LOCAL RULES FOR THE

SUPERIOR COURT OF CALIFORNIA

COUNTY OF FRESNO

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FRESNO COUNTY SUPERIOR COURT

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CHAPTER 1. ADMINISTRATIVE RULES

RULE 1.1 GENERAL

1.1.1 Citation of Rule

These rules shall be known and cited as the "The Superior Court of Fresno County, Local Rules." **(Effective January 1, 2008, Rule 1.1.1 renumbered effective January 1, 2006; adopted as Rule 1.1 effective July 1, 1999)**

1.1.2 Effective Date of Rules

Repealed. **(Effective January 1, 2009, Rule 1.1.2 renumbered effective January 1, 2006; adopted as Rule 1.2 effective January 1, 1997)**

1.1.3 Construction, Scope and Effect of Rules

A. These rules shall be construed to secure the efficient administration of the business of the court and to promote and facilitate the administration of justice by the court.

B. These rules shall govern all proceedings in the court.

C. These rules are supplementary and subject to, and at all times shall be construed and applied so as to be compatible with California statutes, the California Rules of Court and other rules adopted by the Judicial Council of California. When a specific California Rule of Court or code section designated in these rules is amended or renumbered, the successor Rule of Court or code section shall be applicable. **(Rule 1.1.3 renumbered effective January 1, 2006; adopted as Rule 1.3 effective January 1, 1999)**

1.1.4 Definitions

The definitions set forth in the California Rules of Court, or any other rules adopted by the Judicial Council, shall apply with equal force and for all purposes to these rules, unless the context or subject matter herein otherwise requires.

Alternative Dispute Resolution: "Alternative Dispute Resolution" or "ADR" means a process, other than formal litigation, in which a neutral person or persons resolve a dispute or assist parties in resolving their dispute. Examples include mediation, arbitration, neutral evaluation, and mini-trial.

Business Day or Days: The words "business day" or "business days" shall mean days, excluding weekends and Court holidays, when used for the purposes of counting time.

Clerk: The word "Clerk" means the Clerk of the court and any deputy clerks.

Complex Litigation: The words "complex litigation" mean cases that meet the definition of "complex case" found in Rule 3.400 of the California Rules of Court.

Court: The word "court" means the Superior Court of California, County of Fresno, and includes and applies to any duly appointed or elected judge, to any duly appointed commissioner or referee, to any judge or retired judge who has been assigned by the Chairperson of the Judicial Council to serve, and is serving, as a judge of the court, and to any attorney who is a member of the State Bar of California designated by the Presiding Judge or any other judge as a temporary judge, while the attorney is serving as a judge.

Court Day: A day the Court is open to the public and court is in session.

Court's Website: The court's website is http://www.fresno.courts.ca.gov.

Department: The word "department" means either a numbered courtroom or an administrative unit of a division.

General Civil Case: The words "general civil case" mean a limited or unlimited civil case, except probate, guardianship, conservatorship, family law, juvenile proceeding, other civil petition, complex litigation, unlawful detainer, and small claims cases.

Judgment: The word "Judgment" includes and applies to any judgment and to any other order or decree from which an appeal lies.

Judicial Council Rules: The words "Judicial Council Rules" mean any rules heretofore or hereafter adopted by the Judicial Council of the State of California for superior courts.

Judicial Officer: The words "judicial officer" mean any duly appointed or elected judge of the court, any duly appointed commissioner or referee, any judge or retired judge assigned by the Chairperson of the Judicial Council to serve as a judge of the court, and any attorney designated to serve as a temporary judge, while so serving.

Limited Civil Cases: The words "limited civil cases," mean limited civil cases as defined in Code of Civil Procedure § 86.

Meet and Confer: The words "meet and confer" mean a telephone conference between opposing parties or, whenever reasonably possible, a face-to-face meeting. A meet and confer obligation is not satisfied by an exchange of letters.

Paper: The word "paper" includes all pleadings, notices and other documents.

Party: Unless otherwise indicated, "party" means the party litigant, but if the litigant is represented by an attorney, then "party" means the attorney.

Person: The word "person" shall include and apply to corporations, partnerships, proprietorships, associations and all other entities, as well as natural persons.

Plaintiff: The word "plaintiff" means a plaintiff or petitioner; it also means cross-complainant in those cases where the plaintiff is no longer an active party.

Presiding Judge: The words "Presiding Judge" mean the elected Presiding Judge of the court, or the Presiding Judge's designee, unless a case has been filed in, or assigned to, a division other than the Central Division, in which event the words "Presiding Judge" mean the judge of that division.

Short Cause Case: The words "short cause case" mean any case in which the time estimated for trial by all parties is five (5) hours or less.

Unlimited Civil Case: The words "unlimited civil case" mean a civil action or proceeding other than a limited civil case. **(Effective January 1, 2016; Rule 1.1.4 renumbered effective January 1, 2006; adopted as Rule 1.4 effective January 1, 2005)**

1.1.5 Amendment, Addition or Repeal of Rules

Subject to the California Rules of Court, these rules may be amended or repealed, and new rules may be added, by a majority vote of the judges of the court. Written notice of the exact wording of the proposed amendment, addition or repeal shall be given to all of the judges prior to taking a vote. Written notice may be waived by a majority of the judges, if the Presiding Judge declares the proposed amendment, addition, or repeal to be an urgency measure. **(Rule 1.1.5 renumbered effective January 1, 2006; adopted as Rule 1.5 effective January 1, 1999)**

1.1.6 Failure to Comply with Rules

A. The failure of any party to comply with these rules, unless good cause is shown, or the failure of any party to participate in good faith in any hearing or conference required by these rules, is an unlawful interference with the proceedings of the court and may be punishable by contempt. The court may order the party at fault to pay the opposing party's reasonable expenses and counsel fees, to reimburse or make payment to the county, may order an appropriate change in the calendar status of the case and impose any other sanctions authorized by law. The appearance of a party in pro per does not excuse compliance with these rules.

B. The fact that the court does not strictly enforce some provision or requirement of these rules on some occasion should not be construed as an indication that the court cannot or will not strictly enforce that provision or requirement on other occasions. **(Rule 1.1.6 renumbered effective January 1, 2006; adopted as Rule 1.6 effective July 1, 2000)**

1.1.7 Court Security

Security in courtrooms shall be maintained by the Sheriff of the County of Fresno, unless otherwise ordered by the Presiding Judge. **(Rule 1.1.7 renumbered effective January 1, 2006; adopted as Rule 1.7 effective January 1, 1997)**

1.1.8 Court Attire

No person shall appear in court without a shirt, or barefoot, or wearing a tank top. Bailiffs of the court are to remove any person violating this rule. This rule does not limit any judge from prescribing appropriate attire in the courtroom. **(Rule 1.1.8 renumbered effective January 1, 2006; adopted as Rule 1.8 effective January 1, 1997)**

1.1.9 Appearance for Another Attorney

An attorney who appears for another attorney is representing the party then before the court. As provided by the California Rules of Professional Conduct such attorney is required to do so competently, and is expected to be prepared to carry out and perform any duties required by the court, to have authority to make appropriate dispositions or calendar settings and to communicate any orders the court may issue to the attorney of record. **(Rule 1.1.9 renumbered effective January 1, 2006; adopted as Rule 1.9 effective January 1, 1997)**

1.1.10 Filing and Format of Documents

A. All papers shall conform to these rules and the California Rules of Court, and shall be typewritten or legibly printed. The Clerk will not accept for filing any papers not in compliance unless otherwise ordered by the Court.

B. California Rules of Court, rule 3.1110(e), requires all pages of each document and exhibit filed with the Court to be attached together at the top by a method that permits pages to be easily turned and the entire content of each page to be read. To fully comply with rule 3.1110(e) in this court, parties filing papers attached together at the top by prong fasteners, must not use prong fasteners with a capacity larger than 2" so that the bound documents can fit into a standard court file. Excepted from this requirement are exhibits or documents that exceed 2" or that would otherwise be destroyed if they were torn apart to comply with the 2" capacity limit. **(Effective July 1, 2012; Rule 1.1.10 renumbered effective January 1, 2006; adopted as Rule 1.10 effective January 1, 1997)**

1.1.11 Forms of Payment

A. A personal check, bank cashier's check or draft, money order or traveler's check offered in payment of any fee, fine or bail deposit may be accepted by the Clerk as provided herein.

B. Personal checks shall be drawn on a banking institution located in California. Cashier's checks or money orders may be drawn on an issuing institution located in the United States.

C. The amount shall be the exact amount of the fee, fine or bail; change will not be given. The date on the check must not be over one month previous to the date presented; post-dated checks are not acceptable. The original payee must be the Fresno County Superior Court or other similar designee. Two-party checks are not acceptable. The numeric figures must agree with the amount written in words. The sum must be in U.S. currency.

D. Any check or money order which appears irregular on its face may be refused. Personal checks from persons known to have previously tendered dishonored checks may be refused. Checks returned to the court are subject to the applicable fees established by the Fresno County Superior Court.

E. Coinage of more than $50.00 shall be counted and rolled. **(Effective July 1, 2011; Rule 1.1.11 renumbered effective January 1, 2006; adopted as Rule 1.11 effective July 1, 2001)**

1.1.12 Custody of Court Files and Signed Orders

A. No papers, exhibits, or evidence on file with the Clerk in any civil or criminal case shall be taken from the Clerk's Office, except by order of the court or in response to a subpoena duces tecum.

B. Orders signed by a judge must be filed immediately in the Clerk's Office. An unfiled signed order shall not be taken from the courthouse. **(Rule 1.1.12 renumbered effective January 1, 2006; adopted as Rule 1.12 effective January 1, 1997)**

1.1.13 Attorney's Duty to Comply with Calendar

An attorney shall not accept representation of a client if the attorney does not have sufficient time to adequately prepare before the next scheduled court appearance, and shall comply with all applicable case disposition standards unless otherwise ordered by the court. **(Rule 1.1.13 renumbered effective January 1, 2006; adopted as Rule 1.13 effective January 1, 1997)**

1.1.14 Filing and Acceptance of Papers

All papers are to be submitted for filing at the Clerk's Office during normal business hours. For purposes of this section, normal business hours shall be 8:00 a.m. through 4:00 p.m., Monday through Friday, excluding court holidays. Acceptance of papers for filing with the Court shall be deemed to occur:

1. On the date the papers were submitted to the Clerk's Office for filing if the submission occurred during normal business hours of the Clerk's Office; and,

2. On the next Court day the Clerk's Office is open for business if the submission occurred after normal business hours of the Clerk's Office.

To be deemed submitted during the normal business hours of the Clerk's Office the person submitting the papers for filing must have gained entry to the Clerk's Office

during normal business hours. In the event that the submission or entry to the Clerk's Office occurred after normal business hours the filing will occur on the next Court day. Nothing in this section shall limit the clerk's ability to reject filings.

Any exceptions to these rules can be effected by posting of a policy allowing filing through a drop-box. **(Effective July 1, 2012; adopted as Rule 1.1.14 effective January 1, 2009)**

1.1.15 Filing Notices of Appeal

Notices of Appeal can only be filed at the Clerk's Office, in either the civil division or criminal division, as otherwise provided for in accordance with rule 1.1.14. They will not be accepted for filing in any individual courtroom. **(Effective July 1, 2010, New)**

1.1.16 Returned Checks

Notification will be mailed if a check is returned for any reason (e.g., insufficient funds, stop payment or account closed). A "returned check hold" will be placed on all accounts and cases of the person whose check is returned, which will block the ability to pay any fees and/or fines by check and may result in the striking of court filings. To remove the hold on the accounts and cases, the party must pay in cash or with certified funds the original check amount plus a returned check fee that is set by the Court. Once the hold is removed the person may again pay the fees and/or fines by check. **(Effective July 1, 2011; adopted as Rule 1.1.15 (now 1.1.16) effective January 1, 2010)**

(Rule 1.1 renumbered effective January 1, 2006; adopted as Rule 1 effective July 1, 1992)

RULE 1.2 COURT ORGANIZATION

1.2.1 Election, Term and Duties of Presiding Judge

A. Election and Term

The Presiding Judge shall be elected and may be removed by a majority of all judges by secret ballot. The election of the Presiding Judge shall take place at a regular meeting held in the fall of each year in which the term of the prior Presiding Judge expires. Nominations for the position of Presiding Judge shall be made in writing and delivered to the secretary of the Executive Committee not earlier than twenty-one (21) days prior to the meeting and no later than seven (7) calendar days prior to the regular meeting in which the election is to be held. Any Fresno County Superior Court Judge may be nominated by another judge or may nominate himself or herself for the position of Presiding Judge.

The Presiding Judge shall be elected to serve a two-year term commencing the following January 1. The Presiding Judge may be reelected.

B. **Powers and Duties**

The Presiding Judge shall have those powers and duties conferred on the Presiding Judge as provided by statute, California Rules of Court and rules as adopted by the Fresno County Superior Court.

The Presiding Judge's duties shall include, but are not necessarily limited to, the following:

Selecting the court's Assistant Presiding Judge.

Presiding over regular and special court's meetings.

Presiding over Executive Committee meetings.

Setting and implementing policies and procedures.

Planning for the court's future needs.

Supervising the Executive Officer.

Conducting the day-to-day affairs of the court.

Designating an Acting Presiding Judge, when the Presiding Judge is unavailable or absent. **(Effective July 1, 2012; Rule 1.2.1 renumbered effective January 1, 2006; adopted as Rule 2.1 effective April 6, 2002)**

1.2.2 Assistant Presiding Judge

A. **Selection**

The Presiding Judge shall select the Assistant Presiding Judge from among all Fresno County Superior Court Judges.

B. **Duties**

The duties of the Assistant Presiding Judge shall be the same as the Presiding Judge in his or her absence at the discretion of the Presiding Judge. Other duties may be delegated to the Assistant Presiding Judge by the Presiding Judge. The Assistant Presiding Judge shall be a member of the Executive Committee. **(Rule 1.2.2 renumbered effective January 1, 2006; adopted as Rule 2.2 effective January 1, 1999)**

1.2.3 Acting Presiding Judge

An Acting Presiding Judge may be designated by the Presiding Judge in the Presiding Judge's absence or unavailability. **(Rule 1.2.3 renumbered effective January 1, 2006; adopted as Rule 2.3 effective January 1, 1999)**

1.2.4 Regular and Special Meetings

A. Membership

All Fresno County Superior Court Judges created under Article VI of the California Constitution shall be voting members.

The Court Executive Officer shall be a non-voting ex officio member and shall serve as secretary at all judges' meetings.

Court Commissioners may attend all judges' meetings unless otherwise informed.

B. Judges' Meetings

1. Regular Meetings

The judges may hold regular meetings at least once every month unless otherwise determined by the Presiding Judge. The meetings shall be held at a reasonably fixed date, time and location. Agendas for all meetings shall be distributed no less than four (4) Court days prior to the meeting. Minutes of all meetings shall be distributed as soon as possible.

2. Semi-Annual Meetings

The judges shall hold extended meetings two (2) times each calendar year. One of those meetings shall be scheduled during the fall. Biennially, at the fall meeting, one of the agenda items shall be the election of the Presiding Judge. The Executive Committee shall schedule these semi-annual meetings at a reasonably fixed date and location and provide all judges with at least thirty (30) calendar days written notice thereof. These meetings shall be designated as regular meetings. The purpose of these meetings is to discuss and formulate major policies, strategies and other issues which cannot be discussed adequately at a regular meeting.

3. Special Meetings

Special meetings may be called by at least twenty-five percent (25%) of the judges or by the Executive Committee, provided written notice of the date, time and place of the meeting is given to all judges at least seven (7) calendar days prior to the date of the meeting.

C. **Voting**

Each Judge shall have one (1) vote. Any judge who does not attend a regular or special meeting may authorize another Fresno County Superior Court Judge to exercise a written proxy, general or specific as stated in the proxy, and vote on his or her behalf.

D. **Quorum**

A quorum for the conduct of business shall require at least fifty percent (50%) of the total number of voting members (inclusive of general, but not of specific proxies) plus one (1). The proxy must be submitted to the secretary prior to the voting on any issue in which a proxy vote is to be cast. **(Effective July 1, 2012; Rule 1.2.4 renumbered effective January 1, 2006; adopted as Rule 2.4 effective January 1, 2002)**

1.2.5 Election, Term and Duties of Executive Committee

A. **Composition/Selection of Voting Members**

There is hereby established an Executive Committee. The committee shall be comprised of seven (7) judges, one of whom must be the Presiding Judge, and one of whom must be an Assistant Presiding Judge. The remaining judge members shall be elected by all Fresno County Superior Court Judges.

In addition, in an effort to ensure leadership continuity and a heightened awareness of court history and decision-making considerations, the immediately preceding Presiding Judge shall occupy an "emeritus" membership position for up to two consecutive one-year terms, at his or her option. The emeritus position shall be a non-voting member.

The Court Executive Officer shall be a non-voting member and shall serve as secretary of the Executive Committee.

At the fall semi-annual meeting and by written notice to each judge, the secretary of the Executive Committee shall notify each judge that nominations for judge members of the Executive Committee are open and shall close fourteen (14) calendar days after the date of the written notice. Nominations for Executive Committee judge members shall be made in writing and delivered to the secretary of the Executive Committee. Within three (3) court days after the close of nominations, the secretary shall distribute written ballots to all judges that must be returned to the secretary no later than fourteen (14) calendar days thereafter. Any judge may be nominated by another judge or by himself or herself for the position of Executive Committee member.

B. **Executive Committee Membership**

The five (5) judge members shall be elected at large from among all Fresno County Superior Court Judges. Vacancies in any member position, regardless of the

reason – elevation, retirement, death, disability, resignation, etc. – shall be filled for the remainder of the term by a majority vote of the remaining members of the Executive Committee, unless just cause to leave the position vacant, such as the limited amount of time left on the departing member's term, is determined by the Executive Committee.

The Executive Committee shall announce the vacancy in writing to all judges. Any judge interested in serving in the vacant position shall have one (1) week to notify the Executive Committee of his or her interest.

C. **Term of Office for Voting Members**

The term of office for Executive Committee members shall be two (2) years, commencing January 1 of the calendar year following selection.

The terms of the members shall be staggered so that each January 1, no more than four (4) of the seven (7) members change, unless an exception is approved by the Executive Committee.

D. **Voting**

Each judicial member of the Executive Committee shall have one (1) vote. Any member who does not attend a committee meeting may authorize another judge to exercise a written proxy, general or specific as stated in the proxy, to vote on his or her behalf. No judicial member shall exercise more than two (2) proxies on behalf of other judicial members. The proxy should be provided to the secretary in advance of the meeting. All matters coming before the committee for approval shall require a majority vote of voting members present.

E. **Quorum**

At least four (4) voting members of the Executive Committee in attendance are necessary to establish a quorum. Submission of a general proxy shall not constitute presence at the meeting for the purpose of a quorum.

F. **Meetings**

The Executive Committee shall hold regular meetings at least once every month. Any Fresno County Superior Court Judge may attend any meeting of the committee. Notice of the time, place and agenda for committee meetings shall be provided to all judges at least twenty-four (24) hours before the meeting and minutes of the meeting shall be promptly prepared and immediately distributed to all judges. Voting on issues shall be limited to agenda items except for items designated as emergency items by a majority of the Executive Committee. Meetings of the Executive Committee shall be chaired by the Presiding Judge.

Any member of the Executive Committee, other than the Presiding Judge, who is absent from three (3) consecutive meetings without good cause as determined by the

Executive Committee, or who is excessively absent as determined by the Executive Committee, may be removed as a member by majority vote of the Executive Committee. The remaining members of the Executive Committee shall by majority vote elect a replacement member to serve the remainder of the term of the removed member.

G. **Duties**

The duties of the Executive Committee shall include:

1. Recommending court policy and procedures for implementation by the Presiding Judge.

2. Reviewing, in its discretion, the decisions and actions of the Presiding Judge and Executive Officer and, where appropriate, making recommendations to the Presiding Judge.

3. Establishing budgetary priorities and approving budget for submission to the State Trial Court Budget Commission.

4. Recommending for hire an Executive Officer.

5. Conducting an annual evaluation of the performance of the Executive Officer.

6. Selecting and hiring Court Commissioners. **(Effective July 1, 2012; Rule 1.2.5 renumbered effective January 1, 2006; adopted as Rule 2.5 effective January 1, 2002)**

1.2.6 Committee Assignments

All committee members shall be appointed by the Presiding Judge. **(Rule 1.2.6 renumbered effective January 1, 2006; adopted as Rule 2.6 effective January 1, 1999)**

1.2.7 Court Executive Officer

Pursuant to Government Code § 69898, the Court Executive Officer, under the direction of the Presiding Judge, shall exercise all of the powers, duties and responsibilities as Clerk of the Fresno County Superior Court. These powers, duties and responsibilities shall include all of those previously performed by the County Clerk as Ex Officio Clerk of the Fresno County Superior Court, and those pertaining to the Grand Jury prescribed by Penal Code §§ 900 and 933. Pursuant to Government Code § 26800, the County Clerk is hereby relieved of any obligation imposed by law with respect to these powers, duties and responsibilities. Pursuant to Government Code § 69893 and Code of Civil Procedure § 195, the Court Executive Officer shall also serve as Jury Commissioners.

The duties of the Court Executive Officer shall include, but are not necessarily limited to, those set forth in California Rules of Court, Rule 10.610, and such other

duties as may be assigned by the Presiding Judge. The Court Executive Officer shall be responsible for the selection, retention and direction of all non-judicial personnel of the court. The Court Executive Officer shall be an exempt employee whose selection shall be recommended by a majority of the Executive Committee and approved by a majority vote of all Fresno County Superior Court Judges, who may be terminated by a majority vote of all Fresno County Superior Court Judges. The Court Executive Officer shall serve as a non-voting member of the Executive Committee and shall serve as secretary. The secretary is responsible for conducting all elections and counting all votes. **(Effective July 1, 2007; Rule 1.2.7 renumbered effective January 1, 2006; adopted as Rule 2.7 effective January 1, 1999)**

1.2.8 Court Commissioners

Court Commissioners shall be exempt employees who shall serve at the pleasures of the judges of the Fresno County Superior Court. They shall be selected by the Executive Committee and may be terminated by a majority of all Fresno County Superior Court Judges. The court shall conduct at least an annual evaluation of Court Commissioners or additional evaluations as needed. **(Rule 1.2.8 renumbered effective January 1, 2006; adopted as Rule 2.8 effective January 1, 1999)**

1.2.9 Definition of a Judicial Vacation Day

Pursuant to Rule 10.603(c)(2)(E) of the California Rules of Court, the Presiding Judge of each Court is required to allow the judges of that court vacation days according to their number of years of service. Rule 10.603(c)(2)(H) requires each court to define a vacation day, for purposes of the above entitlement.

A “day of vacation” for a judge of the court shall be defined as an approved absence for one full business day. Consistent with the needs of the court and on approval of the Presiding Judge, a judge may nevertheless use accumulated unused vacation leave in half-day increments. **(Effective January 1, 2009, New)**

(Rule 1.2 renumbered effective January 1, 2006; adopted as Rule 2 effective July 1, 1992)

(Chapter 1 amended effective January 1, 2006; adopted as I effective July 1, 1992)

CHAPTER 2. CIVIL RULES

RULE 2.1 ADMINISTRATION OF CIVIL CASES

2.1.1 Applicability

The provisions of Rule 2.1 shall apply to all general civil cases and complex litigation, as defined in Rule 1.1.4, unless otherwise specified in these rules. **(Rule 2.1.1 renumbered effective January 1, 2006; adopted as Rule 3.1 effective May 14, 2001)**

2.1.2 Case Disposition Time Standards

A. The court adopts the case disposition time standards set forth in §§ 2.1 and 2.3 of the California Standards of Judicial Administration.

B. The court shall endeavor to dispose of all general civil cases as follows: 90% within twelve (12) months after filing, 98% within eighteen (18) months after filing, 100% within twenty-four (24) months after filing. **(Effective January 1, 2012; Rule 2.1.1 renumbered effective January 1, 2006; adopted as Rule 3.2 effective July 1, 2000)**

2.1.3 Tracking Cases

All pending cases shall be calendared for a future event. No pending case shall go off calendar without a future event being set. **(Rule 2.1.3 renumbered effective January 1, 2006; adopted as Rule 3.3 effective May 14, 2001)**

2.1.4 Notice of Case Management Conference

A. At the time the complaint is filed, the Clerk will issue a Notice of Case Management Conference to plaintiff, designating a date for a Case Management Conference that is no less than 120 days after the filing of the complaint. Plaintiff shall serve a copy of the Notice of Case Management Conference on each defendant along with the summons and complaint.

B. Any party who files and serves a cross-complaint prior to the Case Management Conference shall serve on each cross-defendant who is a new party to the action a copy of the Notice of Case Management Conference along with the summons and cross-complaint. If a new cross-defendant is served after the initial Case Management Conference, the cross-complainant shall serve the new cross-defendant with notice of any pending Case Management Conference, any assigned trial or settlement conference dates, and any other dates set by the court or orders made at the Case Management Conference.

C. If plaintiff adds a new defendant or identifies a fictitiously named defendant after the initial Case Management Conference, along with the summons and complaint, plaintiff shall serve the newly named defendant with notice of any pending Case Management Conference, any assigned trial and settlement conference dates,

and any other dates set by the court or orders made at the Case Management Conference.

D. Proof of service of notice of a Case Management Conference shall be filed with the court and may be included in the proof of service of the summons and complaint or cross-complaint. **(Rule 2.1.4 renumbered effective January 1, 2006; adopted as Rule 3.4 effective May 14, 2001)**

2.1.5 Service and Filing of Proof of Service

A plaintiff shall serve all named defendants with all pleadings and notices required by these rules or other law, including notice of a Case Management Conference, and shall file proof of service with the court, within sixty (60) days from the date the complaint is filed. **(Rule 2.1.5 renumbered effective January 1, 2006; adopted as Rule 3.5 effective July 1, 2002)**

2.1.6 Extensions of Time by the Court

A. The court may extend any time requirement for service of process or for filing proof of service or responsive pleadings upon a showing of good cause on noticed motion or by ex parte application, which may be made on the form available from the Clerk's Office and on the court's website. The motion or application must be filed before the expiration of the initial time period within which the act is required to be done. When a request for an extension is filed, the court may deny the request, grant an extension of time to a specified date, or conduct a hearing on the matter.

B. When applying to the court to extend time for service of process based on the conditions stated in Code of Civil Procedure § 583.240, the plaintiff shall set forth the earliest date by which service may reasonably be effected so that the court may set a date for service and for the filing of a proof of service. **(Rule 2.1.6 renumbered effective January 1, 2006; adopted as Rule 3.6 effective May 14, 2001)**

2.1.7 Case Management Plans

A. All general civil cases and complex litigation shall be assigned to one of the following case management plans:

1. Plan 1: cases to be disposed of within 12 months.

2. Plan 2: cases to be disposed of within 18 months.

3. Plan 3: cases to be disposed of within 24 months.

4. Exempt complex litigation: complex litigation as defined in Rule 1.1.4 that is not expected to be disposed of within 24 months.

B. Unless designated as a complex case in accordance with the California Rules of Court, all general civil cases shall be deemed to be assigned to Plan 1 upon the filing of the complaint. The court may reassign a case to a different plan at the time of a Case Management Conference or on noticed motion showing good cause for the reassignment.

C. All cases filed as class actions shall be initially assigned on a provisional basis as exempt complex litigation, subject to the Court reassigning any class action case to a different plan. **(Effective July 1, 2014; Rule 2.1.7 renumbered effective January 1, 2006; adopted as Rule 3.7 effective May 14, 2001)**

2.1.8 Stipulation for Trial Setting in Lieu of Case Management Conference

A. In general civil cases that are at issue before the Case Management Conference, if no jury is demanded and the time estimate for trial is two (2) hours or less, the parties may execute and file a Stipulation for Trial Setting in Lieu of Case Management Conference. The Stipulation shall be filed on a form that is available from the Clerk's Office and on the court's website. The Stipulation must be signed by all attorneys and self-represented parties.

B. If the filing of the Stipulation does not result in a trial date being set prior to the Case Management Conference, the Case Management Conference must be attended by all attorneys and self-represented parties as required by Rule 2.1.9.

C. Preference shall be deemed waived unless the At Issue Memorandum or Counter At Issue Memorandum states that the case is entitled to preference in setting. **(Effective July 1, 2010; Rule 2.1.8 renumbered effective January 1, 2006; adopted as Rule 3.8 effective January 1, 2002)**

2.1.9 Case Management Conference

A. All parties are required to appear at the Case Management Conference. The person attending the conference shall have sufficient understanding of the case and sufficient authority to make decisions and agreements as necessary, including agreements regarding submission of the case to ADR (such as choosing the form of ADR and choosing an arbitrator or mediator), and decisions regarding demanding or waiving a jury trial, assignment of the case to a Plan and the dates to be set for trial and settlement conference.

B. Unless the court determines otherwise, all cases except complex litigation are deemed at issue and ready to be set for trial at the time of the Case Management Conference.

C. At the Case Management Conference, all at issue cases will be assigned a date for trial, mandatory settlement conference, and trial readiness hearing.

D. At the case Management Conference, the court may:

1. Reassign the case to Plan 2 or Plan 3;

2. Designate the case as complex litigation, refer it to the Presiding Judge for assignment of a judge for all purposes, and set it for a further Case Management Conference before the assigned judge;

3. Order or refer the case to ADR;

4. Direct one or more parties to effect service of process, file specified motions, or take other specified actions within specified time periods;

5. Record each party's demand or waiver of jury trial;

6. Schedule a further Case Management Conference;

7. Make a scheduling order, which may include a completion date for discovery and a final date for motions;

8. Schedule the matter for a dismissal hearing or issue an order to show cause;

9. Impose sanctions, including dismissal of the case;

10. Make such other orders as the court deems appropriate.

E. A Case Management Conference will be taken off calendar only if the case has been disposed of or has received a trial date prior to the Conference. For purposes of this rule, a case is disposed of if a judgment or dismissal of the entire action has been filed. If the case has been stayed or a notice of conditional settlement has been filed, the Conference will be continued. If any of these conditions has been met, it is the responsibility of the parties to notify the TCDR Clerk in writing and ask that the Conference be taken off calendar or continued. **(Rule 2.1.9 renumbered effective January 1, 2006; adopted as Rule 3.9 effective May 14, 2001)**

2.1.10 Trial Date and Conflicts

A. Ordinarily, Plan 1 cases will be assigned a trial date that is approximately 330 days after the date the complaint was filed.

1. At the request of all parties or at the request of any party without objection from any other party, a Plan 1 case may be set for trial on the earliest available court date. The request may be made at the At Issue Memorandum pursuant to Rule 2.1.8, or by stipulation. If the request is made in the At Issue Memorandum, it will be deemed unopposed if no Counter At Issue Memorandum is timely filed challenging the request. If an objection is made, the court will determine at the Case Management Conference whether the case should be set for trial on the earliest available court date.

2. Limited civil cases in which an early trial date is not requested as described in subdivision (1) will ordinarily be assigned a trial date that is approximately 90 days after the initial Case Management Conference date.

B. Plan 2 cases will be assigned a trial date that is approximately 480 days after the date the complaint was filed.

C. Plan 3 cases will be assigned a trial date that is approximately 630 days after the date the complaint was filed.

D. No trial date may be continued merely on stipulation of the parties. On a showing of good cause, the trial date may be continued by court order, obtained by noticed motion or by ex parte application presented to the Presiding Judge, or his or her designee, at least five (5) court days before trial. It may also be continued pursuant to (F) below.

E. If an application for a continuance is presented less than five (5) court days before the trial date, it shall contain a detailed factual declaration demonstrating good cause for the delay.

F. After a trial date has been assigned, any party who has a conflict with the trial date shall, immediately upon having knowledge of the conflict, submit a letter to the Presiding Judge and to all other parties notifying them of the conflict. The court shall maintain the trial date until the trial readiness hearing unless: (1) a continuance has been granted pursuant to (D) above, or (2) a continuance is approved by the Presiding Judge at the conclusion of the settlement conference. **(Rule 2.1.10 renumbered effective January 1, 2006; adopted as Rule 3.10 effective January 1, 2002)**

2.1.11 Complex Litigation

A. Cases designated as complex litigation shall be exempt from the case disposition time standards of Rule 2.1.2. When a case is designated as complex litigation, the case shall be referred to the Presiding Judge or his designee, who may assign the case to one judge for all purposes or make other orders as appropriate.

B. If the case is assigned to one judge for all purposes, any pending or future Case Management Conference will be heard before the assigned judge. At or after the Case Management Conference, the assigned judge shall establish a case progression plan and assign a trial date designed to ensure that the case will progress to a disposition in a timely fashion, consistent with the purposes of the Trial Court Delay Reduction Act and with the particular needs of the case. After assignment, the assigned judge shall hear all of the proceedings in the case, except the mandatory settlement conference and except as otherwise ordered by the Presiding Judge. The assigned judge shall monitor the case to its conclusion, with the goal that it be disposed of within three (3) years after filing.

C. If the case is not assigned to one judge for all purposes, the case will be set for a further Case Management Conference before the Case Management Conference judge or another designated judge. The Case Management Judge or designated judge shall establish a case progression plan and monitor the case to ensure timely disposition consistent with the exceptional circumstances, with the goal of disposition within three (3) years after filing.

D. All cases initially filed as class actions shall be assigned to one judge for all purposes. Within one hundred twenty (120) calendar days of the filing of the action, an initial Case Management Conference will be heard before the assigned judge. Notice of the initial Case Management Conference will be given by the Court no later than forty-five (45) calendars days before the conference. The parties to the action will file a joint Case Management Conference Statement no later than seven (7) calendar days before the initial Case Management Conference, which shall address the following matters, among others:

1. Whether there are any related cases;

2. Whether all parties named in the complaint or cross-complaint have been served, have appeared, or have been dismissed;

3. Whether any additional parties may be added or the pleadings may be amended;

4. Whether any other matters (e.g., the bankruptcy of a party) may affect the Court's jurisdiction or processing of the case;

5. Whether the parties have stipulated to, or the case should be referred to, judicial arbitration in courts that have a judicial arbitration program or to any other form of alternative dispute resolution (ADR) process and, if so, the date by which the judicial arbitration or other ADR process must be completed;

6. Whether an early settlement conference should be scheduled and, if so, on what date;

7. What discovery issues are anticipated;

8. The date by which discovery will be completed concerning the class certification issues;

9. Any issues relating to the discovery of electronically stored information, including:

a. Issues relating to the preservation of discoverable electronically stored information;

b. The form or forms in which information will be produced;

c. The time within which the information will be produced;

d. The scope of discovery of the information;

e. The method for asserting or preserving claims of privilege or attorney work product, including whether such claims may be asserted after production;

f. The method for asserting or preserving the confidentiality, privacy, trade secrets, or proprietary status of information relating to a party or person not a party to the civil proceedings;

g. How the cost of production of electronically stored information is to be allocated among the parties;

h. Any other issues relating to the discovery of electronically stored information, including developing a proposed plan relating to the discovery of the information;

10. A proposed schedule for class certification motions, including any motions to strike class certification. The schedule shall include the proposed date for filing of any motions, the proposed date for filing any oppositions, the proposed date for filing any replies for motions and the proposed date for hearings on those motions;

11. Any other matters that should be considered by the Court or addressed in its case management order; and

12. Other relevant matters.

At the conclusion of the initial Case Management Conference, the Court may issue an order, including setting further Case Management Conferences. **(Effective July 1, 2013; Rule 2.1.11 renumbered effective January 1, 2006; adopted as Rule 3.11 effective July 1, 2003)**

2.1.12 Continuance or Modification

No time standard or deadline specified in these rules, nor any schedule, date, time limitation or other requirement imposed by any order made pursuant to these rules may be modified, extended or voided by any stipulation or agreement of the parties unless a written order approving it is obtained from the court. Continuances, extensions or modifications may be obtained by noticed motion or ex parte application, on a showing of good cause. **(Rule 2.1.12 renumbered effective January 1, 2006; adopted as Rule 3.12 effective May 14, 2001)**

2.1.13 Settlement and Conditional Settlement

A. When a case settles, whether by conditional settlement or otherwise, the plaintiff shall comply with Rule 3.1385 of the California Rules of Court. Written notice of settlement shall be given on the Notice of Settlement form, which is available from the Clerk's Office and on the court's website.

B. When a settled case has not been dismissed within 45 days of the notice of settlement or within 45 days of the dismissal date specified in the notice, if the settlement is conditional, the court will set the matter for a Rule 3.1385 hearing. An unexcused failure or plaintiff to appear at the hearing may result in the court's dismissal of the case.

C. An extension of time for filing the dismissal may be granted on a showing of good cause. Requests for extensions shall be made on the Request for Extension of Time to File Dismissal form, which is available from the Clerk's Office and on the court's website. **(Effective July 1, 2007; Rule 2.1.13 renumbered effective January 1, 2006; adopted as Rule 3.13 effective July 1, 2002)**

2.1.14 Default Judgment

To obtain a default judgment a plaintiff shall present testimony in support of his or her claim by competent witnesses having personal knowledge of the essential facts, or file an affidavit or declaration by such witnesses, except for cases governed by Code of Civil Procedure § 585(a). Applications for default judgment on declarations pursuant to Code of Civil Procedure § 585(d) is the preferred procedure.

When submitting a matter for default judgment on declarations, the parties must comply with California Rules of Court, rule 3.1800. If a hearing has been scheduled and proof is to be by written declaration, the material required by rule 3.1800(a) must be submitted together as a single packet. Each exhibit must be separated by a hard 8 ½ x 11 sheet with hard paper or plastic tabs extending below the bottom of the page, bearing the exhibit designation. Any provision for attorney fees based on a contract must be highlighted within the written contract. Parties should file such default packets in the Clerk's Office at least ten (10) court days prior to the scheduled hearing date.

The Court may, in its discretion, set an application for default judgment on declarations for a hearing.

If, after reviewing the materials submitted, the Court determines that oral testimony or additional documentary evidence is necessary, it will indicate that in the tentative ruling posted before the hearing pursuant to Local Rule 2.2.6. **(Effective January 1, 2014; Rule 2.1.14 renumbered effective January 1, 2006; adopted as Rule 3.14 effective July 1, 2000)**

2.1.15 Signatures on Orders

It is the policy of the court not to sign orders or judgments unless some portion of the text of the order or judgment appears on the page to which the judicial officer's signature is affixed, so that the connection between the signature page and the remainder of the order or judgment is apparent. **(Rule 2.1.15 renumbered effective January 1, 2006; adopted as Rule 3.15 effective July 1, 2000)**

2.1.16 Designation of Counsel

When a law firm is the attorney of record in a civil action, the attorney who signed the initial pleading shall be designated to receive notices in the case. If, after the filing of the initial pleading, the attorney who is to receive notices changes, then a Designation of Counsel must be filed with the court. The designation must include the name and state bar number of the designated attorney. The designation may be made on a form available from the Clerk's Office and on the court's website. **(Rule 2.1.16 renumbered effective January 1, 2006; adopted as Rule 3.16 effective May 14, 2001)**

2.1.17 Resolution of Discovery Disputes

A. Except for motions to compel initial responses to interrogatories, requests for production and requests for admissions, no motion under sections 2016.010 through 2036.050, inclusive, of the California Code of Civil Procedure shall be heard in a civil unlimited case unless the moving party has first requested an informal Pretrial Discovery Conference with the Court and such request for a Conference has either been denied and permission to file the motion is expressly granted via court order or the discovery dispute has not been resolved as a consequence of such a conference and permission to file the motion is expressly granted after the conference.

1. Any request for a Pretrial Discovery Conference must be filed with the Clerk's Office on the approved form (provided by the clerk), must include a brief summary of the dispute, and must be served on opposing counsel on or before the date it is filed with the court. Any opposition to a request for a Pretrial Discovery Conference must also be filed on an approved form (provided by the clerk), must include a brief summary of why the requested discovery should be denied, must be filed within five (5) court days of service of the request for a Pretrial Discovery Conference, extended five (5) days for service by mail, and must be served on opposing counsel.

2. Excepting a privilege log, if required pursuant to subsection B, below, no other pleadings, including but not limited to exhibits, declarations, or attachments, will be accepted.

3. If the party opponent has *any* opposition to the dispute as stated in the request described in paragraph no. 1 above, a written opposition on the approved form shall be timely filed or it will be considered by the Court as a refusal to participate as defined in "C" below.

4. The parties will be notified by minute order whether the request has been granted or denied and, if granted, the date and time of the Pretrial Discovery Conference.

5. Filing a request for a Pretrial Discovery Conference tolls the time for filing a motion to compel discovery on the disputed issues for the number of days between the filing of the request and issuance by the Court of a subsequent order pertaining to the discovery dispute. The Court's order will specify the number of days the time for filing a motion is tolled.

B. Where privilege is a basis for refusal to produce documents, privilege logs must be provided. The privilege log must include an identification of all sending and receiving entities, as well as details of the information sufficient to apprise the opposing party of the basis for the privilege.

C. Refusal of any counsel to participate in a Pretrial Discovery Conference shall be grounds, in the discretion of the Court, for entry of an order adverse to the party represented by counsel so refusing, or adverse to counsel. Failure to file a written opposition to the merits underlying a request for a Conference is considered a refusal to participate. Where there has been no written opposition to the merits of the request filed the Court may, in its discretion, enter an order adverse to the non-responding party. **(Effective July 1, 2015; adopted as Rule 2.1.17 effective January 1, 2013)**

(Rule 2.1 renumbered effective January 1, 2006; adopted as Rule 3 effective July 1, 1992)

RULE 2.2 CIVIL LAW AND MOTION

2.2.1 Setting Law and Motion Hearing

Prior to the filing of any law and motion matter, a date and time for hearing shall be reserved with the law and motion clerk. Parties may also obtain a date and time for hearing of the law and motion matter for the earliest available date at the filing counter in the civil clerk's office upon presentation of moving papers and payment of appropriate fees. When calling to reserve a hearing date for a discovery motion, the person setting the motion shall provide information regarding compliance with rule 2.1.17. The person setting the motion shall inform the Clerk of one of the following:

A. The motion is to compel initial responses and is, therefore, exempt from rule 2.1.17;

B. Rule 2.1.17 has been complied with and permission to file the motion has been granted by the Court; or

C. Rule 2.1.17 does not apply to the motion being set. Anyone claiming C must provide the name of the attorney or self-represented party making the claim and a brief explanation to support the claim. **(Effective July 1, 2016; Rule 2.2.1 renumbered effective January 1, 2006; adopted as Rule 4.1 effective January 1, 1997)**

2.2.2 Taking Law and Motion Hearing Off Calendar

A. Any party who reserves a date and time for hearing with the Clerk, but fails to timely file moving papers for a hearing on that date, shall promptly notify the Clerk and request that the hearing be taken off calendar.

B. Any reserved law and motion date may be vacated by the Court without further notice if the moving papers are not filed the required number of days before the hearing date.

C. Unless otherwise ordered by the Court, any moving party who wishes to have a law and motion hearing taken off calendar after the moving papers have been filed but before a response has been filed, may be required to give written notice to the Clerk, the assigned judge, and all parties at least five (5) court days before the scheduled hearing date. Notice to the Clerk may be sent by facsimile and shall be accompanied by proof that notification was given to all parties. Proof of notification to all parties may be made:

1. By proof of service by mail, or

2. By letter indicating that a copy thereof has been sent by facsimile to all parties, or

3. By a declaration stating when, and in what manner, notice was given to all parties.

D. A law and motion matter may also be taken off calendar by stipulation of the parties at least five (5) court days before the scheduled hearing, with written notice to the Clerk and assigned judge. Notice to the Clerk and assigned judge may be given by facsimile.

E. Any moving party who wishes to have a law and motion matter taken off calendar after the responsive papers have been filed shall do so by stipulation of the parties or shall obtain the permission of the assigned judge and give written notice to all parties. Proof of notification to all parties shall be made as described in (B) above.

F. Within five (5) court days of the hearing, permission to take the matter off calendar shall be obtained only from the assigned judge. **(Effective July 1, 2012; Rule 2.2.2 renumbered effective January 1, 2006; adopted as Rule 4.2 effective January 1, 2003)**

2.2.3 Continuing a Law and Motion Hearing

A. Any request for continuance of a law and motion hearing, may be required to be made in writing to the assigned judge at least five (5) court days before the scheduled hearing with proof of notification to all parties as described in Rule 2.2.2. The request may be submitted by facsimile. The request for continuance shall include a

specific date for the continued hearing and a statement indicating whether the other parties consent or object to the continuance and/or the requested new hearing date.

B. If the request is made after the five (5) court day time limit has passed, the request shall contain a detailed factual explanation demonstrating good cause for the delay. **(Rule 2.2.3 renumbered effective January 1, 2006; adopted as Rule 4.3 effective January 1, 2003)**

2.2.4 Additional Copies

In cases other than limited civil cases, the court requests that any papers filed with the Clerk in connection with a law and motion matter be accompanied by one full set of copies of the original (including exhibits). The copies may be emailed to the research attorneys at: researchattorney@fresno.courts.ca.gov. Each email shall state the case name, number and hearing date in the subject line. All documents *must* be submitted in either a .doc/.docx or .pdf format. **(Effective July 1, 2014; Rule 2.2.4 renumbered effective January 1, 2006; adopted as Rule 4.4 effective July 1, 2000)**

2.2.5 Telephonic Appearances

When telephone appearances are allowed, attorneys or parties may appear by "Court Call," by making prior arrangements with the private company that administers the program. Court Call may be arranged by calling (888) 882-6878, or the telephone number of any other vendor as approved by the Court. **(Effective July 1, 2008; Rule 2.2.5 renumbered effective January 1, 2006; adopted as Rule 4.5 effective July 1, 2000)**

2.2.6 Tentative Rulings

A. The court follows the tentative ruling procedure set forth in Rule 3.1308(a)(1) of the California Rules of Court. A tentative ruling on civil law and motion matter may be obtained by:

1. Telephoning the court at (559) 457-4943; or

2. Accessing tentative rulings on the court's website.

B. If a party wishes to appear for oral argument, the notice to be given to the court, as required by Rule 3.1308(a)(1) of the California Rules of Court, must be given by telephone to the clerk in the department to which the matter is assigned for hearing. **(Effective January 1, 2010; Rule 2.2.6 renumbered effective January 1, 2006; adopted as Rule 4.6 effective January 1, 2005)**

2.2.7 Appendix of Authorities

If a party cites to out-of-state cases, statutes or rules, or authority cited through a "Lexis" or "Westlaw" citation, a copy of each authority shall be lodged in a separately bound appendix of authorities, and each authority shall be tabbed and indexed as an exhibit as required by California Rules of Court, rule 3.1110(f). **(Effective January 1, 2013, New)**

RULE 2.3 EARLY MANDATORY MEDIATION PILOT PROGRAM

Repealed. **(Effective January 1, 2007)**

RULE 2.4 ALTERNATIVE DISPUTE RESOLUTION (ADR)

2.4.1 ADR Information

Attorneys shall provide their clients with a copy of the ADR information package at the earliest available opportunity. Upon request, the ADR information package may be obtained from the Clerk. Plaintiffs and cross-complainants shall serve a copy of the ADR information package on each defendant or cross-defendant as required by the California Rules of Court. **(Rule 2.4.1 renumbered effective January 1, 2006; adopted as Rule 7.1 effective May 14, 2001)**

2.4.2 Judicial Arbitration

The provisions of Chapter 2.5, commencing with § 1141.10 of the Code of Civil Procedure and the provisions of California Rules of Court set forth in Title 3, commencing with Rule 3.810, regarding judicial arbitration shall apply to all civil cases as stated therein. It is determined to be in the interest of justice that any at-issue limited civil case pending on or filed after September 1, 1997, may be ordered by the court to arbitration, except as otherwise provided by law. **(Effective July 1, 2007, Rule 2.4.2 renumbered effective January 1, 2006; adopted as Rule 7.2 effective May 14, 2001)**

2.4.3 Mediation

The Presiding Judge has elected to apply the provisions of Code of Civil Procedure § 1775, et seq., to eligible cases. Cases eligible for judicial arbitration may be subject to court-ordered mediation. **(Rule 2.4.3 renumbered effective January 1, 2006; adopted as Rule 7.3 effective May 14, 2001)**

(Rule 2.4 renumbered effective January 1, 2006; adopted as Rule 7 effective July 1, 1992)

RULE 2.5 MANDATORY SETTLEMENT CONFERENCE

2.5.1 Mandatory Settlement Conference

A mandatory settlement conference shall be held pursuant to Rule 2.5 for every civil case set for trial on the master calendar, except as follows:

A. Small claims, unlawful detainers, and family law cases. (For Family Law Department requirements, refer to Rule 5.7.)

B. Short cause cases.

C. In any case where, at least thirty (30) days prior to the date set for trial, all parties have filed a written stipulation that they have previously engaged in one court-

supervised settlement conference and do not believe another settlement conference would be productive. Plaintiff shall notify the calendar Clerk of the filing of the stipulation.

D. In any case where, at least thirty (30) days prior to the date set for trial, all parties have filed a written stipulation that they have engaged in mediation, conducted by a neutral mediator, and do not believe a settlement conference would be productive. Plaintiff shall notify the calendar Clerk of the filing of the stipulation.

E. By order of the court for good cause, based upon a petition addressed to the Presiding Judge citing this rule, filed and served on all other parties at least thirty (30) days prior to trial. Opposition to the petition shall be in writing, addressed to the Presiding Judge, filed and served on all parties no later than ten (10) days after service of the petition. There will be no oral argument on such petitions. Parties will be notified of the court's ruling. Good cause requires facts supporting the conclusion that it would be extremely unlikely that a settlement conference will resolve the case. **(Rule 2.5.1 renumbered effective January 1, 2006; adopted as Rule 8.1 effective January 1, 1997)**

2.5.2 Meet and Confer Prior to Settlement Conference

A. In all cases set for a settlement conference where the parties are not excused from attending the settlement conference, the parties shall meet and confer prior to the date set for the settlement conference in a good faith attempt to settle all issues. The requirement of this rule is met by a face-to-face meeting between the parties, or by engaging in mediation before a neutral mediator. If, however, an attorney's office is located outside of Fresno County, or a party in pro per resides outside of Fresno County, that party may meet the requirement of this rule by meeting and conferring telephonically in a good faith attempt to settle all issues. Communication by writing will not suffice.

B. The fact of compliance with this rule, and the results of the meet and confer conference shall be set forth in the settlement conference statement. **(Rule 2.5.2 renumbered effective January 1, 2006; adopted as Rule 8.2 effective January 1, 1998)**

2.5.3 Further Settlement Conference on Day of Trial

Notwithstanding Rule 2.5.1, the Presiding Judge may order any case to a further settlement conference on the day the case is set for trial. **(Rule 2.5.3 renumbered effective January 1, 2006; adopted as Rule 8.3 effective January 1, 1997)**

2.5.4 Conflicts in Scheduling and Special Requests

A. Any part who wishes to request a change in a settlement conference date due to a scheduling conflict, or who wishes to make any other special request regarding a settlement conference, shall present that request to the Presiding Judge by letter, with a copy mailed to each party, at least thirty (30) days prior to the date set for the settlement conference. Any party wishing to respond to the request shall respond by

letter to the Presiding Judge, with a copy mailed to each party, within two (2) days of receipt of the request letter.

B. If the request is made after the thirty-day limit has passed, the request shall include a detailed factual declaration demonstrating good cause for the delay.

C. The party making the request may submit a stipulation or other paper reflecting the consent of all other parties to the proposed change. The court will generally not grant a request for a change of date for the settlement conference unless all parties have been contacted by the requesting party and have agreed to a new date and time.

D. Parties will be notified of the court's ruling.

E. On the request of an attorney whose office is located outside the County of Fresno, the court will attempt, if possible, to reschedule a settlement conference at a different time, but on the same date, when such request is made pursuant to subparagraph A above. **(Rule 2.5.4 renumbered effective January 1, 2006; adopted as Rule 8.4 effective January 1, 1997)**

2.5.5 Attendance

A. **Parties**. All parties shall be personally preset at the settlement conference except that an insured party is not required to appear where that party's insurance carrier admits coverage for all causes of action alleged against that party, full authority has been granted by such insured party to the carrier and attorney to settle within policy limits, and the highest demand for settlement is within policy limits. However, where the carrier assumes the defense pursuant to a reservation of rights, the insured shall attend the settlement conference also.

A party who is not an individual shall appear by a representative who shall be fully familiar with the facts of the case and have full authority to settle. If the party's governing body is a board, council, or committee which is required to approve settlement, the representative attending the settlement conference on behalf of that party shall have authority to recommend approval directly to such governing body, without seeking approval from any other person prior to making such recommendation.

B. **Attorneys**. The trial attorney for the case shall be personally present. The only exception shall be where the trial attorney is engaged in another trial at the same time as the settlement conference, in which case another attorney from the trial attorney's office shall attend, who is fully familiar with the facts of the case and has full authority to settle and who has discussed the case thoroughly with the client prior to the settlement conference.

C. **Insurance Claims' Employee**. In any case which requires consent of an insurance carrier to settle, an employee of the insurance carrier, who is fully familiar with the case and who has full authority to settle, shall be personally present. A claims

adjuster retained only for the purpose of attending the settlement conference will not be acceptable. If the insurance carrier has no claims office located in California, and the court has been so notified pursuant to these rules, the personal attendance of an employee of the carrier is not required; provided, however, an employee of the insurance carrier with full authority to settle shall be immediately available by telephone until released by the court, regardless of the time zone.

D. **Consent of Others**. Where the consent of a spouse, business partner or other person is necessary to achieve settlement, even though this person is not a named party, every reasonable effort shall be made to either secure the attendance of such person at the settlement conference or have that person immediately available by telephone until released by the court.

E. **Structured Settlements for Minors**. In any case involving possible settlement for the benefit of a minor, where the settlement value might reasonably exceed $25,000.00, the defendant seeking settlement with the minor shall bring to the settlement conference, or, throughout the settlement conference shall have immediate access to, a person qualified to compute present values under a structured settlement.

F. **Excused Attendance**. Subject to the above the court will not excuse parties, attorneys, or insurance carrier employees from required attendance except upon a timely showing of good cause by written declaration.

G. **"Full Authority to Settle Defined**. In the case of a plaintiff or cross-complainant, "full authority" to settle means the attendee shall have the individual discretion and authority to negotiate, without consultation with others, and dismiss the complaint or cross-complaint in return for no consideration from the defendant or cross-defendant. In the case of a defendant or cross-defendant, "full authority" to settle means the attendee shall have the individual discretion and authority to negotiate, without consultation with others, and pay the highest demand made to date by the plaintiff or cross-complainant.

In the case of public entity parties whose elected bodies (e.g., City Council, Board of Supervisors) must approve a settlement, the attendee must be an authorized representative of the public entity who is fully informed as to the parameters under which the entity will approve a settlement. **(Rule 2.5.5 renumbered effective January 1, 2006; adopted as Rule 8.5 effective January 1, 2005)**

2.5.6 Settlement Conference Statement

A. Each party shall mail to the Presiding Judge and serve on all parties a settlement conference statement, in pleading or letter form, preferably at least ten (10) days prior to the settlement conference, but in no event later than five (5) court days prior to the settlement conference. Settlement conference statements will not be filed or kept in the court file, and must be submitted anew for each additional settlement conference.

B. In addition to the subject matter required by Rule 3.1380(c) of the California Rules of Court, the settlement conference statement shall contain:

1. The names of parties and their attorneys.

2. Whether or not an insurance carrier employee is required to be personally present, and, if so, the identity of the carrier.

3. Whether or not a board, council or other committee must approve of settlement, and, if so, the identity of that body.

4. Whether or not the consent of a person who is not a named party is necessary to achieve settlement, and, if so, the identity of that person.

5. The fact and results of compliance with Rule 2.5.2 and the results of prior mediation or arbitration.

6. Prior settlement negotiations.

7. Code of Civil Procedure § 998 demands.

8. Whether or not further discover contemplated, and, if so, a description of it. **(Effective July 1, 2007; Rule 2.5.6 renumbered effective January 1, 2006; adopted as Rule 8.6 effective July 1, 1999)**

2.5.7 Further Settlement Conferences Before Trial

To ensure a meaningful settlement conference prior to trial, the court may set the matter for further settlement conferences prior to the date set for trial, or, with the consent of the Presiding Judge, may remove the case from the trial calendar and order the parties to obtain a new settlement conference and trial date. **(Rule 2.5.7 renumbered effective January 1, 2006; adopted as Rule 8.7 effective January 1, 1997)**

2.5.8 Mandatory Settlement Conferences at Trial Readiness Hearing

All parties to Unlimited and Limited Civil Cases for which a Trial Readiness Hearing has been calendared are required to attend a mandatory settlement conference at the time and place of the Trial Readiness Hearing (see Local Rule 2.6.2). The settlement conference shall be subject to the provisions of Local Rule 2.5.5. **(Effective January 1, 2009; Rule 2.5.8 renumbered effective January 1, 2006; adopted as Rule 8.8 effective January 1, 2005)**

(Rule 2.5 renumbered effective January 1, 2006; adopted as Rule 8 effective July 1, 1992

RULE 2.6 TRIAL READINESS

2.6.1 Meet and Confer

In all civil cases, except short cause cases, the attorneys for the parties shall meet and confer at least five (5) days prior to the date set for trial in order to accomplish the following:

A. All in limine motions and motions for judgment on the pleadings shall be in writing and exchanged by the parties. The trial court will not hear oral in limine motions or those not exchanged except for good cause shown.

B. If a jury has been requested, the parties shall prepare and exchange proposed jury instructions and shall prepare a jointly signed neutral statement of the case.

C. If a jury has not been requested, the parties shall prepare and exchange trial briefs. The trial court will not accept trial briefs not exchanged except for good cause shown.

D. The parties shall identify and list the proposed exhibits, and exchange such lists.

E. The foregoing papers shall be submitted to the trial judge at trial readiness. **(Effective July 1, 2011; Rule 2.6.1 renumbered effective January 1, 2006; adopted as Rule 9.1 effective January 1, 1998)**

2.6.2 Trial Readiness Hearing

A. Except for short cause cases, the Presiding Judge shall set and conduct a trial readiness hearing on the Friday prior to the date set for trial. The Presiding Judge, in his or her discretion, may excuse a case from the trial readiness hearing.

B. The attorney trying the case is required to be personally present at this hearing. In the event the trial attorney has a conflict preventing his or her presence, the trial attorney must make arrangements to have another attorney present, who is familiar with the case and its state of readiness for trial, and who has authority to confirm and/or continue the trial date.

C. Any party may appear telephonically with prior approval of the assigned department.

D. Unless otherwise ordered by the Court, the parties shall provide the Court with the following documents at the trial readiness hearing: Motions in limine, motions for judgment on the pleadings, proposed jury instructions, the joint neutral statement of the case, trial briefs, an exhibit list and a witness list. **(Effective July 1, 2011; Rule 2.6.2 renumbered effective January 1, 2006; adopted as Rule 9.2 effective July 1, 2000)**

(Rule 2.6 renumbered effective January 1, 2006; adopted as Rule 9 effective July 1, 1992)

RULE 2.7 EX PARTE APPLICATIONS

2.7.1 Format and Filing

A. All applications for ex parte orders failing to comply with Rules 3.1200 through 3.1207 of the California Rules of Court will be rejected. Parties making ex parte applications should obtain a date and time for the hearing of the application from the law and motion clerk. Parties making ex parte applications may also obtain a date and time for hearing of the application at the filing counter in the civil clerk's office upon presentation of moving papers and payment of appropriate fees.

B. The court requests that the party seeking an ex parte order submit the application and all supporting papers and fees to the Clerk for filing not later than 2:00 p.m. on the day preceding the hearing, if the hearing is set in the morning, and not later than 9:00 a.m. on the date of the hearing, if the hearing is set in the afternoon. **(Effective July 1, 2016; Rule 2.7 renumbered effective January 1, 2006; adopted as Rule 10 effective July 1, 2000)**

2.7.2 Cases in Which Hearings Not Required

An ex parte application will be considered without a hearing in the following cases:

1. Application to file a memorandum of points and authorities in excess of the applicable page limit;

2. Stipulation by the parties for an order;

3. Application for appointment of a guardian ad litem in a civil case;

4. Application for an order extending time to serve pleading;

5. Application to serve by publication;

6. Extension of time by the court pursuant to the Superior Court of Fresno County, Local Rules, rule 2.1.6;

7. Motion to continue trial pursuant to the Superior Court of Fresno County, Local Rules, rule 2.1.10;

8. Application to substitute Doe under CCP 474. **(Effective July 1, 2008, New)**

RULE 2.8 MISCELLANEOUS CIVIL RULES

2.8.1 Civil Jury Fees

A. Trial by jury shall be deemed waived unless jury fees are deposited no later than twenty-five (25) days prior to the trial in any case not entitled to priority setting, or deposited five (5) days prior to trial in any unlawful detainer case or other case entitled to priority setting.

B. Should any party demanding jury trial fail to deposit required fees, the Clerk will notify all other parties who have not previously waived trial by jury. Any such party may preserve its right to trial by jury by depositing the required fees within five (5) court days of mailing of the Clerk's notice.

C. Failure by any party to deposit jury fees as required herein shall constitute waiver of trial by jury. **(Rule 2.8.1 renumbered effective January 1, 2006; adopted as Rule 11.1 effective January 1, 1997)**

2.8.2 Use of Interpreters

Interpreters will not be provided for civil or small claims matters, unless otherwise ordered by the court. Upon request, the Clerk will provide the names of authorized interpreters with whom a party may make arrangements for interpreting services, or may refer the party to the court's interpreter coordinator. Any party requiring the services of an interpreter is responsible for arranging and paying for the services of such interpreter unless otherwise ordered by the court. **(Rule 2.8.1 renumbered effective January 1, 2006; adopted as Rule 11.2 effective January 1, 1997)**

2.8.3 Attorney's Fees

A. Attorney's fees in default cases, when allowable in designated cases, shall be fixed in accordance with Appendix A1, except as otherwise ordered by the court.

B. When an attorney is appointed to represent a party in designated cases, the attorneys' fees are governed by the Fresno County Courts Appointed Counsel/Expert General Claim Processing Practices (FCCAC/EGCPP), a copy of which is available from the Clerk. **(Rule 2.8.3 renumbered effective January 1, 2006; adopted as Rule 11.3 effective January 1, 2005)**

2.8.4 Compromise of Claims of Minors or Incompetent Persons

A. Petitions to compromise the claims of minors or incompetent persons shall be made on the appropriate Judicial Council forms, in accordance with Rule 7.950, et seq., of the California Rules of Court. Such petitions must be filed with the court at least ten (10) court days prior to the hearing date. If the original petition is denied without prejudice and the petitioner wishes to renew the request, the petitioner must file an amended petition, with appropriate supporting papers and proposed orders, and obtain a new hearing date for consideration of the amended petition.

B. If a petition to withdraw from deposit is made:

1. The certificate of deposit must have been completed and filed prior to filing of the petition for withdrawal.

2. In the event the petition to withdraw funds is based upon the denial of a public agency providing public assistance to provide funds because of the existence of the account, a copy of the written notice from the agency concerned, so stating, shall be attached to the petition.

C. If an order for withdrawal of funds is made, within fifteen (15) days from the date of the order, a declaration of expenditures made with the funds shall be filed with the Clerk.

D. Attorney's fees, if awarded, shall be awarded in conformity with Rule 7.955 of the California Rules of Court. In computing fees, parents claiming reimbursement for medical and other expenses shall pay their proportionate share of the attorneys' fees, except in cases of hardship. **(Effective July 1, 2007; Rule 2.8.4 renumbered effective January 1, 2006; adopted as Rule 11.4 effective July 1, 2002)**

2.8.5 Court Reporter Fees

A. In any civil case in which a trial or hearing is expected to last more than one (1) hour, but not more than four (4) hours, and official reporting services (by court reporter or electronic recording) are required, the parties shall deposit with the Clerk their pro rata shares of the fee for one-half (1/2) day of official reporting services.

B. In any civil case in which a trial or hearing is expected to last more than four (4) hours and official reporting services are required, the parties shall deposit with the Clerk their pro rata shares of the fee for one (1) full day of official reporting services.

C. The fee shall be deposited not later than the conclusion of each day's court session. The fee for any subsequent day of the trial or hearing shall be deposited with the Clerk not later than the conclusion of each day's court session.

D. Attorneys must be prepared to produce receipts for fees on demand of the court or the trial or hearing may not proceed at the discretion of the Court. **(Effective January 1, 2008; Rule 2.8.5 renumbered effective January 1, 2006; adopted as Rule 11.5 effective July 1, 2000)**

2.8.6 Firearms Forfeiture Default

On a petition for order of default regarding a firearms forfeiture pursuant to Welfare and Institutions Code § 8102, subdivision (g), the agency seeking the default shall file their petition for default ten (10) court days preceding the date set for the hearing. **(Effective January 1, 2008; Rule 2.8.6 (was 2.8.7) renumbered effective January 1, 2016)**

2.8.7 Petitions for Approval of Transfers of Structured Settlements

A. All parties to a petition for approval transferring structured settlement payments must appear at the hearing on such petitions, including the payee and the payee's counsel (if any). The petitioner filing a petition for approval of transfer of any structured settlement payments pursuant to Insurance Code § 10134 et seq. shall include with their petition the following information and documents.

1. The jurisdiction and case number of any other petition by the petitioner seeking approval to purchase any structured settlement payments from the payee;

2. A copy of the entire court file for any prior petition by the petitioner seeking approval for purchase of any structured settlement payments from the payee;

3. A declaration from the payee's counsel wherein he or she provides the total number of and lists all other petitions (along with their case numbers and court) wherein he or she has represented a payee who attempted to sell payments to the same petitioner;

4. A declaration from the payee's attorney listing any professional, financial, or personal relationship with the petitioner's employees or petitioner's counsel, past or present, as well as how counsel first came into contact with the payee if other than by a referral from a bar association as described in the statute;

5. A declaration from the petitioner describing any contacts by its personnel with the payee's counsel, including copies of each written communication;

6. A declaration from any of petitioner's personnel having contact with the payee describing all communications, to include any and all documentation of such communications whether on paper or stored electronically;

7. A declaration from petitioner as to any communications it conducted or facilitated with the annuity issuer, owner, or beneficiary, and a copy of all such communications whether on paper or stored electronically;

8. A declaration from petitioner which includes all documents it plans to or has used with regard to the attempted purchase of any structured settlement payments from the payee, including UCC filings. If such documents exist whether on paper or stored electronically, they are to be attached. **(Effective July 1, 2010; Rule 2.8.7 (was 2.8.8) renumbered effective January 1, 2016)**

(Rule 2.8 renumbered effective January 1, 2006; adopted as Rule 11 effective July 1, 1992)

RULE 2.9 UNLAWFUL DETAINER CASES

2.9.1 Case Disposition Time

The court shall endeavor to dispose of all unlawful detainer cases as follows: 90% within thirty (30) days after filing; and 100% within forty-five (45) days after filing. **(Rule 2.9.1 renumbered effective January 1, 2006; adopted as Rule 12.1 effective July 1, 2000)**

2.9.2 Notice of Dismissal Hearing

Approximately two (2) weeks after the filing of the case Clerk will issue a Notice of Dismissal Hearing to plaintiff, designating a date for a Dismissal Hearing that is within 45 days after the filing of the complaint. **(Effective July 1, 2010; Rule 2.9.2 renumbered effective January 1, 2006; adopted as Rule 12.2 effective May 14, 2001)**

2.9.3 Service and Filing of Proof of Service

Within fifteen (15) days from the date the unlawful detainer complaint was filed, plaintiff shall serve all named defendants and file proof of service with the court or shall file an application for a posting order, unless a responsive pleading has been filed. **(Rule 2.9.3 renumbered effective January 1, 2006; adopted as Rule 12.3 effective May 14, 2001)**

2.9.4 Request to Set Case for Trial

Within twenty-five (25) days after the date the unlawful detainer complaint was filed, plaintiff shall file a Request to Set Case for Trial, unless there has been a final disposition of the case or a notice of settlement or stay has been filed. The Request to Set Case for Trial shall be submitted on a form which is available from the Clerk's Office or on the court's website. By filing a Request to Set Case for Trial a party represents that the case is at issue and will be ready to proceed to trial on the date assigned. **(Effective July 1, 2010; Rule 2.9.4 renumbered effective January 1, 2006; adopted as Rule 12.4 effective May 14, 2001)**

2.9.5 Dismissal Hearing

A. Plaintiff shall attend the Dismissal Hearing, either in person or by telephonic appearance. At the hearing, the status of the case will be discussed, including whether the case should be set for trial or dismissed. Appropriate orders will be made.

B. Failure of the plaintiff to appear may result in dismissal or the case.

C. A dismissal hearing will be taken off calendar if a trial date has been set, a Request to Set Case for Trial has been filed, or there has been a final disposition of the case. A dismissal hearing will be continued if a notice of settlement or stay has been filed with the court prior to the date of the dismissal hearing. If any of these conditions exists, it is the responsibility of the parties to notify the TCDR Clerk in writing and ask that the Conference be taken off calendar or continued. **(Effective July 1, 2010; Rule 2.9.5 renumbered effective January 1, 2006; adopted as Rule 12.5 effective May 14, 2001)**

2.9.6 Assignment of Case for Trial

If the Request to Set Case for Trial complies with these rules in all respects, the Clerk shall assign the case for trial within twenty (20) days after the date the Request to Set Case for Trial was filed, and mail notice of the trial date to the parties at least ten (10) days before the trial date. **(Effective July 1, 2010; Rule 2.9.6 renumbered effective January 1, 2006; adopted as Rule 12.6 effective May 14, 2001)**

2.9.7 Hearing to Prove Damages

A. After a Clerk's judgment for restitution of the premises has been entered, a plaintiff seeking to recover money damages shall set the case for a hearing to prove damages within six (6) months after the judgment is entered.

B. A personal appearance will not be required if a declaration is submitted pursuant to § 585(b) and (d) of the Code of Civil Procedure. **(Rule 2.9.7 renumbered effective January 1, 2006; adopted as Rule 12.7 effective July 1, 2000)**

2.9.8 Undertaking for Immediate Possession of Premises

Unless otherwise ordered by the court, the minimum amount of undertaking required for an order for immediate possession of premises, pursuant to § 1166a of the Code of Civil Procedure, shall be ten (10) times the amount of monthly rental, but not less than $500.00. **(Rule 2.9.8 renumbered effective January 1, 2006; adopted as Rule 12.8 effective July 1, 2000)**

2.9.9 Judgment

When a judgment for restitution or possession of the premises under Code of Civil Procedure § 1169 or 1174 is prepared and submitted by plaintiff, it shall describe with reasonable certainty the real property that is the subject of the judgment, giving its street address (including the zip code), if any, or other common designation, if any. **(Rule 2.9.9 renumbered effective January 1, 2006; adopted as Rule 12.9 effective January 1, 2003)**

2.9.10 Notice of Restricted Access

Each plaintiff who files an action for Unlawful Detainer, for which a Notice of Restricted Access must be mailed to the defendants pursuant to Code of Civil Procedure § 1161.2(c), must provide to the court at the time of filing the action, (1) a separate stamped, legal-size envelope addressed to each defendant named in the action at the address provided in the complaint, and (2) a stamped, legal-size envelope addressed to "All Occupants" at the subject premises. **(Rule 2.9.10 renumbered effective January 1, 2006; adopted as Rule 12.10 effective January 1, 2005)**

(Rule 2.9 renumbered effective January 1, 2006; adopted as Rule 12 effective July 1, 1992)

RULE 2.10 SMALL CLAIMS CASES

2.10.1 Case Disposition Time

The court shall endeavor to dispose of all small claims cases as follows: 90% within seventy (70) days after filing; and 100% within ninety (90) days after filing. **(Rule 2.10.1 renumbered effective January 1, 2006; adopted as Rule 13.1 effective July 1, 2000)**

2.10.2 Unserved Defendants

A. If proof of service on the defendant in a small claims case has not been filed by the date set for trial, the case will not be heard on that date. The court or the Clerk may reset the case for trial.

B. If more than one defendant is named in the plaintiff's claim, and proof of service as to some, but not all, of the defendants has been filed prior to the date set for trial, the court may continue the trial of the case as provided in § 116.570 of the Code of Civil Procedure, or trial may proceed only as to those defendants who have been served. The court or the Clerk may reset the case for trial as to any remaining defendants. **(Rule 2.10.2 renumbered effective January 1, 206; adopted as Rule 13.2 effective July 1, 2000)**

2.10.3 Untimely Small Claims Appeals

No notice of appeal from a small claims judgment shall be accepted for filing after the statutory period for filing such an appeal has expired, unless a writ of mandate ordering the Clerk to file the notice of appeal has been issued. **(Rule 2.10.3 renumbered effective January 1, 2006; adopted as Rule 13.3 effective July 1, 2001)**

(Rule 2.10 renumbered effective January 1, 2006; adopted as Rule 13 effective July 1, 1992)

(Chapter 2 amended effective January 1, 2006; adopted as II effective July 1, 1992)

RULE 2.11 CASES INVOLVING THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

2.11.1 Assignment of CEQA Cases

A. **Judge for All Purposes**. Unless otherwise provided in these rules or ordered by the Presiding Judge or Supervising Judge, all CEQA cases will be assigned to a single judge for all purposes including trial.

B. **Notice of Assignment**. A Notice of Assignment indicating the name and department number of the assigned judge, as well as the assigned judge's departmental schedule for noticed motions and ex parte applications, will be prepared by the court. The Notice of Assignment will be issued by the clerk to the petitioner in the same manner as for an ordinary civil unlimited complaint. If the petition is combined with a complaint for injunctive and/or declaratory relief, the assignment shall apply to the complaint as well as the petition.

C. **Service of Notices**. The petitioner must serve the notice of assignment and the case management conference notice on each named respondent when that respondent is served with the summons and petition, and file a proof of service thereof with the court.

D. **Designation of Assigned Judge in Subsequent Documents**. After a CEQA case is assigned, all subsequent documents must state on the face page, under the case number, the following:

ASSIGNED FOR ALL PURPOSES TO:
JUDGE [insert name]
DEPARTMENT [insert number]

E. **Unavailability of Assigned Judge.** In the event of the temporary unavailability of the judge assigned to a CEQA case for all purposes, another judge may be assigned to hear matters in that case. Until and unless the court issues an order or notice revoking the existing single assignment or assigning a new judge for all purposes, any hearing that may take place before another judge does not affect the status of the case as originally assigned for all purposes. **(Effective January 1, 2017; adopted as Rule 2.11.1 effective July 1, 2011)**

2.11.2 Notice of Case Management Conference

A. At the time the petition is processed by the Clerk's Office after it is filed, the clerk will issue a notice of case management conference to petitioner, designating a date for a case management conference that is approximately 120 days after the filing of the petition. Petitioner shall serve a copy of the notice of case management conference on each respondent and real party in interest along with the summons and the petition. The Court's issuance of a notice of case management conference hearing date does not excuse petitioner from mandatory compliance with Public Resources Code section 21167.4, subdivision (a).

B. All parties are required to appear at the case management conference. The person attending the conference shall have sufficient understanding of the case and sufficient authority to make decisions and agreements.

C. In anticipation of the case management conference, the parties should be prepared to discuss at the hearing and submit written case management conference statements (in prose and details, not using the standardized Judicial Council form) seven (7) court days before the case management conference, as to the following:

1. Status of service upon or appearance by real parties in interest.

2. Status of the administrative record.

3. Status of settlement conference, and whether the parties believe that an early settlement conference before their assigned judge would be beneficial (a waiver under Public Resources Code § 21167, subdivision (d) will be required).

4. Anticipated motions, including briefing schedule and proposed hearing dates.

5. Setting of hearing/trial on the merits.

6. The need to set further case status hearing dates. **(Effective January 1, 2017, New)**

2.11.3 Preparation of the Administrative Record

A. **Preparation by the Public Agency**. Within twenty (20) days after receipt of a statutory request that the public agency prepare the record of proceedings, the public agency responsible for such preparation must personally serve on petitioner a preliminary cost notification of the estimated cost of preparation. This preliminary cost notification must state, to the extent then known, the location(s) of the documents anticipated to be incorporated into the administrative record, must designate the contact person(s) responsible for identifying the agency personnel or other person(s) having custody of those documents, and must provide a listing of dates and times when those documents will be made available to petitioner or any party for inspection during normal business hours as the record is being prepared. This preliminary cost notification must be supplemented by the agency from time to time as additional documents are located or determined appropriate to be included in the record.

B. **Notification that Petitioner Elects to Prepare the Record**. Upon receipt of the preliminary cost notification, petitioner may elect to prepare the record of proceeding itself provided it notifies the agency within five (5) days of such receipt. If petitioner elects to prepare the record, then within forty (40) days of service of the notice on the public agency of petitioner's election, petitioner must prepare and serve on all parties a detailed document index listing the documents proposed by petitioner to constitute the record of proceedings. Within seven (7) calendar days of receipt of the detailed document index, the public agency, or other parties if any, must serve the petitioner and all parties with a document notifying them of any document(s) or item(s) that such parties contend should be added to, or deleted from, the record of proceedings. The public agency must promptly notify petitioner of any requested copying procedures or other conditions with which petitioner must comply in petitioner's preparation of the record. Service of the foregoing shall conform with the Code of Civil Procedure, Part 2, Title 14, Chapter 5, § 1010 et seq.

C. **Notice by Public Agency of Proposed Record**. If petitioner does not elect to prepare the record of proceedings, then within forty (40) days after service of the statutory request to prepare the record of proceedings, the public agency must prepare and serve on the parties a detailed document index listing the documents

proposed by the public agency to constitute the record of proceedings and provide a supplemental estimated cost of preparation. Within seven (7) calendar days of receipt of the detailed document index; petitioner, or other parties if any, must serve the agency and all parties with a document notifying the agency of any document or item that such parties contend should be added to, or deleted from, the record. Service of the foregoing shall conform to the Code of Civil Procedure, Part 2, Title 14, Chapter 5, § 1010 et seq.

D. **Time of Lodging of Administrative Record**. If the public agency prepares the record, it shall be lodged with the court when it files its certification of the record. If the petitioner prepares the record, it shall be lodged within five (5) days of the date the public agency files its certification of the record. **(Effective January 1, 2017, adopted as Rule 2.11.2 (now 2.11.3) effective July 1, 2011)**

2.11.4 Format of the Record of Proceedings

Format of the record of proceedings must comply with California Rules of Court, rules 3.2200 through 3.2208, except that the court prefers that the record of proceedings be submitted in a searchable, portable document format (PDF), and not a paper format. The party lodging the record of proceedings should submit two copies of the electronic record of proceedings, one for the court, and one for research. **(Effective January 1, 2017, New)**

2.11.5 Briefing Schedule and Length of Memoranda

A. Unless otherwise ordered by the court, points and authorities prepared for a hearing on the merits of a writ petition shall be filed in accordance with the following schedule and page limits: The opening memorandum of points and authorities shall be filed at least forty-five (45) calendar days prior to the hearing date; and opposition shall be filed at least twenty-five (25) calendar days prior to the hearing date; and the reply shall be filed at least fifteen (15) calendar days prior to the hearing date. The opening and opposition memorandum shall not exceed thirty (30) pages in length with double-spaced lines (or twenty-two (22) pages with one and one-half spaced lines.) The reply shall not exceed twenty (20) pages in length with double-spaced lines (or fifteen (15) pages with one and one-half spaced lines). The court prefers that all memoranda use double-spaced lines. Points and authorities for any motion to be heard prior to the hearing on the merits of the writ petition shall comply with the filing schedule and page limits specified in California Rules of Court, rules 3.1113 and 3.1300, unless otherwise ordered. Except for the trial notebook and appendix of excerpts requirement in Local Rule 2.11.6, papers must be filed in the same manner as for general civil unlimited cases.

B. Applications to exceed the page limit pursuant to California Rules of Court, rule 3.1113, must be submitted directly to the judge assigned for all purposes without a hearing as provided in accordance with California Rules of Court, rule 3.1207, and the Superior Court of Fresno County, Local Rules, rule 2.7.2. The application to exceed the page limit must attach as an exhibit that party's statement of issues filed pursuant to Public Resources Code section 21167.8, and state reasons why the argument cannot

be made within the stated page limit in A above. **(Effective January 1, 2017, adopted as Rule 2.11.5 effective July 1, 2011)**

2.11.6 Trial Notebook and Appendix of Excerpts

A. **Trial Notebook.** Petitioner shall prepare a "hard copy" trial notebook that must be lodged when its opening brief is filed. The trial notebook must consist of the petition, all answers, the briefs, any motions set to be heard at trial, the statement of issues, and any other documents agreed upon by the parties. The trial notebook shall contain a table of contents, tabbed sections consistent with the table of contents, and an index of the documents in the notebook referencing page numbers. The notebook's pages shall be sequentially numbered in the lower right-hand corner of each page and be bound in a "D-ring" binder no more than three (3) inches thick. Should documents dictate, further notebooks with the same features should be used.

B. **Appendix of Excerpts.** The court requires that each party filing a brief prepare and lodge a separate "hard copy" appendix of excerpts that contains the documents or pages of the record of proceedings cited in that party's brief. The appendix shall be lodged when that party's brief is filed. If a party believes that it is necessary to provide context to a cited page of the record of proceedings, that party may include a cover page or other pertinent pages from a document even though not actually cited in its brief.

C. **Separate Trial Notebook and Appendix of Excerpts.** The purpose of a separate trial notebook and separate appendix of excerpts is to provide the court with easy-to-use binders containing the pleadings, motions, briefs, and cited portions of the record of proceedings supporting the parties' respective position. **(Effective January 1, 2017, adopted as Rule 2.11.8 (now 2.11.6) effective July 1, 2011)**

(Rule 2.11, New effective July 1, 2011)

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CHAPTER 3. CRIMINAL RULES

RULE 3.1 GENERAL CRIMINAL RULES

3.1.1 Request for Warrants

During non-court hours all requests for search or arrest warrants in all cases shall be submitted to the designated duty judge. **(Effective January 1, 2014, Rule 3.1.1 renumbered effective January 1, 2006; adopted as Rule 14.1 effective July 1, 2000)**

3.1.2 Release on Own Recognizance

Motions regarding release on own recognizance or for bail modification prior to the first court appearance should be made, in all cases, before the arraignment department judge or commissioner during normal court hours. After the first court appearance, such motions shall be made in the arraignment department or the department assigned to hear such motions, in open court. **(Rule 3.1.2 renumbered effective January 1, 2006; adopted as Rule 14.2 effective July 1, 2000)**

3.1.3 Motions Made for Release on Own Recognizance or Bail Modification

A. When a motion for release on own recognizance or bail modification has been made to the court, and granted in whole or in part, or granted conditionally or with limiting terms, and a subsequent motion is made by the same party in the same case for a similar order upon materially changed circumstances, the subsequent motion shall be accompanied by a disclosure that:

1. A prior motion has been made,
2. When and to what judge it was made,
3. What the nature of the motion was,
4. What order or decision was made thereon, and
5. What materially changed circumstances are claimed to be shown.

B. Any order made on subsequent applications failing to comply with these requirements may be vacated or set aside on ex parte application or on the court's own motion at any time. **(Rule 3.1.3 renumbered effective January 1, 2006; adopted as Rule 14.3 effective July 1, 2000)**

3.1.4 Defendant's Clothing

The attorney representing a defendant in the custody of the Sheriff in a criminal matter shall make timely and appropriate arrangements to ensure that the defendant is suitably dressed for trial before the case is assigned to a trial department. **(Rule 3.1.4 renumbered effective January 1, 2006; adopted as Rule 14.14 effective July 1, 2000)**

3.1.5 Continuances

A. All criminal cases set for trial will proceed to trial on the date scheduled in the absence of good cause. No continuances will be granted unless the court is presented convincing proof of good cause for a continuance in accordance with Penal Code § 1050. A stipulation of counsel to a trial continuance does not necessarily constitute good cause.

B. Motions for trial continuances shall be made in writing and served in accordance with Penal Code § 1050(b), unless the necessary showing is made under § 1050(c).

C. In felony cases after arraignment on the information or indictment, all motions for trial continuances shall be made to the judge in the Designated Department.

D. If, on the date set for trial, counsel is actually engaged in the trial of another case, the case scheduled for trial will trail from day to day until completion of the trial in the other case, or to such other date as set by the court under § 1050(c). **(Effective July 1, 2007; Rule 3.1.6 (now 3.1.5) renumbered effective January 1, 2006; adopted as Rule 14.6 effective July 1, 2000)**

3.1.6 Habeas Corpus Writs

A. All petitions for writ of habeas corpus shall be prepared as specified by the California Rules of Court and filed with the Clerk. Unless otherwise directed by the court, each petition will be assigned a unique case number by the Clerk and immediately forwarded to the research staff for review.

B. Once this initial review has been completed, the petition will be sent to the designated judge. Unless otherwise specified by the Presiding Judge, all such petitions will be acted upon by the judge assigned to hear criminal law and motion matters. Action on the petition will be taken in accordance with the provisions of the California Rules of Court.

C. Priority will be given to emergency petitions, i.e., those alleging that time is of the essence to protect the petitioner from death or permanent disability. Ex parte communications are discouraged.

D. Petitions that do not comply with the California Rules of Court and these rules may be summarily denied. Habeas Corpus petitions are not a substitute for a timely appeal, and should not be sought until all legal and administrative remedies have been exhausted.

E. The repeated filing of unmeritorious petitions may be deemed an abuse of process, and may subject the petitioner to appropriate sanctions as ordered by the court. **(Effective July 1, 2007; Rule 3.1.7 (now 3.1.6) renumbered effective January 1, 2006; adopted as Rule 14.7 effective July 1, 2000)**

3.1.7 Writs of Mandate and Prohibition

A. Petitions for extraordinary relief by way of mandamus and/or prohibition in misdemeanor or traffic cases shall be filed and processed in the Appellate Division. Such relief should not be sought until all existing legal and administrative remedies have been exhausted.

B. Petitions for extraordinary relief by way of mandamus and/or prohibition in felony cases, which challenge a ruling by a magistrate made prior to defendant being held to answer, shall be filed and processed in the underlying felony criminal case. The supervising judge of the Criminal Division will then assign the petition to a single superior court judge for determination. In the event the supervising judge of the Criminal Division acted as the magistrate whose ruling is being challenged the assignment of the petition shall be made pursuant to rule 3.4.2.

C. When an emergency situation exists, it is the responsibility of the petitioner to clearly indicate the nature of the emergency in the petition, and to also inform the Clerk at the time the petition is filed. For the purposes of these petitions, emergency situations include actions in which time is of the essence to prevent denial of a fundamental constitutional right or undue hardship.

D. Petitions that are defective, incomplete, lack adequate supporting documentation, or fall outside the scope of the court's jurisdiction may be summarily denied. Abuse of the writ process may subject the petitioner to appropriate sanctions. **(Effective January 1, 2010; Rule 3.1.8 (now 3.1.7) renumbered effective January 1, 2006; adopted as Rule 14.8 effective July 1, 2003)**

3.1.8 Attorney, Expert and Investigation Fees

The fees for an attorney appointed to represent a defendant in a criminal case, the investigator and interpreter fees and fees for medical, psychological and psychiatric services are governed by the Fresno County Courts Appointed Counsel/Expert General Claim Processing Practices, a copy of which is available from the Clerk. **(Effective July 1, 2007; Rule 3.1.9 (now 3.1.8) renumbered effective January 1, 2006; adopted as Rule 14.9 effective July 1, 2000)**

3.1.9 Retention of Exhibits Prior to Final Determination of Action or Proceeding

A. Clerk to Retain Custody of Exhibits: The Clerk shall retain custody of any exhibit introduced into evidence in a criminal proceeding, including the preliminary hearing, until the final determination or dismissal of the action or proceeding, or as otherwise required by law. No exhibit, having been introduced into evidence, may be returned absent a court order, consistent with Penal Code § 1417.2.

B. Hazardous Materials: Hazardous materials may only be brought to the courtroom or received into evidence consistent with Penal Code § 1417.3(b). **(Effective January 1, 2009, New)**

3.1.10 Sound and/or Video Recordings to be Offered as Evidence in Criminal Cases

Any party intending to offer any sound and/or video recording in evidence shall lodge with the Court on the first day of trial a copy converted to a format compatible with the equipment used by the Court. **(Effective July 1, 2010, New)**

3.1.11 Penal Code Sections 1203.4, 1203.4a, and 1203.41

A. **Petition for Dismissal.** Submission of a petition for dismissal, pursuant to Penal Code §§ 1203.4, 1203.4a or 1203.41 without a calendared hearing date will require that the defendant seeking such relief also submit with their petition a completed income and expense declaration, providing the information required on Judicial Council form MC-210.

Failure to include the required income and expense declaration may result in summary denial of the petition, without prejudice.

B. **Proof of Service.** All petitions for dismissal, including those filed by Fresno County Probation on behalf of a defendant, submitted for filing pursuant to Penal Code §§ 1203.4, 1203.4a (only as to infractions), or 1203.41 shall include proof of service of the petition on the Office of the District Attorney. (Pen. Code §§ 1203.4, subd. (e); 1203.4a, subd. (f) & 1203.41, subd. (e)(1).)

Failure to provide proof of service of the petition on the Office of the District Attorney, at the time of filing, will result in summary denial of the petition, without prejudice. **(Effective July 1, 2014; adopted as Rule 3.11.11 effective July 1, 2011)**

3.1.12 Payment of Criminal Fines

A. **Continuances.** Court Staff is authorized to grant one sixty (60) day continuance for the initial payment of criminal fines; one sixty (60) day continuance once monthly payments have been established; and one request to change the specific day of the month that the monthly payment is due. Any requests for a continuance of more than sixty (60) days shall be made to a judicial officers either in writing or through a personal court appearance.

B. **Requests for Monthly Payments Following an Order That the Fine Be Paid in One Payment**

1. Defendants who appear in Court are currently given several options for paying, including: (1) pay in full on the date of their Court appearance; (2) pay in full [including an additional thirty dollar ($30.00) administrative fee] by a future date; or (3) a monthly payment plan [including an additional fifty dollar ($50.00) installment fee.]

2. For defendants who elect in Court to pay their fine in full on the date of their court appearance and fail to do so, Court staff is authorized on that same day to either: (1) add the thirty dollar ($30.00) administrative fee and give the defendant sixty (60) days to pay in full; or (2) add the fifty dollar ($50.00) installment fee and convert the defendant to a monthly payment plan.

3. For defendants who elect in Court to either pay their fine in full by a future date or by monthly payments, Court staff is authorized to delete the thirty dollar ($30.00) administrative fee or the fifty dollar ($50.00) installment fee if the defendant pays in full on the date of their court appearance.

4. For defendants who elect in Court to pay their fine in full by a future date, Court staff is authorized to convert those defendants to a monthly payment plan if the defendant's request is made prior to the date by which the fine was ordered to be paid in full. When this request is made, Court staff is authorized to delete the thirty dollar ($30.00) administrative fee and add the fifty dollar ($50.00) installment fee.

5. For defendants who elect in Court to pay by monthly payments, Court staff is authorized to vacate the fifty dollar ($50.00) installment fee and add a thirty dollar ($30.00) administrative fee if the defendant pays in full by the first monthly payment due date.

C. **Transferring Overpayments.** In the event a defendant remits more money than is due on a case, the overpayment shall be refunded to the defendant, unless the defendant has an outstanding balance in any other case with a disposition, in which case Court staff is authorized to transfer the overpayment to the case with an outstanding balance. Any remaining balance will then be refunded to the defendant. **(Effective January 1, 2017; adopted as Rule 3.1.12 effective January 1, 2015)**

(Rule 3.1 renumbered effective January 1, 2006; adopted as Rule 14 effective July 1, 1992)

RULE 3.2 MISDEMEANOR CASE RULES

3.2.1 Misdemeanor Filings

The court shall endeavor to dispose of misdemeanor cases as follows: 90% within thirty (30) days after the defendant's first court appearance, 98% within ninety (90) days after the defendant's first court appearance, and 100% within 120 days after the defendant's first court appearance. **(Rule 3.2.1 renumbered effective January 1, 2006; adopted as Rule 15.1 effective July 1, 2000)**

3.2.2 Case Assignment

Upon the filing of a misdemeanor action the case is assigned to a specific department. The judge normally assigned to that department is the judge who shall preside over that case and over all remaining aspects of the case, including motions and trials estimated to last two (2) days or less, unless circumstances require

assignment of the trial to another department. Trials estimated to last more than two (2) days shall be assigned from the assigned misdemeanor department to an available courtroom on the morning of the trial. All parties shall report to the assigned misdemeanor department at 8:30 a.m. on the morning of the trial. **(Effective January 1, 2017; adopted as Rule 3.2.2 effective January 1, 2010)**

3.2.3 Continuances

All motions for a continuance of a trial shall be made in the assigned trial department. **(Effective January 1, 2010; Rule 3.2.2 (now 3.2.3) renumbered effective January 1, 2006; adopted as Rule 15.2 effective July 1, 2000)**

3.2.4 Misdemeanor Pretrial Hearing

A. **Pretrial Hearing**. At such time as designated by the court, a pretrial hearing (formerly jury motion) will be held. Unless otherwise ordered by the court, the defendant shall personally appear at the hearing, unless appearing by counsel.

B. Duties at Pretrial Hearing. All motions for continuance, waiver of jury, change of plea or other procedural matters shall be presented at the hearing. If the case is not settled at the hearing, the court may order the defendant to appear at the trial readiness hearing prior to the trial date. On the date set for trial there shall be no continuances or other delay of the trial, except on a showing of good cause based on facts not known by the moving party at the time of the pretrial hearing. **(Effective January 1, 2010; Rule 3.2.3 (now 3.2.4) renumbered effective January 1, 2006; adopted as Rule 15.3 effective July 1, 2000)**

3.2.5 Misdemeanor Trial Calendar

Misdemeanor trials shall be called at 8:30 a.m. on Thursday. Trial counsel shall appear unless excused by the Court and shall be ready to proceed at the scheduled time. **(Effective January 1, 2017; Rule 3.2.4 (now 3.2.4) renumbered effective January 1, 2006; adopted as Rule 15.4 effective July 1, 2000)**

(Rule 3.2 renumbered effective January 1, 2006; adopted as Rule 15 effective July 1, 1992)

RULE 3.3 MOTIONS AND HEARINGS IN MISDEMEANOR CASES

3.3.1 Assignment of Motions

All motions or other matters not connected directly with trial, including, but not limited to motions to suppress, to amend the accusatory pleading, for discovery, dismissal, sanctions, interpreters, or substitution of counsel shall be made in the assigned department. **(Rule 3.3.1 renumbered effective January 1, 2006; adopted as Rule 16.1 effective July 1, 2000)**

3.3.2 Filing of Motions

A. Absent an order shortening time, or provided by statute, motions in misdemeanor cases shall be filed in writing no later than ten (10) court days before the hearing.

B. Motions shall contain a notice of motion, the motion itself, a declaration or affidavit in support thereof and a memorandum of points and authorities. Proof of service shall be filed no later than five (5) court days prior to the date of the hearing.

C. All opposition papers shall be filed no later than five (5) court days prior to the hearing, with proof of service on all parties. All reply papers shall be filed no later than two (2) court days prior to the hearing, with proof of service on all parties.

D. Each paragraph of any declaration shall be numbered sequentially. The original and all copies of exhibits and attachments shall be tabbed and shall be referred to in the pleadings or papers by tab identification. Each exhibit must be separated by a hard 8 ½ x 11 sheet with hard paper or plastic tabs extending below the bottom of the page, bearing the exhibit designation. **(Effective January 1, 2012; Rule 3.3.2 renumbered effective January 1, 2006; adopted as Rule 16.2 effective July 1, 2000)**

3.3.3 Motions to Suppress Evidence

A. Motions to suppress evidence and all responses shall comply with Penal Code § 1538.5 and controlling case law. (E.g., for searches allegedly conducted without a warrant, see *People v. Williams* (1999) 20 Cal.4th 119 and its progeny.) If any factual assertions are based on cited documentation (such as a police report) and this documentation has not previously been filed with the court, the party making those assertions shall attach a copy of the cited document.

B. Each party is responsible for insuring that its witnesses are present for the hearing. **(Rule 3.3.3 renumbered effective January 1, 2006; adopted as Rule 16.3 effective July 1, 2004)**

3.3.4 Renewal of Motions

Motions decided prior to trial shall not be renewed unless the motion could not, with due diligence, have been made earlier. Any renewed motion shall be based upon grounds of new evidence which could not, with due diligence, have been discovered earlier, or if the original motion as denied without prejudice and leave to renew has been granted by the court. **(Rule 3.3.4 renumbered effective January 1, 2006; adopted as Rule 16.4 July 1, 2000)**

(Rule 3.3 renumbered effective January 1, 2006; adopted as Rule 16 effective July 1, 1992)

RULE 3.4 FELONY CASE RULES

3.4.1 Felony Filings

The court shall endeavor to dispose of felony filings (by plea, finding of probable cause, or dismissal) excluding murder cases in which the prosecution seeks the death penalty as follows: 90% within thirty (30) days after the defendant's first court appearance, 98% within forty-five (45) days after the defendant's first court appearance, and 100% within ninety (90) days after the defendant's first court appearance. **(Rule 3.4.1 renumbered effective January 1, 2006; adopted as Rule 17.1 effective July 1, 2000)**

3.4.2 Designated Department

Unless otherwise assigned by the Presiding Judge, all proceedings in each felony case, from arraignment through settlement conference shall be heard in one of the felony departments. For each case, the appropriate department shall be known as the "Designated Department." Felony cases shall be assigned to the Designated Department alphabetically by last name of defendant. Multiple defendant cases shall be assigned by last name of the first named defendant. **(Effective January 1, 2016; adopted as Rule 3.4.2 effective July 1, 2007)**

3.4.3 Schedule of Hearings

Hearings shall be set in the Designated Departments according to a schedule available from the Clerk's Office, or by order of the court if not specifically noted. **(Effective July 1, 2007, New)**

3.4.4 Certification

A court which has suspended criminal proceedings pursuant to Penal Code § 1368 shall appoint a psychiatrist or licensed psychologist or two such professions in accordance with Penal Code § 1369(a) and refer the matter to the Designated Department. **(Effective July 1, 2007; Rule 3.4.2 (now 3.4.4) renumbered effective January 1, 2006; adopted as Rule 17.2 effective July 1, 2000)**

3.4.5 Preliminary Examinations

Except as provided in Rule 3.4.2A, preliminary examinations shall be calendared in the Designated Department and motions for continuance of a preliminary examination shall be made in the Designated Department. **(Effective July 1, 2007; Rule 3.4.3 (now 3.4.5) renumbered effective January 1, 2006; adopted as Rule 17.3 effective July 1, 2000)**

3.4.6 Trial Setting

A. At the time of the arraignment and plea, the court will set a date for trial within the statutory period. This is the only notice of the trial date that will be given counsel and the defendant.

B. Reciprocal informal discovery, pursuant to Penal Code § 1054, will be ordered at the time of the arraignment. Any additional discovery requests must be

made in a duly filed and noticed written motion, complying with all statutory requirements applying to such motions and Rule 3.5.1. **(Effective July 1, 2007; Rule 3.4.5 renumbered effective January 1, 2006; adopted as Rule 17.5 effective July 1, 2000)**

3.4.7 Settlement Conference

A. Trial Confirmations shall be renamed as Settlement Conferences. All felony Settlement Conferences will be set in the Designated Department, on Thursdays. The initial Settlement Conference will be set up two (2) weeks before the date set for trial, or on such other date as set by the Designated Department.

B. Trial attorneys who will try the case shall personally appear at the Settlement Conference. In the event a trial attorney has a conflict preventing that attorney's presence, that attorney shall make arrangements to have another attorney present who is familiar with the case. The appearing defense attorney shall have previously conferred with the client. **(Effective July 1, 2007, New)**

(Rule 3.4 renumbered effective January 1, 2006; adopted as Rule 17 effective July 1, 1992)

RULE 3.5 MOTIONS AND HEARINGS IN FELONY CASES

3.5.1 Motions in General

A. Except for motions to set aside the indictment or information pursuant to Penal Code § 995 and special hearings on motions to suppress under Penal Code § 1538.5, subdivision (i), where a motion to suppress was made at the preliminary hearing, all motions or other matters not connected directly with trial, including, but not limited to, motions to suppress, to amend the accusatory pleading, for discovery, dismissal, sanctions, interpreters, or substitution of counsel shall be made in the Designated Department. Dates and times for hearings shall be cleared with the individual Designated Department, and a cover sheet indicating the pre-approved date shall be attached to the face of the motion.

B. Motions to set aside the indictment or information pursuant to Penal Code § 995, and special hearings on motions to suppress under Penal Code § 1538.5, subdivision (i), where a motion to suppress was made at the preliminary hearing, shall be set in the department of the supervising judge of the Criminal Division, or his or her designee, at the time designated by that judge for motions. No pre-approval of the date is required. In the event that judge (supervising judge or his or her designee) acted as the magistrate at the preliminary hearing, the motion to set aside the information, or for renewal of the suppression motion made at the preliminary hearing, shall be set in the Designated Department pursuant to the procedure for other motions set forth in rule 3.5.1A and D.

C. Except as otherwise authorized by the court or required by statute, all motions and accompanying papers must be filed with the Clerk.

D. All motions shall contain a notice of motion, the motion itself, a declaration or affidavit in support thereof, a memorandum of points and authorities, and the face sheet indicating approval by the Designated Department of the dates as required by rule 3.5.1A. All motions shall contain, in the area below the Motion Title of the first page of the filing party's motion, the hearing date, time, and department number, and the filing party's estimate of the overall time required for the hearing of the matter.

A request for a transportation order should be included if a defendant or necessary witness is in custody. If the court has not previously ordered the defendant to be present at the motion hearing and the defendant is not in custody, counsel for the defendant shall give written notice of the hearing date to the defendant and file proof of service of same at the time the motion is filed. Failure to request a transportation order when one is required or to give such notice to a non-custody defendant may result in the motion being taken off calendar.

E. Motions to suppress that are to be heard at the preliminary hearing must be personally served and filed at least five (5) court days before the preliminary hearing. Any written response by the People to the motion shall be filed with the Court and personally served on the self-represented defendant or the attorney of record at least two (2) court days prior to the hearing.

F. All other motions and accompanying papers shall be filed not less than ten (10) court days prior to the hearing, unless otherwise provided pursuant to an order shortening time or a statute. Proof of service shall be filed no later than five (5) court days prior to the date of the hearing.

G. All opposition papers shall be filed no later than five (5) court days prior to the hearing, with proof of service on all parties. All reply papers shall be filed no later than two (2) court days prior to the hearing, with proof of service on all parties.

H. Any papers filed with the Clerk in connection with the motion or response thereto shall be accompanied by two complete copies in addition to the original.

I. Continuances of hearings on motions shall not be granted except for good cause shown and upon the filing of a written notice of intention to move for such continuance with the Clerk, together with proof of service on all other parties two (2) court days prior to the hearing.

J. Motions and accompanying papers pursuant to Penal Code § 995 shall include the following:

1. A brief statement in summary form of the facts as set forth in the preliminary examination transcript;

2. A statement of the issues, specifically identifying why the information or indictment should be set aside;

3. Where defendant intends to rely upon some testimony in the transcript, the moving papers shall contain references to the testimony, identified by page and line number of the transcript; and,

4. A statement of the authorities upon which defendant relies with explanation as to why they are applicable. Mere citation of sections of the California Penal Code and the U.S. Constitution will not be sufficient.

K. Each paragraph of any declaration shall be numbered sequentially. The original and all copies of exhibits and attachments shall be tabbed and shall be referred to in the pleadings or papers by tab identification. Each exhibit must be separated by a hard 8 ½ x 11 sheet with hard paper or plastic tabs extending below the bottom of the page, bearing the exhibit designation. **(Effective January 1, 2015; Rule 3.5.1 renumbered effective January 1, 2006; adopted as Rule 18.1 effective July 1, 2004)**

3.5.2 Motions to Suppress Evidence

A. In addition to the requirements of Rule 3.5.1, motions to suppress evidence and all responses shall comply with Penal Code § 1538.5 and controlling case law. (See, e.g., *People v. Williams* (1999) 20 Cal.4th 119 and its progeny when a warrantless search is at issue.)

B. Pursuant to Penal Code § 1538.5(b), hearings to challenge searches, based upon a warrant, should first be heard by the issuing magistrate, if available. Defendants seeking to challenge such a warrant shall comply with the procedure in Local Rule 3.5.1A, in the calendaring and filing of said motion with the issuing magistrate as the "Designated Department."

In cases where the motion is brought to coincide with the preliminary hearing the hearing on the motion shall instead be heard by the magistrate assigned to conduct the preliminary hearing. (Pen. Code § 1538.5 subd. (f).)

C. All motions to suppress must comply with the filing, notice, and content requirements of Local Rule 3.5.1.

1. Moving papers shall include the following:

a. If factual assertions are based on cited documentation (such as police reports) and this documentation has not previously been filed with the court, the moving party shall attach a copy of the cited document.

b. Where a motion to suppress was made at the preliminary examination, any references in the supporting papers to such testimony shall be identified as to volume number, if more than one volume, and page and line number in the transcript.

c. Where no motion to suppress was made at the preliminary examination and if the moving party requests testimony be received by the court at the hearing, the first page of the notice of motion, or motions, shall so indicate. The failure to so indicate shall be construed by the court as a request by the moving party to submit the matter on the statement or statements of fact and the argument of counsel.

d. Where a motion to suppress was made at the preliminary examination and if the moving party requests additional testimony be received by the court at such hearing, the first page of the notice of motion, or motions, shall so indicate. The failure to so indicate shall be construed by the court as a result on the part of the moving party that the matter be submitted on the transcript(s) of prior proceedings and the argument of counsel.

2. Responding papers shall include the following:

a. If factual assertions are based on cited documentation and this documentation has not yet been filed with the court, the responding party shall attach a copy of the cited document.

b. If the responding party intends to present testimony at the hearing, the first page of the response shall so indicate. Failure to so indicate may be construed by the court as a waiver of any right to call or recall witnesses.

c. Where no motion to suppress was made at the preliminary hearing and if the responding party requests testimony be received by the court at the hearing, the first page of the notice of motion or motions shall so indicate. The failure to so indicate shall be construed by the court as a request by the responding party to submit the matter on the statement or statements of fact and the argument of counsel.

D. Each party is responsible for insuring that its witnesses are present for the hearing.

E. Motions for Traverse of Search Warrant:

1. In accordance with *Franks v. Delaware* (1978) 438 U.S. 154, 90 S.Ct. 2674, as explained in *People v. Wilson* (1986) 182 Cal.App.3d 742, 227 Cal.Rptr. 528, the moving party must do the following:

a. Make a Penal Code § 1538.5 motion.

b. Establish standing to contest the search.

c. Point to specific portions of the affidavit which contain false information, or demonstrate with specificity what information it is claimed was omitted.

d. Allege that the misstatements or omissions were made by the officer/affiant with the intent to deceive, or were made recklessly (i.e., with utter disregard for the truth). Allegations of negligence, or allegations failing to refer to the state of mind of the affiant, are insufficient.

e. Demonstrate that the alleged misstatements or omissions were material. Materiality in this context means that the affidavit with the objectionable language taken out or omissions added would be lacking sufficient probable cause.

f. Submit affidavits or other competent evidence demonstrating the probable truth of the defense allegations, or satisfactorily explain the absence of such affidavits.

F. If any motion involves a warrant, the moving papers shall include a copy of the warrant and its affidavit.

G. Failure to comply with the above-stated rules may result in appropriate sanctions. In the case of the moving party, this may include a summary denial of the motion. **(Effective July 1, 2008; Rule 3.5.2 renumbered effective January 1, 2006; adopted as Rule 18.2 effective July 1, 2004)**

(Rule 3.5 renumbered effective January 1, 2006; adopted as Rule 18 effective July 1, 1992)

RULE 3.6 TRAFFIC INFRACTION CASES

3.6.1 Trial by Declaration

A. Pursuant to Vehicle Code § 40903, a defendant charged with Vehicle Code infractions or violations of local ordinances adopted pursuant to the Vehicle Code who fails to (1) appear in court to plead or set a trial date, (2) post bail and request a trial by written declaration by mail, (3) request an extension, or (4) pay and forfeit bail by the date shown on the notice to appear may be deemed to have elected to have a trial by written declaration upon any alleged infraction or violation, as charged by the citing officer. A defendant deemed to have elected this procedure will be mailed a TTR-206 Form. Failure to return a written declaration by the date shown on Form TTR-205.2 may result in a trial upon such evidence as provided by Vehicle Code § 40903(b) and the case may be adjudicated solely on the merits of the citing document.

B. A trial by written declaration is also available to any defendant who wishes to contest the citation and who timely requests a trial by written declaration in writing. A trial by written declaration shall be requested and conducted in accordance with rule 4.210 of the California Rules of Court. A trial by declaration is not available if defendant has been notified that a personal appearance is mandatory. A defendant electing this

procedure shall complete and return to the Clerk Forms TR-205, Election by Trial By Written Declaration, and TR-200, Instructions to Defendant and shall notify the Clerk of his or her current address and of any changes thereof. Failure to return a written declaration by the date shown on Form TR-205 may result in a trial upon such evidence as provided by Vehicle Code § 40902(c). **(Effective January 1, 2016; Rule 3.6.2 (now 3.6.1) renumbered effective January 1, 2006; adopted as Rule 19.2 effective January 1, 2002)**

3.6.2 Traffic Infraction Appeals

A party may appeal an unfavorable decision made in the trial court to the Appellate Division of the Superior Court pursuant to Rules 8.800 through 8.821 and 8.60 through 8.880 of the California Rules of Court. The Notice of Appeal (form TR1-55) must be filed with the Clerk of the trial court within thirty (30) CALENDAR DAYS after the rendition of judgment. No extension of time is allowed.

The appeal must be directed toward errors of law only. An appeal is not a retrial, and introduction of new evidence will not be permitted. The forms and instructions on appeal procedures are available in all traffic court locations in Fresno County. **(Effective January 1, 2009; Rule 3.6.3 (now 3.6.2) renumbered effective January 1, 2006; adopted as Rule 19.3 effective January 1, 2002)**

3.6.3 Remote Video Trials and Proceedings in Traffic Infraction Cases

A. Pursuant to California Rules of Court, rule 4.220(a), the Court permits traffic infraction trials and proceedings to be conducted by two-way remote video communications.

B. The following are designated as locations where eligible defendants may appear for remote video trials of traffic infraction cases:

1. Coalinga

2. Mendota

Additional locations may be designated. All designated locations shall be at least ten (10) miles outside the Fresno-Clovis Metropolitan Area and the city in which the site is located may not have regular public transportation servicing the area.

C. To be eligible to appear for remote video arraignment or trial:

1. The citation issued must be for an infraction as defined in California Rules of Court, rule 4.220(b)(1);

2. Defendant must comply with California Rules of Court, rule 4.220;

3. Travel for the defendant to the M Street Courthouse must be in excess of fifteen (15) miles from the location where the defendant resides.

D. Pursuant to California Rules of Court, rule 4.220(g), defendant's witnesses shall appear at the remote location with the defendant.

E. Defendant must submit form TR-505 or TR-510 to the Traffic Clerk's Office for filing. The forms may be submitted in person at:

Traffic Clerk's Office
2317 Tuolumne Street
Fresno, CA 93721-1220

Or mailed to:

Fresno Superior Court
Attn: Traffic Division
1100 Van Ness Avenue
Fresno, CA 93724-0002

Forms submitted in person must be presented for filing on or before the appearance date indicated on the Notice to appear. Forms submitted by mail must be postmarked at least five (5) court days before the appearance date indicated on the Notice to Appear.

F. Upon receipt of a subpoena setting out the hearing date and remote location, law enforcement officers may make a request to appear in court instead of at the remote location. The request must be made via form PTR-506. The form may be substituted in person or by mail at the addresses set out above. Forms submitted in person must be presented for filing at least five (5) court days before the date of the video proceeding set out in the subpoena. Forms submitted by mail must be postmarked at least ten (10) days before the date of the video proceeding set out in the subpoena.

G. It is the Court's preference that all exhibits intended to be used at the remote video trial be submitted prior to the hearing date so they will be available at the Court location for the judge's reference. Defendant and Law Enforcement designee should submit any exhibits he/she intends to use in presentation of his/her case prior to the trial date. All exhibits shall be accompanied by form PTR-507 to assist in identifying the case associated with the exhibits. The form and exhibits may be submitted in person or by mail at the addresses set out above. Exhibits that are submitted in advance in person must be presented at least five (5) court days before the remote video trial date. Exhibits that are submitted in advance by mail must be postmarked at least ten (10) days before the remote video trial date.

Defendant and Law Enforcement designee shall bring two (2) copies of all documentary evidence he/she intends to use in presentation of his/her case to the remote location on the day of the hearing. Documentary evidence includes written documents, and standard sized photographs.

Defendant and Law Enforcement designee may bring one (1) copy of all demonstrative or other physical evidence he/she intends to use in presentation of his/her case to the remote location on the day of the hearing. Demonstrative or other physical evidence includes oversized maps or diagrams, three dimensional objects, and blown up photographs. **(Effective January 1, 2017; Rule 3.6.3 (was 3.6.4) renumbered effective January 1, 2016)**

(Rule 3.6 renumbered effective January 1, 2006; adopted as Rule 19 effective July 1, 1992)

(Chapter 3 amended effective January 1, 2006; adopted as III effective July 1, 1992)

CHAPTER 4. MISCELLANEOUS RULES

RULE 4.1 RULES OF GENERAL APPLICATION

4.1.1 Jury Instructions and Verdict Forms

A. Where there is a trial by jury, the parties shall request instructions by submitting proposed instructions to the trial judge on the first day of trial. The latest edition of CALCRIM or CACI (Judicial Council of California Civil Jury Instructions) forms shall be used wherever applicable.

B. Proposed pattern jury instructions, which have been modified by a party, shall clearly indicate any proposed change.

C. The party requesting a CALCRIM or CACI instruction which contains one or more blanks shall type in the blank space all the words required to adapt the form for use in the pending case.

D. Instructions shall be submitted either on a form with a detachable top or in a multi-page format. If a form with a detachable top is used, the top portion of the instruction shall contain the name of the party upon whose behalf it is requested and citation to supporting authority. If that instruction is used, the detachable bottom of the form will be given to the jury for use during deliberations. If a multi-page format is used, one page shall contain the name of the party upon whose behalf it is requested and citation to supporting authority. A separate page or pages shall contain the instruction itself. If that instruction is used, only the page or pages containing the instruction itself will be given to the jury for use during deliberations.

E. In civil cases each party shall submit proposed verdict forms suitable for used by the jury in the pending case. In criminal cases the court may order the prosecution to submit proposed verdict forms, including lesser offenses, suitable for use by the jury in the pending case. Each verdict must be submitted on a separate form, must contain the caption of the case, and must not indicate the party upon whose behalf the verdict is submitted. **(Effective July 1, 2007; Rule 4.1.1 renumbered effective January 1, 2006; adopted as Rule 20.1 effective July 1, 2004)**

4.1.2 Sound Recordings to be Offered as Evidence at Trial

A. Any party intending to offer a sound recording in evidence at trial shall prepare a transcript of the sound recording and serve such transcript and a copy of the recording on all other parties at least two (2) weeks before trial. Any party disputing the accuracy of the transcript shall prepare his or her own transcript of the sound recording identifying the disputed portions and serve that transcript on all other parties no later

than three (3) days before trial. When disputed, the parties shall meet and confer in a good faith effort to resolve their differences.

B. In the event that the differing versions cannot be resolved by the parties, they shall alert the Presiding Judge at the trial readiness hearing to reserve an appropriate amount of time in the assigned trial court to settle the dispute before summoning a jury panel.

C. Nothing herein is intended to contravene the applicable rules of discovery or valid claims of confidentiality provided by law. If a party is entitled to maintain the confidentiality of a sound recording and chooses to do so until trial, a proposed settled transcript shall be lodged with the court when the sound recording is marked for identification. The opposing party shall be allowed a reasonable opportunity to listen to the sound recording, prepare a proposed transcript and lodge objections before the sound recording is received as evidence.

D. Each transcript shall be certified by the person preparing it. In the event the sound recording is in a language other than English, the certification shall also include a certification by the person translating the sound recording.

E. The propounding party shall prepare a sufficient number of copies of the transcript for distribution as ordered by the court. **(Effective January 1, 2014; Rule 4.1.2 renumbered effective January 1, 2006; adopted as Rule 20.2 effective July 1, 2000)**

4.1.3 Confidentiality of Jurors' Declarations

The court may grant access to declarations that were submitted to the court by prospective trial and grand jurors upon application to the trial judge or, if the trial judge is unavailable, to the presiding judge or his or her designee. If the applicant seeks personal juror identifying information of trial jurors that has been sealed by the court pursuant to Code of Civil Procedure § 237, a noticed motion in accordance with that section is required. **(Rule 4.1.3 renumbered effective January 1, 2006; adopted as Rule 20.3 effective July 1, 2004)**

4.1.4 Requests to Conduct Media Coverage

A. Requests for media coverage (photographing, recording or broadcasting of court proceedings by the media using television, radio, photographic or recording equipment) shall comply with the provisions of California Rules of Court, Rule 1.150.

B. The court will rule on the request at the hearing. **(Effective July 1, 2007; Rule 4.1.4 renumbered effective January 1, 2006; adopted as Rule 20.4 effective July 1, 2000)**

4.1.5 Dangerous, Large or Bulky Exhibits

A. Permission from the judge assigned to the hearing or trial must be obtained before a party may bring dangerous, large or bulky exhibits into the courthouse. If possible, the party should substitute a photograph, technical report, or dummy object for proposed exhibits which are either:

1. Inherently dangerous, such as:

a. Firearms;

b. Any type of explosive powder;

c. Explosive chemicals, toluene, ethane;

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

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

f. Canisters containing tear gas, mace;

g. Rags which have been soaked with flammable liquids;

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

i. Samples of any bodily fluids, liquid or dried; or

j. Controlled or toxic substances; or

k. Corrosive or radioactive substances.

2. Large and cumbersome, such as a ladder, sewer pipe, or automobile chassis.

If a party believes the exhibit should be brought into the courtroom without substitution, an application for permission must be made in writing and describe the materials to be brought into the courtroom and the reason a substitution should not be made. The option of viewing the materials at another location may be considered by the court.

B. Evidence received in any case shall be limited to those items required in the case and shall be retained by the court for the minimum time required by law, unless good cause is shown to retain the evidence for a longer period of time.

C. No exhibit shall be accepted by the Clerk or exhibits custodian unless:

1. All containers of controlled or toxic substances are securely sealed and protected against breakage to safeguard court personnel, so that the contents cannot be spilled and odors cannot be emitted;

2. All containers of liquid substances, including bodily fluids, are securely sealed and protected against breakage to safeguard court personnel, so personnel are not exposed to the contents and odors;

3. All objects containing bodily fluids or dangerous, controlled or toxic substances (e.g., bloody shirt, gasoline soaked rage, etc.) are placed in containers that are securely sealed and protected against breakage so that odors cannot be emitted and court personnel are safeguarded;

4. All firearms are secured by a nylon tie or trigger guard, and have been examined by the bailiff to determine that they have been rendered inoperable;

5. All sharp objects, such as hypodermic needles, knives, and glass, are placed in containers that are securely sealed and protected against breakage, which will safeguard personnel;

6. All containers with liquid substances are clearly marked and identified as to type and amount;

7. All containers of controlled substances are clearly marked, identified, weighed, and sealed;

8. All cash is specifically identified, whether individually or packaged, as to the total amount and number of each denomination.

D. All exhibits must be individually tagged with the proper exhibit tag, properly completed, and securely attached to the exhibit. Any exhibit improperly tagged, marked, weighed, or identified will not be accepted by the court. Unless otherwise ordered, unidentified or improperly identified liquids, containers, controlled substances, or other suspect substances shall be returned to the party offering them.

E. When a dangerous, large or bulky exhibit that has been marked and identified or received in evidence poses a security, storage or safety problem, on recommendation of the Clerk of the court, the court may order that all or a portion of it be returned to the party that offered it. In the case of exhibits offered by the prosecutor in a criminal case, the court may order that the exhibit be returned to the law enforcement agency involved. The order shall require that a full and complete photographic record of the exhibit or the portion returned be substituted for the exhibit. The party who offered the exhibit shall provide the photographic record. The party or agency to whom the exhibit is returned shall be responsible for maintaining and preserving the exhibit until there is a final disposition of the action or proceeding. All exhibit tags and other identifying markings or information concerning each exhibit shall remain in place and shall not be disturbed. Each exhibit shall be maintained intact and

in the same condition as during trial. In the event further proceedings of any court having jurisdiction of the matter require the presence of the exhibit, the party or agency to whom it was returned shall promptly deliver the exhibit to the appropriate court, with notice to all parties. **(Rule 4.1.5 renumbered effective January 1, 2006; adopted as Rule 20.5 effective January 1, 2004)**

4.1.6 Facsimile Machine (FAX) Filing and Notification

A. The Superior Court of California, County of Fresno hereby adopts rule 2.300 et seq. of the California Rules of Court, allowing for facsimile filing of civil, probate and family law documents. The Superior Court of California, County of Fresno also allows for facsimile filing of specified documents in juvenile cases as set out in California Rules of Court 5.522. The Superior Court of California, County of Fresno allows for facsimile filing of only the following documents in a criminal case: the Declaration of Conflict of Interest executed under oath by the Fresno County Public Defender or appointed counsel; a proposed Order Substituting Attorney of Record for Defendant, FCR-33, or a proposed Order Substituting Attorney of Record for Defendant (Multiple Defendant Case), FCR-34; Petitions for Revocation of Supervision, and Warrants for Revocation of Supervision.

B. Fax filings will be accepted during normal business hours. A document may be faxed to the court at any time of the day. Acceptance of the document for filing with the court shall be deemed to occur:

1. On the date the document was faxed to the court if the submission occurred during normal business hours of the Clerk's Office; and,

2. On the next business day the Clerk's Office is open for business if the submission occurred after normal business hours of the Clerk's Office.

For purposes of this section, normal business hours shall be 8:00 a.m. through 4:00 p.m., Monday through Friday, excluding court holidays. Nothing in this section shall limit the clerk's ability to reject filings.

C. A party who has established a filing fee account in advance may file pleadings and documents by facsimile machine directly with the Clerk. All such filings must fully comply with the provisions of the California Rules of Court. Any party electing to file by facsimile shall be deemed to have consented to service of notices by the Court by facsimile machine. The Fresno County Public Defender and appointed counsel are exempt from this requirement.

D. In addition to other fees imposed by law, a party filing by fax directly with the court shall pay a fee of $1.00 for each page of the paper.

E. Any document received with missing or partial pages, or other facial defects, shall not be filed but shall be returned by the Clerk to the sending party by mail.

F. Where these rules require notification by letter, to court or counsel, such notification may be by fax. The court has several fax numbers, and notification to a specific judge shall be addressed to him or her by name and shall be transmitted to the fax number nearest his or her chambers.

G. A list of fax numbers may be obtained from the Clerk by a fax request to (559) 457-1624, citing this rule. **(Effective January 1, 2014; Rule 4.1.6 renumbered effective January 1, 2006; adopted as Rule 20.6 effective July 1, 2000)**

4.1.7 Trial Readiness Hearing

Repealed. **(Effective July 1, 2007; Rule 4.1.7 renumbered effective January 1, 2006; adopted as Rule 20.7 effective July 1, 2000)**

4.1.8 Identification of Document Preparers

A. In this section:

1. "Document preparer" means a person, other than an attorney or an employee of an attorney, who prepares for compensation a paper for filing; and

2. "Paper for filing" means any paper, as defined in Rule 1.1.4, prepared for filing on behalf of a party.

B. A document preparer who prepares a paper for filing shall print on a separate sheet of paper the preparer's name, address, telephone number, FAX number and e-mail number, if any. This separate paper identifying the preparer shall be served on the opposing party, filed with the court, and identified in the proof of service.

C. An attorney, or an employee of an attorney, who prepares a paper for filing as "in pro per" shall print on a separate piece of paper the preparer's name, address, telephone number, FAX number and e-mail address, if any. This separate paper identifying the preparer shall be served on the opposing party, filed with the court, and identified on the proof of service.

D. As an additional requirement, document preparers shall type their initials or the initials of their business and the runner numbers in the caption under the heading "Attorney or Party Without Attorney" on the face sheet of the moving papers.

E. A document preparer shall, not later than the time at which a paper for filing is presented for the party's signature, furnish to the party a copy of the paper.

F. A document preparer shall not execute any paper on behalf of a party.

G. Nothing in this rule shall be construed to permit activities that are otherwise prohibited by law, including rules and laws that prohibit the unauthorized practice of law.

H. These requirements are in addition to those regarding legal document assistants set forth in the Business and Professions Code. **(Rule 4.1.8 renumbered effective January 1, 2006; adopted as Rule 20.8 effective July 1, 2000)**

4.1.9 Electronic Mail Communication with the Court

Consistent with the Canons of Ethics relating to Ex-Parte Communications with the court, an attorney for a party, or a party appearing in pro per, may direct electronic mail communications to the clerk of the department to which a case has been assigned, relating to a case pending before that court.

However, unless otherwise approved by the court, consistent with the Canons of Judicial Ethics and the California Rules of Professional Conduct, no attorney or party to an action shall, either with or without prior notice to opposing counsel, contact any judge directly by e-mail concerning a case pending before the court, or a matter relating to a case pending before the court. **(Rule 4.1.9 renumbered effective January 1, 2006; adopted as Rule 20.9 effective January 1, 2005)**

4.1.10 Protocol for Communication Between Courts Regarding Domestic Violence Orders

A. Purpose

This rule sets forth the court communication protocol for Domestic Violence and Child Custody Orders as required by the California Rules of Court. This protocol is intended to avoid the issuance of conflicting orders when possible, and to permit appropriate visitation between a restrained person and the child(ren) who is/are the subject of a family, probate or juvenile proceeding, while providing for the safety of all victims and witnesses. Furthermore, the best interests of the child(ren), litigants and the Court are promoted by early identification and coordination of proceedings involving the same child(ren) or the child(ren)'s caretaker(s). To that end, this rule is also designed to ensure that all bench officers have information about the existence of overlapping cases. This rule recognizes the statutory requirement that criminal protective orders have precedence of enforcement over all other contract orders; however, it acknowledges that there are situations where it is appropriate to permit visitation between a criminal defendant and his or her child.

B. Notice of Pending Cases and Orders

1. Court Inquiry

Before issuing a criminal or non-criminal protective order, or a custody or visitation order, the Court should inquire of the parties or the attorneys whether there are any cases in which there are criminal or civil protective orders, or custody and visitation orders that involve the child(ren) in the current case.

2. Attorneys and Self-Represented Parties in Family, Probate and Juvenile Cases

All attorneys and self-represented parties involved in family law, probate and juvenile cases shall inform the Court about any cases in which there are criminal or non-criminal protective orders or custody and visitation orders that involve the child(ren) in the current case. The information shall be provided to the Court, all parties and all attorneys in the case.

3. Prosecuting Attorneys

Pursuant to Penal Code § 273.75, the District Attorney or City Attorney shall investigate whether there are any criminal or civil protective orders or custody and visitation orders that involve a child of, or under the care of, a participant in a domestic violence charge. Prosecuting attorneys shall inform the Court, all parties and all attorneys in the case of such orders.

C. Communication Between Courts

1. Communication Regarding Existing Cases in Other Departments

When any court becomes aware of the existence of another case involving the same child(ren), the judicial assistant shall notify the Domestic Violence Case Coordinator who shall then provide notification to the other court. The Domestic Violence Case Coordinator shall ensure that the appropriate trial courts receive written notice of overlapping cases. Prior to conducting a hearing in the matter, the trial judge will review the overlapping orders, if appropriate. Notice will be provided to the parties of the overlapping orders reviewed by the judicial officer.

2. Communication Regarding Protective Orders

a. Criminal Protective Orders

When the criminal court issues a protective order against a defendant who has a pending family, probate or juvenile case, the criminal court shall send a copy of the protective order to the appropriate court administrator who will send it to the trial court with the overlapping case. This may be accomplished by working through the Domestic Violence Case Coordinator.

b. Temporary or Permanent Non-Criminal Restraining Orders

When either the Family Court or Dependency Court issues a temporary or permanent restraining order and the restrained person or the protected person has another pending dependency, family, probate, juvenile or criminal case, the Family Court or Dependency Court shall send a copy of the protective order to the appropriate court administrator who will send it to the trial court with the overlapping case. This may be

accomplished by working through the Domestic Violence Case Coordinator.

D. **Modification of Criminal Protective Orders**

Criminal protective orders take precedence over other contact orders. When a criminal protective order exists and either or both parties request a child custody order that is inconsistent with the criminal protective order, it is the obligation of the moving parties to seek a modification of the criminal protective order by placing the matter on the criminal domestic violence calendar. Notice must be provided to all parties, attorneys and probation or parole officers. No party shall seek a child custody or visitation order in family, probate or juvenile court that is inconsistent with an existing criminal protective order unless a judicial officers presiding over the criminal domestic violence matter has first granted the request to modify the criminal protective order. **(Effective January 1, 2010, New)**

4.1.11 Juror Panel List

In the event that any list of prospective jurors, whether it be an alphabetical list or a list in the order in which the juror will be called, is provided to the parties or counsel to help facilitate the jury selection process, the lists may not be reproduced. All lists provided shall be returned to the Court upon completion of jury selection, cancellation of the jury panel or release of the jury panel prior to the conclusion of jury selection. **(Effective July 1, 2013, New)**

4.1.12 Delivery of Court Reporter Transcripts to the Court

In all case types, any court reporter utilized to report court proceedings shall file all appellate and court ordered transcripts electronically via YesLaw. This rule applies to Court employees, per diem and pro tempore court reporters. **(Effective January 1, 2016, New)**

4.1.13 Electronic Filing

A. **Mandatory Electronic Filing in Unlimited Civil Cases**

Pursuant to Code of Civil Procedure § 1010.6(g), documents filed by represented parties in all unlimited civil actions must be filed electronically unless the Court excuses parties from doing so. Although not required, self-represented parties are encouraged to participate in electronic filing and service.

B. **Permissive Electronic Filing**

Parties may file documents electronically in all types of cases other than criminal or juvenile. No electronic filing is permitted for criminal or juvenile cases or confidential case types including confidential name change, unlawful detainer (if within the first sixty (60) days of the file date), developmentally disabled and dangerous, forfeiture of confiscated weapon, involuntary medication, mental health, Murphy LPS conservatorship, petition to consent for medical treatment, petition for Electroconvulsive

Therapy (ECT), Riese hearing, relief of firearm prohibition, TB petition, petition for consent LPS conservatorship, writ of habeas corpus, adoption, appointment of confidential intermediary, petition to declare minor free, petition to establish parental relationship, set aside declaration of paternity, surrogacy, termination of parental rights, and unseal birth records.

C. **Rules Applicable to All Case Types**

The electronic filing of documents must be effected using the Court's electronic service providers. Electronic service provider information is available on the Court's website at www.fresno.courts.ca.gov/. If a party with a fee waiver files documents electronically, that party is exempt from the fees and costs associated with the electronic filing.

Confidential documents shall be designated as such by the filer during the electronic filing process via the confidential security option.

For purposes of electronic filing of documents, pursuant to California Rules of Court, Rule 2.250(b)(10), the "close of business" is 5:00 p.m. Pursuant to California Rules of Court, Rule 2.259(c), a document that is received electronically by the Court after the close of business is deemed to have been filed on the next court day. This provision concerns only the method and effective date of filing; any document that is electronically filed must satisfy all other legal filing deadlines and requirements. This rule does not affect the timing requirements for any documents that must be filed by a set time on the due date.

This rule is subject to the provisions set forth in Code of Civil Procedure § 1010.6 and California Rules of Court, Rules 2.250 thru 2.259.

The Court requests that electronic filing of documents be effected using a fully searchable .pdf file and include electronic bookmarks to each heading, subheading and component (including the table of contents, table of authorities, petition, verification, points and authorities, declaration, and proof of service if included within the petition), and to the first page of each exhibit or attachment, if any; that each bookmark to an exhibit or attachment include the letter or number of the exhibit or attachment and a description of the exhibit or attachment. The Court also requests that if exhibits or attachments are submitted in multi-part electronic files, each separate file have its own table or index of the contents of the file. The Court anticipates these requests will become mandatory at a future date.

D. **Limitations on Filings**

Notwithstanding any other provision of law or this rule, the following documents may not be filed electronically.

1. Affidavit re: Real Property of Small Value;

2. Bonds;

3. Documents for cases under seal;

4. Labor Commissioner deposit of cash or check;

5. Subpoenaed documents;

6. Undertakings; and

7. Wills/Codicils; or

8. Any exhibits that cannot be accurately transmitted via electronic filing due to size or type. **(Effective July 1, 2016; adopted as Rule 4.1.13 effective January 1, 2016)**

(Rule 4.1 renumbered effective January 1, 2006; adopted as Rule 20 effective July 1, 1992)

RULE 4.2 APPEALS TO THE APPELLATE DIVISION

4.2.1 Three Judge Panel

All infraction, misdemeanor, and limited civil case appeals are decided by a majority of a three (3) judge panel of the Appellate Division. **(Rule 4.2.1 renumbered effective January 1, 2006; adopted as Rule 21.1 effective July 1, 200)**

4.2.2 Filing of Appeal, Briefing and Hearing Dates

Appeal papers shall be filed with the Clerk. Briefing and hearing dates will be set by the court. Each party shall ensure that complete documentation is submitted in a timely manner. **(Rule 4.2.2 renumbered effective January 1, 2006; adopted as Rule 21.2 effective July 1, 2000)**

4.2.3 Record on Appeal

A. Pursuant to California Rules of Court, rules 8.830(a)(1)(B), 8.833, 8.860(a)(1)(B), 8.863, 8.910(a)(1)(B) and 8.914 the court elects to use the original trial court file instead of the clerk's transcript as the record of the written documents from the trial court proceedings.

B. Pursuant to California Rules of Court, rules 8.835(c), 8.868(c) and 8.917(c) on stipulation of the parties or on order of the trial court under rule 8.837(d)(6)(A), 8.869(d)(6)(A) or 8.916(d)(6)(A) the original of an official electronic recording of the trial court proceedings, or a copy made by the court, may be transmitted as the record of these oral proceedings without being transcribed. **(Effective January 1, 2011)**

4.2.4 Briefing Procedure

A. An original and three (3) copies of each brief shall be filed with the Clerk. The original, which will be maintained in the court file, shall have a standard two-hole punch on the top when submitted for filing. Each of the three (3) copies shall have a standard three-hole punch on the left side when submitted for filing. Notwithstanding the California Rules of Court, briefs shall not be bound.

B. All briefs shall include appropriate points and authorities, clear identification of the issue(s) being raised and valid proof of service. Because appeals are concerned with issues of law, mere factual arguments will generally be insufficient. If applicable, a reporter's transcript and/or a settled statement on appeal shall be submitted.

C. A party may file a request for an extension of time to comply with the briefing schedule with the Presiding Judge of the Appellate Division. Such request shall include a separate declaration providing good cause for the extension of time, a proposed order and a properly completed checklist for proposed orders form. The checklist for proposed orders form is available from the Clerk's Office.

D. Failure of the appellant to file a timely opening brief or to otherwise comply with applicable rules may result in dismissal of the appeal. **(Effective January 1, 2009; Rule 4.2.3 renumbered effective January 1, 2006; adopted as Rule 21.3 effective January 1, 1997)**

(Rule 4.2 renumbered effective January 1, 2006; adopted as Rule 21 effective July 1, 1992)

(Chapter 4 amended effective January 1, 2006; adopted as IV effective July 1, 1992)

CHAPTER 5. FAMILY LAW RULES

RULE 5.1 GENERAL PROVISIONS

5.1.1 Result of Failure to Comply

Failure to comply with these Family Law Rules may result in one or more of the following on the request of the other party or on the court's own motion:

A. Making an order based solely on the pleadings properly before the court.

B. Making or vacating orders as the court deems appropriate under the circumstances.

C. Continuing the matter.

D. Awarding attorney's fees and costs against the non-complying party, without the requirement of filing either an Income and Expense Declaration or a noticed motion.

E. Removing the matter from calendar.

F. These rules shall not prevent the exercise of judicial discretion whenever appropriate. **(Rule 5.1.1 renumbered effective January 1, 2006; adopted as Rule 30.1 effective July 1, 2001)**

5.1.2 Abbreviations

Abbreviations used in these Family Law Rules are defined in Appendix C-1. **(Effective January 1, 2006, New)**

(Rule 5.1 renumbered effective January 1, 2006; adopted as Rule 30 effective July 1, 1992)

RULE 5.2 MOVING AND RESPONSIVE PLEADINGS AND OTHER NON-TRIAL HEARINGS

5.2.1 Setting the Date and Time

A. **Clear the Date**. No case shall be calendared for court hearing without the moving party first contacting the opposing attorney (if known) and attempting to obtain a mutually agreeable hearing date, unless notice is otherwise excused by these rules.

B. **Set the Date**. Attorneys may obtain a hearing date on the family law calendar by calling the calendar clerk and obtaining a date and time for the hearing. A self-represented party may obtain a hearing date from the Clerk at the time the party's papers are filed.

If effective service of the moving papers is not made, the party shall notify the Calendar Clerk and Family Court Services, if applicable, to remove the matter from calendar.

C. **Attorney's Fees**. Attorney's fees may be raised in the responsive papers to a NOM/OSC even though no other financial issues were raised in the moving papers. The responsive papers must be accompanied by a current Income and Expense Declaration. **(Effective July 1, 2007; Rule 5.2.1 renumbered effective January 1, 2006; adopted as Rule 31.2 effective July 1, 2001)**

5.2.2 Temporary Orders and Ex Parte Procedures

A. **Applications**. Applications for ex parte orders, including a TRO shall be made in accordance with all applicable California Codes and Rules of Court.

B. **Declarations**.

1. Change in Status Quo. There is an absolute duty to disclose the fact that a requested ex parte order will result in a change of status quo.

The declaration in support of a request for an ex parte order which changes the status quo shall state all applicable facts describing the existing situation and supporting the requested change. In determining status quo, the court will consider actual custody/visitation practices which have occurred on a regular basis.

2. Exigent Circumstances. The first paragraph of the declaration shall set forth the exigent circumstances requiring the ex parte hearing.

3. Child Custody Visitation.

a. The declaration in support of a request for an ex parte order relating to custody/visitation of a minor child shall include the following:

1) A completed UCCJEA declaration;

2) A summary of the custody/visitation practices of the parties during the last twelve (12) months, the date the parents separated, and whether or not the applicant obtained custody by mutual agreement;

3) The current custody order SHALL BE ATTACHED;

4) Specific facts describing what immediate bodily injury or emotional harm the children may be subjected to if the current custody and/or visitation order remains in effect; and

5) No ex parte change in status quo will be granted unless clear and specific facts are stated which demonstrate that the health and welfare of the child will be in immediate danger without the change.

b. The application shall set forth a proposed specific visitation plan pending the hearing. **(Effective January 1, 2013; Rule 5.2.2 renumbered effective January 1, 2006; adopted as Rule 31.3 effective July 1, 2000)**

5.2.3 Orders Shortening and Extending Time

A. Absent a stipulation and approval by the court, a request for an order shortening time shall follow the procedure set forth in Rule 5.2.2. The opposing attorney must be contacted in an attempt to clear the hearing date.

B. The court will favor an order shortening time for additional issues to be heard on the same date previously set for an OSC/NOM. The request shall include a declaration that the opposing counsel or party has been notified of the intent to seek an order shortening time and has been informed of the additional issues. The declaration shall include a statement as to whether the opposing party agrees to or opposes the order shortening time, and if applicable, the specific reasons for opposition. **(Rule 5.2.3 renumbered effective January 1, 2006; adopted as Rule 31.4 effective July 1, 1999)**

5.2.4 Moving and Responsive Pleadings

A. **Filing and Serving**. The original and two copies of all moving and responsive law and motion pleadings must be filed. A true and complete copy shall be served on the opposing party.

B. **Copy to DCSS**. If public assistance is being paid, the DCSS is an indispensable party to the action and shall be served with the pleadings.

C. **Late Filing of Responsive Pleading**. A responsive pleading may be filed or served late for good cause or if the opposing party expressly consents to the late service. A copy of the pleading shall be delivered to the Judicial Officer's Clerk no later than 2:00 p.m. on the date before the hearing. **(Effective January 1, 2013; Rule 5.2.5 (now 5.2.4) renumbered effective January 1, 2006; adopted as Rule 31.6 effective July 1, 2001)**

5.2.5 Pre-Hearing Settlement Efforts

Parties shall confer before the scheduled hearing date to resolve or limit the issues. Failure to confer and attempt to settle in good faith shall have a bearing on attorney's fees to be awarded. This rule does not apply in cases where there are allegations involving domestic violence and neither party is represented by an attorney. **(Rule 5.2.6 (now 5.2.5) renumbered effective January 1, 2006; adopted as Rule 31.7 effective July 1, 1998)**

5.2.6 Matters Off Calendar

Request. If there is a request to take a hearing off calendar, the moving party shall contact the Judicial Assistant of the Department prior to the hearing. If the request is granted, the requesting party shall submit a letter of confirmation with a copy to the opposing party which verifies the cancellation of the hearing. Unless the court is so notified, both parties must appear on the hearing date and advise the court of the disposition of the matter and why sanctions should not be imposed for failure to abide by this rule. **(Effective January 1, 2013; Rule 5.2.7 (now 5.2.6) renumbered effective January 1, 2006; adopted as Rule 31.8 effective July 1, 2001)**

5.2.7 Continuances

A. **Request**. If there is a request to continue a hearing by agreement, the moving party shall, as early as possible, contact the Judicial Assistant of the Department. Upon the showing of good cause and the department's approval, the parties may call the Calendar Clerk to obtain the next available hearing date. A letter or stipulation confirming the new date shall be submitted to the Calendar Clerk along with the appropriate fee. Unless the request is approved by the department, both parties must appear on the hearing date and advise the court of the disposition of the matter and why sanctions should not be imposed for failure to abide by this rule. Requests for continuances are strongly disfavored.

1. Court Permitted Continuances. Permission of the Judicial Officer shall be obtained before a stipulated continuance is granted. The court must also approve the new hearing date if it is prior to the Clerk's next available hearing date.

2. Notify FCS or DCSS. When appropriate, FCS and DCSS must also be notified of continuances by the party requesting the continuance.

B. **Contempts**. Continuances of contempt hearings must be requested in open court or obtained by written stipulation signed by the citee. **(Effective January 1, 2013; Rule 5.2.8 (now 5.2.7) renumbered effective January 1, 2006; adopted as Rule 31.9 effective July 1, 1998)**

5.2.8 Presence of Parties and Attorneys

A. **Present at Calendar Call**. The parties or their attorneys shall be present in court when the case is called, unless they have previously checked in with the bailiff.

B. **Calendars**. Attorneys shall bring their calendars to court. **(Rule 5.2.9 (now 5.2.8) renumbered effective January 1, 2006; adopted as Rule 3.110 effective January 1, 2000)**

5.2.9 Conduct of Hearings

A. **Thirty Minute Limitation**. The law and motion calendars are limited to matters that take no more than fifteen (15) minutes per side of total court time, **including in-chambers conferences**.

B. **A settlement conference may be calendared by the Judicial Officer before setting the matter for a long cause hearing date.** Temporary orders, based on the pleadings, may be made by the Judicial Officer before the case is set on the settlement conference calendar. **(Effective January 1, 2013; Rule 5.2.10 (now 5.2.9) renumbered effective January 1, 2006; adopted as Rule 31.11 effective July 1, 1998)**

5.2.10 County Prisoners

If a prisoner in a Fresno County Detention Facility is a party, the attorney for either the prisoner or opposing party shall notify the bailiff of the Family Law Department/Family Support Department of this fact by 12 noon on the day before the hearing. The notification should be in writing, if possible, giving the full name and birth date of prisoner and the title and case number of the matter, so that the prisoner may be present at the hearing. **(Rule 5.2.12 (now 5.2.10) renumbered effective January 1, 2006; adopted as Rule 31.13 effective January 1, 1999)**

5.2.11 Photocopies in Court File

If photocopies of forms adopted by the Judicial Council are illegible or the reverse side is photocopied upside down, they may not be accepted as original documents for filing. **(Rule 5.2.14 (now 5.2.11) renumbered effective January 1, 2006; adopted as Rule 31.15 effective January 1, 1999)**

5.2.12 Judicial Officer's Signature

A. All proposed orders requesting the Judicial Officer's signature shall be delivered to the Clerk's Office.

B. All requests for a hearing requiring a Judicial Officer's signature to be calendared shall be delivered to the Clerk's Office. **(Rule 5.2.15 (now 5.2.12) renumbered effective January 1, 2006; adopted as Rule 31.16 effective January 1, 1999)**

5.2.13 Preparation of Order After Hearing

A. Unless the court orders otherwise or prepares the Order After Hearing on its own, the moving party shall prepare a written order following any hearing.

B. The preparing party shall mail the proposed order to the responding party for approval within ten (10) calendar days following the hearing. The responding party, within ten (10) calendar days after mailing, shall approve or refuse to approve the order and state alternate language.

C. If the preparing party does not receive a response within ten (10) days from the date of mailing of the proposed order, the preparing party shall mail a second letter to the respondent party.

The second letter shall notify the responding party that in five (5) days the proposed order will be submitted to the hearing officer, together with a copy of the second letter, for signature and filing with the court, without further notice to the responding party.

D. If there is a disagreement, each party shall submit to the court a proposed order with a cover letter delineating the areas of discrepancy. The court will make a ruling after a review of the appropriate record.

E. After an order has been signed by the Judicial Officer and filed, the party preparing the order shall serve a conformed filed copy on the opposing party. In addition, if applicable, a copy shall be served on DCSS and/or FCS within fifteen (15) days after filing and shall be reflected on the proof of service.

F. If the party directed by the court does not prepare an Order After Hearing within ten (10) days of the hearing and does not communicate the reason for the delay to the opposing party, then the opposing party may prepare the order and process it pursuant to B and C above.

G. Where the court does not prepare its own Order After Hearing, the parties may be directed to complete pre-printed Order After Hearing forms prior to leaving the courthouse. The pre-printed Order After Hearing forms shall be signed by both parties and, if represented, their attorneys of record. **(Rule 5.2.16 (now 5.3.13) renumbered effective January 1, 2006; adopted as Rule 31.17 effective July 1, 1999)**

5.2.14 Signatures on Stipulations

A. Stipulations shall be signed by each of the parties and their respective attorneys.

B. Exceptions.

1. Only the attorneys need to sign a stipulation to continue a hearing except an OSC re: contempt (see Rule 5.2.8(C)).

2. Only the attorneys need to sign a stipulation, which was rendered in open court in the presence of the parties.

3. For good cause shown, the court may accept a stipulation signed only by the attorneys. **(Effective July 1, 2007; Rule 5.2.17 (now 5.2.14) renumbered effective January 1, 2006; adopted as Rule 31.18 effective January 1, 1999)**

5.2.15 Complaints About Minor's Counsel

Complaints about minor's counsel shall be in written form. The complaint shall detail all reasons for the complaint and shall set forth specific examples of the acts or omission by Minor's Counsel. The complaint shall be sent to the Presiding Judge of the Family Court. The Presiding Judge will investigate and respond to the complaint.

Complaints must specifically address conduct and cannot focus on the outcome of the hearing. **(Effective January 1, 2013, New)**

(Rule 5.2 renumbered effective January 1, 2006; adopted as Rule 31 effective July 1, 1992)

RULE 5.3 JUDGMENTS

5.3.1 Requirements for Every Judgment

A. **EVERY JUDGMENT SUBMITTED TO THE COURT MUST HAVE THE CASE NAME, CASE NUMBER, AND PAGE NUMBER CLEARLY SET FORTH.** All judgments involving children are cleared by FSD to verify the payment (or lack thereof) of public assistance on behalf of the minor children.

B. All judgments involving children are cleared by the Department of Child Support Services (DCSS) to determine involvement.

C. If the DCSS has been or will be involved with the enforcement of a support order, see **Rule 5.4 – CHILD SUPPORT**.

D. Each judgment by declaration submitted to the court must contain the following:

1. Declaration for Default or Uncontested Dissolution, unless the Judgment is entered in Court.

2. Judgment:

a. The “by declaration” box should be checked unless otherwise indicated by a different rule.

b. Unless a specific date in the future is requested, the date for termination of status shall be left blank.

c. Any attachment incorporated into the Judgment shall be in proper court pleading form.

3. Notice of Entry of Judgment with two (2) **large** stamped addressed envelopes. The addresses in the boxes on the Notice of Entry of Judgment must be the same as the addresses on the envelopes. The submitted envelopes shall bear sufficient postage. Any envelope addressed to a defaulted party must use the address of the Clerk as the return address.

E. When a judgment is requested *nunc pro tunc,* the requesting party shall submit a declaration setting forth the requested date, the facts and reasons which justify the entry of a *nunc pro tunc* order. **(Effective July 1, 2007, Rule 5.3.1 renumbered effective January 1, 2006; adopted as Rule 32.1 effective January 1, 2000)**

5.3.2 Default and No Agreement

The following forms and declarations must be submitted where applicable:

A. Family Law Forms FL-165 Request to Enter Default and FL-170 Declaration for Default or Uncontested Judgment.

B. A supplemental declaration must be attached to the Declaration for Default or Uncontested Dissolution / Legal Separation. The supplemental declaration will address each applicable issue in the order listed below.

1. If there are any children of marriage. The child(ren)'s date of birth and full legal name(s) must be listed.

2. If there is any community property that needs to be divided the proposed division must be listed on this supplemental declaration with the specifications provided below.

3. Division of assets and liabilities.

a. If real property is included in the judgment, the common identification as well as the legal description must be included. This may be by a referenced attached exhibit.

b. All automobiles, motor homes, trailers, motorcycles, and other vehicle should be identified by the license plate number.

c. All boats should be identified by their "CF" number and VIN#.

d. All aircraft should be identified by their "N" number and VIN#.

4. A request for attorney fees and costs shall include an itemized declaration of work performed and costs incurred. A current Income and Expense Declaration must be submitted.

C. A completed Declaration Regarding Service of Declaration of Preliminary Disclosure.

D. An Income and Expense Declaration or Simplified Financial Statement that conforms to Rule 5.4.2 must be submitted if there is child support, spousal support, family support or attorney's fees.

E. If DCSS has been, is, or will be involved with the enforcement of a support order, see Rule 5.4.

F. If the respondent is incarcerated, this fact shall be set forth in the attached declaration along with expected release date, if known.

G. The Court may on its own motion or at the request of the defaulting party schedule a prove-up hearing to review judgment documents after those judgment documents have been submitted. **(Effective January 1, 2013; Rule 5.3.2 renumbered effective January 1, 2006; adopted as Rule 32.2 effective January 1, 2000)**

5.3.3 Default with Marital Settlement Agreement (MSA)

A. The signature of the defaulted party on any Marital Settlement Agreement must be notarized.

B. For each unrepresented party, the language in the Judicial Council Form entitled "Declaration Re Unrepresented Party" may either be set forth in the MSA (under an appropriate heading) or the form may be attached as an exhibit and incorporated in the MSA.

C. When a party is represented by counsel, the signature of the attorney who did not prepare the Judgment/MSA shall appear to show approval as to form and content.

D. Each party must submit a completed Declaration Regarding Service of Declaration of Preliminary Disclosure.

E. Each party must submit a completed Declaration Regarding Service of Declaration of Final Disclosure on in the alternative a separate Family Code § 2105 Waiver. **(Effective January 1, 2013; Rule 5.3.3 renumbered effective January 1, 2006; adopted as Rule 32.3 effective January 1, 2000)**

5.3.4 Appearance by Respondent and Marital Settlement Agreement or Stipulated Judgment

If Respondent is making a first appearance in the judgment documents, then that general appearance may be made by the following:

A. Response.

B. Appearance, Stipulation and Waivers form or by including the applicable box(es). A first paper-filing fee may be required.

1. A general appearance may be made by checking the applicable box(es). A first paper-filing fee may be required. **(Effective January 1, 2013; Rule 5.3.4 renumbered effective January 1, 2006; adopted as Rule 32.4 effective January 1, 2000)**

5.3.5 Appearance by Respondent and the Uncontested Judgment is Entered In Court

The following must be submitted:

A. Judgment.

1. The first box entitled "default or uncontested" shall be checked and the rest of paragraph 2 shall be completed.

2. If the party who did not prepare the Judgment is represented by an attorney, a signature line for counsel is required above the hearing officer's signature. The party preparing the Judgment does not sign.

3. The applicable waivers must be included in the body of the Judgment or attached as exhibits.

4. The Judgment shall be submitted as recited in open court. **(Effective January 1, 2013; Rule 5.3.5 renumbered effective January 1, 2006; adopted as Rule 32.4 effective January 1, 1998)**

5.3.6 Judgment after Trial

A. A Judgment incorporating all of the court's rulings shall be prepared and submitted by the party so ordered. The party preparing the Judgment shall provide a signature line for the other party on the Judgment before the hearing officer's signature.

B. Paragraph 2 must be completed in its entirety and the "contested" box shall be checked.

C. The judgment after trial shall follow the procedures for an order after hearing as set forth in Rule 5.2.16. **(Effective July 1, 2007, Rule 5.3.6 renumbered effective January 1, 2006; adopted as Rule 32.6 effective July 1, 1998)**

5.3.7 Bifurcated Judgment/Status Only

A. A bifurcation may be obtained by one of the following:

1. Stipulation and Order for Bifurcation submitted in addition to the following documents:

   a. A completed Appearance, Stipulation and Waiver form or equivalent language in the stipulation.

   b. Judgment with "status only" box checked.

   c. Notice of Entry of Judgment with "status only" box checked, in addition to the other requirements set forth in these rules.

2. Notice of Motion.

The following forms must be submitted if the request to bifurcate status is granted at the hearing:

a. Judgment with "status only" box checked.

b. Notice of Entry of Judgment with "status only" box checked, in addition to the other requirements set forth in these rules.

B. If temporary orders were issued, the Judgment shall state that such orders shall continue in full force and effect until further order of the court. **(Effective January 1, 2013; Rule 5.3.7 renumbered effective January 1, 2006; adopted as Rule 32.7 effective January 1, 2000)**

5.3.8 Uniform Parentage Act Judgment

A. Uniform Parentage Judgments by declaration must follow the procedures set forth in Rule 5.3 when applicable.

B. Default judgments must follow the applicable provisions of Rule 5.3.2. The filing party must submit a completed Advisement of Waiver of Rights form.

C. Judgments by agreement must follow the applicable provisions of Rule 5.3.4. Each party must sign the Stipulation for Entry of Judgment and submit a completed Advisement and Waiver of Rights form.

D. Judgments after hearing or trial must follow the applicable provisions of Rule 5.3.6. **(Effective January 1 2013; adopted as Rule 5.3.8 effective July 1, 2007)**

(Rule 5.3 renumbered effective January 1, 2006; adopted as Rule 32 effective July 1, 1992)

RULE 5.4 CHILD SUPPORT

5.4.1 Minimum Child Support Waiver

All stipulations to a child support amount that deviates from the amount established by the statewide uniform guideline calculation, except where either of the parties or children is receiving public assistance, shall include a signed Family Code § 4065 Waiver. **(Effective January 1, 2013; Rule 5.4.1 renumbered effective January 1, 2006; adopted as Rule 33.1 effective January 1, 1998)**

5.4.2 Income and Expense Declarations/Financial Statements

A. Income and Expense Declarations/Financial Statements.

If child support, spousal support, family support or attorney's fees are an issue, a current (less than three (3) months old) Income and Expense Declaration form FL-150 must be completed, including the other party's income, or a fair estimate

thereof, as well as his or her occupation. If only child support is at issue, then the Financial Statement (Simplified) Judicial Council form FL-155 may be substituted unless otherwise ordered by a judicial officer, for an Income and Expense Declaration.

1. Wage earners shall attach the two (2) most recent months of pay stubs for all jobs and the most recent W-2 and/or 1099 to all Income and Expense Declarations/Financial Statements.

2. Self-employed individuals shall attach copies of their Federal Income Tax Schedule C for the last year and profit and loss statements for the current year to all Income and Expense Declarations/Financial Statements. **(Effective January 1, 2013; Rule 5.4.2 renumbered effective January 1, 2006; adopted as Rule 33.2 effective July 1, 1998)**

5.4.3 Notifying DCSS of Change of Custody

In all cases where DCSS is enforcing child support and there is a change of custody, a copy of the new order shall be mailed to the DCSS within ten (10) days of filing. **(Rule 5.4.3 renumbered effective January 1, 2006; adopted as Rule 33.4 effective July 1, 1992)**

5.4.4 Child Support and the DCSS

A. Within ten (10) days of the date of filing, conformed copies of ALL orders involving DCSS shall be mailed by the moving party to DCSS.

B. In any case before the court, the parties shall inform the Judicial Officer if DCSS is involved in child support issues. **(Effective January 1, 2013; Rule 5.4.4 renumbered effective January 1, 2006; adopted as Rule 33.5 effective July 1, 1998)**

5.4.5 Motions to Determine Arrears and DCSS

A. The court encourages parties to meet and confer with DCSS before filing a motion to determine arrears. If the issues cannot be resolved, the moving papers shall specify the nature and amount of the dispute, and shall identify, if possible, the specific errors in DCSS calculations.

B. The party shall serve DCSS with the moving papers.

C. All parties shall comply with the provisions of Family Code § 17526(c). **(Effective January 1, 2013; Rule 5.4.5 renumbered effective January 1, 2006; adopted as Rule 33.6 effective July 1, 1998)**

(Rule 5.4 renumbered effective January 1, 2006; adopted as Rule 33 effective July 1, 1992)

RULE 5.5 MEDIATION AND CHILD CUSTODY RECOMMENDING COUNSELING (CCRC)

5.5.1 Purpose of Mediation and CCRC Sessions (CCRCS)

The purpose of Mediation and a CCRC session is to reduce acrimony which may exist between the parties and to develop a custody/visitation plan which ensures the minor child(ren) frequent and consistent contact with both parents, when in the child(ren)'s best interests. **(Effective July 1, 2013; Rule 5.5.1 renumbered effective January 1, 2006; adopted as Rule 34.1 effective July 1, 1999)**

5.5.2 Types of Mediation and CCRC Sessions

The following services are offered by Family Court Services (FCS). Confidential mediation (Tier I below) shall be made available in all cases in which child custody is at issue; the remaining services shall be scheduled as directed by the family law judicial officer in the exercise of his/her discretion according to the availability of resources and the needs of each case.

A. **At-Court CCRC Session.** An at-court session is scheduled by a judicial officer when a judicial officer determines that exigent circumstances exist such that an immediate CRCRC Session must be scheduled. Children who are five years of age or older must be brought to court for at-court sessions. All at-court sessions shall be child custody recommending counseling sessions. The sessions are not confidential and the counselor shall submit a report and recommendation to the Court and parties. When possible, the recommending counselor will provide a report and recommendation on the day of the at-court session; however, the counselor shall be provided adequate time to interview the parties and child(ren), make collateral contacts, and prepare the report and recommendation. There is no charge for child custody recommending counseling for at-court sessions, as these sessions are mandatory. Once a case has had an at-court session, future sessions may include any of the services set forth below.

B. **Confidential Mediation**

1. Two types of confidential mediation may be offered:

a. Courtroom Mediation: When resources allow, an initial confidential mediation session may take place at a request for a Restraining Order hearing. The goal of mediation is to assist parents in reaching an agreement that would meet the needs of the child(ren). If an agreement is not reached during courtroom mediation, then the Court may make a custody order. The parents may, if they wish, come to a more complete agreement during any future mediation session.

b. Schedule Mediation (Tier 1): Unless custody/visitation has been resolved at the readiness hearing, parents will be given a date for confidential mediation at the readiness hearing.

2. Children shall not participate in confidential mediation unless otherwise directed by FCS or the Court.

3. There is no charge for confidential mediation.

4. Mediation is confidential except:

a. The mediator shall report, but not comment on, the parties' agreement or inability to reach an agreement to the parties and the Court.

b. The mediator shall report suspected child abuse, elder abuse, and/or if someone is a danger to themselves or others.

C. **Further Services Beyond Mandatory Confidential Mediation (Tiers II and III).** If confidential mediation has not resulted in full agreement, the judicial officer has discretion to refer the parties for further sessions with FCS as provided in this section.

1. Two types of further services may be offered.

a. Tier II. The purpose of Tier II sessions is to provide the Court with additional information regarding specific areas deemed significant by the Judicial Officer. A Tier II summary report shall be provided to the Court and parties which may include, but not be limited to, a description of collateral contacts with law enforcement or Child Protective Services, interviews with the child(ren), etc. The Tier II summary report will not include any recommendations from the mediator.

b. Tier III. Tier III sessions are CCRC sessions. These sessions shall result in a report and recommendation from the counselor. The counselor's recommendation shall be made available to the parties, at the FCS office, two (2) court days before the court hearing. If the recommendation is not available before the hearing, it shall be available in court at the time of the hearing. Children who are five years of age or older shall participate in Tier III sessions.

2. Tier II and Tier III sessions are not confidential. Any mediator who provided confidential mediation to the parents shall not be permitted to serve as a Tier II, Tier III, or At-Court counselor unless deemed operationally necessary by the FCS Manager.

3. When permitted by law or rule, fees may be charged for Tier II and Tier III. If fees are to be charged, then parents shall be informed of the fees and given an opportunity to be heard before the judicial officer refers the parents for Tier II or Tier III services. The amount ordered, if any, shall be included in the minute order. The Court has jurisdiction to allocate the fees between the parties.

D. Family Code § 3111 – Custody Evaluation: Custody evaluations will only be ordered by the Court in the event all other services have been insufficient to develop a long term custody order.

1. Evaluators. The custody evaluator shall be mutually agreed upon by the parties or selected by the judicial officer if the parties are unable to reach an agreement. The custody evaluation may be completed by a FCS staff member or by a private psychologist who has been approved by the Court.

2. Fees. A fee will be charged for a custody evaluation. A substantial deposit may be required before the evaluation can commence and full payment may be required before the custody evaluation report is submitted to the Court for consideration.

3. Time Period. The custody evaluation shall be completed within the time period set forth by the Court. In the event a child custody evaluation is not completed within the time set forth by the Court, the referral may be terminated and the current orders regarding custody and visitation shall remain in full force and effect until further order of the Court.

4. Participation. If the Court receives a custody evaluation where only one party participates and the other party does not complete the evaluation, the completed portion of the evaluation may be considered by the Court. **(Effective July 1, 2016; Rule 5.5.2 renumbered effective January 1, 2006; adopted as Rule 34.2 effective July 1, 1999)**

5.5.3 Family Court Services Orientation

A. Pursuant to California Rule of Court 5.210e(2), Family Court Services provides orientation information regarding the Tier 1 – Confidential Mediation process. Unless excused by the Court, both parties are required to complete the online orientation program prior to their scheduled Tier 1 – Confidential Mediation appointment.

1. To complete the online orientation, the participant must have access to the Internet. The online orientation will not be accessible on a mobile phone.

2. There will be a kiosk in the Family Court Services lobby that will be available, on a first come, first serve basis, from 8:00 a.m. to 3:00 p.m., Monday through Friday.

B. The online orientation prepares parties for their Tier 1 – Confidential Mediation by giving an overview of the process. This includes educational information regarding children's developmental needs and co-parenting skills.

C. The online orientation is offered in both English and Spanish in the form of an audio and visual slide show.

D. General Information and Admonitions:

1. Children do not participate in the online orientation. The online orientation is designed for parents, not for children.

2. Notice of successful completion of the online orientation is sent automatically to Family Court Services.

3. Failing to successfully complete the online orientation may result in adverse consequences from the Court.

4. If the Court orders the parties to participate in Tier 1 – Confidential Mediation on more than one occasion, the Court may again order the parties to complete the Family Court Services online orientation in the following circumstances:

a. If the parties have failed to complete the online orientation as previously ordered by the Court, or

b. If it has been more than 6 months since the parties last completed the online orientation. **(Effective July 1, 2016; adopted as Rule 5.5.3 effective January 1, 2016)**

5.5.4 Attendance at FCS Appointments

A. Telephonic Participation: The request for telephonic participation shall be made a minimum of three (3) calendar days in advance of the mediation or CCRC appointment. A party may participate in their mediation or CCRC appointment via telephone when any one of the following occurs:

1. The party resides beyond a 250-mile radius from the B.F. Sisk Fresno Superior Court building;

2. Traveling to the FCS facility will cause an extreme hardship;

3. Telephonic participation is directly ordered by the Court; or

4. When there is good cause, at the discretion of FCS.

B. Rescheduling FCS Appointments: All mediation and CCRC appointments will be scheduled by the Court; thus, FCS is unable to reschedule without a modified order from the Court.

C. Cancellation of FCS Appointments: Both parties will need to contact FCS to cancel a mediation or CCRC appointment. Once FCS has received confirmation of the cancellation request from both parties, the appointment with FCS will be cancelled. Note: This will NOT cancel any upcoming court hearings. **(Effective January 1, 2015; Rule 5.5.3 (now 5.5.4) renumbered effective January 1, 2006; adopted as Rule 34.3 effective July 1, 1998)**

5.5.5 Availability of FCS Mediators/CCRC Counselors for Testimony

A. Mediator Testimony. Pursuant to Family Code section 3177, mediation proceedings under Family Code section 3160 et seq., such as those provided in Confidential Tier I Mediation here at the Superior Court of California, County of Fresno, must be held in private and are confidential and all communications, verbal and written, from the parties to the mediator are deemed to be "official information" within the meaning of Evidence Code section 1040. Due to the confidential nature of the Tier I mediation process the mediator must assert that all information that was obtained, verbal and written, as part of the mediation process is privileged information and therefore the mediator cannot testify about this information. The official information privilege belongs to the Court, not the parties, therefore the mediator cannot testify about this information. If called to testify regarding a confidential mediation session, the mediator will assert the official information privilege on behalf of the Court.

B. CCRC Counselor Testimony:

1. On-Call: Unless otherwise directed by the Court, the CCRC counselor will be on call rather than personally present in the courtroom.

2. Service/Fees: To subpoena a CCRC counselor to appear, the following must be personally served to FCS, as the authorized agent, at least ten (10) calendar days prior to the hearing:

a. The original and one copy of the subpoena to appear;

b. A check in the amount of $275.00 made payable to the Fresno County Superior Court. This check will serve as a deposit for the counselor's testifying services pursuant to Government Code § 68097.2(a)

c. If expenses exceed the $275.00 deposit, FCS will bill the depositing party for the additional funds.

3. Continuance. In the event the matter is continued, the previously subpoenaed CCRC counselor may be ordered back to the continued hearing date. The party who subpoenaed the CCRC counselor shall forward a letter to FCS confirming the continued hearing date within five (5) calendar days of the date of the hearing was continued, and shall set forth the parties' names, the Fresno County Superior Court case number, the name of the CCRC counselor and the continued hearing date. **(Effective January 1, 2015, Rule 5.5.4 (now 5.5.5) renumbered effective January 1, 2006; adopted as Rule 34.4 effective July 1, 1999)**

5.5.6 Contact with Mediator/CCRC Counselor

A. Ex Parte Communication. Neither party may contact the Mediator or CCRC counselor prior to or following their appointment.

B. Documents Provided to FCS. FCS is not obligated to retain any documents provided to FCS by the parties or other collateral sources. Although the mediator/CCRC has the discretion to temporarily retain supplemental documents all supporting documents will be destroyed, in a confidential manner, by FCS staff, at the conclusion of the mediation/CCRC services and FCS will not provide copies of supplemental documents to the Court or to the other party on the case.

C. Mediator/CCRC Counselor Assignment.

1. The assignment of mediators and CCRC counselors is an administrative function of FCS. Mediators and CCRC counselors are assigned on a predetermined rotational basis, except by specific order of the Court.

2. It is the intention of FCS to maintain the same mediator with each case to provide continuity of care for the parties. However, the FCS staff member that served as a Tier 1 mediator for the case will **not** be assigned as a CCRC counselor for the same case.

D. Request for New Mediator/CCRC Counselor.

1. A change of Mediator/CCRC counselor may be granted by FCS when a conflict of interest exists. A conflict of interest exists if it is determined that one or more of the following has occurred:

a. The Mediator/CCRC counselor has personal knowledge of the matter or parties outside of the mediation context;

b. The Mediator/CCRC counselor has a financial interest in the potential outcome of the matter;

c. The Mediator/CCRC counselor is related to the parties within the third degree;

d. There is substantial doubt as to the impartiality of the Mediator/CCRC counselor.

2. The "Request for New Mediator/CCRC Counselor" form must be submitted to FCS and a copy provided to the opposing party, no later than five (5) calendar days from the date the Court orders the mediation/CCRC session. The investigation of the request will not begin until FCS can confirm that the opposing party has received a copy of the request. **(Effective July 1, 2016; Rule 5.5.5 (now 5.5.6) renumbered effective January 1, 2006; adopted as Rule 34.5 effective July 1, 1999)**

5.5.7 Children at Court

Children who are five (5) and older shall be brought to court only when an at-court recommending counselor session is scheduled. In all other circumstances, children are not to be brought to the hearing unless specifically ordered by the Court. **(Effective January 1, 2013; Rule 5.5.6 (now 5.5.7) renumbered effective January 1, 2006; adopted as Rule 34.6 effective July 1, 1998)**

5.5.8 Confidential Mediation

Nothing in these rules prohibits the Court from offering confidential mediation if resources allow. **(Effective January 1, 2013; Rule 5.5.7 (now 5.5.8) renumbered effective January 1, 2006; adopted as Rule 34.7 effective January 1, 2002)**

5.5.9 Removal of Children in Violation of a Court Order

If the minor child(ren) is/are removed by either party under circumstances which violate the custody or visitation order, and that violation establishes probable cause to believe that a crime has been committed, the court may award physical custody ex parte to the parent deprived of a custody or visitation right prior to mediation. **(Rule 5.5.9 renumbered effective January 1, 2006; adopted as Rule 34.10 effective July 1, 1992)**

5.5.10 Child Custody Evaluations

The Fresno County Superior Court has the discretion to appoint a Child Custody Evaluator to conduct a child custody evaluation in all child custody/visitation matters.

A. **Peremptory Challenge of Child Custody Evaluator**. The court may allow one peremptory challenge to the Child Custody Evaluator as follows:

1. If the appointment is made in a hearing before the court, the challenge **MUST** be made at the time of hearing.

B. **Withdrawal of Child Custody Evaluator**. The Child Custody Evaluator may request to be allowed to withdrawn from an evaluation at any stage of the process for the following reasons:

1. Conflict;

2. Nonpayment of fees;

3. Lack of cooperation by a party;

4. Any other significant reason which prevents the Child Custody Evaluator from completing the evaluation.

If the Child Custody Evaluator wishes to be removed from the case, the Child Custody Evaluation shall forward a letter to Family Court Services specifically stating the reasons for the request. Family Court Services shall review the letter and forward copies of the request to the parties and to the court. The parties shall have twenty (20) days to file a motion challenging the request. If no motion is filed, the court may grant or deny the request for withdrawal and Family Court Services shall notify the Child Custody Evaluator and the parties of the court's decision. **FAXED LETTERS WILL NOT BE ACCEPTED.**

C. Complaints about Child Custody Evaluator. Complaints about a Child Custody Evaluator's performance shall be in written form. The complaint shall detail all reasons for the complaint and shall set forth specific examples of the acts or omissions by the Child Custody Evaluator. The complaint shall be sent to Family Court Services. Family Court Services shall review the letter and forward copies of the complaint to each party and to the court. **FAXED LETTERS WILL NOT BE ACCEPTED.**

D. **Ex Parte Communications**. Neither party may contact the Child Custody Evaluator, directly or through the party's attorney, except regarding procedural matters such as setting appointments. Neither party shall forward any documents to the Child Custody Evaluator except by order of the court or at the specific request of the Child Custody Evaluator. During the evaluation process, any documents provided to the Child Custody Evaluator shall also be provided to the opposing party at the same time.

The Child Custody Evaluator shall have sole discretion to conduct ex parte communications with any party, witness, attorney, mediator, counselor, therapist, physician, teach, law enforcement officer or any other person that the Child Custody Evaluator determines is necessary to complete the evaluation process. No third party shall contact the Child Custody Evaluator unless requested to do so by the Child Custody Evaluator or by order of the court for procedural matters only.

After the evaluation has been completed and the report has been written, the Child Custody Evaluator may communicate with the parties or their attorneys as the Child Custody Evaluator determines. **(Effective January 1, 2013; Rule 5.5.11 (now 5.5.10) renumbered effective January 1, 2006; adopted as Rule 34.12 effective July 1, 2001)**

(Rule 5.5 renumbered effective January 1, 2006; adopted as Rule 34 effective July 1, 1992.

RULE 5.6 FAMILY CENTERED CASE MANAGEMENT

5.6.1 Purpose and Intent

This rule and the process developed to implement this rule are intended to further the purpose of and to comply with Family Code section 2450 et seq. and California Rules of Court, rule 5.83. **(Effective July 1, 2013, New)**

5.6.2 Scope

Section 5.6.3 of this rule applies to all dissolution, legal separation, nullity, and parentage cases filed on or after January 1, 2013. Section 5.6.4 applies to all family law cases. This rule supersedes prior rule 5.7. **(Effective July 1, 2013, New)**

5.6.3 Process and Scheduling

Upon the filing of a first paper in the case types set out in rule 5.6.2 the case shall be set for an initial Status Conference hearing. The initial Status Conference hearing shall be set approximately one hundred and twenty (120) days from the date of filing the first paper in the department of the Presiding Judge of the Family Law Division. The Petitioner shall be provided two (2) copies of the "Notice of Calendar Setting" for the initial Status Conference hearing. The Notice of Calendar Setting may also include subsequent Status Hearing dates. One copy of the Notice of Calendar Setting shall be served on the Respondent with the pleadings. Petitioner must include the Notice of Calendar Setting on the Proof of Service of the Summons and Petition. The Petitioner shall receive an information sheet containing the information required by California Rules of Court, rule 5.83.

At the initial Status Conference hearing the case shall be set for a follow-up Status Conference hearing(s) as requested by the parties, determined by the judicial officer, or required by law or rule. Follow-up Status Conference hearings shall be set in the department of the Presiding Judge of the Family Law Division unless otherwise determined by the judicial officer.

Following the Status Conference hearings the case may be set for Family Centered Case Resolution in the direct calendar department to which the case has been assigned. The setting and duration of Family Centered Case Resolution will be determined on a case-by-case basis according to the needs of the individual case. **(Effective January 1, 2014; adopted as Rule 5.6.3 effective July 1, 2013)**

5.6.4 Requesting a Conference

Any party may request to have a case set for a Status Conference hearing or Family Centered Case Resolution Conference. The request shall be made by filing a "Request for Status or Family Centered Case Resolution Conference", form TFL-15. Status Conference hearings will be set in the direct calendar department to which the case has been assigned or in the department of the Presiding Judge of the Family Law Division at the discretion of the Court. **(Effective July 1, 2013, New)**

5.6.5 Continuances of Status Hearings and/or Case Resolution Conferences

Continuances of Status Conference or Case Resolution Conferences may be requested by both parties or attorney by contacting the clerk of the department in which the Status Conference or Case Resolution Conference is set. Approval of the Court is necessary for the matter to be continued. Case Status Conferences may only be taken

off calendar upon the entry of judgment, dismissal of the case, or as otherwise provided by law or rule. **(Effective January 1, 2014, New)**

5.6.6 Requirements for Case Status Conference and Case Resolution Conferences

A. **Status Conferences.** Unless the Status Conference has been continued with the Court's permission, attendance at the Status Conference is mandatory. However, if the parties/attorneys so agree, one party or attorney may appear to report the status of the case to the Court and obtain a follow-up Status Conference date(s). Settlement Conference Statements are not required for a Status Conference unless otherwise directed by the judicial officer.

B. Case Resolution Conferences. Unless otherwise directed by a judicial officer, a Settlement Conference Statement does not need to be filed prior to a Case Resolution Conference.

C. Case Management Orders. At or prior to a Status Conference or a Case Resolution Conference, the judicial officer may make case management orders including, but not limited to, the following to occur or be filed prior to the next Status Conference or Case Resolution Conference: Requiring that Preliminary and/or Final Declarations of Disclosure be exchanged with appropriate proofs of service to be filed within a certain time limit; requiring a four-way or informal meeting to occur to discuss settlement; requiring Statements of Disputed and/or Stipulated Facts to be filed; requiring a Settlement Conference Statement, etc. **(Effective January 1, 2014, New)**

RULE 5.7 SETTLEMENT CONFERENCES

At any time for any type of hearing or conference, the court may order that Settlement Conference Statements be prepared and exchanged. If spousal support, child support, or attorney's fees (including sanctions) have been requested by either party, then a Settlement Conference Statement must be accompanied by a complete Income and Expense Declaration with appropriate supporting documentation. Unless otherwise directed by the judicial officer, Settlement Conference Statements are to be filed and served at least ten (10) calendar days prior to the conference or hearing for which they were ordered.

If Settlement Conference Statements are not filed or contain so little information as to be ineffective in assisting the court with settlement efforts, the court may take the matter off calendar or may continue the settlement conference. If one party has complied with these rules and the other has not, the complying party may request attorney's fees and/or sanctions against the noncomplying party. Such request must be made in a manner that is accepted under the law.

Settlement Conference Statements must include, at a minimum, the following information:

A. **Dissolution of Marriage or Legal Separation**:

1. The statistical information of the marriage including a detailed explanation of any disputed facts regarding the statistical information;

2. If spousal support is at issue, then each party must include a declaration addressing each of the factors set forth in Family Code section 4320;

3. If child support is at issue, each party must indicate whether the Department of Child Support Services is involved, and each party must include a child support calculation supported by a declaration addressing what information was utilized for each fact set forth in that calculation;

4. If property division is at issue, then a proposed division of property must be included addressing each asset and debt with particularity. For example, "each to pay one-half of debt" is not sufficient particularity; "Each to pay one-half of the Visa accounting ending in XXXX with a date-of-separation balance of $XXXX" is sufficient particularity;

[Note: a specific format is not required for the proposed property division, but the proposal must be clear, complete, and understandable. A computerized program such as Propertizer or a spread sheet may be used, or a Judicial Council Form, such as the Property Declaration (FL-160) may be completed and attached to reflect the proposed property division.]

5. If attorney's fees are requested, then a declaration addressing Family Code section 4320 must be included even if spousal support is not requested, and the declaration must set forth with clarity the party's position regarding attorney's fees;

6. If there is a disputed separate property claim, then the party making the claim must include a declaration setting forth the party's specific tracing of his/her separate property and describe with particularity the documents which support the tracing, and the party opposing the claim must address the tracing.

B. **Uniform Parentage Actions**:

1. Whether there are any other actions pertaining to this child and whether or not those actions have resulted in judgment;

2. If the mother of the child was married to someone else within three hundred (300) days of the child's birth, the full name of that person;

3. If anyone other than the parties to this case has held the child out to be his/her own, the full name of that person;

4. If anyone other than the parties in this case signed a Voluntary Declaration of Paternity regarding this child, the full name of that person;

5. If anyone other than the parties adopted the child, the full name of that person;

6. The specific facts in dispute;

7. Whether there are any guardianship, termination of parental rights, Child Protective Services, Dependency Court, or other actions involving this child.

C. **Law and Motion/Family Court section 217 evidentiary hearings**:

The Settlement Conference Statement must include the date the Request for Order was filed, identify the party who filed the Request for Order, and must indicate which issues remain in dispute. Additional information must be included as directed by the Court according to the issues in dispute. **(Effective January 1, 2014, New)**

RULE 5.8 MATTERS SET FOR TRIAL OR EVIDENTIARY HEARING

Consistent with Family Code section 2330.3 and Standard of Judicial Administration 5.30(b), it is the policy of the Fresno County Superior Court that a family law case will be assigned to one judicial officer for all purposes to the extent possible. Trials and evidentiary hearings will be set in the department of origin unless the time estimate exceeds that available in that department. Trials or evidentiary hearings with a time limit in excess of that available in the department of origin shall be given a trial/hearing setting date in the presiding department of the Family Law Division. If the time estimate for the matter is within the allowable limit of the presiding department of the Family Law Division, then the matter shall be given a date in that department. If the time estimate for the trial/hearing exceeds all available time within the Family Law Division, then the matter shall, when ready, be assigned a date through Master Calendar. The Master Calendar date will be obtained through the presiding department of the Family Law Division.

At the time a case is set for an evidentiary hearing or trial, the parties shall provide a time estimate of the anticipated length of the evidentiary hearing or trial. The Court will rely on the accuracy of the time estimate in setting cases and managing its calendar. All parties must regard the time estimate as certain. If the case is not completed within the time estimate, the Court may make any orders permitted by law including but not limited to deeming the case submitted on the evidence received, ordering the case off calendar, declaring a mistrial, curtailing further presentation of evidence, or completing the trial or hearing.

Prior to setting any matter for trial/evidentiary hearing, any family law judicial officer hearing the case may make appropriate pre-trial orders, including but not limited to requiring an office four-way meeting, allowing time for Alternative Dispute Resolution,

setting one or more Case Status Conferences/Case Resolution Conferences/Settlement Conferences.

Unless otherwise ordered by the court, the following must be filed and exchanged at least ten (10) calendar days prior to any trial/evidentiary hearing:

1. A joint statement of stipulated facts; a joint statement of disputed facts;

2. All exhibits which may be submitted at the trial/hearing (the exhibits themselves need not be filed, but each party must file a detailed list of each exhibit which that party has exchanged);

3. A current Income and Expense Declaration with appropriate supporting documents unless there is no issue of child support, spousal support, or attorney's fees/sanctions;

4. A witness list which must include the names, addresses, and telephone numbers of each witness along with a detailed but concise offer of proof of that witness's anticipated testimony and the number of minutes that witness is expected to testify on direct examination; and

5. A trial brief which must include a statement of issues, and if the matter is to be heard as a result of a Request for Order, then the trial brief must indicate the date the Request for Order was filed, which party filed the Request, and the issues being to be heard.

Unless otherwise ordered by the court at the trial/hearing setting conference, all motions in limine must be in writing and filed and served at least ten (10) calendar days prior to the hearing/trial.

Matters will be set for trial/evidentiary hearing only when settlement opportunities have been exhausted. Matters will be released to Master Calendar only upon exhaustion of all remedies within family law. If a matter is released to Master Calendar and the parties then wish to discuss settlement with the Master Calendar trial judge, the matter will be returned to the Family Law Division for further settlement negotiations. **(Effective July 1, 2014; adopted as Rule 5.8 effective January 1, 2014)**

RULE 5.9 ADOPTIONS

5.9.1 Stepparent/Domestic Partner Adoptions under Family Code Sections 8500 et seq., 8600 et seq., and 9000 et seq.

A. A stepparent desiring to adopt a child of the stepparent's spouse may for that purpose file a petition in the county in which the petitioner resides. A domestic partner, as defined in Family Code § 297, desiring to adopt a child of his or her domestic partner may for that purpose file a petition in the county in which the petitioner resides. If the other parent does not consent there may be an additional action needed.

B. The petitioner or their attorney is responsible for filing the Adoption Request, Adoption Order and Adoption Agreement for each child with the Family Law Examiner's Office. Once the Adoption Request for each child has been filed, the Court Examiner must immediately send a conformed copy to Family Court Services.

C. Family Court Services will notify the petitioner or their attorney by mail to set up an appointment in order to conduct an investigation.

D. The following documents must be forwarded to Family Court Services no later than fifteen (15) calendar days from the receipt of notification by Family Court Services:

1. Birth Certificate of the Child (Certified Copy);

2. Birth Certificate of Natural Parent retaining custody of the child;

3. Birth Certificate of the adopting party;

4. Marriage Certificate of Natural Parents (Certified Copy) (if applicable);

5. Marriage Certificate of Natural Parent and Stepparent (Certified Copy) (if applicable);

6. Declaration of Domestic Partnership (Filed Copy) (if applicable);

7. Final Judgment of Dissolution of Natural Parents (Filed Copy) (if applicable);

8. Final Judgment of Dissolution of Domestic Partnership of Natural Parents (Filed Copy) (if applicable);

9. Final Judgment of Dissolution of Marriage of the Adopting Parent (Filed Copy) (if applicable);

10. Final Judgment of Dissolution of Domestic Partnership of Adopting Parent (Filed Copy) (if applicable);

11. Death Certificate of Natural Parent (Certified Copy) (if applicable); and

12. Social History Data Sheet

E. In the event that Family Court Services is not provided with the requested documents, no appointment will be scheduled and the court will be notified that Family Court Services cannot proceed with the Stepparent/Domestic Partner adoption.

F. Once the investigation has been completed, a copy of the report, whether favorable or unfavorable, shall be given by Family Court Services to the petitioner's attorney in the proceeding, if the petitioner has an attorney of record, or the petitioner. The original report is submitted to the Family Law Examiner's Office for filing.

G. The court may not set a hearing until after the original report or findings have been filed. Once the court has received the report or findings and all notices have been completed by the petitioner or their attorney, the adoption can be calendared. The petitioner or their attorney must call the Family Law Examiner's Office to schedule the hearing.

H. **In the event there is a pending Family Law or Probate proceeding regarding the same children, the parties shall submit a declaration so stating and the proceeding shall be consolidated with the Adoption proceeding.** **(Effective January 1, 2013; Rule 5.8.1 (now 5.9.1) renumbered effective January 1, 2006; adopted as Rule 37.1 effective July 1, 1992)**

5.9.2 Independent Adoptions under Family Code Sections 8500 et seq., 8600 et seq., and 8800 et seq.

A. The petitioner(s) or their attorney is responsible for filing Adoption Request, Adoption Expenses, Adoption Order and Adoption Agreement for each child with the Family Law Examiner's Office. If either parent does not consent there may be an additional action needed.

B. The State Department of Social Services is responsible for conducting an investigation and preparing a report and recommendation to the court. Once the investigation has been completed, a copy of the report, whether favorable or unfavorable, shall be given by the State Department of Social Services to the petitioner's attorney in the proceedings, if the petitioner(s) has an attorney of record, or the petitioner(s). The original report is submitted to the Family Law Examiner's Office for filing.

C. The court may not set a hearing until after the original report and recommendation have been filed. Once the court has received the report and the petitioner(s) or their attorney has completed all notices, the adoption can be calendared. Petitioner(s) or their attorney must call the Family Law Examiner's Office to schedule the hearing.

D. If the petitioner(s) desire to withdraw the petition or dismiss the proceeding or the State Department of Social Services recommends that the petition be denied, the Family Law Examiner's Office upon receipt of the report from the State Department of Social Services, shall immediately refer it to the court for review. The Court Examiner shall immediately notify the department in Sacramento of the action. Upon receipt of the report or dismissal, the court shall set a date for hearing of the petition and shall give reasonable notice of hearing to the State Department of Social Services, the petitioner's attorney in the proceeding, if the petitioner(s) has an attorney of record, or

the petitioner(s) and if necessary, the birth parents, by certified mail, return receipt requested, to the address of each as shown in the proceedings.

E. **In the event there is a pending Family Law or Probate proceeding regarding the same children, the parties shall submit a declaration so stating and the proceeding shall be consolidated with the Adoption Proceeding.** **(Effective January 1, 2013; Rule 5.8.2 (now 5.9.2) renumbered effective January 1, 2006; adopted as Rule 37.2 effective July 1, 1992)**

5.9.3 Agency Adoptions under Family Code Sections 8500 et seq., 8600 et seq. and 8700 et seq.

A. The petitioner(s), agency representative or their attorney is responsible for filing the Adoption Request, Adoption Expenses, Joinder, Adoption Order and Adoption Agreement for each child with the Family Law Clerk's Office. Petitioner(s) must cooperate with the licensed adoption agency. If either parent does not consent there may be an additional action needed.

B. When the report or findings are submitted to the court by a licensed adoption agency, a copy of the report or findings, whether favorable or unfavorable, shall be given to the petitioner's attorney in the proceeding, if the petitioner(s) have an attorney of record, or the petitioner(s) by the licensed adoption agency. The original report or findings are submitted to the Family Law Examiner's Office for filing.

C. Once the court has received the report and the petitioner(s), agency representative or their attorney has completed all notices, the adoption can be calendared. The petitioner(s), agency representative or their attorney must call the Family Law Examiner's Office to schedule the hearing.

D. **In the event there is a pending Family Law or Probate proceeding regarding the same children, the parties shall submit a declaration so stating and the proceeding shall be consolidated with the Adoption proceeding.** **(Effective January 1, 2013; Rule 5.8.3 (now 5.9.3) renumbered effective January 1, 2006; adopted as Rule 37.3 effective July 1, 1999)**

5.9.4 Intercounty Adoptions Finalized under Family Code Sections 8500 et seq., 8600 et seq. and 8900 et seq.

A. Each resident of the State of California, County of Fresno who adopts a child through intercounty adoption that is finalized in a foreign country may readopt the child in this county.

B. The petitioner(s), agency representative or their attorney is responsible for filing the Adoption Request, Adoption Expenses, Joinder, Adoption Order and Adoption Agreement for each child with the Family Law Examiner's Office. The petitioner(s) must cooperate with the agency. If either parent does not consent there may be an additional action needed.

C. When the report or findings are submitted to the court by a licensed adoption agency, a copy of the report or findings, whether favorable or unfavorable,

shall be given to the petitioner's attorney in the proceeding, if the petitioner(s) have an attorney of record, or the petitioner(s) by the licensed adoption agency. The original report or findings are submitted to the Family Law Examiner's Office for filing.

D. The court may not set a hearing until after the original report or findings have been filed. Once the court has received the report or findings and all notices have been completed by the petitioner(s) or their attorney, the adoption can be calendared. Petitioner(s), agency representative or their attorney must call the Family Law Examiner's Office to schedule the hearing.

E. If the petitioner(s) desires to withdraw the petition or dismiss the proceeding or the State Department of Social Services or licensed adoption agency recommends that the petition be denied, the Family Law Examiner's Office upon receipt of the report of the State Department of Social Services or licensed adoption agency shall immediately refer it to the court for review. The Court Examiner shall immediately notify the department in Sacramento of the action. Upon receipt of the report or dismissal, the court shall set a date for hearing of the petition and shall give reasonable notice of hearing to the State Department of Social Services, licensed adoption agency, the petitioner's attorney in the proceeding, if the petitioner(s) has an attorney of record, or the petitioner(s) and if necessary, the birth parents, by certified mail, return receipt requested, to the address of each as shown in the proceedings.

F. **In the event there is a pending Family Law or Probate proceeding regarding the same children, the parties shall submit a declaration so stating and the proceeding shall be consolidated with the Adoption proceeding.** **(Effective January 1, 2013; adopted as Rule 5.8.4 (now 5.9.4) renumbered effective January 1, 2014; adopted as Rule 5.8.4 effective July 1, 2007)**

5.9.5 Adoptions of Adults under Family Code Sections 8500 et seq., 8600 et seq. and 9300 et seq.

A. An adult or married minor may be adopted by another adult, including a stepparent.

B. The petitioner(s) or their attorney is responsible for filing with the Family Law Examiner's Office for each adoption the Petition for Approval of Adoption Agreement and if applicable, the consent of the spouse.

C. A married person, who is not lawfully separated from the person's spouse, may not adopt an adult without the consent of the spouse, provided the spouse is capable of giving that consent.

D. A married person who is not lawfully separated from the person's spouse, may not be adopted without the consent of the spouse, provided the spouse is capable of giving that consent.

E. When the Petition for Approval of Adoption Agreement is filed, the Court Examiner shall set the matter for hearing. The court may require notice of the time and

place of the hearing to be served on any interested person and any interested person may appear and object to the proposed adoption. **(Effective January 1, 2013; Rule 5.8.5 (now 5.9.5) renumbered effective January 1, 2014; adopted as Rule 5.8.5 effective July 1, 2007)**

(Rule 5.8 (now 5.9) renumbered effective January 1, 2006; adopted as Rule 37 effective July 1, 1992)

RULE 5.10 PARENTAL RIGHTS

5.10.1 Filing of the Petition to Terminate Parental Rights of the Father under Family Code Section 7600 et seq.

A. The petitioner(s), agency representative or their attorney is responsible for filing for each parent with the Family Law Clerk's Office the petition to terminate parental rights of the father and if applicable: a notice of proceeding to be issued by the Court Examiner or an Order Dispensing with Notice. Once the Petition for each parent has been filed, the Court Examiner must immediately send a conformed copy to Family Court Services with the exception of the filing from a licensed adoption agency.

B. Family Court Services will notify the petitioner(s) or their attorney by mail to set up an appointment in order to conduct an investigation.

C. The following documents must be forwarded to Family Court Services no later than fifteen (15) calendar days from the receipt of notification by Family Court Services:

1. Birth Certificate of the Child (Certified Copy);

2. Birth Certificate of Natural Parent retaining custody of the child;

3. Birth Certificate of the adopting party;

4. Marriage Certificate of Natural Parents (Certified Copy) (if applicable);

5. Marriage Certificate of Natural Parent and Stepparent (Certified Copy) (if applicable);

6. Declaration of Domestic Partnership (Filed Copy) (if applicable);

7. Final Judgment of Dissolution of Natural Parents (Filed Copy) (if applicable);

8. Final Judgment of Dissolution of Domestic Partnership of Natural Parents (Filed Copy) (if applicable);

9. Final Judgment of Dissolution of Marriage of the Adopting Parent (Filed Copy) (if applicable);

10. Final Judgment of Dissolution of Domestic Partnership of Adopting Parent (Filed Copy) (if applicable);

11. Death Certificate of Natural Parent (Certified Copy) (if applicable); and

12. Social History Data Sheet

D. In the event that Family Court Services is not provided with the requested documents, no appointment will be scheduled and the court will be notified that Family Court Services cannot proceed with the Investigation Report.

E. Once the investigation has been completed, a copy of the report, whether favorable or unfavorable, shall be given to the petitioner's attorney in the proceeding. If the petitioner(s) has an attorney of record, or the petitioner(s) by Family Court Services. The original report is submitted to the Family Law Clerk's Office for filing.

F. In the event there is a pending Family Law or Probate proceeding regarding the same children, the parties shall submit a declaration so stating and the proceeding shall be consolidated with the Termination proceeding. **(Effective July 1, 2007; Rule 5.9.1 (now 5.10.1) renumbered effective January 1, 2014; adopted as Rule 5.9.1 effective January 1, 2006)**

5.10.2 Filing of the Petition for Declaration of Freedom from Parental Custody and Control under Family Code Section 7800 et seq.

A. A proceeding may be brought under this part for that purpose of having a minor child declared free from the custody and control of either or both parents.

B. The petitioner(s), agency representative or their attorney is responsible for filing for each parent with the Family Law Clerk's Office the petition for Declaration of Freedom from Parental Custody and Control and a Citation to be issued by the Court Examiner. Once the Petition for each parent has been filed, the Court Examiner must immediately send a conformed copy to Family Court Services with the exception of the filing from a licensed adoption agency.

C. Family Court Services will notify the petitioner(s) or their attorney by mail to set up an appointment in order to conduct an investigation.

D. The following documents must be forwarded to Family Court Services no later than fifteen (15) calendar days from the receipt of notification by Family Court Services:

1. Birth Certificate of the Child (Certified Copy);

2. Birth Certificate of Natural Parent retaining custody of the child;

3. Birth Certificate of the adopting party;

4. Marriage Certificate of Natural Parents (Certified Copy) (if applicable);

5. Marriage Certificate of Natural Parent and Stepparent (Certified Copy) (if applicable);

6. Declaration of Domestic Partnership (Filed Copy) (if applicable);

7. Final Judgment of Dissolution of Natural Parents (Filed Copy) (if applicable);

8. Final Judgment of Dissolution of Domestic Partnership of Natural Parents (Filed Copy) (if applicable);

9. Final Judgment of Dissolution of Marriage of the Adopting Parent (Filed Copy) (if applicable);

10. Final Judgment of Dissolution of Domestic Partnership of Adopting Parent (Filed Copy) (if applicable);

11. Death Certificate of Natural Parent (Certified Copy) (if applicable);

12. Social History Data Sheet

E. In the event that Family Court Services is not provided with the requested documents, no appointment will be scheduled and the court will be notified that Family Court Services cannot proceed with the Investigation Report.

F. Once the investigation has been completed, a copy of the report, whether favorable or unfavorable, shall be given by Family Court Services to the petitioner's attorney in the proceeding, if the petitioner(s) has an attorney of record, or the petitioner(s). The original report is submitted to the Family Law Clerk's Office for filing.

G. **In the event there is a pending Family Law or Probate proceeding regarding the same children, the parties shall submit a declaration so stating and the proceeding shall be consolidated with the Petition for Declaration of Freedom from Parental Custody and Control proceeding.** **(Effective July 1, 2007; Rule 5.9.2 (now 5.10.2 renumbered effective January 1, 2014; adopted as Rule 5.9.2 effective January 1, 2007)**

(Rule 5.9 (now 5.10) Adopted effective January 1, 2006)

RULE 5.11 ARBITRATION

The Court may require the parties to submit to arbitration, when applicable.

The provisions set forth in the California Rules of Court shall be followed except:

1. When no request for compliance is filed within ten (10) calendar days after any case is ordered to arbitration, the provisions thereof are deemed waived and the administrator shall select an arbitrator at random from the panel of arbitrators. The arbitrator may appoint a specific arbitrator upon stipulation of all parties at any time prior to the selection of an arbitrator.

2. With the consent of the arbitrator, the parties may stipulate to one (1) continuance, not to exceed thirty (30) calendar days. Any further requests for continuance shall be made by motion before the Judicial Officer. **(Rule 5.10 (now 5.11) renumbered effective January 1, 2014; adopted as Rule 38 effective July 1, 1992)**

RULE 5.12 THE FAMILY LAW FACILITATOR

A. Pursuant to Family Code § 10000 et seq., the Fresno County Superior Court shall maintain an office of the family law facilitator. Services provided by the family law facilitator shall include, but are not limited to those set out in Family Code §10004.

B. Provided they have adequate staffing, time, funding, and available resources, the Family Law Facilitator may provide and perform any additional duties as directed by the Presiding Judge of the Family Law Department pursuant to Family Code § 10005. **(Rule 5.11 (now 5.12) renumbered effective January 1, 2014; adopted as Rule 39 effective July 1, 1998)**

(Chapter 5 amended effective January 1, 2006; adopted as Rule V effective July 1, 1992)

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CHAPTER 6. JUVENILE RULES

RULE 6.1 GENERAL PROVISIONS

6.1.1 Authority

These Juvenile Rules apply to matters heard in Juvenile Court, with the exception of juvenile traffic hearings and juvenile traffic hearing appeals. **(Rule 6.1.1 renumbered effective January 1, 2006; adopted as Rule 50.1 effective January 1, 1999)**

6.1.2 Administrative Presiding Judges of the Juvenile Court

There shall be an Administrative Presiding Judge of the Juvenile Delinquency Court and an Administrative Presiding Judge of the Juvenile Dependency Court. The Presiding Judges of the Juvenile Courts shall be selected by the Presiding Judge of the Court.

The respective Administrative Presiding Judges of the Juvenile Courts shall have the powers granted to and obligations imposed by law on the "Presiding Judge of the Juvenile Court", as such is used in California statute, case law and regulations.

To the extent possible the Administrative Presiding Judges of the Juvenile Courts shall remain in those respective positions for at least three years. **(Effective July 1, 2012; Rule 6.1.2 renumbered effective January 1, 2006; adopted as Rule 50.2 effective January 1, 1999)**

6.1.3 Juvenile Court Committees

The Administrative Presiding Judges of the Juvenile Courts may authorize and establish such informal committees related to Juvenile Court work and activities as they deem appropriate. Membership on such committees shall be as determined by the Administrative Presiding Judges of the Juvenile Courts.

The Administrative Presiding Judge of the Juvenile Delinquency Court shall be the Chair of the Fresno County Interagency Council for Children and Families, assist in the selection of members to the Juvenile Justice Commission and select the Court's appointment of a board member to the EOC Board of Directors.

The Administrative Presiding Judge of the Juvenile Dependency Court shall be the superior court judge to whom CASA is accountable as required by Welfare & Institutions Code § 201, et seq. **(Effective July 1, 2012; Rule 6.1.3 renumbered effective January 1, 2006; adopted as Rule 50.3 effective January 1, 1999)**

6.1.4 Assignment of Juvenile Court Cases

It is the policy of the Juvenile Court to have all matters heard by a judicial officer assigned to the Juvenile Court to the extent possible. **(Effective July 1, 2012; Rule 6.1.4 renumbered effective January 1, 2006; adopted as Rule 50.4 effective January 1, 1999)**

6.1.5 Abbreviations

Abbreviations used in these Juvenile Law Rules are defined in Appendix D-1. **(Effective July 1, 2012; Rule 6.1.8 (now 6.1.5) renumbered effective July 1, 2012; adopted as Rule 6.1.8 effective January 1, 2007)**

***(Rule 6.1 renumbered effective January 1, 2006; adopted as Rule 50 effective July 1, 1992*)**

RULE 6.2 CONFIDENTIALITY

6.2.1 Release of Information Relating to Juveniles

A. **Application of Rule.** Juvenile Court records are confidential. In accordance with Welfare & Institutions Code §§ 827 and 828, California Rules of Court, rule 5.552, and case law, disclosure and use of juvenile records shall be governed by this rule.

1. Definitions.

a. "Juvenile records and information" as used in this rule means any of the following:

1) Any document or record filed in any Juvenile Court proceeding,

2) Any document, record or information concerning a minor made available to the probation officer, DSS, GAL or CASA in preparing a report to the Juvenile Court; and

3) Any probation department, DSS, CASA, or state or local law enforcement document, record or information relating to a juvenile contact, or to a hold or arrest of a juvenile, even if Juvenile Court proceedings have not been instituted.

b. "Otherwise confidential" refers to records, which are also confidential under one or more other statutes (including, but not limited to, Civil Code § 56, et seq.; Welfare & Institutions Code §§ 5328, Penal Code §§ 11143, 11167, 13300; Government Code § 6254; Health & Safety Code §§ 10850, 11977, 120980). Note: Such records may not be shared with other agencies or individuals without the consent of the record holder or a court order.

2. Nothing in this rule is intended to limit the exchange of information and documents as provided by Penal Code § 11166 et seq.

3. Persons or agencies receiving records or information pursuant to this rule shall not disclose such records or information to another person or agency unless such disclosure is authorized by the Juvenile Court or this rule.

B. **Release of Documents.**

1. Juvenile records and information cannot be obtained by civil or criminal subpoena. Unless otherwise authorized by law, juvenile records and information may be disclosed only by an order of the Juvenile Court as provided for by Welfare & Institutions Code § 827 and California Rules of Court, rule 5.552, except as subdivisions (d) and (e) of rule 5.552 are modified herein. For good cause shown, and compelling reasons, if a petition pursuant to § 827 seeks juvenile records and information for a court proceeding pending before a regularly sitting judge of the Superior Court of Fresno County, that judge shall be deemed to be a judge of the Juvenile Court, for purposes of applying this rule. Any order made by such a judge shall be filed with the Juvenile Court.

2. Once a petition to declare a person a dependent child or ward of the Juvenile Court has been filed, juvenile records and information, unless otherwise confidential, may be released without a court order to authorized Juvenile Court personnel, including judicial officers and the Clerk, and to those persons or agencies designated by Welfare & Institutions Code §§ 827 and 828.

3. If access to juvenile records and information is necessary and relevant in connection with, or in the course of, a civil or criminal investigation, a proceeding brought to declare a person a dependent child or ward of the Juvenile Court, or a proceeding involving custody, visitation, adoption, guardianship, conservatorship, emancipation, or domestic violence, the agencies listed below or their duly authorized representatives may share with any of the other listed agencies and their authorized representatives such records and information, not otherwise confidential, as the holder of the records and information deems to be appropriate and in the best interest of the minor. An agency or its authorized representative may petition the Juvenile Court for disclosure of any records or information not so disclosed.

a. City Attorney offices;

b. Coroner offices;

c. Child Protective Services;

d. County Counsel offices;

e. Probation departments (including their Victim/Witness Assistance programs);

f. District Attorney offices;

g. Family Court Services;

h. Persons or agencies specified in Penal Code § 11167.5(b);

i. Federal, state or local law enforcement agencies;

j. Superior Court judicial officers and their immediate court personnel;

4. The Court recognizes that certain agencies need to inspect juvenile court records to accomplish the legitimate goals of the juvenile justice system. Such goals include the need to adequately evaluate an individual minor's background in order to develop a treatment plan, or the need to audit any part of the juvenile justice system to evaluate its operation. To that end, the agencies listed in rule 6.7.1(B)(3) above may disclose juvenile records, not otherwise confidential, to the following agencies upon providing the agency holding the juvenile records a declaration under penalty of perjury setting forth the need:

a. County Mental Health departments;

b. Department of Motor Vehicles;

c. Federal, state, county and city auditors;

d. Public guardian offices; and

e. Other agencies as authorized in writing by the Presiding Judge of the Juvenile Court, for good cause shown.

5. Law enforcement agencies may disclose to a minor’s parent(s) or legal guardian(s), and DSS or County Probation may disclose to a foster parent caring for a minor, such juvenile records of the minor, not otherwise confidential, as the agency deems appropriate and in the best interest of the minor.

6. Mental health records and information of a juvenile may be disclosed to the extent authorized by Welfare & Institutions Code § 5328 (e.g., written parental consent) or 18961 (“multi-disciplinary personnel teams”).

7. Law enforcement agencies may disclose information, which is not otherwise confidential, from police reports written by officers of the agency

concerning traffic accidents (excluding any driving record report) or incidents of criminal acts alleged to have involved one or more juveniles, to a person or entity (or its authorized representative) who was damaged by the accident or who was a victim of the crime. The information is to be released only for purposes of assisting the person or entity in obtaining reimbursement for injuries or damages caused by the conduct of the minor(s). The person to whom the information is released shall agree in writing that the person will not disclose any of the information released to him or her to anyone other than the person's attorney, insurance adjuster, or one legally representing the person's or entity's interest in recovering damages resulting from the incident. The person to whom the information is released shall also agree in writing that the information will be used for no purpose other than as stated above. Any document released pursuant to this paragraph shall be clearly marked "CONFIDENTIAL." It shall state that it is being provided pursuant to this rule, and that any distribution or use other than as allowed herein is a violation of this rule and that the violator may be subject to sanctions. Notwithstanding this rule, if the information identifying any juveniles is deleted, traffic accident reports may also be released to any state or local engineering department for use in the normal scope of the department's duties.

8. Nothing in this rule shall be used to limit disclosure of information as authorized by Welfare & Institutions Code §§ 627, 828, and 829. Additionally, the Fresno County Probation Department is authorized to inspect and utilize those records specified in Welfare & Institutions Code § 504 relating to serious habitual offenders.

9. The documents referenced below may be released to those agencies or individuals as specified herein.

a. DSS is authorized to disclose to the parties and their actual or prospective counsel at a dependency court detention hearing such documents as DSS deems to be appropriate as part of its prima facie statement including, but not limited to, the identity of all persons who reported any allegation of child abuse or neglect (see Penal Code § 11167(d)). If DSS chooses to delete the identification of the reporting party or parties, and a party to the dependency proceeding wants the identification disclosed, then that party may request that the Court order such disclosure. The Court shall not issue such an order except for good cause shown and only after an in camera review with DSS and/or its attorney of record having an opportunity to be heard.

b. In cases where a minor who has been taken into custody by DSS is abducted, then DSS may provide to the prosecuting authority the following documents and information:

1) Copies of any law enforcement reports which brought the matter to the attention of DSS;

2) Copies of the juvenile dependency petition concerning that minor;

3) Copies of all minute orders or other court orders which show the Juvenile Court's jurisdiction over the minor, any knowledge of this jurisdiction by the suspected child abductor(s), and/or any appearance before the Court by the suspected child abductor(s);

4) Copies of any warrants or body attachments for the child or suspected child abductor(s);

5) Any addresses, telephone numbers, or other identifying information which could assist the District Attorney's office in locating the child or suspected child abductor(s).

c. Whenever a law enforcement agency has prepared a report referencing one or more juveniles involved in an incident related to school activity or attendance that occurred at any time within the scope of Education Code § 48900, the agency may release that report to a school official or other person authorized to act on behalf of the school, provided that the requesting person declares under penalty of perjury that the information in the report will be used exclusively for purposes of possible suspension, expulsion, or other disciplinary action against one or more minors referenced in the report and/or for seeking restitution under Education Code § 48904.

d. Whenever a juvenile has been assessed a fine or otherwise has been ordered by the Juvenile Court or Juvenile Court Traffic hearing officer to pay monies to the County, the Court is authorized to enter into the Case Management System Odyssey the name, address, telephone number, social security number, case number, amount ordered to be paid, and such other information as is reasonably necessary for the Court and/or the Revenue Collections Unit (RCU) of the Auditor-Controller/Treasurer-Tax Collector's Office for the collection of said monies. The Court shall take reasonable steps to limit access to this information in Odyssey to court and RCU personnel.

10. The Court recognizes that state prosecutors need to inspect and disclose certain juvenile court records as necessary to plead and prove prior qualifying juvenile adjudications within the meaning of Penal Code § 667 (commonly known as "Three Strikes"). To that end, a District Attorney of any county of the State of California, or the Attorney General of the State of California, and their agents and employees, are entitled to access any and all juvenile court records not previously ordered sealed pursuant to Welfare &

Institutions Code § 781, related to a prior qualifying juvenile adjudication within the meaning of Penal Code § 667(d)(3). The District Attorney, Attorney General and their agents and employees are permitted to disclose, without further order of this court, so much of such records as is necessary to plead and prove an accusatory pleading pursuant to Penal Code § 667.

The enactment of Penal Code § 667 constitutes good cause to retain records of juvenile adjudications qualifying under that statute. No such juvenile records shall be routinely destroyed as provided in Welfare & Institutions Code §§ 781(d) and 826(a). Nothing in this rule is intended to limit the right of the person who is the subject of a juvenile court record to petition the Court for the destruction of such records.

C. **Petition Procedure.** Anyone seeking to inspect, copy or obtain juvenile records or juvenile case file information or testimony relating thereto, not otherwise specifically provided for by this rule, shall comply with the following requirements:

1. Juvenile records or information possessed by the Department of Social Services (DSS) or pertaining to a dependent of the Court:

a. Before filing the petition, petitioner shall contact Fresno County Counsel and provide the name and date of birth of the minor, and the nature of the records or information sought.

b. Fresno County Counsel will obtain from DSS information identifying parties and attorneys, and their addresses for notice. In those cases where there is, or has been, a juvenile court case, the attorneys appointed to represent the parties in that case shall be identified to petitioner.

c. Fresno County Counsel shall provide this information to petitioner, as well as a preliminary indication as to whether there will be opposition by DSS to the petition for disclosure.

d. Petitioner shall serve all parties and attorneys with a copy of the completed Request for Disclosure of Juvenile Case File (Judicial Council form JV-570). Forms are available in the Juvenile Dependency Clerk's Office and on the Judicial Council website at www.courts.ca.gov.

e. Before filing the petition, petitioner shall make good faith efforts to meet and confer with all parties for the purpose of obtaining a signed stipulation regarding release of the records or information, including any limitations on scope or content of the release. See sample stipulation in Appendix D3.

f. If all parties sign a stipulation, petitioner shall file the petition and signed stipulation with the Juvenile Dependency Court, and serve them upon all parties. The Court shall review and consider the petition and stipulation and shall grant or deny the petition, or order the matter to be set for hearing.

g. If a stipulation is not signed by all parties, petitioner shall file the petition with the Juvenile Court, along with a declaration setting forth petitioner's efforts to meet and confer with all parties and the reason or reasons that a stipulation could not be obtained, and serve them upon all parties. The Court shall review and consider the petition and declaration and shall grant or deny the petition, or order the matter to be set for hearing.

2. Juvenile records or information possessed by the Probation Department or local law enforcement agencies:

a. Petitioner shall complete an Application to Inspect and/or Copy Juvenile Case File (Fresno Superior Court form #PJV-20) and submit to the Court. Form is available in the Juvenile Delinquency Clerk's Office or at www.fresno.courts.ca.gov.

b. If the application is denied, the petitioner may elect to file a Request for Disclosure of the Juvenile Case File (Judicial Council form #JV-570). Forms are available in the Juvenile Delinquency Clerk's Office and on the Judicial Council website at www.court.ca.gov.

c. If filing the JV-570, the following is required:

1) Petitioner shall serve the affected juvenile, or the juvenile's attorney, if known; and

2) The local law enforcement agency with a copy of the completed Request for Disclosure of Juvenile Case File (Judicial Council form #JV-570).

d. Before filing the petition, petitioner shall make good faith efforts to meet and confer with all parties for the purpose of obtaining a signed stipulation regarding release of the records or information, including any limitations on scope of content of the release. See sample stipulation in Appendix D3.

e. If all parties sign a stipulation, petitioner shall file the petition and signed stipulation with the Juvenile Delinquency Court, and serve them upon all parties. The Court shall review and consider the petition

and stipulation and shall grant or deny the petition, or order the matter to be set for hearing.

f. If a stipulation is not signed by all parties, petitioner shall file the petition with the Juvenile Delinquency Court, along with a declaration setting forth petitioner's efforts to meet and confer with all parties and the reason or reasons that a stipulation could not be obtained, and serve them upon all parties. The Court shall review and consider the petition and declaration and shall grant or deny the petition, or order the matter to be set for hearing.

3. Upon an order that a hearing be held, the Clerk shall set the hearing within ten (10) court days and cause notice to be served upon all parties, as provided for in California Rules of Court, rule 5.552.

4. Responsive pleadings shall be filed and served no later than two (2) court days prior to the hearing. **(Effective July 1, 2016; Rule 6.7.1 (now 6.2.1) renumbered effective January 1, 2006; adopted as Rule 56.1 effective July 1, 1999)**

6.2.2 Release of Records to Parties and Their Attorneys

Any party or their attorney in any Welfare & Institutions Code § 300 matter shall be given access to all unsealed dependency records relating to the minor which are held by the Clerk. **(Effective July 1, 2012; Rule 6.7.2 (now 6.2.2) renumbered effective January 1, 2006; adopted as Rule 56.2 effective January 1, 1999)**

6.2.3 Public and Media Access

A. **Access to Specific Proceedings.** Pursuant to Welfare & Institutions Code §§ 346 and 676, dependency and delinquency proceedings are closed to the public unless the judicial officer in the courtroom grants access to the proceedings, in accordance with either Welfare & Institutions Code § 346 or 676.

1. Conditions of Media Access to Specific Proceedings. Where the public/media is admitted into a juvenile court proceeding, the following must be observed.

a. A member of the public or media representative must provide appropriate identifying information upon request to the court bailiff or clerk.

b. A member of the public or media representative shall conduct himself or herself in a manner consistent with the decorum and dignity of the courtroom. (See Code of Civil. Proc. 128, subd. (a).)

c. Any requests to photograph, record, or broadcast a juvenile court proceeding shall be in accordance with California Rules of Court, rule 1.1.50.

B. **Request For Admission for Educational Purposes.** Any member of the public with a "direct and legitimate interest in the work of the Court" pursuant to Welfare & Institutions Code § 346 or 676 may be admitted to observe a juvenile court proceeding at the discretion of the Court. Such requests shall be made in a timely manner to ensure that the Court has time to consider the request and make the appropriate arrangements.

C. **Requests for Interviewing, Photographing, Videotaping, or Voice Recording of Dependent/Delinquent Children.** A person or media representative must obtain a Court order from a Judge of the Juvenile Court prior to contacting a child if the person or media representative seeks to interview, photograph, videotape or voice record a child, who the person knows, or has reason to know, is under juvenile court jurisdiction and has been removed from the physical custody of the parent or legal guardian.

Requests pertaining to delinquent children may be sent to the judge assigned to the case:

Delinquency Clerk's Office
Juvenile Justice Campus
3333 E. American Ave., Bldg. 701, Ste. A
Fresno, CA 93725

Requests pertaining to dependent children may be sent to:

Dependency Clerk's Office
1100 Van Ness Ave., Room 200
Fresno, CA 93724

1. Access to Dependent or Delinquent Children Without Court Permission. This rule does not prevent dependent or delinquent children from initiating contact with any person or media representative without Court permission. Additionally, this rule does not limit contact between any person or media representative and families, attorneys, detention facilities, or court-ordered placements without Court permission.

2. Right to Refuse. Conversely, nothing in this rule is intended to suggest that children, their families, attorneys, or personnel of detention facilities or placements have any obligation to agree to an interview or to provide information to media representatives.

3. Contents of Request. Every request shall contain the following information:

a. The basis for the Court's jurisdiction over the minor (i.e., Welfare and Institutions Code §§ 300, 601, 602, etc.), if known.

b. The method of the requested contact, including interviewing, photographing, videotaping, or voice recording. Specify whether Petitioner requests permission to reveal or show the identity or name of the child and reason why.

c. The purpose of the requested contact, including newspaper article, television program, radio program, or internet posting.

d. That the Petitioner provided notice to the applicable persons or entities as listed in section 4 below.

4. Notice. At least five (5) calendar days before the Request is filed with the Court, the person initiating the Request shall serve, or attempt to serve, a copy on the appropriate parties either personally, by fax, or by first class mail. In dependency proceedings, notice shall be served on: the child, attorney of record for the child who remains a dependent of the Court, parent(s) or guardian(s) of the child who is under 18 years of age or their attorney, County Counsel, and Department of Social Services ("DSS"). In delinquency proceedings, notice shall be served on: the child, attorney of record for the child who remains a ward of the Court, parent(s) or guardian(s) of the child who is under 18 years of age, District Attorney, and Probation Department.

a. Objections. Any objections to the Petitioner's Request shall be submitted in writing to, and received by, the Juvenile Court Presiding Judge no later than: (1) Five (5) calendar days after date of service, if served by fax, electronic mail, or personal service, or (2) Ten (10) calendar days after date of service, if served by mail. In order to receive a copy of the Court's decision on the Request, the person/agency filing an objection shall include a self-addressed envelope.

1) Time for Objection Shortened for Good Cause. Petitioner may request the time allowed for objections to be shortened. Petitioner must provide timely notice to ensure any person/agency has an opportunity to object, and establish good cause why the objection period should be shortened. A judge of the Juvenile Court will approve or deny the request based on whether good cause has been established in the Request, or the matter may be set for a hearing.

5. Ex Parte Requests. A judge may grant a Request on an ex parte basis, without notice, as defined above, if it is shown by declaration or affidavit that good cause exists why required notice could not be given or should not be given.

6. Factors Court May Consider. In making its determination, the Court may consider, but is not limited to, the following factors: age of the child, nature of the allegations in the case, child's expressed desire, child's physical and emotional health, extent of the present or expected publicity and its effect, if any, on the child and his or her family.

7. Protective Orders. Where it is necessary to protect the best interests of a child, the Court may issue additional protective orders to maintain the confidentiality of the child's name and/or identity. **(Effective July 1, 2012, New)**

6.2.4 Appearance by Consular Representative

In cases where a parent or minor is a citizen of a foreign nation, the Consul or representative of the Consul of that nation shall have the right to appear and participate in the court proceedings to the extent such is provided for by international agreement to which the United States is a signatory. **(Effective January 1, 2007, Rule 6.2.22 renumbered effective January 1, 2006; adopted as Rule 51.22 effective January 1, 1996)**

(Rule 6.2 renumbered effective January 1, 2006; adopted as Rule 51 effective July 1, 1992)

RULE 6.3 DEPENDENCY – ATTORNEYS AND PARTIES

6.3.1 Master Calendar Referrals (Long Cause Cases)

Only the Administrative Presiding Judge of the Juvenile Dependency Court shall assign any case to the Superior Court Master Calendar for trial. **(Effective July 1, 2012; Rule 6.1.5 (now 6.3.1) renumbered effective January 1, 2006; adopted as Rule 50.5 effective January 1, 1999)**

6.3.2 Peremptory Challenges

Any challenge of a judicial officer hearing dependency matters in Juvenile Court, Dependency Division pursuant to Code of Civil Procedure § 170, et. seq. shall be reported to the Administrative Presiding Judge of the Juvenile Dependency Court. The Administrative Presiding Judge of the Juvenile Dependency Court shall take whatever legal action is appropriate, including reassignment to another department if necessary. If the challenge is to the Administrative Presiding Judge of the Juvenile Dependency Court, the Presiding Judge of the Superior Court shall take whatever legal action is appropriate, including reassignment to another department if necessary. **(Effective July 1, 2012; Rule 6.1.6 (now 6.3.2) renumbered effective January 1, 2006; adopted as Rule 50.6 effective January 1, 1999)**

6.3.3 Declarations of Conflict and Appointment of New Counsel

A. Whenever any counsel for any party in a dependency proceeding determines that a conflict of interest exists which interferes with that attorney's ability to represent that client, the attorney shall immediately file such a declaration with the Court. All discovery in the possession of the attorney should be submitted to the Court at the time the declaration is filed.

B. The Court shall appoint new counsel upon receipt of the declaration, and the Clerk of the Court shall forward discovery to that attorney.

C. The Clerk shall provide notice of appointment of new counsel to all other parties. **(Effective July 1, 2012; Rule 6.1.7 (now 6.3.3) renumbered effective January 1, 2006; adopted as Rule 50.7 effective July 1, 1999)**

6.3.4 Attendance at Hearing

Unless excused by the Court, each party and attorney shall attend each scheduled Juvenile Court hearing. **(Effective July 1, 2012; Rule 6.2.1 (now 6.3.4) renumbered effective January 1, 2006; adopted as Rule 51.1 effective January 1, 1999)**

6.3.5 Presence of Minor in Court

All minors are entitled to attend court hearings. Every minor ten (10) years old or older shall be told of his or her right to attend court hearings and all minors ten (10) years old or older shall be given notice by DSS.

All minors ten (10) years old or older shall attend court hearings unless excused for one of the listed reasons:

A. The minor's attorney waives the minor's appearance;

B. The minor chooses not to attend;

C. The minor is excused by the Court; or

D. The minor is disabled, physically ill, or hospitalized.

No minor shall be brought to court solely for the minor to confer with his or her attorney or for a visit with a parent, relative or friend. The reason for a minor's failure to appear shall be placed on the record. **(Effective July 1, 2012, Rule 6.2.5 (now 6.3.5) renumbered effective January 1, 2006; adopted as Rule 51.5 effective January 1, 1999)**

6.3.6 Duties of Counsel

A. **General Duties.** All counsel representing parties in the Juvenile Dependency Court shall have the following duties and responsibilities:

1. The attorney shall make inquiries necessary to determine at the outset of the proceedings whether a conflict exists in the representation of a party.

2. At a party's first appearance, the attorney shall verify with the client, to the extent the information is known, the names, addresses, telephone numbers, and relationships of all persons entitled to receive notice of the proceedings, including the birth dates of each party and child. The attorney shall also inquire as to the name, address, telephone number, and relationship of all known relatives and/or non-relative family members for possible placement of any detained child.

3. At a mother and/or father's first appearance, the attorney shall make inquiry of the client as to the applicability of ICWA, and so inform the Court.

4. At a mother and/or father's first appearance, the attorney shall make inquiry of the client as to paternity issues in order to resolve the status of paternity. The "Statement Regarding Parentage" form (Judicial Council form JV-505) shall be completed by any person claiming paternity status or non-paternity, which shall also be filed with the Court.

5. The attorney shall have a complete familiarity with the facts of the case by reviewing the court file, especially when appointed to represent a party in the middle of an ongoing case, and by bringing discovery motions, interviewing witnesses, procuring experts, and otherwise conducting an independent investigation.

6. The attorney should make all reasonable efforts to ensure that the client understands the Court processes, proceedings, and the potential and actual consequences of the proceedings. Special efforts should be taken to ensure that a client understands these matters if the client demonstrates any evidence of being developmentally delayed, or exhibits signs that he/she is suffering from any cognitive or emotional problems which would affect the client's ability to comprehend any aspect of the dependency proceedings.

7. The attorney shall maintain a current business address and working telephone number and promptly notify clients of any change of address or telephone number. The attorney should provide the client with his or her business card.

8. The attorney shall show courtesy and respect to judicial officers, all social workers, CASA, courtroom personnel, witnesses and all counsel.

9. The attorney should be aware of children present in the courtroom, so that discussions of sensitive case issues, whether pertaining to a particular

child or other children, are not overheard by the children or made in an insensitive manner.

10. Settlement should be considered as soon as enough information is known about the case to make settlement discussions meaningful. In every case, the attorney should consider whether the client's interests could best be served and whether the case could be more appropriately resolved through settlement discussions.

B. **Duties of Counsel Representing Children in Dependency Court.** In addition to the foregoing duties, attorneys representing children shall have the following additional duties and responsibilities:

1. The attorney shall be thoroughly familiar with the requirements of Welfare and Institutions Code § 317(e) for the representation of children, rule 5.660 of the California Rules of Court regarding standards of representation, and rule 5.660 of the California Rules of Court regarding caseload size.

2. The attorney or his/her staff shall separately interview each child four years of age or older unless it is determined that the child has sufficient language skills to communicate at an earlier age. The attorney shall ascertain the child's wishes, needs, and background. Interviews should be done in an atmosphere where the child feels comfortable and privacy is ensured.

3. At the initial interview, where possible, the attorney shall inform the child, in language the child can comprehend, the nature of dependency proceedings, the role of the lawyer, the child's rights including the right to confidentiality, and the nature of the subject matter of any petition and the contents of any related report.

4. The attorney should be actively involved in, and vigorously advocate at, every stage of the proceedings involving a child client and take any necessary legal steps that would promote and advance a child's right to receive all appropriate reunification and permanent placement services and all other services and resources to meet the child's educational, dental, medical, and mental health needs. **(Effective July 1, 2016; Rule 6.2.2 (now 6.3.6) renumbered effective January 1, 2006; adopted as Rule 51.2 effective January 1, 1999).**

6.3.7 Access to Minors Petitioned Pursuant to Welfare & Institutions Code § 300

Except for DSS personnel:

A. No party or attorney in a dependency proceeding shall interview the minor about the events relating to the allegations in the petition(s) on file without permission of the minor's attorney or court order.

B. No party or attorney, including minor's attorney, in a dependency proceeding shall cause the minor to undergo a physical, medical or mental health examination or evaluation without court approval. **(Effective July 1, 2012; Rule 6.2.3 (now 6.3.7) renumbered effective January 1, 2006; adopted as Rule 51.3 effective January 1, 1996)**

6.3.8 Interviewing Minors Who are Alleged Victims of Child Abuse or Neglect

All attorneys representing parties in a dependency case in which child abuse or neglect has been alleged and other participants in the case, including a child advocate, shall minimize the number of interviews given by the child relating to the events surrounding the alleged abuse or neglect. Those participants requiring information about the alleged incident shall first review any interviews taken or reports made by the investigating officer(s). **(Effective July 1, 2012; Rule 6.2.4 (now 6.3.8) renumbered effective January 1, 2006; adopted as Rule 51.4 effective January 1, 1996)**

6.3.9 Guardian Ad Litem for Minors

For purposes of the federal Child Abuse Prevention and Treatment Act and Welfare & Institutions Code § 326.5, the minor's attorney shall be deemed to be the minor's guardian ad litem (GAL) unless the Court orders otherwise. **(Effective July 1, 2012; Rule 6.2.6 (now 6.3.9) renumbered effective January 1, 2006; adopted as Rule 51.6 effective January 1, 1999)**

6.3.10 Guardian Ad Litem for Parents

The Court shall appoint any person that the Court deems qualified as a GAL to represent any incompetent parent or guardian whose child is before the Juvenile Court pursuant to a petition under Welfare & Institutions Code § 300. The determination of incompetency may be made by the Court at any time in the proceeding based upon evidence received from any interested party. **(Effective July 1, 2012; Rule 6.2.7 (now 6.3.10) renumbered effective January 1, 2006; adopted as Rule 51.7 effective January 1, 1996)**

6.3.11 Notice to Guardian Ad Litem, Access to Records, Right to Appear

In all proceedings, the GAL shall be given the same notice as any party, have the same access to all records relating to the case as would any party, and have the right to appear at all hearings. **(Effective July 1, 2012; Rule 6.2.8 (now 6.3.11) renumbered effective January 1, 2006; adopted as Rule 51.8 effective January 1, 1996)**

6.3.12 Care Providers

A minor's care provider shall be allowed to be present at the hearing and address the Court. **(Effective July 1, 2012; Rule 6.2.9 (6.3.12) renumbered effective January 1, 2006; adopted as Rule 51.9 effective January 1, 1996)**

6.3.13 De Facto Parents

Upon a sufficient showing the Court may recognize the minor's present or previous custodians as de facto parents and grant standing to participate as parties in dispositional hearings and any hearings thereafter at which the status of the dependent child is at issue. The person seeking de facto parent status shall have the rights outlined in California Rules of Court, Rule 5.534(e). **(Effective July 1, 2012; Rule 6.2.10 (now 6.3.13) renumbered effective January 1, 2006; adopted as Rule 51.10 effective January 1, 1996)**

6.3.14 Relatives

Upon a sufficient showing, the Court may permit relatives of the child to be present at the hearing and address the Court. The Court shall hear from all parties before granting such permission. **(Effective July 1, 2012; Rule 6.2.11 (now 6.3.14) renumbered effective January 1, 2006; adopted as Rule 51.11 effective January 1, 1996)**

6.3.15 Court-Appointed Counsel Duties

All court-appointed counsel shall comply with their professional duties as required by statute, regulation, and state and local rules of court. **(Effective July 1, 2012; Rule 6.2.12 (now 6.3.15) renumbered effective January 1, 2006; adopted as Rule 51.12 effective January 1, 1996)**

6.3.16 Juvenile Dependency Collections Program for Cost of Legal Services

Once the case reaches disposition, the Court will determine if a party is responsible for the repayment of costs incurred for court appointed counsel for their children and/or self. The Court shall make a finding based on information provided by DSS in court or the Court will order the responsible parties to appear before a financial evaluation officer within thirty (30) days to determine the ability for the responsible party to pay cost for legal services. If it is determined that the responsible party is able to pay, monthly billing statements will be sent to the responsible party. If the installment payment becomes ninety (90) days in arrears, the account balance will be forwarded to an outside collections agency. Payments can be made in the Clerk's Office or mailed to the following address:

Fresno Superior Court
1100 Van Ness Ave., Rm. 200
Fresno, CA 93724

NOTE: At any time during this process, the responsible party can request to be heard in court. **(Effective January 1, 2015; adopted as Rule 6.3.16 effective July 1, 2012)**

6.3.17 The Child Advocate Program

A. **Referrals.** The judicial officer, or any party may refer a case to the CASA Program at any point in the dependency or delinquency proceedings. The CASA Program also may request that a referral be made by the judicial officer in a case

brought to the attention of the CASA Program. All referrals must be signed by the judicial officer.

B. **Referral Criteria.**

1. Appropriate Referrals. Referrals to the CASA Program are appropriate when:

a. The Court needs specific information or would benefit from an independent investigation in order to make a decision regarding the child's welfare, except for information pertaining to allegations made in the petition.

b. There is an unnecessary delay in achieving family reunification, legal guardianship, adoption, or emancipation.

c. The child has a specific unmet need and requires advocacy to obtain educational, medical, or other services. This does not include the need for a mentor, big brother or sister, or special friend.

2. Inappropriate Referrals. Referrals are not appropriate when:

a. The child's behavior and/or the circumstances of the case would place the CASA volunteer at risk.

b. The child is unwilling to participate in the services or cooperate with the advocate.

c. The child is frequently AWOL.

d. The child is placed outside of Fresno County.

C. **Evaluation of a Referral.** The CASA Program will evaluate the referral to determine if it is appropriate for the CASA Program. In the event that the case is not accepted, the CASA Program will submit a report to the Court stating the basis for declining the referral.

D. **Acceptance of a Referral.** Once a case is accepted by the CASA Program and a CASA volunteer is identified, the Court will be asked to sign an order appointing the identified CASA volunteer.

E. **Status of CASA volunteers.**

1. Appointment. The CASA is appointed as a sworn officer of the Court, serves at the pleasure of the Court, and is bound by all the rules and

standards set forth in Welfare & Institutions Code §§ 102 and 103, and California Rules of Court, rule 5.655.

2. Participation of CASAs, CASA Program Supervisors, and attorneys for the CASA Program.

a. A CASA has the right to be present at all hearings, sit at the counsel table during the proceedings, and participate in any reported conferences held in chambers. An advocate cannot be excluded from any reported proceedings for any reason, including the fact that he or she may be called upon to give testimony in the case.

b. A CASA volunteer for a child who has a child may participate in the dependency proceedings for both children.

c. Program supervisors may attend court hearings, participate in proceedings along with the CASA volunteer or in lieu of the CASA volunteer, and may serve as the CASA on the case.

d. Attorneys representing the CASA Program have the right to participate in any proceeding in Juvenile Court in which any aspect of the CASA Program is at issue.

3. Notice to CASA. Pursuant to Welfare & Institutions Code § 106, the CASA volunteer must be properly and timely noticed for all proceedings concerning the case on which he or she is appointed. The social worker on/assigned the case is responsible for providing notice to the CASA for regularly calendared matters. Any party requesting that a matter be added to the Court's calendar is responsible for providing notice to the CASA.

4. Reports. CASA reports shall be read and considered by the judicial officer. Minute orders shall reflect whether the CASA and/or the CASA supervisor was present at the hearing and that the CASA's report was read and considered by the Court. On behalf of any CASA submitting a report to the Court, the Child Advocates Office shall deliver sufficient copies for all parties and their counsel (including parents appearing in pro per) to the Court at least two (2) court days prior to the relevant hearing. The Court has the discretion to admit a CASA report regardless of the time it was submitted.

5. Distribution of Reports. Only parties and their counsel are entitled to receive copies of CASA reports. De facto parents are entitled to receive copies of CASA reports only if there is a court order directing distribution of the CASA report to the de facto parent(s). Relatives, foster parents, service providers and other interested parties are not entitled to receive CASA reports in the absence of a specific court order.

F. **Reporting.** The CASA Program shall report regularly to the Presiding Judge of the Juvenile Dependency or Delinquency Courts with evidence that it is operating under the guidelines established by the National Court Appointed Special Advocate Association and the California State Guidelines for Child Advocates. **(Effective July 1, 2016; Rule 6.2.14 (now 6.3.17) renumbered effective January 1, 2006; adopted as Rule 51.14 effective January 1, 1996)**

6.3.18 Child Advocates

A. **Advocate's Functions**. Advocates serve at the pleasure of the Court having jurisdiction over the proceeding in which the advocate has been appointed. In general, an advocate's functions are as follows:

1. To support the child throughout the court proceedings;

2. To establish a relationship with the child to better understand his or her particular needs and desires;

3. To communicate the child's needs and desires to the Court in written reports and recommendations;

4. To identify and explore potential resources which will facilitate early family reunification or alternative permanency planning;

5. To provide continuous attention to the child's situation to ensure that the Court's plans for the child are being implemented;

6. To the fullest extent possible, to communicate and coordinate efforts with the case manager/social worker;

7. To the fullest extent possible, to communicate and coordinate efforts with the child's attorneys; and

8. To investigate the interests of the child in other judicial or administrative proceedings outside Juvenile Court; report to the Juvenile Court concerning same; and, with the approval of the Court, offer his or her services on behalf of the child to such other courts or tribunals.

B. **Sworn Officer of the Court**. An advocate is an officer of the Court and is bound by these rules.

Each advocate shall be sworn in by a Superior Court Judge before beginning his or her duties, and shall subscribe to the written oath set forth in Appendix D2.

C. **Specific Duties**. The Court shall, in its initial order of appointment, and thereafter in any subsequent order, specifically delineate the advocate's duties in each

case, which may include independent investigation of the circumstances of the case, interviewing and observing the child and other appropriate individuals, reviewing appropriate records and reports, consideration of visitation rights for the child's grandparents and other relatives, and reporting back directly to the Court as indicated. If no specific duties are outlined by court order, the advocate shall discharge his or her obligation to the child and the Court in accordance with the general duties set forth in (A) above. **(Effective July 1, 2012; Rule 6.2.15 (now 6.3.18) renumbered effective January 1, 2006; adopted as Rule 51.15 effective January 1, 1999)**

6.3.19 Release of Information to Advocate

A. **Court Authorization**. To accomplish the appointment of an advocate, the Judge making the appointment shall sign an order granting the advocate the authority to review specific relevant documents and interview parties involved in the case, as well as other persons having significant information relating to the child, to the same extent as any other officer appointed to investigate proceedings on behalf of the Court.

B. **Access to Records.** An advocate shall have the same legal right to records relating to the child he or she is appointed to represent as any case manager/social worker with regard to records pertaining to the child held by any agency, school, organization, division or department of the State, physician, surgeon, nurse, 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 or 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.

C. **Report of Child Abuse**. An advocate is a mandated child abuse reporter with respect to the case to which the advocate is appointed.

D. **Communication With Others**. DSS, Probation, the case manager, the child's attorney, the attorneys for parents, relatives, foster parents, any CASA advocate, and any therapist for the child shall engage in ongoing regular communication concerning the child's best interests, current status, and significant case developments. **(Effective July 1, 2016; Rule 6.2.16 (now 6.3.19) renumbered effective January 1, 2006; adopted as Rule 51.16 effective January 1, 1996)**

6.3.20 Advocate's Right to Timely Notice

In any motion concerning the child for whom the advocate has been appointed, the moving party shall provide the advocate timely notice. **(Effective July 1, 2012; Rule 6.2.17 (now 6.3.20) renumbered effective January 1, 2006; adopted as Rule 51.17 effective January 1, 1996)**

6.3.21 Calendar Priority for Advocates

In light of the fact that advocates are rendering a voluntary service to children and the Court, matters on which they appear should be granted priority on the Court's

calendar, whenever possible. **(Effective July 1, 2012; Rule 6.2.18 (now 6.3.21) renumbered effective January 1, 2006; adopted as Rule 51.18 effective January 1, 1999)**

6.3.22 Advocate's Visitation Throughout Dependency

An advocate shall visit the child regularly until the child is secure in a permanent placement. Thereafter, the advocate shall monitor the case as appropriate until dependency is dismissed or the advocate is relieved from appointment. **(Effective July 1, 2012; Rule 6.2.19 (6.3.22) renumbered effective January 1, 2006; adopted as Rule 51.19 effective January 1, 1996)**

6.3.23 Family Law Advocacy

Should the Juvenile Court dismiss dependency and create a family law order pursuant to Welfare & Institutions Code § 362.4, the advocate's appointment may be continued in the family law proceeding, in which case the Juvenile Court order shall set forth the nature, extent and duration of the advocate's duties in the family law proceeding. **(Effective July 1, 2012; Rule 6.2.20 (now 6.3.23) renumbered effective January 1, 2006; adopted as Rule 51.20 effective January 1, 1996)**

6.3.24 Advocate's Right to Appear

An advocate shall have the right to be present and be heard at all court hearings, and shall not be subject to exclusion by virtue of the fact that the advocate may be called to testify at some point in the proceedings. An advocate shall not be deemed to be a "party" (California Rules of Court, Rule 5.530(b)(6)); however, the Court, in its discretion, shall have the authority to grant the advocate amicus curiae status, which includes the right to appear with counsel. **(Effective July 1, 2012, Rule 6.2.21 (now 6.3.24) renumbered effective January 1, 2006; adopted as Rule 51.21 effective January 1, 1996)**

***(Rule 6.3 renumbered effective January 1, 2006; adopted as Rule 52 effective July 1, 1992*)**

RULE 6.4 DEPENDENCY COURT PROCEEDINGS

6.4.1 Determination of Paternity

A. The issue of the paternity of a minor may be determined in a Juvenile Court proceeding.

B. If a person claims to be the natural/biological father of a minor who is the subject of Juvenile Court proceedings, the Court may take such measures as are necessary to make a paternity finding and judgment.

C. In any paternity proceeding arising under this rule the Court shall inform the mother and the person claiming to be the father of their right to be separately represented by counsel on the issue of paternity. The Court shall advise the person claiming to be the father of his legal responsibilities should he be found to be the natural father of the minor, including the obligation to pay child support and the possibility he

may be incarcerated if he willfully fails to pay child support after being legally ordered to do so.

D. The Court shall permit such evidence to be taken as necessary to determine the paternity of the minor. Testimony from the mother and the person claiming to be the natural father may be sufficient to make a paternity finding and judgment. If the mother or the person claiming to be the father is absence from the court proceeding, evidence in addition to testimony from those in attendance will normally be necessary to enable the Court to make a paternity finding.

E. The Court may order blood or other scientific tests if it believes such tests will assist in making a paternity finding. The Court shall determine which party or parties shall pay for any such test.

F. Any paternity finding and judgment shall be noted in the Clerk's minutes and appropriate documentation shall be provided to the parties, their counsel, and the local child support agency. **(Effective July 1, 2012; Rules 6.3.1, 6.3.2, 6.3.3, 6.3.4, 6.3.5 and 6.3.6 (now 6.4.1) renumbered effective January 1, 2006; adopted as Rules 52.1, 52.2, 52.3, 52.4, 52.5, 52.6 effective January 1, 1996)**

6.4.2 Informal Discovery

Pre-hearing discovery shall be conducted informally. Except as protected by privilege, all relevant material shall be disclosed in a timely fashion to all parties of the litigation. **(Effective July 1, 2012; Rule 6.3.7 (now 6.4.2) renumbered effective January 1, 2006; adopted as Rule 52.7 effective January 1, 1996)**

6.4.3 Formal Discovery

A. **Formal Discovery.** Only after all 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 and the clerk of the department hearing the motion at least five (5) court days before the hearing date.

Any responsive papers shall be filed and served on all parties and the clerk of the department hearing the motion two (2) court days prior to the hearing.

B. **Civil Discovery.** In order to coordinate the logistics of discovery in dependency cases, there shall be no depositions, interrogatories, subpoenas of juvenile records or other similar types of civil discovery without approval of a judge of the Juvenile Court upon noticed motion. For non-dependency cases see Rule 6.7.1.

C. **Case Records and Reports (California Rules of Court, Rule 5.546).** In contested proceedings, the social worker's narratives and other relevant case records shall be made available to all counsel at least ten (10) calendar days before the hearing and any updated records two (2) calendar days before the hearing. In all other cases,

such documents shall be made available at least two (2) calendar days prior to the hearing.

Upon timely request, parents and guardians shall disclose to DSS such non-privileged material and information within the parent's or guardian's control which is relevant. **(Effective July 1, 2012; Rule 6.3.8 (now 6.4.3) renumbered effective January 1, 2006; adopted as Rule 52.8 effective January 1, 1999)**

6.4.4 Disclosure of Evidence

A. Social study reports prepared by DSS shall be made available to all parties before the hearing in accordance with the following time limitations unless otherwise ordered by the Court:

1. Jurisdictional and/or Dispositional reports are due at least forty-eight (48) hours before the hearing;

2. Six, Twelve and Eighteen Month Status Reviews and section 366.3 Status Review reports are due at least ten (10) calendar days before the hearing;

3. All other reports shall be due a reasonable number of days before the hearing but in no event less than forty-eight (48) hours before.

B. If the social study report is not timely filed or made available to all parties, then any affected party may request a continuance or the Court on its own motion may continue the hearing to the extent permitted by law.

C. The names of any experts to be called by any party and copies of their reports, if not part of a social study report prepared by DSS, shall be provided to all parties at least ten (10) days before the hearing. **(Effective July 1, 2012; Rule 6.3.9 (now 6.4.4) renumbered effective January 1, 2006; adopted as Rule 52.9 effective January 1, 1999)**

6.4.5 Settlement Conferences

Settlement conferences shall be calendared and held prior to every contested hearing, unless deemed unnecessary by the judicial officer setting the contested hearing.

The trial attorneys and all parties shall be present at the settlement conference, unless excused by the Court. All parties shall be readily available either in person or by telephone at the direction of their attorneys. A representative of DSS with authority to settle cases shall be present at the settlement conference. **(Effective July 1, 2012; Rule 6.3.10 (now 6.4.5) renumbered effective January 1, 2006; adopted as Rule 52.10 effective January 1, 1996)**

6.4.6 Requests for Transcripts

Any party wanting the Court to pay for a reporter's transcript shall apply in writing to the judicial officer who heard the matter in question or to the Administrative Presiding Judge of the Juvenile Dependency Court. Alternatively, a party may orally request at a court hearing that the court order a transcript be prepared at court expense. A party may order a reporter's transcript prepared at that party's expense without seeking court authorization. **(Effective July 1, 2012; Rule 6.3.11 (now 6.4.6) renumbered effective January 1, 2006; adopted as Rule 52.11 effective January 1, 1999)**

6.4.7 Continuances

It is the policy of this Juvenile Court to strictly comply with the timelines for dependency hearings, unless good cause is shown for continuance. (Welfare & Institutions Code § 352; California Rules of Court, rule 5.5.50(a)(2)). **(Effective July 1, 2012, New)**

(Rule 6.4 renumbered effective January 1, 2006; adopted as Rule 53 effective July 1, 1992)

RULE 6.5 DEPENDENCY MOTIONS AND ORDERS

6.5.1 Motion to Challenge Legal Sufficiency of Petition

In any dependency proceeding the Court may entertain a pre-hearing challenge to the petition's sufficiency by a motion to challenge the legal sufficiency of the petition. Such a motion may be made in writing or orally, but must be made as early in the proceedings as possible. The Court may rule on the motion at the hearing at which it is made, or may continue the hearing on the motion to another date in order to receive briefing from counsel. If the Court sustains the motion, the Court may grant leave to amend the pleading in the petition upon any terms as may be just and shall fix the time within which the amendment or amended petition shall be filed. **(Effective July 1, 2012; Rule 6.4.1 (now 6.5.1) renumbered effective January 1, 2006; adopted as Rule 53.1 effective January 1, 1999)**

6.5.2 Ex Parte Applications/Orders

Ex parte applications for orders are made to the Court without formal advance notice to the other parties of the application. There are three types of ex parte applications: ex parte applications to calendar hearings, routine ex parte applications, and all other ex parte applications. **(Effective July 1, 2012; Rule 6.4.2 (now 6.5.2) renumbered effective January 1, 2006; adopted as Rule 53.2 effective January 1, 1996)**

6.5.3 Ex Parte Application to Calendar Hearing

A. An ex parte application to calendar a hearing is made by submission of the Ex Parte Application to Calendar and Order form to the judicial officer in whose courtroom the case is assigned. An ex parte application to calendar a hearing shall not be made to a judicial officer other than the judicial officer in whose courtroom the proposed hearing is to be held, except for good cause.

1. If the Ex Parte Application to Calendar and Order form is being used to place on calendar a hearing which does not already have a hearing date, advance notice to all other parties of the intent to submit an Ex Parte Application to Calendar and Order form to a judicial officer in whose courtroom the case is assigned is not required if the proposed date of hearing is more than seven (7) calendar days from the date of submission of the form. Any party choosing to proceed thus must give all other parties seven (7) calendar days written notice of the hearing date which has been approved by the judicial officer. If the proposed date of hearing is less than seven (7) calendar days from the date of submission of the Ex Parte Application to Calendar and Order form, consent to the proposed hearing date must be sought from the other parties. Consent of a party can be reflected by that party initialing the appropriate box on the Ex Parte Application to Calendar and Order form.

An Ex Parte Application to Calendar and Order form seeking a hearing date less than seven (7) calendar days from the date of submission of the form may be submitted to the judicial officer even if written consent to the proposed hearing date has been withheld by another party, so long as said party was given an opportunity to give written consent to the proposed hearing date. The party submitting the Ex Parte Application to Calendar and Order form shall memorialize on the form the party's refusal to give written consent to the proposed hearing date.

2. If the Ex Parte Application to Calendar and Order form is being used to obtain a continuance of a hearing date which is already on calendar, the Ex Parte Application to Calendar and Order form, which shall adequately specify the reason the continuance is sought and the length of the continuance being sought, shall first be presented to all parties. If any party objects to the proposed continuance, or requests a hearing on the request for a continuance, that party should so specify on the Ex Parte Application to Calendar and Order form. Once the Ex Parte Application to Calendar and Order form has been initialed by all parties, the form shall be presented to the judicial officer in whose courtroom the hearing is currently scheduled for consideration.

When presented with an Ex Parte Application to Calendar and Order form requesting a continuance, the judicial officer shall do one of the following:

a. Grant the request for a continuance and select a new hearing date,

b. Deny the request for a continuance, or

c. Set the request for a continuance for hearing and select a date for that hearing.

When the party submitting the completed Ex Parte Application to Calendar and Order form receives that form back from the judicial officer, that party shall file the form with the Clerk's Office and serve copies of the filed form on all parties.

B. If a case has an upcoming hearing date already on calendar, an Ex Parte Application to Calendar and Order form need not be submitted to place on calendar for the same date a separate/different motion on the same case. However, the party seeking to place the separate/different motion on calendar must give ten (10) calendar days written notice of the separate/different motion to all other parties, unless the Court, for good cause shown, prescribes a lesser number of days for notice.

C. The Ex Parte Application to Calendar and Order form has no purpose other than to place, change, or continue a hearing date on the Court's calendar. The Ex Parte Application to Calendar and Order form is not a substitute for a Welfare & Institutions Code § 388 petition, a formal written motion, or supporting points and authorities. **(Effective July 1, 2012; Rule 6.4.3 (now 6.5.3) renumbered effective January 1, 2006; adopted as Rule 53.3 effective January 1, 1999)**

6.5.4 Routine Ex Parte Applications

A. Unless counsel for a party has specifically requested advance notice of ex parte applications for out-of-state travel or medical/dental care for the minor, an ex parte application may be made, without advance formal notice, to the judicial officer in whose courtroom the minor's case is assigned, seeking an order permitting the minor to travel out-of-state with the foster parent or care provider, relative, or other appropriate adult acceptable to DSS, or an order authorizing that medical or dental care be performed on the minor. Any such ex parte applications shall be filed no less than fifteen (15) calendar days prior to the proposed travel or medical/dental care absent good cause shown on the application, or unless the Court has specified a greater or lesser period. All such ex parte applications shall include the following information:

1. The name and address of each party to the action, and the name and address of each party's counsel;

2. The efforts made to obtain the consent of and/or give notice to the parents or guardians of the minor of the proposed travel or medical/dental care;

3. If a parent or guardian has refused to agree to the proposed travel or to give consent to medical/dental care, that fact shall be noted on the application, including the ground for the parent’s/guardian's refusal, if known;

4. For any parent or guardian whom DSS was unable to locate to give notice and/or obtain consent, a description of the efforts made to locate the parent/guardian;

5. The fact the minor's counsel has been notified of the proposed travel or medical/dental care, and said counsel's position on the proposed travel or medical/dental care.

6. The fact the CASA has been notified of the proposed travel or medical/dental care, and said CASA's position on the proposed travel or medical/dental care.

B. When presented with an ex parte application for an order authorizing out-of-state travel or medical/dental care, the judicial officer shall either grant the request and issue the order, or deny the request. If the judicial officer issues the requested order authorizing out-of-state travel or medical/dental care, the party who sought the order shall file the ex parte application form and order with the Clerk's Office and provide copies of the filed ex parte application and order form with all counsel. Any party disagreeing with the order for out-of-state travel or medical/dental care may place the matter on calendar for further consideration.

C. An order nunc pro tunc making corrections, changes or additions to any finding or order generated at a prior hearing may be made by ex parte application where the Court made an order or finding that was mistakenly omitted from the minute order. **(Effective July 1, 2012; Rule 6.4.4 (now 6.5.4) renumbered effective January 1, 2006; adopted as Rule 53.4 effective January 1, 1999)**

6.5.5 Non-Routine Applications

A. All ex parte applications other than those discussed in Rules 6.5.3 and 6.5.4 are considered non-routine ex parte applications. All non-routine ex parte applications must be made only upon adequate advance notice to all counsel in accordance with this rule. Non-routine ex parte applications include, but are not limited to, requests for a temporary order modifying a visitation order pending a hearing on a concurrently filed Welfare & Institutions Code § 388 petition seeking the same relief on a permanent basis.

B. Non-routine ex parte applications shall be heard at 8:30 a.m. by the judicial officer in whose courtroom the case is assigned.

C. Before submitting an ex parte application and proposed order forms to the judicial officer in whose courtroom the case is assigned for signature, the applicant shall adhere to the following procedures:

1. The applicant shall advise the judicial officer in whose courtroom the case is assigned no later than 3:00 p.m. that a non-routine ex parte application will be made the following morning in that judicial officer's courtroom.

2. The applicant shall give, no later than 4:00 p.m. on the day prior to the proposed ex parte application, advance notice of the time, place, and basic

subject matter of the proposed ex parte application to all counsel and the social worker assigned to the case, except for good cause shown or consent of all counsel.

3. The notice given to the other counsel regarding the ex parte application for a non-routine order shall be stated on the Declaration Re Notice of Ex Parte Application form.

D. If the applicant has made a good faith attempt to inform the other counsel regarding the ex parte application but was unable to do so, the efforts made to inform them shall be specified on the Declaration Re Notice of Ex Parte Application form.

E. If the applicant contends that advanced notice to one or more other counsel should not be required, the grounds upon which this contention is based shall be specified on the Declaration Re Notice of Ex Parte Application form. The completed Declaration Re Notice of Ex Parte Application form shall be submitted to the judicial officer with the ex parte application. An ex parte application which is submitted to the judicial officer without the Declaration Re Notice of Ex Parte Application form will be summarily denied.

F. Whenever possible, the ex parte application moving papers and the Declaration Re Notice of Ex Parte Application form, and any responding papers, shall be served on all other counsel as far in advance of the ex parte application as is practicable.

G. Notice of the ex parte application may be excused if the giving of such notice would frustrate the purpose of the order, or cause the minor to suffer immediate and irreparable physical or emotional harm.

H. Notice may also be excused if, following a good faith attempt, the giving of notice is not possible, or if the other counsel do not object to the relief sought by the ex parte application. **(Effective July 1, 2012; Rule 6.4.5 (now 6.5.5) renumbered effective January 1, 2006; adopted as Rule 53.5 effective January 1, 1996)**

6.5.6 Noticed Motions

Except as otherwise provided herein, all motions shall be in writing and accompanied by a supporting affidavit or declaration and points and authorities, if applicable. No noticed motion shall be accepted by the Clerk unless it is accompanied by a proof of service. A noticed motion must give ten (10) calendar days written notice to all other counsel unless the Court, for good cause shown, prescribes a lesser number of days for notice. **(Effective July 1, 2012; Rule 6.4.6 (now 6.5.6) renumbered effective January 1, 2006; adopted as Rule 53.6 effective January 1, 1996)**

6.5.7 Motion for More Restrictive Placement

Any motion by DSS to modify an existing order to a more restrictive placement shall be implemented pursuant to Welfare & Institutions Code § 387 and California Rules of Court, rules 5.560(c) and 5.565. A change in an out-of-home, non-relative placement (i.e., foster care, family foster home, or group home) shall not be deemed a more restrictive placement unless the placement change is from a level twelve (12) or lower placement (as defined by State law) to a higher level which requires a mental health certification. Placement in a level thirteen (13) or higher level home is defined as being more restrictive than a level one (1) to level twelve (12) home whether the home be a foster home, a family foster home or a group home. **(Effective July 1, 2012; Rule 6.4.7 (now 6.5.7) renumbered effective January 1, 2006; adopted as Rule 53.7 effective January 1, 1996)**

6.5.8 Motion for Less Restrictive Placement

Any motion by an interested party to modify the Court's orders to a less restrictive placement shall follow the procedures outline in Welfare & Institutions Code § 388 and California Rules of Court, rules 5.560(d) and 5.570, and these rules. **(Effective July 1, 2012; Rule 6.4.8 (now 6.5.8) renumbered effective January 1, 2006; adopted as Rule 53.8 effective January 1, 1999)**

6.5.9 Petitions for Modification (Consent Calendar Procedure)

The following procedures shall be followed for all Petitions for Modification filed pursuant to Welfare & Institutions Code § 388, except those petitions seeking termination of a guardianship pursuant to Welfare & Institutions Code § 366.3, subdivision (b), and California Rules of Court, rule 5.740.

A. Each Department will hold a “388” consent calendar on a designated day of each week at 8:30 a.m., at which time the Court will act upon those petitions to which there is no objection and set for hearing those petitions to which any party objects.

B. Petitioner shall select the consent calendar date for the matter to be heard based upon a date which allows at least five (5) court days’ advance notice to all parties. Petitioner is to provide copies of the petition to all parties and file the original with an attached proof of service. Copies are to be provided to both DSS and County Counsel.

C. The Clerk shall file the Petition and calendar it on the “388” consent calendar, which shall be separate from the regular calendar. The Clerk will make available copies of the “388” consent calendar to the office of each counsel of record and DSS seven (7) calendar days preceding the date of the “388” consent calendar.

D. At the hearing, if all parties consent, the matter will be submitted without hearing and a ruling will be entered. If any party enters an objection, which may be communicated to the Court in person, in writing, or telephonically, the matter will be set for hearing.

E. The Court's ruling, or the date of the hearing if one is set, will be noted on a minute order.

F. Petitions seeking an interim order are to be presented to the Court prior to filing and service. Interim orders will be granted upon a showing of good cause. **(Effective July 1, 2012; Rule 6.4.9 (now 6.5.9) renumbered effective January 1, 2006; adopted as Rule 53.9 effective July 1, 1999)**

6.5.10 Visitation

A. Visitation between a minor and the minor's parents should be as frequent as possible based on the individual circumstances of the case.

B. Orders for visitation may be issued at any scheduled hearing. Arrangements for visitation may be modified by the filing and approval of a Welfare & Institutions Code § 388 petition.

C. Unless specified otherwise by the Court, the following definitions shall apply to visitation orders:

1. Supervised Visits: Visits supervised by DSS, unless the Court orders that a third party may supervise the visits.

2. Reasonable Visits: Supervised or unsupervised visits which may last up to one (1) day but shall not include overnight.

3. Liberal Visits: Visits which may include overnight and weekends and up to a maximum of thirteen (13) consecutive days.

4. Extended Visits: Visits which last beyond thirteen (13) consecutive days. Extended visits do not become placements, unless otherwise ordered by the Court.

D. Any significant decrease from the Court-ordered level of a parent's/party's level of visitation shall be presented to the affected parent/party for comment before being submitted to the Court. The Court may set a hearing on the issue after hearing the parent's/party's comments on the proposed reduction. **(Effective July 1, 2012; Rule 6.4.10 (now 6.5.10) renumbered effective January 1, 2006; adopted as Rule 53.10 effective January 1, 1996)**

6.5.11 Travel Authorization

Unless ordered otherwise by the Court, a minor's care provider may authorize travel by the minor within the State of California with the concurrence of DSS and, when possible, notice to the parent. Any travel for the minor out of the State of California shall require prior court approval. Any application to the Court for orders regarding travel of the minor shall comply with Juvenile Rule 6.5.4 and shall state what efforts have been made to notify the parent(s) and their response, if any. **(Effective July 1, 2012; Rule 6.4.11 (now 6.5.11) renumbered effective January 1, 2006; adopted as Rule 53.11 effective January 1, 1996)**

6.5.12 Application to Commence Proceeding

When a CPS referral is made to DSS and if DSS decides not to intervene or fails to report the outcome of the referral to a reporting party within ten (10) days, any person may apply to DSS requesting DSS to file a petition pursuant to Welfare & Institutions Code § 329. In that application, the applicant shall give notice and identifying information of any pending family law-related proceeding. If a family law-related proceeding is pending, a copy of the application shall also be sent to Family Court Services by the applicant. DSS shall respond to the application as soon as possible or within three (3) weeks after submission of the application. If applicable, DSS shall notify Family Court Services of its response. If the applicant is dissatisfied with the decision of DSS, the applicant may petition the Juvenile Court to order DSS to file a Welfare & Institutions Code § 300 petition as provided by Welfare & Institutions Code § 331. **(Effective July 1, 2012; Rule 6.4.12 (now 6.5.12) renumbered effective January 1, 2006; adopted as Rule 53.12 effective January 1, 1999)**

6.5.13 Request for Rehearing

Any party to a juvenile delinquency proceeding requesting a rehearing within ten (10) calendar days after service of a copy of an order and findings shall, within one (1) judicial day after filing a request for rehearing also serve a copy of the request upon the referee from whose decision the request has arisen.

The referee shall immediately direct the court reporter, by minute order, to prepare a transcript of the appropriate hearing and deliver a copy of the minute order to the Presiding Judge of the Juvenile Court and to the counsel for the party requesting the rehearing.

Within ten (10) calendar days after being ordered to prepare the transcript, the court reporter shall deliver the transcript to the Presiding Judge of the Juvenile Court. **(Effective July 1, 2012; Rule 6.4.13 (now 6.5.13) renumbered effective January 1, 2006; adopted as Rule 53.13 effective January 1, 1996)**

***(Rule 6.5 renumbered effective January 1, 2006; adopted as Rule 54 effective July 1, 1992*)**

RULE 6.6 COORDINATION OF COURT PROCEEDINGS

6.6.1 Court Management of Child Abuse or Neglect Cases

A. It is the policy of the Superior Court to identify and coordinate custody proceedings involving the same minor, which may appear in multiple legal settings. It is further the policy of the Superior Court to coordinate the efforts of the different court systems (including, but not limited to, the family, juvenile, child support, and probate courts) so that the minor's needs are served and the resources of the family and the Court are not wasted. To these ends the Superior Court and the agencies serving the Court shall cooperate to increase the exchange of information and to determine the most appropriate forum for the resolution of the issues relating to the minor.

B. **Notice of Pending Cases and Orders**

1. Court Inquiry. Before issuing a protective order, or a custody or visitation order, the Court should inquire of the parties or the attorneys whether there are any cases in which there are criminal or civil protective orders, or custody and visitation orders that involve the child(ren) in the current case.

2. Attorneys and Self-Represented Parties in Family, Probate and Criminal Cases. All attorneys and self-represented parties involved in family law, probate and criminal cases shall inform the Court about any cases of which they are aware in which there are criminal or non-criminal protective orders or custody and visitation orders that involve the child(ren) in the current case. The information shall be provided to the Court, all parties and all attorneys in the case.

C. **Communication Between Courts**

1. Communication Regarding Existing Cases in Other Departments. When any court becomes aware of the existence of another case involving the same child(ren), the judicial assistant shall notify the other court. Prior to conducting a hearing in the matter, the trial judge will review the overlapping orders, if appropriate. Notice will be provided to the parties of the overlapping orders reviewed by the judicial officer.

2. Communication Regarding Protective Orders.

a. Temporary or Permanent Non-Criminal Restraining Orders. When either the Family Court or Dependency Court issues a temporary or permanent restraining order and the restrained person or the protected person has another pending dependency, family, probate, juvenile or criminal case, the Family Court or Dependency Court shall send a copy of the protective order to the appropriate court administrator who will send it to the trial court with the overlapping case. This may be accomplished by working through the Domestic Violence Case Coordinator.

D. **Modification of Criminal Protective Orders.** Criminal protective orders take precedence over other contact orders. When a criminal protective order exists and either or both parties request a child custody order that is inconsistent with the criminal protective order, it is the obligation of the moving parties to seek a modification of the criminal protective order by placing the matter on the criminal domestic violence calendar. Notice must be provided to all parties, attorneys and probation or parole officers. No party shall seek a child custody or visitation order in family, probate or juvenile court that is inconsistent with an existing criminal protective order unless a judicial officer presiding over the criminal domestic violence matter has first granted the

request to modify the criminal protective order. **(Effective July 1, 2012; Rule 6.5.1 (now 6.6.1) renumbered effective January 1, 2006; adopted as Rule 54.1 effective January 1, 1999)**

6.6.2 Report Pursuant to Penal Code § 11166

If during the pendency of a family law proceeding a child abuse or neglect allegation against one of the minor's parents comes to the attention of a Family Court Services staff member or other mediator or evaluator, that person shall first determine whether the allegation must be reported to a child protection agency pursuant to Penal Code § 11166. If that person determines the allegation does not fall within the description of § 11166, he or she need not make a report. However, any other person may report the allegation to a child protection agency. **(Effective July 1, 2012; Rule 6.5.2 (now 6.6.2) renumbered effective January 1, 2006; adopted as Rule 54.2 effective January 1, 1996)**

6.6.3 Child Abuse or Neglect Investigation

When DSS receives a report of suspected child abuse or neglect during the pendency of a family law-related proceeding, it shall investigate the matter pursuant to the regulations of the California Department of Social Services. DSS shall inform Family Court Services of any decisions it makes concerning the child abuse or neglect investigation. If DSS determines that further investigation is necessary, it shall contact the appropriate investigating agency immediately so that all investigative efforts can be coordinated. **(Effective July 1, 2012; Rule 6.5.3 (6.6.3) renumbered effective January 1, 2006; adopted as Rule 54.3 effective January 1, 1996)**

6.6.4 Suspension of Family Law and Probate Proceedings

A. **DSS Report**. After a report of suspected child abuse or neglect has been made to a child protection agency, any custody and visitation proceedings in the Family Law or Probate Department are suspended, except that the Family Law or Probate Department shall have the power to make temporary protective orders to ensure the safety of the minor. The suspension shall remain for eighteen (18) calendar days from the report or until DSS indicates in writing that it will take no action in the matter, whichever occurs first.

B. **Welfare & Institutions Code § 300 Petition, Juvenile Court**. If a petition pursuant to Welfare & Institutions Code § 300 is filed in the Juvenile Court, all custody and visitation proceedings in the Family Law or Probate Department are suspended. Thereafter, custody and visitation issues shall be determined by the Juvenile Court. The Family Law or Probate Department shall resume custody or visitation proceedings only after written authorization is received from the Juvenile Court. **(Effective July 1, 2012; Rule 6.5.4 (now 6.6.4) renumbered effective January 1, 2006; adopted as Rule 54.4 effective January 1, 1999)**

6.6.5 Informal Supervision Agreement

If, during DSS's investigation, one or both parents reach an informal supervision agreement pursuant to Welfare & Institutions Code § 301, a copy of that agreement shall be sent immediately to DSS, to Family Court Services and to each parent. **(Effective July 1, 2012; Rule 6.5.5 (now 6.6.5) renumbered effective January 1, 2006; adopted as Rule 54.5 effective January 1, 1996)**

6.6.6 Coordination of Cases

At any time during the process described herein, the Presiding Judges of the Family Law and Probate Departments and the Juvenile Court are encouraged to discuss problems relating to the coordination of cases involving child abuse or neglect allegations. **(Effective July 1, 2012; Rule 6.5.6 (now 6.6.6) renumbered effective January 1, 2006; adopted as Rule 54.6 effective January 1, 1999)**

6.6.7 Petition for Dismissal

Whenever any interested party believes that Juvenile Dependency Court intervention on behalf of a minor is no longer necessary, application may be made to the Juvenile Dependency Court pursuant to Welfare & Institutions Code § 388 or at any regularly scheduled hearing to have the case dismissed. If the application is granted, any future litigation relating to the custody, visitation and control of the minor shall be heard in the Family Law Department or other appropriate department. **(Effective July 1, 2012; Rule 6.5.7 (now 6.6.7) renumbered effective January 1, 2006; adopted as Rule 54.7 effective January 1, 1999)**

6.6.8 Juvenile Court Custodial Order

If the Juvenile Dependency Court determines that jurisdiction of the Juvenile Court is no longer necessary for the protection of the minor, the Court may create a custodial order consistent with the needs of the minor and thereafter dismiss the juvenile petition and case. (See Judicial Council form JV-200.) Any party may object to the proposed dismissal and be heard on the issues. **(Effective July 1, 2012; Rule 6.5.8 (now 6.6.8) renumbered effective January 1, 2006; adopted as Rule 54.8 effective January 1, 1996)**

6.6.9 Maintenance of Orders in Court Files

A. **Juvenile Court**. The original court custodial order shall be filed in the Family Law Department or other department and endorsed copies shall be filed in the Juvenile Court file. A copy of the endorsed-filed order shall be mailed to the attorneys and parties.

B. **Superior Court**. If no court file exists in the Family Law Department or other department or in any other jurisdiction, the Clerk shall create a file under the names of the minor's parents. The file shall contain a copy of the Juvenile Court order. Pursuant to Welfare & Institutions Code § 362.4, there shall be no filing fee. **(Effective July 1, 2012; Rule 6.5.9 (now 6.6.9) renumbered effective January 1, 2006; adopted as Rule 54.9 effective January 1, 1999)**

(Rule 6.6 renumbered effective January 1, 2006; adopted as Rule 55 effective July 1, 1992)

RULE 6.7 MEDICAL MATTERS

6.7.1 Medical Consent

A. **Medical Consent.** Welfare & Institutions Code §§ 369 and 739 set forth the responsibilities of the Court, social worker and probation officer for handling medical consent matters for minors in dependency and delinquency. In Fresno County, DSS is responsible for obtaining required court authorization or for authorizing necessary medical care for minors who come within the provisions of Welfare & Institutions Code § 300 (abused and neglected children), and the Probation Department is responsible for obtaining these authorizations for minors who come within the provisions of Welfare & Institutions Code §§ 601 and 602 (status offenders and delinquent minors, respectively). Only where a minor has been taken into temporary custody and the parents object to the treatment is it necessary for the Court to intervene. (See Welf. & Inst. Code, §§ 369(a) and 739(a).

1. The Court authorizes DSS social workers to consent in this situation for children covered by Welfare & Institutions Code § 369(a).

B. **Notification.** In any case where the Court intervenes in providing consent for a medical procedure, the Court shall ensure that notice of the procedure and request for consent are given to the child's attorney and Court-Appointed Special Advocate (CASA) at the earliest practicable time.

C. **Emergency Medical Consent.** Emergency Medical Consent can be obtained through the respective agencies responsible for the minor, either DSS or Probation. DSS and Probation provide this Medical Consent service twenty-four (24) hours a day, each day of the year. Pursuant to Welfare & Institutions Code §§ 369(d) and 739(d) the social worker or probation officer, after making reasonable efforts to obtain parental consent, has the authority to grant "emergency medical treatment" for any minor who "requires immediate treatment for the alleviation of severe pain or an immediate diagnosis and treatment of an unforeseeable medical, surgical or dental, or other remedial condition or contagious disease which, if not immediately diagnosed and treated, would lead to serious disability or death" without involving the Court. **(Effective January 1, 2015; Rule 6.6.1 (now 6.7.1) renumbered effective January 1, 2006; adopted as Rule 55.1 effective January 1, 1999)**

6.7.2 Authorization for Use of Psychotropic Drugs in Juvenile Delinquency/Dependency Proceedings

Family Code § 6924 sets forth the general guidelines for providing mental health treatment to minors. Pursuant to Welfare & Institutions Code §§ 369(b), 369.5 and 739.5 and California Rules of Court, rule 5.640, for any minor removed from the custody of the parent or guardian pursuant to Welfare & Institutions Code §§ 306, 309, 726, or by order of the Juvenile Court, approval must be obtained for the minor (if under 18

years of age) to be treated with psychotropic medication. Absent a medical emergency as defined in Welfare & Institutions Code § 369(d), authorization from the Juvenile Court (or from someone authorized by the Court) must be obtained prior to administering psychotropic medication to a minor under the jurisdiction of the Juvenile Court. If the minor has a current prescription for psychotropic medication at the time a juvenile dependency proceeding is commenced, a medical professional may continue to authorize administration of, and the minor may continue using, the medication pending Juvenile Court review. The treating medical professional is required to notify the Juvenile Court whenever a treatment plan for psychotropic medication is commenced without consent of a parent or guardian.

A. **Application for Psychotropic Medication**. The following outlines the process for obtaining Court authorization:

1. At the time the minor appears before a physician for treatment, and if the consent of the parent or guardian has not been obtained, the treating physician completes the Prescribing Physician's Statement-Attachment (Judicial Council form #220(A)). The statement is presented to the appropriate agency; either DSS or Probation.

2. Once the JV-220(A) is received by the appropriate agency, DSS or Probation is to legibly and fully complete the JV-220 packet, which includes the following mandatory Judicial Council forms:

a. JV-220 – Application Regarding Psychotropic Medication

b. JV-220(A) – Prescribing Physician's Statement-Attachment

c. JV-221 – Proof of Notice; Application Regarding Psychotropic Medication

d. JV-222 – Opposition to Application Regarding Psychotropic Medication

e. JV-223 – Order Regarding Application for Psychotropic Medication

f. JV-510 – Proof of Service - Juvenile:

3. The completed JV-220 Application must be filed by personal delivery to the appropriate Clerk's Office:

The Clerk of the Juvenile Court-Dependency
1100 Van Ness Ave., Room 200
Fresno, California 93724

The Clerk of the Juvenile Court-Delinquency
3333 E. American Ave., Bldg. 701, Ste. A
Fresno, California 93725

4. The appropriate agency, DSS or Probation sends a facsimile copy of the JV-220 Application to the Fresno County Chief Psychiatrist for further review and recommendation.

C. **Hearing Date.** Upon receipt of the completed JV-220 Application, the Court will determine whether a hearing date is necessary, and thereafter will schedule a hearing date that allows sufficient time for all parties to be provided notice of the JV-220 Application and to file an opposition.

D. **Opposition to Application**. Any party who wishes to oppose the JV-220 Application must, within two (2) court days after receiving notice of the JV-220 Application:

1. Complete and file a statement of opposition (Form JV-220A) with the Clerk of the Juvenile Court-Dependency; and

2. Provide notice of the opposition to all parties and attorneys and file a form JV-221 (Notice). **(Effective January 1, 2015; Rule 6.6.2 (now 6.7.2) renumbered effective January 1, 2006; adopted as Rule 55.2 effective January 1, 1999)**

6.7.3 Six Month Renewal for all Psychotropic Drug Orders

An order authorizing administration of psychotropic medication shall expire no later than six (6) months from date of issuance without prejudice to a renewal request using the above procedures. **(Effective July 1, 2012; Rule 6.6.3 (now 6.7.3) renumbered effective January 1, 2006; adopted as Rule 55.3 effective January 1, 1996)**

(Rule 6.7 renumbered effective January 1, 2006; adopted as Rule 56 effective July 1, 1992)

RULE 6.8 DELINQUENCY

6.8.1 Peremptory Challenges

Any challenge of a judicial officer hearing delinquency matters in Juvenile Court, Delinquency Division pursuant to Code of Civil Procedure § 170, et. seq. shall be reported to the Administrative Presiding Judge of the Juvenile Delinquency Court. The Administrative Presiding Judge of the Juvenile Delinquency Court shall take whatever legal action is appropriate, including reassignment to another department if necessary. If the challenge is to the Administrative Presiding Judge of the Juvenile Delinquency Court, the Presiding Judge of the Superior Court shall take whatever legal action is appropriate, including reassignment to another department if necessary. **(Effective July 1, 2012, New)**

6.8.2 Requirements for Noticed Motions

A. All motion papers, opposition papers, and reply papers must be in writing and must display on the first page the motion hearing date, time, and department and a time estimate for the motion hearing.

B. **Time for Service When the Minor is in Custody.** Unless a different briefing schedule is set by the Court:

1. All moving papers must be filed and served on the opposing party at least five (5) court days before the time appointed for the hearing.

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

3. All reply papers must be filed and served at least one (1) court day before the time appointed for the hearing.

C. **Time for Service When the Minor is Not in Custody.** Unless a different briefing schedule is set by the Court:

1. All moving papers must be filed and served on the opposing party at least ten (10) court days before the time appointed for the hearing.

2. All papers opposing the motion must be filed and served at least five (5) court days before the time appointed for the hearing.

3. All reply papers must be filed and served at least two (2) court days before the time appointed for the hearing.

D. **Time for Service of Motion to Suppress Evidence.** All motions to suppress evidence shall be filed, served and heard in accordance with Welfare & Institutions Code § 700.1. Unless a different briefing schedule is set by the Court:

1. All moving papers must be filed and served on the opposing party at least five (5) court days before the time appointed for the hearing.

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

3. All reply papers must be filed and served at least one (1) court day before the time appointed for the hearing.

E. **Points and Authorities.**

1. All moving and opposing papers must be accompanied by supporting points and authorities.

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

3. The memorandum of points and authorities must clearly specify the factual and legal issues raised and the specific legal authority relied upon for the motion.

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

5. In case of a failure of either party to serve and file points and authorities within the time permitted, the Court may find good cause to continue the hearing.

F. **Abandonment of Motions.** Any party intending to abandon a motion already filed must immediately notify opposing counsel and the clerk of the department in which the motion is to be heard, and must also notify the clerk immediately if the case is disposed of by plea prior to the hearing.

G. **Length of Points and Authorities.** No opening or responding memorandum of points and authorities exceeding fifteen (15) pages may be filed, absent an order from the judge of the Court in which the motion is calendared. Such an order will be granted only upon a written application including a declaration setting forth good cause for the order. **(Effective July 1, 2012, New)**

6.8.3 Ex Parte Applications to Calendar and Order (Non-Probation)

A. An ex parte application to calendar an order can be requested from the Juvenile Delinquency Clerk's Office during normal operational hours. All applications must be on the applicable Fresno County Superior Court Local Form. Reasons for the request must be specified. The request must be legible.

B. If the minor is not in custody at the time the ex parte application is filed, the requested court date must be no sooner than five (5) court days from the date the application is filed unless emergency or other good cause is demonstrated. The applicant must also submit at least two (2) alternative dates for a court date on the application in case the first is not acceptable to the Court.

C. If the minor is in custody at the time the ex parte application is filed, the requested court date must be no sooner than two (2) court days from the date the application is filed unless emergency or other good cause is demonstrated. The applicant must also submit at least two (2) alternative dates for a court date on the application in case the first is not acceptable to the Court. **(Effective July 1, 2012, New)**

6.8.4 Ex Parte Application Brought by County Probation

A. When a minor is not in custody, an ex parte application for an order by County Probation must be filed five (5) court days from the date of the requested hearing unless emergency or other good cause is demonstrated.

B. When a minor is in custody, an ex parte application for an order by County Probation must be filed by 10:00 a.m. the day before the court day prior to the requested hearing unless emergency or other good cause is demonstrated. **(Effective July 1, 2012, New)**

6.8.5 Duties of Counsel

All counsel in juvenile proceedings have a duty to act competently in accordance with Welfare & Institutions Code § 202 and Rules of Professional Conduct, rule 3-110, as well as the specific duties enumerated in Penal Code § 1240.1 and in the Rules of Court, rule 5.663. These duties, while applicable, shall not be exclusive. **(Effective July 1, 2012, New)**

6.8.6 Law Enforcement Requests to Take Minor Off-Site

A. Law enforcement must obtain a court order from a judge of the Juvenile Court prior to removing a minor from the Juvenile Justice Campus. Local Rule 6.8.3 shall be followed in order to make the request.

Requests pertaining to delinquent children may be sent to the judge assigned to the case:

Delinquency Clerk's Office
Juvenile Justice Campus
3333 E. American Ave., Bldg. 701, Ste. A
Fresno, California 93725

1. Contents of Request. Every request will contain the following information:

   a. The name of the minor;

   b. The reasons for the request, with specificity;

   c. The duration of the off-site travel;

d. The nature of the off-site travel; and

e. A proposed order.

2. Items b-c may be attached to the Application in a supporting attachment. **(Effective July 1, 2012, New)**

RULE 6.9 COMPETENCY PROTOCOL

A. Introduction

1. The following protocol applies when it appears that there is a doubt as to the competency of a minor to stand trial or participate in Juvenile proceedings in a delinquency case.

2. This protocol is intended to supplement the provisions of Welfare & Institutions Code § 709, and the California Rules of Court, rule 5.645. In the event that a conflict arises between this protocol and the statute or rule, the statutory and rule provisions control.

3. This protocol is also intended to support Welfare & Institutions Code § 202 and enable a collaborative approach toward issues of competency. The Court should always consider the rehabilitative needs and best interests of the minor and concurrently the interests of public safety and protection of the community. Victims that desire to be present at competency proceedings may attend consistent with Welfare & Institutions Code § 676.5.

4. In order to accomplish the goals of this protocol, the Court shall convene a meeting/staffing of a Juvenile Competency Attainment Team (JCAT).

5. The JCAT is a juvenile justice multidisciplinary team engaged in the prevention, identification and control of crime pursuant to Welfare & Institutions Code § 830.1 and may share information pursuant to the parameters therein consistent with federal regulations.

B. Informal Resolution/Competency Assessment Hearing (CAH)

1. Consistent with Welfare & Institutions Code § 680, when it appears that there may be a doubt as to the competency of a minor; the parties are encouraged to seek an informal resolution of the matter, by way of stipulation or agreement.

2. In order to attempt to facilitate an informal resolution, the Court may order a staffing/assessment is to be prepared by the Juvenile Competency Attainment Team (JCAT), under the protocol stated below.

3. At any time during the proceedings, either the District Attorney or defense counsel for the minor may request that a Formal Competency Hearing be scheduled and informal resolution proceedings under Section B2 shall be terminated. (See section C1 of the Protocol)

4. Once doubt has been raised pursuant to this protocol, the Court may set a hearing within five (5) court days (or as soon thereafter as possible) in order to have the JCAT meet and confer about potential options. See Welfare & Institutions Code § 4096. If the minor is not in custody the Court may set a hearing within fifteen (15) court days in order to have the JCAT meet and confer about potential options.

5. A representative from the Department of Behavioral Health (DBH) shall meet with the minor prior to the CAH and may collect information from other JCAT members, family members and/or guardians in order to present clinical impressions to the JCAT at the CAH.

The JCAT on any particular case is to consist of the following representative members; although, each will only be noticed as requested by the Court:

a. Judge

b. Defense Counsel for the Minor

c. District Attorney

d. Probation

e. Department of Behavioral Health

f. Department of Social Services (DSS)

g. Central Valley Regional Center (CVRC)

h. Fresno County Office of Education/Fresno Unified School District

i. Other School District Representation

j. County Counsel/Public Guardian

k. Other government or community based organization as designated by the Court (i.e., trial representative)

6. The JCAT will be noticed of the CAH date and time electronically or by phone by Court staff and will be advised to either attend the CAH with relevant documents or to advise that they do not have relevant information to provide as to the subject minor (these orders are made consistent with the Court's subpoena powers per Welfare & Institutions Code § 727(a)).

7. The Court should consider the following potential outcomes of the CAH:

a. Informal Probation per Welfare & Institutions Code § 654

b. Welfare & Institutions Code § 725

c. Placement within CVRC diversion pursuant to Penal Code § 1001.21 et seq.

d. DSS placement

e. Suspension of proceedings per Welfare & Institutions Code § 709

f. Guardianship per WIC § 705, 5000 (Lanterman-Petris-Short Act), 6551 and/or Penal Code § 4011.6

g. Stipulation as to Competency or Incompetency

h. Formal Probation with appropriate terms and conditions

i. The JCAT and the Court may conclude that the minor is not competent and thereafter schedule the matter for a Competency Review Hearing (see section F).

C. <u>Setting the Competency Determination Hearing (CDH)</u>

1. Pursuant to Welfare & Institutions Code § 709(a), when the Court or minor's counsel formally declares a doubt as to the competency of the minor and the Court finds substantial evidence to support the finding, proceedings as to the minor shall be suspended. It is the intent of this protocol to make these determinations only after or at the time of a CAH or if the parties refuse such hearing.

2. Where the Court or minor's counsel formally declares a doubt as to the competency of the minor, the Court shall set the matter for a Formal CDH as follows:

a. If the minor is in custody, the hearing shall be set within twenty (20) court days from the date of the CAH or from the finding made pursuant to Welfare & Institutions Code § 709.

b. If the minor is not in custody the hearing shall be set within thirty (30) court days from the date of the CAH or from the finding made pursuant to Welfare & Institutions Code § 709.

c. Upon a showing of good cause, the Court may extend the day for the setting of the CDH or continue the hearing date.

3. Once the matter is to proceed to a formal CDH, the Court shall appoint an expert psychologist or psychiatrist pursuant to Welfare & Institutions Code § 709(b).

D. **Evaluation of the Minor**

1. The qualifications of the Evaluator are to be governed by Welfare & Institutions Code § 709(b) and California Evidence Code § 730.

2. The psychiatrist/psychologist appointed will be chosen from a list on a rotational basis as determined by the Presiding Judge of the Juvenile Delinquency Court. The clerk of the Court assigned to the case shall provide the name to the Court of the panel psychologist/psychiatrist next available in rotation. The Court assigned to the case along with the Probation Department will be responsible for arranging the interview between the minor and the Evaluator.

3. The psychologist/psychiatrist will be provided with any and all documents or reports presented to the JCAT. The JCAT folder (which contains all reports or documents presented at the CAH) is to be delivered by the Court to the Evaluator within one (1) business day of the CAH or the formal declaration. The Court shall make all determinations as to which documents will be provided to the evaluator for purposes of the CDH. Attorneys and/or Probation or other JCAT members may provide additional reports including police reports or other documents which they determine may assist with the formal evaluation. Any reports received by the Evaluator must thereafter be returned to the Court, which thereafter holds the formal CDH.

4. In the event that minor's counsel objects to revealing the identity of any health care provider records, school or employer or custodian of any other relevant records regarding the minor, minor's counsel shall raise the objection in court. The District Attorney may similarly raise objections to the inclusion of reports within the JCAT folder. The Court may examine minor's counsel in chambers in order to rule on the objection, or may schedule a separate hearing in order to evaluate and rule on which documents are to be excluded from the JCAT folder

5. The Order appointing the Evaluator shall set forth the issues upon which the Evaluator is to express an opinion per Welfare & Institutions Code § 709 as follows:

a. Does the minor suffer from a mental disorder, developmental disability, developmental immaturity or other condition:

1) Which causes the minor to lack sufficient present ability to consult with counsel and assist in preparing the defense with a reasonable degree of rational understanding; or

2) Which causes the minor to lack a rational as well as factual understanding of the nature of the charges or proceedings.

b. The Evaluator shall also render a professional opinion as to whether the minor is likely to benefit from attempts at attaining competency, i.e. what interventions, treatment, education, programs or training may assist the minor in attaining competency and whether with available resources there is a substantial probability that the minor will be able to attain competency in the foreseeable future.

The Evaluator may contact any of the JCAT members, excluding counsel and the judicial officer to provide further information that may assist in answering any of the queries outlined above.

6. The Evaluator shall submit a report and three copies to the Court within two (2) court days prior to the date set for the formal CAH. The JCAT folder is to be returned to the Court by the Evaluator (however, maybe utilized by the Evaluator during any hearings that are held pursuant to this protocol).

E. **Competency Determination Hearing (CDH)**

1. The Court shall conduct a hearing to determine whether the minor is competent. At the hearing, the Court may consider the Evaluator's report, testimony by the Evaluator, and any other records or testimony proffered by the parties (including the JCAT folder). The District Attorney or minor's counsel at their expense may request, with good cause, another Welfare & Institutions Code § 709(b) evaluation be conducted prior to the formal hearing.

2. The burden of proving incompetence is upon the minor's counsel and must be shown by a preponderance of the evidence.

3. Upon a finding of competence, the suspension of proceedings shall be ordered vacated.

4. Upon a finding of incompetence, the Court shall set the matter for a Competency Review Hearing (CRH). All proceedings shall remain suspended.

5. The Court may make orders it deems appropriate for services that may assist the minor in attaining competence and may rule on motions that do not require the participation of the minor as delineated in Welfare & Institutions Code § 709(c).

F. **Competency Review Hearing (CRH) and Competency Restoration**

1. After any determination of incompetence, the Court shall order the JCAT to reconvene and shall determine which members shall participate in the CRH. The members may reconvene either in person or by other telephonic or electronic method; however, counsel and the judicial officer are not to participate in the evaluations of the minor for purposes of submission of a CRH Planning Report.

2. If the minor is detained in custody, the CRH shall be set within fifteen (15) court days from the finding of incompetence. If the minor is out of custody, the CRH shall be set within thirty (30) court days from the finding of incompetence. After the first CRH is held, subsequent CRHs are to be held every forty-five (45) court days. Upon a showing of good case, the Court may extend the day for the setting of the CRH or continue the hearing date.

3. The report is to be submitted jointly by representatives from DBH and Probation. The report should outline the nature of the charges pending before the Court, and contain general information about the status of the case and the date the minor was declared incompetent. The body of the report should address three areas. The **first section** should address the services that are available in order to assist the minor in obtaining competency. These services can include but are not limited to, mental health services, placement services, educational services, rehabilitative services, and psychiatric services, and should address whether these services can best be met safely in the home, community, or an open or closed residential facility. (This portion of the Planning Report is similar in structure to the Mini Treatment plan). The JCAT, when submitting its Planning Report must always consider that the minor be held in the least restrictive setting and may only be detained pursuant Welfare & Institutions Code § 636. Providing services to attain competency should always include coordination of services from JCAT members. The report in the **second section** should address the minor's compliance with the current plan and the status of implementation of the plan. The **third section** of the report should address in a general overview, the minor's progress toward regaining competency. The joint report is to be provided to the Court and counsel two (2) court days prior to the CRH.

4. The CRH shall typically be handled as an informal hearing in order for the parties to promote the best interests of the minor and restoration of competency. However, either counsel may request a contested hearing be held as to any of the proposed orders for treatment or housing, or if there is a determination being sought as to the ultimate issue of restoration of competency. Any party requesting such formal hearing must do so with advance notice if at all possible. Notice by the objecting party must be served on all parties and requests made to JCAT members to be present in order to testify if necessary; subpoenas may be requested of the Court upon a contested hearing being scheduled. The purpose of the CRH is to determine whether:

a. The minor has regained competency or whether there is a substantial probability that the minor will attain competency in the foreseeable future;

b. The minor is progressing in the course of treatment that has been previously ordered for the minor;

c. The minor needs adjustments in the services being provided in order to promote the least restrictive setting for continued treatment or in order to promote the safety of the minor and/or the public.

5. If a determination is being requested at the CRH that the minor be determined competent and that delinquency proceedings be reinstated, the Court, District Attorney, or counsel for the minor may request a new evaluation and CDH be held consistent with sections C through E of the Protocol. The preference is for the Court to appoint the same doctor that conducted the initial Evaluation.

6. If a determination is made that there is not a substantial probability that the minor will attain competency in the foreseeable future, the Court and the JCAT may pursue hospitalization of the minor pursuant to Welfare & Institutions Code §§ 705, 5000, 6551 and/or Penal Code § 4011.6, the JCAT can determine whether the minor would benefit from a conservatorship under the LPS Act and the JCAT should cause to file an Application for Mental Health Conservatorship Investigation with the Public Guardian's Office. The JCAT, upon pursuit of either option, should work collaboratively toward the best interests of the minor and in accordance with this protocol.

7. The Court may at any time that it determines there is not a substantial probability that the minor will attain competency in the foreseeable future, determine that all other options are not appropriate and that the case must be dismissed. Under no circumstances shall a minor be held in a custodial setting in excess of one hundred fifty (150) days after the determination of incompetency has been made on the case which is the subject of the competency proceedings. **(Effective January 1, 2013; adopted as Rule 6.9 effective July 1, 2012)**

(Chapter 6 amended effective January 1, 2006; adopted as VI effective July 1, 1992)

CHAPTER 7. PROBATE RULES

RULE 7.1 PLEADINGS

7.1.1 Form of Documents Presented for Filing in Probate Matters

A. When printed forms are reproduced on the front and back of a single sheet, the back sheet shall be inverted (tumbled) so that it can be read when affixed at the top in a file folder.

B. All persons filing as self-represented shall file with the court a separate verified declaration regarding his or her residence address, if the residence is not the address of record in the proceeding.

C. When a petition or other request for relief is presented to the court, the Probate Code section that allows the requested relief must appear below the title of the pleading.

D. If a beneficiary, heir, child, spouse, or registered domestic partner in any action before the Probate Court is deceased, that person's date of death shall be included in the petition.

E. When any document is filed for which a hearing is requested, an extra copy of the first page of the pleading shall be provided to the Clerk.

F. A proposed Order shall be submitted with all pleadings that request relief. If the proposed Order is not received in the Probate Filing Clerk's Office ten (10) days before the scheduled hearing, a continuance may be required.

G. All documents relating to a matter set for hearing shall have the hearing date, time and department set forth on the face of the document.

H. All documents containing attachments, schedules or exhibits shall be indexed and tabbed at the bottom. Each page shall have page numbers to facilitate review by the Probate Examiner's Office and the court. **(Rule 7.1.1 renumbered effective January 1, 2006; adopted as Rule 70.1 effective July 1, 2004)**

7.1.2 Filing Fees for Trust Matters

All initial proceedings for court supervision of trusts (including but not limited to related but separate trusts, or testamentary trusts funded by a probate) and Petitions to Establish Special Needs Trusts are new actions, and require assignment of a new case number and payment of a current filing fee. **(Effective January 1, 2015; Rule 7.1.2 renumbered effective January 1, 2006; adopted as Rule 70.2 effective January 1, 2004)**

(Rule 7.1 renumbered effective January 1, 2006; adopted as Rule 70 effective July 1, 1992)

RULE 7.2 PROBATE APPEARANCES

7.2.1 Appearance Requirements

Court appearances are required at all hearings unless the matter has been recommended for approval (see Rule 7.3). When an appearance is required, local attorneys or unrepresented parties are expected to appear in person or by telephone, pursuant to California Rule of Court 3.670. **(Effective July 1, 2008; Rule 7.2.1 renumbered effective January 1, 2006; adopted as Rule 71.1 effective January 1, 2004)**

7.2.2 Telephonic Appearances

Attorneys or parties may appear by "Court Call," by making prior arrangements with the private company that administers the program. Court Call may be arranged by calling (888) 882-6878, or the telephone number of any other vendor as approved by the Court. **(Effective January 1, 2017; Rule 7.2.2 renumbered effective January 1, 2006; adopted as Rule 71.2 effective January 1, 2004)**

(Rule 7.2 renumbered effective January 1, 2006; adopted as Rule 71 effective July 1, 1992)

RULE 7.3 PRE-APPROVED MATTERS/PROBATE EXAMINERS

A. All matters set for hearing are reviewed in advance by Probate Examiners. If the matter is submitted properly, if all procedural requirements have been satisfied, and if the matter does not require discretionary consideration by the Probate Judge, the matter will be pre-approved, and a court appearance will be unnecessary.

B. A list of pre-approved, continued, and off calendar cases on the next day's calendar will be posted on the Court's web site by 4:00 p.m. daily.

C. Pre-approved matters are called by the court at the time set for hearing. If there are no objections, and if the Probate Judge approves, the Order will be signed at that time. If someone appears at the hearing to object, or if the Probate Judge does not approve the petition, a new hearing date will be set and a copy of the minute order will be mailed to the moving party or attorney.

D. For all non-confidential matters, a copy of the Probate Examiner Notes is available upon request or can be retrieved by going to the Court's website, at www.fresno.courts.ca.gov.

E. If a matter is not pre-approved due to procedural irregularities or omissions, parties may submit to the Probate Filing Clerk additional documents to cure the irregularities or omissions, up to 24 hours before the hearing. Any additional documents received less than 24 hours before the hearing may not be considered by the court, and the matter may need to be continued. **(Effective January 1, 2017; Rule 7.3 renumbered effective January 1, 2006; adopted as Rule 72 effective January 1, 2004)**

RULE 7.4 CONTINUANCES

7.4.1 Regularly Calendared Matters

On the call of the calendar, matters not ready for hearing shall be continued by the court. The length of continuance shall be determined upon the facts and size of the calendar. A matter is considered not ready for hearing if notices, supplements, or other documentation curing all discrepancies or omissions, other than strictly court-determined matters, are not submitted to the Probate Examiner's Office at least twenty-four (24) hours in advance of the hearing date. If the matter is not ready on the continued date, it may be ordered off calendar or may be denied without prejudice unless a request for continuance is granted by the court upon the personal appearance by counsel or the petitioner, if self-represented. **(Effective January 1, 2017; Rule 7.4.1 renumbered effective January 1, 2006; adopted as Rule 73.1 effective January 1, 2004)**

7.4.2 Objections

The court may continue a matter so that written objections may be filed. When a matter has been continued to allow written objections, they shall be filed and served on all interested parties no later than five (5) days prior to the continued hearing date, unless otherwise ordered by the court. **(Rule 7.4.2 renumbered effective January 1, 2006; adopted as Rule 73.2 effective January 1, 2004)**

7.4.3 Limitations on Continuances

Status hearings and hearings for 30-day review of ex-parte temporary guardianship or conservatorship orders may only be continued by the judge at the time of the hearing. For all other matters, the Probate Clerk's Office may grant a maximum of two continuances on any particular matter on a request made by the petitioning party made no later than the close of business two days prior to the hearing. Any further continuances must be made in court, by the Judge, at the time set for hearing. **(Effective January 1, 2017; Rule 7.4.3 renumbered effective January 1, 2006; adopted as Rule 73.3 effective January 1, 2004)**

7.4.4 Notification of Parties

A party obtaining a continuance is responsible for noticing all parties who have received notice of the hearing by close of business the day prior to the hearing. If there are unnecessary appearances made and notice was not given, the party requesting a continuance may be assessed and held responsible for costs of those persons appearing. **(Effective January 1, 2017; Rule 7.4.4 renumbered effective January 1, 2006; adopted as Rule 73.4 effective January 1, 2004)**

7.4.5 Resetting a Matter Taken Off Calendar

If a petition has been taken off calendar, it may be re-set for hearing by filing a new Notice of Hearing form, entitled "RESET Notice of Hearing." Reference shall be made to the original hearing date, and the new Notice shall be served in the same manner as that required for the original hearing. **(Rule 7.4.5 renumbered effective January 1, 2006; adopted as Rule 73.5 effective January 1, 2004)**

(Rule 7.4 renumbered effective January 1, 2006; adopted as Rule 73 effective January 1, 2004)

RULE 7.5 STATUS HEARINGS AND STATUS REPORTS

A. If a trustee or a court appointed Personal Representative, Guardian, or Conservator fails to timely file a required account, report, or petition for distribution, the court will set the matter for Status Hearing. Appearance at the hearing is mandatory for parties and counsel.

B. In all matters set for Status Hearing, (except as provided in the following paragraph) verified Status Reports must be filed no later than five (5) days before the hearing. Status Reports must comply with the applicable code requirements. A Proof of Service, together with a copy of the Status Report, shall be served on all parties who are legally entitled to notice of the underlying petition. Failure to comply with any part of this rule may result in the immediate imposition of sanctions.

C. If the required account, report, or petition for distribution is filed at least five (5) days before the date set for the Status Hearing, no Status Report is required. The filing party shall notify the Probate Filing Clerk or Probate Examiner, in writing or via email or FAX that the necessary documents have been filed and the date of the hearing thereon. Upon such timely notification, the Status Hearing will be taken off calendar. **(Effective January 1, 2017; Rule 7.5 renumbered effective January 1, 2006; adopted as Rule 74 effective January 1, 2004)**

RULE 7.6 ORDERS

7.6.1 Form of Orders

A. All orders or decrees in probate matters must be complete in themselves. Orders shall set forth all matters ruled on by the court, the relief granted, and the names of persons, descriptions of property and/or amounts of money affected with the same particularity required of judgments in general civil matters. Monetary distributions must be stated in dollars, and not as a percentage of the estate.

B. If the order contains riders or exhibits, the signature line provided for the judicial officer shall appear after all such exhibits, at the end of the complete document.

C. All orders distributing property and orders settling accounts shall contain a statement as to the balance of the estate on hand, specifically noting the amount of cash included in the balance.

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

E. In no case shall any material appear after the signature of the judge.

F. Some portion of the contents of the order must appear on the page upon which the judge's signature is affixed. **(Effective January 1, 2015; Rule 7.6.1 renumbered effective January 1, 2006; adopted as Rule 75.1 effective January 1, 2004)**

7.6.2 Pre-Approved Orders

Orders on uncontested matters may be approved by the court at the time noticed for hearing. A copy of the signed order will be immediately available to appearing counsel. Unrepresented parties may generally obtain a copy of the order at the Probate Clerk's Office after 1:30 p.m. on the day of the hearing. **(Effective January 1, 2017; Rule 7.6.2 renumbered effective January 1, 2006; adopted as Rule 75.2 effective January 1, 2004)**

7.6.3 Orders Correcting Clerical Errors

A. If, through inadvertence, the signed order is incorrect, and such inadvertence is brought to the attention of the court by written ex parte petition, the court will sign a new, correct order that relates back to the date of the original order (nunc pro tunc).

B. If the nunc pro tunc order does not restate all of the terms of the original order, it shall be substantially in the following form: "Upon consideration of the petition of (name of declarant) to correct a clerical error, the (title and date of mistaken order) is corrected by striking the following: (incorrect sentence or paragraph) and by substituting the following: (correct sentence or paragraph."

C. A complete sentence or paragraph shall be stricken, even if it is intended to correct only one word or a single figure. Reference shall be made to page and line numbers of the order being corrected. **(Rule 7.6.3 renumbered effective January 1, 2006; adopted as Rule 75.3 effective January 1, 2004)**

(Rule 7.6 renumbered effective January 1, 2006; adopted as Rule 75 effective January 1, 2004)

RULE 7.7 EX PARTE PROCEEDINGS

A. All ex parte petitions requesting that notice be dispensed with must be filed with the Court. The Court may grant or deny an ex parte request, or may set the matter for hearing and require notice to appropriate parties. If set for hearing the appropriate filing fees are due.

B. No testimony is taken in connection with ex parte applications in the Probate Department, so the application must contain facts sufficient to justify the relief requested. The facts stated in each declaration shall be set forth with particularity. Each declaration shall show affirmatively that the declarant can testify competently to the facts stated therein. The declarant may be any person who has knowledge of the facts. The application and declarations must be verified.

C. All ex parte applications and stipulations, shall be accompanied by a separate order complete in itself. It is not sufficient for such an order to state that the application has been granted.

D. Requests to dispense with accountings will not be considered ex parte.

E. Petitions for Final Distribution on Waiver of Account or Accountings on Waiver of Notice may not be submitted ex-parte, but shall be placed on the court's regular calendar. **(Effective January 1, 2017; Rule 7.7 renumbered effective January 1, 2006; adopted as Rule 76 effective January 1, 2004)**

RULE 7.8 BLOCKED ACCOUNTS

7.8.1 General Provisions

A. **Notice and Hearing.** A petition seeking to deposit funds or securities into a blocked account in a financial institution or trust company may be granted by the court ex parte.

B. **Title to Account.** The order as well as the title to the blocked account shall show the name of the minor, conservatee, or estate and shall state that the account is "blocked" and that no withdrawals of principal or interest shall be made without the prior written order of the court.

C. **Account Requirements.** All cash deposits into blocked accounts shall be into federally insured, interest bearing accounts.

D. **Maximum in Blocked Accounts.** In no event shall assets exceeding the maximum insured amount be held in any one federally insured depository. If it becomes necessary to transfer funds to an additional federally insured depository to comply with this rule, a request to transfer such funds may be submitted to the court on ex parte application, and the transfer shall be by an interbank or other direct transfer transaction unless otherwise approved or ordered by the court.

E. **Separate Petitions and Blocked Accounts for Each Minor or Person.** A separate petition shall be filed for each minor or person whose funds are to be deposited into a blocked account. A separate blocked account shall be established for the funds of each minor or person.

F. **Withdrawals.** Withdrawals from a blocked account may be requested by ex parte application using the appropriate Judicial Council form. In all cases, sufficient documentation to support the requested withdrawal must be submitted with the application, including copies of bills, statements, or letters related to the request.

G. **Notice.** The court in its discretion may require a noticed hearing, even if the request to withdraw funds is submitted ex parte.

H. **Direct Payment.** If the withdrawal is granted, the order shall provide that payment will be made directly to the vendor or service provider and not to the applicant, unless the withdrawal is for reimbursement of an expense already paid by the applicant.

I. **Court Policy.** Absent a showing of good cause, it is the policy of the court to block all funds in Guardianship Estates. **(Effective January 1, 2017; Rule 7.8.1 renumbered effective January 1, 2006; adopted as Rule 77.1 effective January 1, 2004)**

7.8.2 Accounting Requirements for Blocked Accounts

A. If a guardianship of the estate is established and the court orders that all assets are to be deposited into a blocked account, the guardian shall file an inventory and appraisal within ninety (90) days of appointment and thereafter file a first account one (1) year after date of appointment. The petition on the first account may include a request that the court dispense with further accountings until the guardianship is terminated.

B. If the guardian of the estate requests authority to deposit the minor's funds into a blocked brokerage account, mutual fund or similar investment account to allow greater flexibility in investments, the court will not dispense with accountings but will continue to require annual and biennial accountings even though all assets are blocked. If accountings are not dispensed with, the Court will set a status hearing for the filing of the next accounting. **(Effective January 1, 2017; Rule 7.8.2 renumbered effective January 1, 2006; adopted as Rule 77.2 effective January 1, 2004)**

7.8.3 Withdrawals from Minor's Blocked Account During Minority

A. With the exception of withdrawals to pay taxes on a minor's funds, requests to withdraw funds will ordinarily be denied if either or both parents are living and financially able to pay the requested expenditure. An application to withdraw funds to pay income taxes on the minor's funds shall include a breakdown of state and federal taxes due and any costs of preparation. An application to withdraw funds for purposes other than payment of taxes shall be accompanied by a financial declaration by the parent or parents describing their income and expenses and, if applicable, other circumstances justifying the use of the minor's assets. A statement regarding the minor's employment and income, if any, shall also be attached. If the request is for multiple items, each item must be listed separately, with its cost.

B. If a withdrawal is requested for the purchase of a car, a copy of the proposed purchase/sale agreement shall be attached to the application showing the type of car, year, purchase price, and whether payment will be made in full or in specified installments. A binding agreement shall not be entered into before obtaining a court order. A casualty and liability insurance quote shall be attached to the application showing public liability coverage at (i) current state minimum limits or greater limits if ordered by the court, or (ii) per person and per accident for automobile insurance or policy limits equal to the funds which will remain on deposit after the purchase, whichever is greater. The application shall contain an explanation of who will pay for the insurance. A copy of the minor's current report card; a statement as to who will pay for the automobile's maintenance; and a statement of the current availability of public and alternate transportation shall also be submitted.

C. If the request for withdrawal pertains to medical or dental care, including orthodontia, a statement from the doctor, dentist or orthodontist regarding the need for the treatment to be performed and the cost of the treatment shall be submitted, together with a declaration by the applicant explaining why the expense is not covered by insurance.

D. Requests to pay for educational or recreational programs must describe the program and include a statement as to the necessity or appropriateness of the program for the minor. **(Effective January 1, 2017; Rule 7.8.3 renumbered effective January 1, 2006; adopted as Rule 77.3 effective January 1, 2004)**

(Rule 7.8 renumbered effective January 1, 2006; adopted as Rule 77 effective January 1, 2004)

RULE 7.9 PUBLICATION

A. If the decedent resided or a non-resident decent, owned property within the city limits of the following cities, publication shall be made as follows:

If the residence or property owned was in:	**Publish in**
Clovis or Fresno	Fresno Bee, or Fresno Business Journal
Kerman	Kerman News
Kingsburg	Kingsburg Recorder
Mendota	Firebaugh Mendota Journal, or Mendota Times
Prather	Mountain Press
Reedley	Reedley Exponent
Sanger	Sanger Herald
San Joaquin	Westside Advance
Selma	Selma Enterprise

B. If the decedent lived outside the city limits of the cities listed above, or anywhere else within the County of Fresno, publication shall be in the Fresno Bee or the Fresno Business Journal. This includes but is not limited to the following areas: Auberry, Big Creek, Biola, Cantua Creek, Caruthers, Centerville, Coalinga, Del Rey, Dunlap, Firebaugh, Five Points, Fowler, Friant, Huron, Kings Canyon, Laton, Miramonte, Orange Cove, Parlier, Piedra, Pinedale, Raisin City, Riverdale, Shaver Lake, Squaw Valley, Tollhouse, or Tranquility. **(Effective January 1, 2017; Rule 7.9 renumbered effective January 1, 2006; adopted as Rule 78 effective January 1, 2004)**

RULE 7.10 LETTERS FOR MULTIPLE REPRESENTATIVES

When more than one person is appointed as guardian, conservator, or personal representative, the names and signatures of all appointed persons shall appear on each copy of the Letters to be issued by the Clerk. **(Rule 7.10 renumbered effective January 1, 2006; adopted as Rule 79 effective January 1, 2004)**

7.10.1 Duties and Liabilities

The birth date and driver's license number, if any, of a personal representative (other than public entities or trust companies) shall be provided in the receipt of acknowledgement of duties and liabilities as required by Probate Code section 8404. This information shall be kept confidential and shall not be made available for public inspection without a court order. **(Effective January 1, 2006, New)**

(Rule 7.10 renumbered effective January 1, 2006; adopted as Rule 79 effective January 1, 2004)

RULE 7.11 INVENTORY AND APPRAISAL

7.11.1 Definitions

A "Final" Inventory and Appraisal may be submitted as a complete inventory of all estate assets, or may be filed after the filing of a partial inventory.

A "Partial" Inventory describes only a portion of the known estate assets, and should be identified as "Partial #1," #2, etc.

A "Supplemental" Inventory contains assets discovered or received after a Final Inventory and Appraisal has been filed.

A "Corrected" Inventory supersedes and completely restates an original inventory (final, partial or supplemental) and should show the total inventory amount as amended. **(Rule 7.11.1 renumbered effective January 1, 2006; adopted as Rule 80.1 effective January 1, 2004)**

7.11.2 Inventory Description of Real Property

The Inventory and Appraisal shall describe real property by legal description, street address (if any), whether improved or unimproved, and any assessor's parcel number. The Inventory must identify the estate's interest in the property by percentage of ownership, and how title was held (i.e., joint tenancy, community property, sole and separate property, etc.) **(Rule 7.11.2 renumbered effective January 1, 2006; adopted as Rule 80.2 effective January 1, 2004)**

***(Rule 7.11 renumbered effective January 1, 2006; adopted as Rule 80 effective January 1, 2004*)**

RULE 7.12 PETITIONS FOR DISTRIBUTION

7.12.1 Listing of Property to be Distributed

A petition for distribution must list and describe in detail all property to be distributed. The description shall include cash on hand. Promissory notes must be described as secured or unsecured. If secured, the security interest must be described. The legal description and APN of all real property must be included. Description in the petition of any asset by reference to the inventory is not acceptable. **(Rule 7.12.1 renumbered effective January 1, 2006; adopted as Rule 81.1 effective January 1, 2004)**

7.12.2 Characterization of Property to be Distributed

A petition for distribution must describe the character of the property, whether separate or community. If some portion of the estate consists of community property, the petition must show whether the interest to be distributed is the decedent's one-half (1/2) interest in the community property or the community property of both spouses. **(Rule 7.12.2 renumbered effective January 1, 2006; adopted as Rule 81.2 effective January 1, 2004)**

7.12.3 Distribution of Personal Effects

The Court will not order distribution of personal property, including but not limited to furniture, vehicles, or appliances, in undivided interests without factual allegations showing good cause or the written consent of all distributes. Parties requesting distribution of personal property in undivided interests to a minor must first submit a detailed declaration documenting the need therefor and why it would be in the minor's best interest. **(Effective July 1, 2016; Rule 7.12.3 renumbered effective January 1, 2006; adopted as Rule 81.3 effective January 1, 2004)**

7.12.4 Distribution of Real Property

A. The court will not order distribution of real property in undivided interests without factual allegations showing good cause or the written consent of all distributees.

B. Parties requesting distribution of real property in undivided interests to a minor must first submit a detailed declaration documenting the need therefore and why it would be in the minor's best interest. **(Effective January 1, 2017; adopted as Rule 7.12.4 effective January 1, 2008)**

7.12.5 Distribution to Inter Vivos Trusts

If property in the estate is to be distributed to a pre-existing trust, the current trustee must file a declaration setting forth the name of the trust, its establishment date, that a taxpayer identification number has been obtained, verifying that the trust is in full force and effect, and that the trustee has an executed copy of the trust in possession. **(Effective January 1, 2017, Rule 7.12.4 effective January 1, 2006; adopted as Rule 81.4 effective January 1, 2004)**

7.12.6 Retention of Closing Reserve

A. Petitions for final distribution that request the retention of funds from distribution (a closing reserve) in excess of $5,000.00 shall be subject to an informal accounting to be filed with the Court within six (6) months of the date of the order for final distribution. The informal accounting shall be filed with the Court ten (10) days prior to the six-month status hearing which the Court shall set at the time the order for final distribution is made. If the informal accounting is timely filed and meets with the Court's satisfaction, the status hearing for the informal accounting may come off calendar and no appearance at the hearing will be required.

B. Where the closing reserve is in excess of $5,000.00 an order for final distribution of an estate shall specifically set forth the use that may be made of the funds retained for closing reserve. The informal accounting of funds retained for closing reserve shall specify the date of payments and all uses of the retained funds (i.e., income taxes, final closing costs, property tax assessments). The Court in its discretion may require a noticed hearing on the accounting and/or a more formal accounting of the funds retained for closing reserve.

C. Where the closing reserve is in excess of $5,000.00 the application for final discharge of the personal representative must include the disposition of all funds retained for closing reserve and receipts from beneficiaries shall be filed for any distributions of the retained funds to beneficiaries.

D. No closing reserve funds shall be used for attorney fees or personal representative compensation. **(Effective January 1, 2017; adopted as Rule 7.12.6 effective July 1, 2015)**

(Rule 7.12 renumbered effective January 1, 2006; adopted as Rule 81 effective January 1, 2004)

RULE 7.13 WAIVER OF ACCOUNTING IN PROBATE ESTATES

A petition requesting distribution on a waiver of accounting shall include the current status of all inventoried items. The petition must include a list of the property on hand for distribution as it exists at the time of the petition and not merely as shown on the inventory and appraisal, unless there has been no change. **(Rule 7.13 renumbered effective January 1, 2006; adopted as Rule 82 effective January 1, 2004)**

RULE 7.14 DISCLAIMERS AND ASSIGNMENTS IN PROBATE ESTATES

A copy of a disclaimer must be on file prior to the hearing on a petition for distribution of an affected asset. An assignment of a beneficiary's interest in a probate estate shall be filed prior to the hearing on a petition for distribution of the beneficiary's interest. **(Rule 7.14 renumbered effective January 1, 2006; adopted as Rule 83 effective January 1, 2004)**

RULE 7.15 CONSERVATORSHIPS AND GUARDIANSHIPS

7.15.1 Investigation Costs

Unless investigation fees are waived, pursuant to Probate Code section 1851.5 or 1513.1, the Court will assess fees for the cost of investigations in guardianship and conservatorship cases. Investigation fees in guardianship matters will usually be waived if the fee for filing the initial petition was waived. Petitioners who do not qualify for a waiver of investigation fees, may request a monthly installment plan. Monthly billing statements will be sent to conservators, guardians or parents, and copies will be sent to their attorneys. If the installment payment becomes 90-days in arrears, accounts will be forwarded to an outside collection agency.

Payments can be made in the Clerk's Office or mailed to the following address:

Fresno County Superior Court
Attention: Probate
1130 O Street, Room 300
Fresno, CA 93721

(Effective January 1, 2014; Rule 7.15.1 renumbered effective January 1, 2006; adopted as Rule 84.1 effective January 1, 2004)

7.15.2 Independent Powers

It is the policy of the court to grant a guardian or conservator only those independent powers necessary in each case to administer the estate. A request for all powers described in Probate Code § 2591 will not be granted by the court. Each independent power requested must be justified by, and narrowly tailored to the specific circumstances of that case. Any powers so granted must be specified in the order and in the Letters of Guardianship or Conservatorship. **(Rule 7.15.2 renumbered effective January 1, 2006; adopted as Rule 84.2 effective January 1, 2004)**

7.15.3 Temporary Conservatorships and Guardianships

A. **Filing Procedure**. The original and two (2) copies of the Petition for Appointment of Temporary Guardian or Conservator shall be presented to the Clerk for filing.

B. **Hearings**. All temporary requests are considered by the Court ex parte as well as set for hearing. In each instance, the Court will advise counsel or the self-represented petitioner if the request is granted ex parte and Letters may be made available. Appearance and notice are required at the hearing set for the temporary petition pursuant to Probate Code § 2250 et seq.

C. **Voluntary Mediation**. To expedite court proceedings, the Court may refer or encourage parties to participate in a voluntary mediation.

D. **Requirements**. The court will generally deny requests for ex-parte appointment of a temporary guardian unless the application establishes that a present emergency exists and that the minor is currently residing with the petitioner. If the minor is residing with a parent and the petitioner believes the child is in danger, a referral should be made to Child Protective Services. **(Effective January 1, 2015; Rule 7.15.3 renumbered effective January 1, 2006; adopted as Rule 84.3 effective January 1, 2004)**

7.15.4 Receipt of Public Benefits

When the only asset or income of a proposed conservatee or ward is the receipt of public assistance benefits, the court does not require appointment of a conservator or guardian of the estate. **(Rule 7.15.4 renumbered effective January 1, 2006; adopted as Rule 84.4 effective January 1, 2004)**

7.15.5 Guardianship of the Estate

Where appointment of a guardian of the estate is sought for more than one related minor, a separate case number shall be assigned for each minor. If the petition requests appointment as guardian of the person only, a single petition shall be filed for all sibling minors. **(Effective January 1, 2015; Rule 7.15.6 (now 7.15.5) renumbered effective January 1, 2006; adopted as Rule 84.6 effective January 1, 2004)**

7.15.6 Guardianship Filing Requirements

A. When a Petition for Appointment of a Guardian is filed, the court will retain the original copy of all documents (except the Notice of Hearing), and will require the following additional copies:

1. Face page and two additional copies of the Petition.

2. Two additional copies of the Guardianship Questionnaire.

3. Two additional copies of the Declaration Under Uniform Child Custody and Jurisdiction Act (UCCJEA).

B. The Guardianship Questionnaire is a local form which is available at 1130 O Street, Fresno, CA, or on the court's website. **(Effective January 1, 2012; Rule 7.15.7 (now 7.15.6) renumbered effective January 1, 2006; adopted as Rule 84.7 effective January 1, 2005)**

7.15.7 Effect of Other Pending Proceedings Regarding the Child

A Petition for Appointment of a Guardian of a minor will not ordinarily be considered if any of the following circumstances exist:

A. A matter involving custody of a child is presently pending in the Family Law Court. In such case, a petitioner seeking custody or visitation rights will be instructed to seek joinder in the family law proceeding and request relief from that court. Under emergency conditions, a temporary guardianship may be granted, but only if the child is already in the custody of the proposed guardian.

B. The minor is subject to the jurisdiction of the Juvenile Court. **(Effective January 1, 2012; Rule 7.15.8 (now 7.15.7) renumbered effective January 1, 2006; adopted as Rule 84.8 effective January 1, 2004)**

7.15.8 Conservatorship Requirements

A. **Conservator Video.** Before the hearing on the appointment of a conservator, the proposed conservator shall view the video entitled "With Heart: Understanding Conservatorships." The video is available for viewing in the Probate Clerk's Office or on the Court's website at

www.fresno.courts.ca.gov/probate/conservatorship. Individuals who plan to view the video in the Clerk's Office are encouraged to call the following number for viewing times: (559) 457-1888. The proposed conservator shall present the "Proof of Viewing" form, available in the Clerk's Office and on the Internet, to the Court at the time of the general hearing. A conservator who resides outside of Fresno County and has no access to the Internet may make arrangements to view the video at any other superior court location statewide.

B. **Sale of Conservatee's Residence and Exclusive Listings for Sale.** Petitions for authority to sell the conservatee's residence must be set on the regular probate calendar. Request for authorization to execute an exclusive listing agreement may be submitted ex parte.

C. **Appointment of Successor Conservator.** If the Petitioner and the proposed successor conservator are not the same person, the petition must specifically allege that the petitioner met and conferred with the person being nominated for appointment as successor conservator and that the person agrees to accept appointment as successor conservator. Notice must be mailed to the proposed successor conservator. **(Effective July 1, 2016; Rule 7.15.9 (now 7.15.8) renumbered effective January 1, 2006; adopted as Rule 84.9 effective January 1, 2004)**

7.15.9 Compensation of Court-Appointed Attorney

A. **Source of Payment**. At the time of appointment, the Order Appointing Counsel shall indicate whether the attorney is to be paid by the conservator of the estate, by the person represented, or by the County of Fresno at the court rate.

B. **Payment by Conservator of Estate or Person Represented**. If the conservatee or person represented has the ability to pay compensation and expenses of counsel, as indicated on the Order Appointing Counsel, the attorney shall file a petition for compensation, including a complete statement of the services rendered and a detailed breakdown of the hours spent, the hourly rate and the total amount requested for such services. Notice of the hearing shall be given pursuant to Probate Code § 1460.

C. **Payment by County**. If the conservatee or person represented does not have the ability to pay compensation and expenses of counsel, as indicated on the Order Appointing Counsel, the attorney shall request payment by filing the form entitled "Application and Order for Payment of Attorney's Fees" which is available from the Probate Filing Clerk. The application shall be accompanied by:

1. A complete statement of the services rendered, including the date, hours spent and narrative description of the services rendered, and

2. A detailed breakdown of all expenses paid, if any, including photocopies of receipts.

The application may be submitted to the Probate Filing Clerk, Room 300 of the B.F. Sisk Courthouse, for delivery to the Clerk designated to review and process the application. Questions regarding content and requirements may be directed to the Clerk prior to submission of the application. The attorney may thereafter file a separate ex parte application to be submitted to the Probate Judge for discharge as attorney of record for the conservatee or person represented, without a filing fee.

D. **Payment to Counsel for LPS Conservatee**. If private counsel is appointed to represent an LPS conservatee or proposed LPS conservatee and the person has the ability to pay compensation and expenses of counsel, as indicated on the Order Appointing Counsel, the petition for compensation shall be filed in the LPS proceeding following the guidelines set forth in subsection (B) above. If a conservator of the estate has been appointed, the petition should include the case number of the estate proceeding, if known to the court-appointed attorney. The court shall order the conservator of the estate or, if none, the person, to pay in any manner the court determines to be reasonable and compatible with the person's financial ability.

E. **Time for Submission of Request for Compensation by Court Appointed Attorney.** If an attorney is appointed by the Court to represent a proposed conservatee in connection with appointment of a conservator, any request for attorney fees in relation to the appointment shall be made within ninety (90) days of the appointment of a conservator. If the attorney fees requested related to any other matter involving the conservatee, such as sales or accountings, said fee request shall be made no later than ninety (90) days after the hearing on or conclusion of the matter. If the Court does not discharge counsel for a conservatee at the hearing of a matter and continues the appointment, any final fee request of Court appointed counsel shall be made within ninety (90) days after the Court later discharges counsel, but in no event later than the hearing on a final account. **(Effective January 1, 2017; Rule 7.15.10 (now 7.15.9) renumbered effective January 1, 2006; adopted as Rule 84.10 effective January 1, 2004)**

(Rule 7.15 renumbered effective January 1, 2006; adopted as Rule 84 effective January 1, 2004)

RULE 7.16 ATTORNEY'S FEES AND COMMISSIONS IN GUARDIANSHIP AND CONSERVATORSHIP

A. Attorney fees and commissions in guardianship and conservatorship matters are awarded based upon what is just and reasonable. Except as set forth in Rule 7.16 (B), below, an attorney seeking compensation or reimbursement of costs shall comply with California Rules of Court, Rules 7.750 through 7.752.

B. The court will allow a flat fee for attorney services, without the need to comply with Rule 7.16 (A) above, as follows:

1. Establishment of a conservatorship or guardianship and preparation of the first account: $2,500.00, upon settling the account.

2. Court confirmed sale of real property: $1,250.00.

3. Attorney-prepared income tax returns: $600.00.

4. Each timely filed subsequent account: $1,250.00 per year.

5. If the account is not timely filed, compliance with Rule 7.16 (A), above, is required.

C. The court will allow a flat fee for guardians and conservators, without the need to comply with Rule 7.16 (A), above, as follows:

1. Sale of personal property: 10% of the sales price, up to a maximum fee of $1,000.00.

2. Sale of real property: $1,000.00 (court confirmation is not required).

D. Attorneys, guardians, and conservators may request fees in excess of the flat fees set forth in paragraphs B and C, above, but must comply with the requirements of Rule 7.16 (A), above.

E. Absent a showing of good cause, no fees to the fiduciary or the fiduciary's attorney will be ordered paid in guardianships or conservatorship proceedings until the filing of an inventory and in no event, before the expiration of ninety (90) days from the issuance of letters. Requests for fees to the fiduciary or fiduciary's attorney will be considered as part of a petition for approval of an account. **(Effective January 1, 2015, Rule 7.16 renumbered effective January 1, 2006; adopted as Rule 85 effective July 1, 2004)**

RULE 7.17 REIMBURSEMENT OF ATTORNEY'S, CONSERVATOR'S, GUARDIAN'S OR PERSONAL REPRESENTATIVE'S COSTS ADVANCED

A. The following costs advanced may be reimbursed to the attorney, conservator, guardian or personal representative without prior court permission:

1. Fees charged by the Clerk of the Court.

2. Newspaper publication fee.

3. Surety bond premiums.

4. Probate referee fees.

5. Court investigator's fees.

B. The following expenses are considered by the court to be a business expense and are not reimbursable costs or fees:

1. Photocopy expense (except as set forth in C below).

2. Telephone charges including appearances such as Court Call.

3. Computer research fees.

4. Clerical services.

5. Travel to and from court including parking fees.

6. Communications with Probate Examiners.

7. Runner services and service fees associated with electronic filing.

C. Requests for reimbursement of allowable costs must be supported by itemized declarations and are subject to the court's discretion. Allowable costs include but are not limited to:

1. Postage and photocopy expense when more than ten people are entitled to notice, or in unusual circumstances upon a showing of good cause.

2. Necessary use of alternative delivery services: i.e., UPS, Fed-Ex, wire transfer. **(Effective January 1, 2017, Rule 7.17 renumbered effective January 1, 2006; adopted as Rule 86 effective January 1, 2004)**

RULE 7.18 EXTRAORDINARY FEES IN DECEDENT'S ESTATES

A. The court will allow the following amounts as extraordinary fees for attorneys without further justification or declaration as would otherwise be required by California Rules of Court, Rule 7.702-7.703:

1. Court confirmed sales of real property: $1,000.00.

2. Attorney-prepared Federal Estate Tax return: $2,000.00.

3. Attorney-prepared Estate Income Tax return: $500.00.

B. The court will allow the following amounts as extraordinary fees for personal representatives without further justification or declaration as would otherwise be required by California Rules of Court, Rule 7.702-7.703:

1. Sales of real property: $1,000.00.

2. Sale of personal property: 10% of the sales price, up to a maximum fee of $1,000.00.

3. Personal-representative prepared Federal Estate Tax return: $2,000.00.

4. Personal-representative prepared Estate Income Tax return: $500.00. **(Effective January 1, 2008, Rule 7.18 renumbered effective January 1, 2006; adopted as Rule 87 effective January 1, 2004)**

RULE 7.19 TRUSTS, SPECIAL NEEDS TRUSTS AND SUBSTITUTED JUDGMENTS

A. A copy of the proposed trust instrument shall be attached to the petition. Special needs trust instruments shall include a "Schedule A" which lists the assets that will fund the special needs trust.

B. Trusts funded by court order in Fresno County must comply with California Rules of Court 7.903 and must require court confirmation of sales of trust real property and advance approval of any purchases of real property. Payments for the purchase of any real property, and any tangible personal property valued at $2,000.00 or greater, shall be accounted for and the asset purchased identified and included on a Schedule of Trust Property on Hand at the time of the special needs trust accounting.

C. A petition to approve the establishment of a trust for a conservatee should include a recommendation for the amount of bond to be posted by the proposed trustee and for termination of the conservatorship estate. Following termination of the conservatorship of the estate, new Letters shall issue for the conservatorship of the person only. Prior to granting a petition to establish a trust, the court will require that a final accounting be filed by the conservator. Thereafter, all trust accountings shall be filed in a new Trust file, and a filing fee shall be payable upon the filing of each account.

D. Trusts created by the court shall be subject to the court's continuing jurisdiction unless otherwise specified, and shall be subject to periodic accounts as are required in guardianship and conservatorship matters. The trust must include language that prior to any distribution to remainder beneficiaries, a final Trust Accounting must be approved by the Court.

E. When a trust is subject to continuing court supervision, no payment of fees to attorneys, trustees, or others may be made without prior court approval. **(Effective January 1, 2015, Rule 7.19.1 renumbered effective January 1, 2006; adopted as Rule 88.1 effective January 1, 2004)**

(Rule 7.19 renumbered effective January 1, 2005; adopted as Rule 88 effective January 1, 2004)

RULE 7.20 COURT CONFIRMED SALES OF REAL PROPERTY

Overbids. When an overbid is made in court, the bidder must submit cash, money order, or certified check at the time of the hearing in the amount of ten (10) percent of the minimum overbid. **(Effective July 1, 2011, New)**

(Rule 7.20, New effective July 1, 2011)

RULE 7.21 ACCOUNT STATEMENTS AND SUPPORTING DOCUMENTS FOR CONSERVATORSHIP AND GUARDIANSHIP ACCOUNTINGS

A. All conservatorship and guardianship accounts must be supported by financial account statements verifying the balances and assets of accounts at financial institutions, including banks, credit unions security, brokerage and similar financial accounts as of the closing date of the accounting. If the accounting is the first account, financial account statements shall also be provided to show the account balance immediately preceding the first account period. The financial institution statements must be the originals must show the vesting of the account, the date, the balance and assets in the account. If a financial institution does not produce statements or records required by this rule, the fiduciary shall submit a declaration stating this fact and what records are available. The declaration shall include the following:

1. The name of the financial institution representative who represented that the institution does not or cannot on request produce statements or records required by this rule;

2. The date the fiduciary spoke with the representative;

3. Any other basis the fiduciary bases the claim that the financial institution does not produce or provide such statements or records.

B. If financial institution records and/or residential care facility statements required to be submitted with an accounting are only received electronically, the report should so allege and copies of the electronic statements should be printed and provided or copies filed electronically.

C. The financial institution account statements shall be filed separately from the accounting and attached to a separate affidavit or declaration describing the character of the document and shall be captioned “confidential financial statements.” The Court shall keep the financial institution account statements confidential, except such shall be available to the Court and Court personnel for use in reviewing accountings and reports and shall be subject to further disclosure only upon order of the Court. **(Effective January 1, 2017, New)**

(Rule 7.21, New effective January 1, 2017)

(Chapter 7 amended effective January 1, 2006; adopted as VII effective July 1, 1992)

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APPENDIX A: CIVIL

APPENDIX A1

ATTORNEYS' FEES UPON DEFAULT JUDGMENT

A. Upon entry of default judgment the following attorneys' fees shall be awarded under normal conditions, or included in the judgment by the Clerk, in actions on promissory notes, contracts, and foreclosures, which provide for attorneys' fees:

1. Action on note or contract:

20% of the first $5,000.00 in principal, or $400.00, whichever is greater;
15% of the next $10,000.00 in principal;
10% of the next $10,000.00 in principal;
5% of the next $25,000.00 in principal;
2% of the next $50,000.00 in principal;
1% of the principal amount over $100,000.00.

"Principal," as used here means the principal obligation owing under the note or contract.

2. Foreclosure: the same amount as computed above, increased by 10%, or $750.00, whichever is greater.

3. A petition for compensation for additional services shall include an itemized statement of the services rendered or to be rendered by the attorney and a reference in the caption and prayer to the request for additional fees. An appearance by the attorney or the parties is not normally, but may be, required. In determining such fees, the court shall consider the experience of counsel, the time expended, the complexity of the issues, the amount involved and the results achieved.

B. An action on a book account, when Civil Code § 1717 does not apply, shall be governed by Civil Code § 1717.5. **(Effective July 1, 2004)**

APPENDIX B: CRIMINAL

APPENDIX B1

RESERVED.

APPENDIX C: FAMILY LAW

APPENDIX C1

LIST OF ABBREVIATIONS

CAU	Fresno County District Attorney – Child Abduction Unit
DCSS	Department of Child Support Services
FCS	Fresno County Family Court Services
MSA	Marital Settlement Agreement
NOM	Notice of Motion
OSC	Order to Show Cause
TRO	Temporary Restraining Order
UCCJEA	Uniform Child Custody Jurisdiction and Enforcement Act

(Effective January 1, 2006)

APPENDIX D: JUVENILE

APPENDIX D1

TABLE OF ABBREVIATIONS

CASA	Court Appointed Special Advocate
CPS	Child Protective Services
DCFS	Department of Children and Family Services
GAL	Guardian Ad Litem
RRD	Revenue and Reimbursement Division

(Effective January 1, 2007)

FRESNO COUNTY SUPERIOR COURT
APPENDIX D2

SUPERIOR COURT, COUNTY OF FRESNO
SITTING AS THE JUVENILE COURT

COURT DESIGNATED CHILD ADVOCATE **OATH**

_____
print your full legal name

I, _____, do solemnly swear, that
ADVOCATE'S NAME

I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that in performing the duties of a Court Appointed Special Advocate, I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties of a Court Appointed Special Advocate to the best of my ability and will serve the best interests of the child.

As an officer of the Court, I will respect and follow the rules of the Court and will to the best of my ability maintain fairness, impartiality and integrity in my role as advocate for the child.

I will adhere to the rules of confidentiality and will respect the privacy of all parties.

I will not take a case where I have any prior knowledge of the child or family member.

I agree to comply with the requirements of the child abuse reporting law (Welfare and Institutions Code Section 11165 et. seq.), reporting any known or suspected instances of child abuse or neglect.

DATED:_____

_____
Appointed Child Advocate

_____
Presiding Judge, Juvenile Court

FRESNO COUNTY SUPERIOR COURT
APPENDIX D3

SUPERIOR COURT OF CALIFORNIA, COUNTY OF FRESNO

In the matter of, _____ DOB: A Minor.	No. _____ **STIPULATION FOR DISCLOSURE OF JUVENILE COURT RECORDS** [W&I §827]

The parties in the above-entitled action hereby stipulate to a limited disclosure of juvenile court records involving the minor in the above-entitled matter. The limitations are as follows:

1. The disclosure is limited to only those documents that meet the description of the documents requested in the Welfare & Institutions Code §827 petition.

2. The disclosure is limited to the party that filed the §827 petition, opposing parties, all parties' counsel, counsel's immediate office staff, and any expert witness and/or investigator retained by counsel for purposes of the pending matter that gave rise to the petition.

///

3. The disclosed records are still open to any available objection and no determination is made as to their admissibility in any judicial or administrative proceeding.

4. This disclosure does not allow for testimony to be taken concerning the documents nor the documents to be entered into evidence at trial or an evidentiary hearing. Any such further dissemination requires an additional §827 petition.

5. The requesting party shall pay the County Department of Social Services reasonable copy costs as defined in Evidence Code §1563(b)(1).

6. At the conclusion of the matter that gave rise to the petition, all parties are required to destroy the released documents or return them to _____.

Date: _____ _____

_____

Date: _____ _____

ORDER

Pursuant to stipulation of the parties and good cause appearing therefor,

IT IS ORDERED that the County of Fresno, Department of Social Services shall disclose documents responsive to the §827 petition within 10 days of the signing of this order or as soon thereafter as the parties agree.

Date: _____ _____

Judge of the Superior Court

APPENDIX E: PROBATE

APPENDIX E1

ADDITIONAL USEFUL INFORMATION

1. Service on Foreign Consulates: When service upon a foreign consulate is required, contact information for all registered consulates may be obtained at the following web site: www.state.gov/s/cpr/rls/fco. Click on the release you want, then the foreign consul.

2. Guardianship Assistance: Guardianship self-help packets in Spanish and English are available in the Probate Filing Clerk's Office for a nominal fee. The court also offers a Guardianship Clinic to provide assistance and information to self-represented litigants.

3. Location of Probate Court: The Probate Clerk's Office and Probate Court are located at the B.F. Sisk Courthouse, 1130 O Street, Third Floor, Fresno, CA. (**Effective January 1, 2017**)

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