

**Stanislaus County Superior Court**

Superior Court of California, County of Stanislaus



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Hon. Loretta Murphy Begen  
Hon. Ricardo Cordova  
Hon. Rick Distaso  
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Lynne R. Meredith, Commissioner  
Nancy Williamsen, Juvenile Court Commissioner

Michael A. Tozzi, Executive Officer/Jury Commissioner  
Linda Romero Soles, Assistant Executive Officer  
Rebecca Fleming; Assistant Executive Officer, Chief Financial Officer  
Jeanine Bean, Director of Human Resources

## Stanislaus County Superior Court

### SUMMARY OF CHANGES Revisions effective July 1, 2009

#### IMPORTANT INSTRUCTIONS FOR USING THESE RULES

#### 1. State Rules and Corresponding Local Rules

The California Rules of Court are not printed as part of the Stanislaus County Local Rules, but are considered incorporated within them. Proceedings in the Superior Court of Stanislaus County ("Court") are governed by the California Rules of Court as supplemented by these Local Rules (also referred to as "Rules"). **EACH LOCAL RULE MUST BE READ IN CONJUNCTION WITH THE CALIFORNIA RULES OF COURT (CRC).**

#### 2. Purchasing Local Rules and Local Forms

Copies of the Local Rules and Local Forms may be obtained online at [www.stanct.org](http://www.stanct.org).

#### INTERNET ADDRESS

[www.stanct.org](http://www.stanct.org)

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**Stanislaus County Superior Court**

**Stanislaus County Superior Court**

**STANISLAUS SERVES THE CITIES OF:**

**Ceres  
Hughson  
Modesto  
Newman  
Oakdale  
Patterson  
Riverbank  
Waterford**

**as well as the following communities:**

**Crows Landing  
Denair  
Empire  
Grayson  
Hickman  
Keyes  
Knights Ferry  
La Grange  
Salida  
Valley Home  
Vernalis  
Westley**

# Stanislaus County Superior Court

## RULE 1 GENERAL

### 1.00 Scope of Rules

These Local Rules apply to the Superior Court of California, the County of Stanislaus. (7/1/99)

### 1.01 Citation of Rules

These Rules shall be known and cited as the "Local Rules for the Superior Court of California, County of Stanislaus" (7/1/99)

### 1.02 Effective Date of Rules

These Rules shall on their effective date supersede all local court rules previously adopted by the Superior Court of California, County of Stanislaus. These Rules shall take effect on July 1, 2009. (7/1/09)

### 1.03 Construction and Application of Rules

These Rules shall be construed and applied so as not to conflict with the Rules of the Judicial Council now or hereafter in effect. In the event of any apparent conflict, the Rules of the Judicial Council control. These Local Rules shall be liberally construed to promote the efficient administration of the business of the Court and the interests of justice. (7/1/99)

### 1.04 Adoption and Amendment of Rules

These Rules shall become effective as of **January 1, 2009**, and thereupon all other rules heretofore adopted by the Superior Court shall be repealed, provided that no action heretofore taken in compliance with such rules shall be made invalid or ineffective by such repeal. These Rules may be amended at any time by a majority of the Judges of the Court. Such amendments shall become effective in accordance with the provisions of the Government Code. Notice of such amendments shall be posted in a conspicuous place in the Clerk's Office. It shall be the duty of each counsel and pro per litigant to be currently informed as to the contents of these rules and any amendments and to obtain copies thereof from the Clerk. Court policies may be adopted at any time by a majority of Judges. Such policy shall be reduced to writing and distributed to the public with the date the policy will go into effect. (1/1/09)

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### 1.05 Sexual Harassment

- A. It is the policy of the Court to ensure that all persons are free from sexual harassment as that term is defined by law.
- B. Any person who perceives he/she is the victim of sexual harassment in the courthouse or any person who witnesses sexual harassment of another person should immediately notify the Court Executive Officer who may conduct an investigation. (7/1/99)

### 1.06 Court Attire

No person is to appear in the courtroom with unacceptable attire. While no specific dress code is adopted, persons entering the courtroom should be attired in such fashion so as not to offend the dignity of the Court. (7/1/99)

### 1.07 Court Security

The security of the Stanislaus County Superior Court is the function of the Stanislaus County Sheriff's Department. Procedures for the security of the Court and for furnishing bailiffs for each courtroom when in session are set forth in the written Policies and Procedures Manual adopted by the Security Committee of the Stanislaus County in consultation with the Sheriff. (7/1/99)

### 1.08 Toxic and Hazardous Materials; and Firearms (Applies to All Civil and Criminal Cases)

- A. Prior to bringing any toxic, hazardous or potentially hazardous materials into the courtroom, counsel shall alert the Clerk of the Court of the following:
  - 1. A list of the technical and street names of the said materials.
  - 2. The types and sizes of the containers to be utilized for the materials.
  - 3. The name of the person who will transport the materials into the courtroom.
  - 4. Where the materials will be stored and the conditions, under which the materials will be stored, viewed or handled.
  - 5. The name of the person who will remove the materials.
  - 6. An explanation as to why the material is hazardous or potentially hazardous and the remedies to be followed in the event of a spill, leak or other accident.

## Stanislaus County Superior Court

7. An explanation as to why the introduction of the materials into evidence must be accomplished by their physical presence in the courtroom, rather than proof of their existence by any other method.
- B. Controlled or toxic substances in any form must be securely sealed in containers so that odors cannot be emitted.
  - C. Blood or urine samples, hypodermic needles or other objects containing blood, urine or other bodily fluids shall be permitted in the courtroom only when enclosed in a container sufficient to protect Court personnel and other persons in the court.
  - D. Toxic, physiological, hazardous or potentially hazardous materials shall include, but not be limited to, all controlled substances commonly seized by narcotics officers and agents, including, to wit, cocaine, etc., and all chemicals, pesticides, and explosives, other than ammunition. A comprehensive list of these materials is contained in the California Administrative Code Title 22, Division 4, Chapter 30, Article 9, entitled Hazardous Waste and Hazardous Materials. Any further information concerning the list of materials provided in the aforementioned Administrative Code or additional information concerning other hazardous materials may be obtained by contacting the Stanislaus County Department of Environmental Resources.
  - E. All evidence of this nature will remain the responsibility of the person bringing such into a courtroom. When such evidence is introduced, the person previously in possession of the evidence shall take responsibility for it and store them pending "final determination of the action." Penal Code §1417.1 defines "final determination" as follows:
    1. When no notice of appeal is filed, **thirty (30)** days after the last day for filing that notice.
    2. When a notice of appeal is filed, **thirty (30)** days after the date the Court Clerk receives the remittitur affirming the judgment.
    3. When an order for a rehearing, a new trial, or other proceeding is granted and the ordered proceedings have not been commenced within **one (1)** year thereafter, **one (1)** year after the date of that order.
    4. In cases where the death penalty is imposed, **thirty (30)** days after the date of execution of sentence.

## **Stanislaus County Superior Court**

- F. Such exhibits **must** be retained by the submitting party/agency until notice of final determination of the action, as defined above, or the submitting party/agency has verified that fact.
- G. This rule does not, nor does it intend to, interfere with or be contrary to any existing statute or case law that governs the introduction of or the viewing of evidence.
- H. This rule is made for the protection of the public and all persons involved in the processes of the justice system of Stanislaus County.
- I. No firearm shall be marked as an exhibit, introduced into evidence or otherwise handled in the courtroom, unless it has been checked by the bailiff for safety and a gunlock has been attached to the trigger. (7/1/03)

### **1.09 General Authority -Superior Court Commissioners**

The Superior Court Commissioners shall perform the duties and shall have the powers prescribed by Code of Civil Procedure sec. 259, the duties and powers of a juvenile court referee as specified in Welfare & Institutions Code sec. 247, and the duties and powers of a probate commissioner appointed pursuant to Government Code sec. 69897.

The Presiding Judge shall assign to the commissioners, sitting either as a commissioner or as a referee or as a judge pro tempore or as a juvenile court referee, such matters as the needs of the Court may require. (7/1/02)

### **1.10 Photographing, Recording and Broadcasting in Court**

The use of photographic, video or audio recording or transmission equipment in the courtroom is prohibited without advanced permission by the judge. Violators are subject to contempt of court (California Rules of Court 1.150) and/or confiscation of the device(s).

Television cameras, video cameras and/or camera operators, still photographers, media reporters or any combination thereof shall not block corridors, block access to any court or hearing room, block the ingress or egress to and from the courthouse, block stairwells or block handicap ramps.

Any and all video, cell phone and other photography through courtroom windows or into the courtroom from the hallway is subject to the same restrictions that apply to the use of cameras in the courtroom and shall require prior approval by the judge of the affected courtroom. (See California Rules of Court 1.150)

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Court security personnel shall enforce this Rule by moving any offending media personnel to the lobby areas of the courthouse when such move is consistent with the intent of this Rule. Should any representative of the media continue to violate this Rule, court security shall direct the offending media personnel to leave the courthouse. Nothing in this Rule shall affect the authority of law enforcement personnel to enforce laws under their jurisdiction.

This Rule does not affect California Rules of Court 1.150 as it pertains to the courtroom and the hearing judge's ruling on media requests under California Rules of Court 1.150. Further, any order by any judge of this court issued pursuant to a media request pursuant to California Rules of Court 1.150 may temporarily supersede this rule with regard to such order in order to further the interests of media coverage for a particular case. (7/1/07)

### **1.11 Automated Fax Filing System**

The automated fax filing system allows documents to be filed with the Court electronically. Documents received by 5:00 p.m. shall be filed with that day's date. All documents received after 5:00 p.m. will be deemed accepted on the next business day.

If a party wants copies of any filed documents, they must request it on the facsimile cover sheet. The Court charges \$.50 per page plus postage (\$.50 if the document is less than six pages, \$3.00 if the document exceeds six pages).

Service may be activated by contacting Official Payments Corp. at 1-800-487-4567. By activating this service, you will have access to all participating courts in the State of California.

Additional information about fax filings may be found in California Rules of Court 2007. (7/1/07)

### **1.12 Bail Bonds Agents**

The various courthouses within the Stanislaus County Superior Court are public buildings that must be accessible to persons with court related business. Because the courthouse buildings have smaller lobby and hallway areas, it is particularly important to ensure that individuals without legitimate court business do not loiter in the public areas or act in such a way as to congest or clog the lobby or hallway areas, making it difficult for people with court related business to access the court.

Title 10 Section 2074 of the California Code of Regulation limits solicitation by bail agents in courthouses and provides that courts may prohibit such solicitation altogether by local rule. Pursuant to this authority as well as its inherent and statutory authority,

## **Stanislaus County Superior Court**

the Court prohibits all solicitation by bail agents within courthouse buildings. Solicitation by bail agents shall also be prohibited on that portion of courthouse property surrounding public entrances and exits to the courthouses.

Bail agents shall not loiter on courthouse property in a manner that clogs or congests the lobby or hallway areas of the courthouse or otherwise restricts the public's ability to access the courthouse for court related business. This rule is not intended to prohibit bail agents from meeting with existing clients on courthouse property when said meetings concern court related business. (7/1/08)

# Stanislaus County Superior Court

## RULE 2 COURT ORGANIZATION

### 2.00 Organization and Executive Committee

The Superior Court shall be divided into the Criminal, Civil, Family Law, Juvenile, Appellate, and Court Clerk's Office. There shall be a Presiding Judge and Assistant Presiding Judge, a Supervising Judge for Criminal, Civil, and Family Law and Appellate Divisions, a Presiding Judge for Juvenile, Court Executive Officer, and an Executive Committee as provided for in these rules. (7/1/07)

### 2.01 Presiding Judge and Assistant Presiding Judge

#### A. Selection of Presiding Judge and Assistant Presiding Judge

##### 1. Qualification

The Presiding Judge must have at least four years of experience as a judge, and, the Assistant Presiding Judge must have at least two years of experience as a judge, unless this requirement is waived by a majority vote of the judges of the court. Nomination and selection of a presiding judge and the assistant presiding judge should take into consideration the judge's: (see California Rules of Court 10.602)

- a. Management and administrative ability;
- b. Interest in serving in the position;
- c. Experience and familiarity with a variety of trial court assignments;
- d. Ability to motivate and educate other judicial officers and court personnel;
- e. Ability to evaluate the strengths of the court's bench officers and make assignments based on those strengths as well as the best interests of the public and the court; and
- f. Other appropriate factors.

##### 2. Term of Office

The term of office for both the Presiding Judge and Assistant Presiding Judge shall be two years. Either may run for additional terms with no limit.

##### 3. Election

Except as stated below, The Presiding Judge and Assistant Presiding Judge shall be elected by a majority of the sitting judges on the bench. Any judge may be nominated by any sitting judge. A judge may nominate him/herself. At the end of his/her term of office, the Assistant Presiding Judge shall automatically be nominated for Presiding Judge and shall become the Presiding Judge without the need for election if:

## Stanislaus County Superior Court

- a. the Presiding Judge declares that he/she will not seek an additional term, and
- b. no other judge runs for Presiding Judge as described below:
  - (1) If either the Presiding Judge or Assistant Presiding Judge seeks a second or subsequent term, he/she must be elected by a majority of the active judges on the bench. Any judge may run against either if nominated by one other sitting judge.
  - (2) A judge may run against an automatically nominated Assistant Presiding Judge for the position of Presiding Judge. To do so, the challenging judge must be nominated by 3 other sitting judges. The challenging judge may not be one of the nominating judges.
  - (3) Elections referred to above shall occur on the first Wednesday of July in the year that the term of office expires.

### **B. Authority and Duties**

The Presiding Judge shall have the authority and duties prescribed by California Rules of Court 10.603.

The Assistant Presiding Judge shall be the acting Presiding Judge when the Presiding Judge is absent or unable to act. The Presiding Judge may delegate such other duties to the Assistant Presiding Judge as the Presiding Judge sees fit.

### **C. Removal**

The Presiding Judge or Assistant Presiding Judge may be removed by a majority vote of the sitting Judges. (1/1/08)

## **2.02 Supervising Judges and Presiding Juvenile Judge**

The Presiding Judge shall appoint the Supervising Judges and Presiding Juvenile Judge referred to above, who shall serve at his/her pleasure. The appointment may not last longer than the term of office of the Presiding Judge. The Presiding Judge may delegate such duties to each judge as he/she sees fit.

A Supervising Judge may hold one or more other positions simultaneously. (7/1/07)

## **2.03 Executive Committee**

The Executive Committee shall have the duties designated in California Rules of Court 10.605.

### **A. Composition**

The Executive Committee shall be comprised of the Presiding Judge, the Assistant Presiding Judge, each of the Supervising Judges, the Presiding Judge of Juvenile and

## Stanislaus County Superior Court

the outgoing presiding judge. There shall be at least one at large member elected by a majority of the sitting judges, and sufficient number of other at large members to constitute a total membership of eight. The Presiding Judge shall serve as the Chairman. The Executive Committee may enact by-laws to govern its operation. The position of outgoing presiding judge is an ex-officio non-voting position.

### **B. Terms**

The at-large members of the Executive Committee shall serve two-year terms. Any existing members of the Executive Committee upon the passage of this rule shall be entitled to serve the remainder of their term. Any at-large members may serve consecutive terms without limitation. The Chairman may appoint any judge to fill the remainder of any term left vacant by any at-large member. The position of outgoing presiding judge shall be for two years unless the current presiding judge is elected to an additional two-year term.

### **C. Elections**

Elections for at large positions shall occur at the same time designated above for Presiding Judge or Assistant Presiding Judge. The judge elected shall be seated in January of the following year.

### **D. Voting**

The Executive Committee shall vote on all action items brought to them on the Executive Committee agenda. The vote to approve is by majority vote. A quorum is necessary for voting. A quorum is four members. (7/1/08)

## **2.04 Members of Other Committees**

Any other committees established by the Superior Court may include both Judges and Commissioners except those committees whose membership is set forth by statute to be limited to Judges. Appointment to committees will be made by the Presiding Judge with confirmation by the Executive Committee. A member of any committee shall serve until the end of the term of the Presiding Judge or otherwise removed by the Presiding Judge. Administrative staff to committees will be appointed by the Executive Officer and shall attend all committee meetings. (7/1/99)

## **2.05 Probable Cause/EPO On-Call Duty**

There will be one primary on-call Judge and one secondary on-call Judge. The period of that responsibility shall be from 12:00 Noon on Wednesday until 12:00 Noon on the following Wednesday. The secondary on-call Judge will become the primary on-call Judge the following week. The Superior Court Calendar Management Office shall keep the on-call schedule. The duties of the primary on-call (and, if necessary, the secondary) Judge shall include issuing search and arrest warrants sought at hours the

## **Stanislaus County Superior Court**

Court is not in session, all Emergency Protective Orders and performing probable cause review at the jail on weekends and holidays. In addition, the primary and secondary on call judges shall have search warrants responsibilities during normal court hours as set forth in Stanislaus County Superior Court Criminal Rule 4.18. (1/1/08)

# Stanislaus County Superior Court

## RULE 3 CIVIL CASES

### 3.00 Application of Rules

These rules apply to all civil cases, limited and unlimited. The term "civil case" does not include criminal, traffic, family law, small claims, probate, with the exception of compromise of personal injury claims of minors and incompetent persons, mental health, adoption nor juvenile cases.

The Civil Clerk's office is located at the City Towers Building, 801 10<sup>th</sup> Street, Fourth Floor, in Modesto, California. The official mailing address is:

Stanislaus County Superior Court - Civil Division  
City Towers Building  
801 10<sup>th</sup> Street, 4<sup>th</sup> Floor  
Modesto, CA 95354

The telephone number is (209) 530-3100.

Effective April 7, 2008, all documents (with the exception of pre-trial documents as set forth in Rule 3.18) in a civil case as defined by Rule 3.00, both limited and unlimited jurisdiction, and including, but not limited to: complaints, answers, unlawful detainers and law and motion, shall be filed at the **above location**, either by mail or in person.  
(07/1/09)

### 3.01 Direct Calendaring of Most Civil Cases

- A. When a civil case is filed or received and filed as a transfer from another county, the Court shall assign the case to a judicial officer for all purposes including trial, except or otherwise as provided or required by law. This section does not apply to limited jurisdiction collection cases or unlawful detainer cases.
- B. Cases, which are subject to direct calendaring, shall be assigned numerically, using the digits of the court case number, to a judicial officer. At the time of initial filing or initial receipt of the file, the Clerk's Office shall affix to the face of the complaint or petition and to the notice of case management conference, the following notice:

"THIS CASE HAS BEEN ASSIGNED TO JUDGE -----,  
DEPARTMENT -----FOR ALL PURPOSES INCLUDING TRIAL".

In the event of unavailability, another judge or an assigned or temporary judge may handle cases directly assigned to the unavailable judge, but the case shall remain

## Stanislaus County Superior Court

directly assigned to the unavailable judge who shall handle all matters related to the case upon his or her return.

- C. Plaintiffs, including cross complainants, shall notify all parties of the direct assignment when so notified by the Court and said parties shall notify all parties who later enter the case of the direct assignment. Plaintiffs and cross complainants shall file a proof of service of their notification of the direct assignment within **five (5)** days after the notice is served.
- D. In all civil cases assigned to a judge for all purposes, the face page of each filed document, under the case number, shall state the name and department of the judge assigned for all purposes.
- E. Time limits for peremptory challenges for plaintiffs shall be within **fifteen (15)** days after the filing of the complaint and receiving notice of the assignment and, for defendants, within **fifteen (15)** days after filing the first pleading or appearance. (1/1/07)

### 3.02 Law and Motion

- A. Law and Motion is heard Tuesday through Friday at 8:30 am. If Monday is a court holiday, then Wednesday through Friday. If you would like to schedule a Law and Motion matter for hearing, call (209) 530-3162, 11:00 a.m. – 4:00 p.m.
- B. Any reserved law and motion date will be vacated if the moving documents are not filed within **five (5)** court days after reserving the date.
- C. Tentative rulings will be issued on Law and Motion matters the court day prior to the hearing date. Tentative rulings can be accessed on the Internet at [www.stanct.org](http://www.stanct.org) after 1:30 p.m.

The tentative ruling will be the order of the court unless a hearing is requested prior to 4:00 p.m. on the court day preceding the hearing. If you would like to request a hearing call (209) 530-3162 or (209) 558-6000 between 1:30 p.m. -4:00 p.m. Each party requesting a hearing shall notify the other side no later than 4:30 p.m. of the same day.

- D. Parties requesting an ex-parte hearing shall contact the assigned department. The bailiff/clerk of the department will schedule the hearing. The moving party shall fax its moving papers to the assigned department no later than 2:00 p.m. on the court date prior to the scheduled hearing. Requests for stay of eviction shall be submitted to the Clerk's Office no later than 2:00 p.m. the day before the requested

## Stanislaus County Superior Court

hearing date. Notice of the ex-parte hearing shall be given as prescribed in California Rules of Court 3.1200 – 3.1207. (7/1/09.)

### **3.03 Time for Service of Complaint, Cross-Complaint, and Response**

#### **A. Applicability.**

This rule applies to the service of pleadings in civil cases except for unlawful detainer actions, proceedings under the Family Code, and other proceedings for which different service requirements are prescribed by law.

#### **B. Service of complaint.**

The complaint must be served on all named defendants and proofs of service on those defendants must be filed with the court within **sixty (60)** days after the filing of the complaint. When the complaint is amended to add an additional defendant, the defendant must be served and proofs of service on the new parties must be filed within **thirty (30)** days of the filing of the amended complaint.

#### **C. Service of cross-complaint.**

A cross-complaint against a party who has appeared in the action must be accompanied by proof of service of the cross-complaint at the time it is filed. If the cross-complaint adds new parties, the cross-complaint must be served on all parties and proofs of service on the new parties must be filed within **thirty (30)** days of the filing of the cross-complaint.

#### **D. Timing of responsive pleadings.**

The parties may stipulate without leave of Court to one **fifteen (15)** day extension beyond the **thirty (30)** day time period prescribed for the response after service of the initial complaint. The Court must approve any other extensions of time to respond.

#### **E. Modification of timing; application for order extending time.**

The Court, on its own motion or on the application of a party, may extend or otherwise modify the times provided in subdivisions (B) -(D). An application for a court order extending the time to serve a pleading must be filed before the time for service has elapsed. The application must be accompanied by a declaration showing why service has not been affected, documenting the efforts that have been made to effect service, and specifying the date by which service is proposed to be completed.

#### **F. Failure to serve.**

Unless the Court has granted an order extending the time to serve a complaint or cross-complaint, the failure to serve and file pleadings as required under this Rule may result in an Order to Show Cause being issued as to why sanctions shall not be imposed.

## Stanislaus County Superior Court

### G. Request for entry of default.

If a responsive pleading is not served within the time limits specified in this rule and no extension of time has been granted, the plaintiff, within **ten (10)** days after the time for service has elapsed, must file a request for the entry of default. When required, a statement of damages with proof of service should also be filed. Failure to do so may result in an Order to Show Cause being issued as to why sanctions shall not be imposed.

### H. Default judgment.

When default is entered, the party who requested the entry of default must obtain a default judgment against the defaulting party within **forty-five (45)** days after entry of default, unless the Court has granted an extension of time. Failure to obtain entry of judgment against a defaulting party or to request an extension of time to apply for a default judgment may result in an Order to Show Cause being issued as to why sanctions shall not be imposed.

### I. Order to Show Cause.

When the Court issues an Order to Show Cause, responsive papers to the Order to Show Cause must be filed and served no less than **five (5)** court days before the hearing. The Court may issue monetary sanctions up to \$250 and/or dismiss the complaint/cross-complaint, answer, or other pleading.

J. All documents presented for filing are limited to an original plus **two (2)** copies. Unless otherwise required by code, the Clerk's Office will conform a maximum of **two (2)** copies. (1/1/05)

K. In unlawful detainer cases, the original proof of service of 3, 30, or 60-day notices to quit/vacate shall be filed with the Court. (7/1/09.)

### 3.04 Order to Appear for Debtor's Examination (Warrants)

When a warrant has been ordered due to failure of defendant or examinee to appear at the debtor's examination, the plaintiff has **thirty (30)** days to file the declaration and obtain the warrant. If the warrant is not obtained within the **thirty (30)** day period, the plaintiff must obtain a new order to appear for examination and have the defendant or examinee served with the same. (1/1/05)

### 3.05 Trial Setting -Unlawful Detainer

Unlawful Detainers may be set for trial by the filing of Judicial Council Form No. UD-150 entitled Request/Counter-Request to Set Case for Trial-Unlawful Detainer. Short cause cases will be scheduled on the 8:30 a.m. Unlawful Detainer Calendar. Long cause cases will be scheduled on the 8:30 a.m. trial calendar. Long cause is considered to be

## Stanislaus County Superior Court

any case lasting longer than thirty (30) minutes. A Counter-Request to Set Case for Trial-Unlawful Detainer (Judicial Council Form No. UD-150) must be filed within **five (5)** Court days. Non-jury trials will be set no more than **twenty (20)** days after the filing of the original Request to Set Case for Trial-Unlawful Detainer (Judicial Council Form No. UD-150) . Jury trial requests will be immediately referred to the Court Calendar Management for priority setting. Jury fees in the amount of One Hundred and Fifty Dollars (\$150.00) must be deposited with the Court five (5) days before trial (CCP § 631). (7/1/09.)

### 3.06 Filing At-Issue Memorandum

In all cases that are exempt from a Case Management Conference and where no trial date is already assigned, an At-Issue Memorandum shall be filed in the Civil Clerk's Office. The Clerk's Office shall within **fourteen (14)** days; (**five (5)** days in Unlawful Detainer cases) set the case a time for trial and a settlement conference, if required. (1/1/05)

## CASE MANAGEMENT

### 3.07 Case Management

#### A. General civil case.

As used in these rules, "general civil case" means all civil cases except probate, guardianship, conservatorship, family law (including proceedings under the Family Law Act, Uniform Parentage Act, and Uniform Child Custody Jurisdiction and Enforcement Act, freedom from parental custody and control proceedings; and adoption proceedings), juvenile court proceedings, small claims proceedings, unlawful detainer proceedings, or other civil petitions as defined by the Judicial Statistical Information Data Collection Standards.

#### B. Uninsured motorist.

To allow for arbitration of the plaintiff's claim, these rules do not apply to a case designated by the Court as an "uninsured motorist" case until 180 days after the designation.

#### C. Case management goals.

These rules are adopted to advance the goals of Section 68616 of the Government Code.

#### D. Case-disposition time goals.

The goal of this Court is to manage general civil cases from filing to disposition as provided under Section 2.1 and 2.3 of the Standards of Judicial Administration.

## Stanislaus County Superior Court

### E. Judge's responsibility.

It is the responsibility of the court to achieve a just and effective resolution of each general civil case through active management and supervision of the pect of litigation from the date of filing to disposition.

### F. Case-management plans.

Disposition under the following case-management plans are from date of filing:

1. Plan I, disposition within **twelve (12)** months;
2. Plan II, disposition within **eighteen (18)** months;
3. Plan III, disposition within **twenty-four (24)** months

### G. Case-management Plan I.

The Court will presume that a case is subject to the disposition goal under case-management Plan I when the case is filed or as otherwise provided by the court. The Court may modify the assigned case management plan at any time for good cause shown.

### H. Exceptional cases.

The Court may, in the interest of justice, exempt a general civil case from the case disposition time goals if it finds the case involves exceptional circumstances that will prevent the Court and parties from meeting the goals and deadlines imposed by the program.

### I. Limited Jurisdiction Collection Cases.

Limited jurisdiction civil collection cases are generally exempt from case management conferences unless a case management conference is specifically ordered by the Court. At the time of filing, the Plaintiff shall file our local Case Management Conference Waiver form and the clerk's office will assign a trial date for each such case. The plaintiff shall thereafter give notice of the trial date to each defendant at the time of service. (07/01/09)

## 3.08 Case Management Conference

In each non-exempt general civil case, the court will set the case for a case management conference approximately **one hundred twenty (120)** to **one hundred fifty (150)** days after the date of filing. Plaintiff and any cross-complainant shall give notice of the case management conference to the defendant(s) or cross-defendant(s) at the time of service.

## Stanislaus County Superior Court

### A. Subjects to be considered at the case management conference.

At the case management conference the parties must address, if applicable, and the court may take appropriate action with respect to the following:

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 it is reasonably probable that the amount in controversy will not exceed \$25,000 and the case will proceed as economic litigation under Code of Civil Procedure Section 90 et seq;
5. Whether there are any other matters (e.g., the bankruptcy of a party) that may affect the court's jurisdiction or processing of the case;
6. Whether the case should be referred to judicial arbitration and, if so, by when the arbitration must be completed;
7. Whether the parties have stipulated to any other form of Alternative Dispute Resolution (ADR) and, if so, by when the ADR must be completed;
8. Whether discovery has been completed and, if not, by when it will be completed;
9. Whether the case should be bifurcated;
10. Whether there are any cross-complaints that are not ready to be set for trial and, if so, whether they should be severed;
11. Whether the case is entitled to any statutory preference and, if so, the statute granting the preference;
12. Whether a jury trial is demanded, and, if so, the identity of each party requesting a jury trial;
13. If the trial date has not been previously set, the date by which the case will be ready for trial and the available trial dates.
14. The estimated length of trial;

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15. The nature of the injuries;
16. The amount of damages, including any special or punitive damages;
17. Any additional relief sought;
18. Whether a settlement conference should be scheduled within 30-90 days after the case management conference date, and, if so, on what date;
19. Whether there are any insurance coverage issues that may affect the resolution of the case; and
20. Any other matters that should be considered by the Court or addressed in its case management order.

### **B. Meet and confer requirement.**

Unless the Court orders another time period, no later than **thirty (30)** days before the initial case management conference, the parties must meet and confer, in person or by telephone, to consider each of the issues identified in subdivision (c), and, in addition, to consider the following:

1. Resolution of any discovery disputes and setting a discovery schedule;
2. Identifying and, if possible, informally resolving any anticipated motions;
3. Identifying the facts and issues in the case that are uncontested and may be stipulated to;
4. Identifying the facts and issues in the case that are in dispute;
5. Determining whether the issues in the case can be narrowed by eliminating any claims or defenses by means of a motion or otherwise;
6. Possible settlement; and
7. Other relevant matters.

### **C. Case Management statement.**

No later than **fifteen (15)** calendar days before each case management conference date, each party must file a case management statement with the clerk of the Court.

The parties must use the Mandatory Case Management Statement (Form C-110).

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All applicable items on the form must be completed. In lieu of each party filing a separate case management statement, any two or more parties may file a joint statement.

### **D. Stipulation to Alternative Dispute Resolution.**

If all parties agree to use a binding Alternative Dispute Resolution (ADR) process, they must jointly sign an ADR stipulation agreement and file it with the court.

### **E. Case management order.**

The Court will issue a case management order in each case. The order will set a schedule for subsequent proceedings and otherwise provide for the management of the case.

### **F. Order to Show Cause.**

The Court may issue an Order to Show Cause to any party violating any provision of this rule. Responsive papers to the Order to Show Cause may be filed and served no later than **five (5)** court days before the hearing. The Court may issue monetary sanctions and/or dismiss the complaint/cross-complaint and/or strike the answer.

Sanctions that typically will be imposed at the Order to Show Cause Hearing.

Failure to file proof of service timely.

1st Violation	\$100
2nd and subsequent violations	\$150 per party/ dismissal of complaint or cross-complaint
Failure to meet and confer	\$50 to \$250
Failure to fully complete the Case Management Conference Statement	\$50 to \$100/ striking the statement

The following sanctions will apply without issuing an Order to Show Cause:

Failure to appear at Case Management Conference	\$300
Failure to file a Case Management Conference Statement	\$150
Failure to timely file Case Management Conference Statement	\$25 (\$100 if filed day of the conference)

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### G. Court call.

Unless specifically ordered to appear in person, parties may appear telephonically through Court Call, (888) 882-6878 or (310) 572-4670.

Notice to use Court Call for a Case Management Conference must be given to Court Call and all counsel or pro pers no later than **five (5)** court days prior to the Case Management conference date.

Notice to use Court Call for Court's Motion to Dismiss, OSC to counsel, or Law and Motion hearings must be given to Court Call and all counsel or pre pers by no later than 4:00 p.m. the Court day before the hearing.

If such advanced notice is not timely given, personal appearance at the Case Management Conference is mandatory. Court Call acts as the agent for the calling party and not as an agent for the Court. (7/1/08)

### 3.09 Alternative Dispute Resolution

In many disputes, the trial process is costly, time consuming, and stressful for the parties involved. Many disputes can be resolved in a fair and equitable manner through the less formal processes of Alternative Dispute Resolution (ADR).

Most cases in litigation can benefit in some way from ADR. The various ADR processes offer different types of benefits. This Court actively encourages and supports the use of mediation, neutral evaluation, and arbitration.

ADR processes are more flexible than the traditional process of settlement conferences and litigation, and permit parties to participate more fully and in a wider range of ways, giving them greater choices in designing an appropriate response to their disputes. ADR offers greater confidentiality than litigation. ADR may:

- A. Help promptly settle all or part of the dispute quicker than trial;
- B. Permit a mutually acceptable solution with all parties involved;
- C. Save time and money;
- D. Reduce hostility between parties to preserve ongoing business or personal relationships; or
- E. Increase party satisfaction, by allowing the parties the opportunity to directly participate in resolving their disputes and resulting in a greater likelihood of a lasting resolution.

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### F. Definitions

1. "Alternative Dispute Resolution Process" or "ADR process" means an informal process in which a neutral person or persons resolve a dispute or assist parties in resolving their dispute.
2. "Mediation" means a process in which a neutral person or persons facilitate communication between parties to assist them in reaching a mutually acceptable agreement.
3. "Arbitration" means the process in which a neutral third party or panel reviews evidence, hears arguments, and renders a decision regarding a dispute.
4. "Neutral Evaluation" refers to the process by which a neutral third party typically considers brief written and oral presentations, assesses the strengths and weaknesses of the parties' contentions and evidence and offers a confidential evaluation of the dispute. In addition, after providing an evaluation, the neutral sometimes facilitates negotiations between the parties. (7/1/06)

### 3.10 Voluntary Mediation

#### A. Court Policy

Mediation is an effective method of resolving disputes. The Court administers a voluntary mediation program, which is available to parties in all general civil cases (as defined in California Rules of Court Rule 1.6(4)).

#### B. Rules Governing Mediation

The Court adheres to the rules set forth in California Rules of Court 3.850 et seq. governing mediation and arbitration.

#### C. Panel of Mediators

The Court shall maintain a panel of mediators participating in the program. The ADR committee (see California Rules of Court, Rule 10.783) shall review applications from potential mediators, evaluations of panel members, and make recommendations to the Presiding Civil Judge on the designation of panel mediators. The Presiding Civil Judge shall designate the panel, and may add or remove mediators from the panel at any time.

##### 1. Qualifications

The panel shall consist of trained attorneys and specially trained and experienced non-attorney mediators. To be on the panel a mediator must meet all of the following requirements:

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- a. Be of good character; and
- b. Be an attorney in good standing with at least five (5) years of civil litigation experience, or, if not an attorney, have served professionally as the mediator in at least ten cases in the two (2) years immediately preceding submission of the panel application; and
- c. Have completed a training program approved of by the court's ADR committee, or have equivalent experience and be approved by the Presiding Judge of the Civil Departments;
- d. Sign a statement or certificate agreeing to:
- e. Comply with all applicable ethics requirements and rules of court; and
- f. Serve as an ADR neutral on a pro bono or modest-means basis in at least one case per year, not to exceed eight hours, if requested by the court. The court shall establish the eligibility requirements for litigants to receive, and the application process for them to request, ADR services on a pro bono or modest-means basis. (See California Rule of Court 10.781)

### 2. Confidentiality

A mediator must, at all times, comply with the applicable law concerning confidentiality. At or before the outset of the first mediation session, a mediator must provide the participants with a general explanation of the confidentiality of mediation proceedings. (See California Rules of Court Rule 3.854, and Evidence Code 703.5 and 1115-1128)

## D. Voluntary Mediation Process

### 1. Assignment to Mediation

All parties must be prepared at the CMC to consider whether the voluntary mediation program is appropriate for their case.

- a. All general civil cases may be assigned to the Court's voluntary mediation program if:
  - (1) Parties or their counsel stipulate in writing and the Court so orders at the Case Management Conference or any time within **twenty-five (25)** days thereafter; and
  - (2) All parties agree to maintain the confidentiality of the mediation, and to sign confidentiality agreement forms provided by the mediator; and
  - (3) All fees are paid; and
  - (4) All parties agree to appear for the mediation and participate in good faith in the mediation.
- b. Cases may be assigned to the court's voluntary mediation program in lieu of judicial arbitration, upon stipulation of the parties.

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### 2. Attendance at Sessions

The parties themselves, their counsel and any insurers whose agreement would be necessary to achieve settlement are expected to attend the mediation session unless all parties and the mediator specifically agree otherwise before the session. A party other than a natural person satisfies this attendance expectation if represented by a person (other than outside counsel) who has authority to settle and who is knowledgeable about the facts of the case.

### 3. Fees and Filing Forms

The voluntary mediation program is self-funded. Parties selecting a mediator from the Court panel shall pay \$200 per side to the Court at the time of filing the *Stipulation & Order form*. Each side shall pay the \$200 fee, which shall be paid to the court to cover the first **two (2)** hours of mediation. For purposes of paying the mediation fee, all plaintiffs are considered to be one side and all defendants are considered one side. There will only be two (2) sides for the purpose of mediation fees. If the Court does not receive the entire fee upon filing of the *Stipulation and Order form*, the case may be ordered to mandatory judicial arbitration. Parties using private mediators, and parties requesting additional time from panel mediators, shall pay the mediators' hourly fees for such services directly to the mediator.

Parties shall forfeit mediator fees if they fail to complete the scheduled mediation, or fail to notify the mediator of a settlement within **five (5)** days before the scheduled mediation.

### 4. Selection of Mediator

The parties shall have **twenty-five (25)** days after the CMC to designate a mediator, obtain the mediator's signature on the *Stipulation & Order form* and return it to the Court. Upon request of the parties, the Court shall appoint a mediator within **thirty (30)** days of the Case Management Conference. Mediators shall be selected from a panel list provided by the court.

### 5. Completion

The mediation must be completed no later than **sixty (60)** days before the trial date, unless the Court designates a different time frame. Mediation shall not affect the time periods of the trial. Within **ten (10)** days of completion of the mediation, the mediator will file a *Mediator's Report* with the Court, which will indicate whether the case settled. Counsel shall complete and submit evaluation forms to the ADR administrator.

**E. Deadlines and Tracking** the Court through the ADR Administrators Office shall track compliance with every deadline date in the voluntary mediation program by contacting the principal attorneys for each party, or parties in pro-per.

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### 1. Deadlines

- a. Within **sixty (60)** days of filing the complaint the plaintiff, or cross-plaintiff, must serve on all defendants or cross-defendants the court's ADR information package. (See California Rule of Court Rule 3.221)
- b. Within **twenty-five (25)** days of the Case Management Conference, parties must return, to the court:
  - (1) The completed *Stipulation and Order to ADR form*; and
  - (2) The mediator's fee, \$200 per side (\$400 total).
- c. No fewer than **sixty (60)** days before trial mediation must be completed.
- d. No more than **ten (10)** days following the completion of mediation, the mediator must submit a *Mediator's Report*.

### 2. Tracking

- a. **Thirty (30)** days after the Case Management Conference, the ADR Administrator shall review cases for the *Stipulation and Order to ADR form*, and fees. If parties have not completed the form indicating the mediator, or if no mediator has been appointed, or the fees have not been paid, then the case may be assigned to judicial arbitration (See Local Rules 3.12) or the Court may issue an OSC.
- b. **Ninety (90)** days before trial, the ADR Administrator shall review the case in the voluntary mediation program, to see if the *Mediator's Report* has been filed. If the form is not in the file, the ADR Administrator shall call lead counsel to determine whether the mediation is complete, or when it is scheduled. If counsel is non-responsive or no date for mediation has been set, the ADR Administrator shall notify the Court and an OSC may be issued.
- c. **Fifty (50)** days before trial, or **ten (10)** days after the scheduled mediation, the ADR Administrator shall review cases for the *Mediator's Report*. If the *Mediator's Report* is not present, ADR will immediately notify the Court. An OSC will be issued as to why mediation has not been completed.

## F. Order to Show Cause and Sanctions

### 1. Order to Show Cause.

The Court may issue an Order to Show Cause to any party violating any provision of this Rule.

### 2. Sanctions.

The Court may continue the trial date, issue monetary sanctions and/or assign the case to Judicial Arbitration. (See Local Rule 3.08(F)). Monetary sanctions of up to \$300 may be assessed to the parties and/or their counsel. (7/1/07)

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### 3.11 Voluntary Neutral Evaluation

#### A. Court Policy

The Court encourages appropriate cases to participate in neutral evaluation. In neutral evaluation, the parties and their counsel present summaries of their cases and receive a non-binding evaluation, in a confidential session, by an experienced neutral lawyer with subject matter expertise. Where appropriate and if requested by the parties, and following completion of the evaluation process, the evaluator may also help identify areas of agreement, provide case-planning guidance and/or offer settlement assistance. **Parties shall only participate in neutral evaluation if they are represented by counsel.**

Neutral evaluation differs from mediation and arbitration in that:

1. The evaluator writes an evaluation in private that includes an estimate, where feasible, of the likelihood of liability and the dollar range of damages, an assessment of the relative strengths and weaknesses of each party's case, and the reasoning that supports these assessments.
2. The evaluation is not a decision.
3. At any party's request, the evaluator shall deliver the evaluation, or if all parties agree, postpone revealing the evaluation while the parties engage in settlement or further discovery.

#### B. Neutral Evaluators

1. The Court will maintain a panel of neutral evaluators participating in the program. The ADR committee shall make recommendations to the Presiding Civil Judge, on the designation of panel neutral evaluators, based upon the review of applications and evaluations of panel members. The Presiding Civil Judge shall designate the panel, and may add or remove evaluators from the panel at any time.

#### 2. Qualifications

The panel will consist of trained attorneys and retired judges specially trained in neutral evaluation. An attorney desiring to be a neutral evaluator must meet all of the following requirements:

- a. Be of good character;
- b. Be an attorney in good standing with at least **ten (10)** years of experience in civil litigation;

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- c. Have completed a neutral evaluation training program approved by the court's ADR committee; or have equivalent experience and be approved by the Presiding Civil Judge; and
- d. Sign a statement or certificate agreeing to comply with all applicable ethics requirements and rules of court.

### C. Voluntary Neutral Evaluation Process

#### 1. Assignment to Neutral Evaluation

All parties shall be prepared at the CMC to consider whether neutral evaluation is appropriate for their case. All general civil cases may be assigned to the Court's voluntary neutral evaluation program if:

- a. All parties are represented by counsel;
- b. Parties or their counsel stipulate in writing and the Court so orders at the Case Management Conference or any time up to **twenty-five (25)** days thereafter;
- c. All parties agree to maintain the confidentiality of the neutral evaluation sessions, and to sign confidentiality agreement forms provided by the neutral evaluator; and
- d. All parties agree to pay all evaluator fees, meet all deadlines, appear for the neutral evaluation and participate in good faith.

#### 2. Selection of Neutral Evaluator

The parties shall have **twenty-five (25)** days after the CMC to designate a neutral evaluator, obtain the evaluator's signature on the *Stipulation & Order form* and return it to the Court. Parties are responsible for researching the background and expertise of the neutrals and are encouraged to contact a neutral's references. If the parties fail to select a neutral evaluator within **twenty-five (25)** days of the Case Management Conference, then the court shall appoint a neutral evaluator within **thirty (30)** days of the Case Management Conference. Neutral evaluators shall be selected from a panel list provided by the court.

#### 3. Pre-Session Phone Contact and Written Statements

The neutral evaluator may, at his/her own discretion, schedule a brief joint phone conference with counsel to discuss the nature of the case. Written statements shall be submitted to the neutral evaluator before the scheduled session and shall not be filed with the Court. The Court shall not have access to written statements submitted to the neutral evaluator.

#### 4. Attendance at Sessions

The parties, their counsel and any insurers whose agreement would be necessary to achieve settlement are expected to attend the neutral evaluation session unless

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all parties and the evaluator specifically agree otherwise before the session. A party other than a natural person satisfies this attendance expectation if represented by a person (other than outside counsel) who has authority to settle and who is knowledgeable about the facts of the case.

### 5. Fees

The neutral evaluation program is self-funded. Parties shall split the neutral evaluator's hourly fees and pay them directly to the neutral.

### 6. Completion

The neutral evaluation must be completed no later than **sixty (60)** days before the trial date, unless the Court designates a different time frame. Neutral evaluation shall not affect the time periods of the trial. Within **ten (10)** days of completion of the neutral evaluation, the evaluator shall file a *Neutral Evaluator's Report* for neutral evaluators with the Court. Counsel shall complete and submit evaluation forms to the ADR administrator. If the case did not settle, the evaluator shall so indicate. If stipulations were made, the evaluator shall include those stipulations.

## D. Deadlines and Tracking

The ADR Administrator shall track compliance with every deadline date in the voluntary mediation program by contacting principal attorneys for each side or parties in pro-per.

### 1. Deadlines

- a. Within **sixty (60)** days of filing the complaint the plaintiff, or cross-plaintiff, must serve on all defendants or cross-defendants the Court's ADR information package. (See California Rule of Court Rule 3.221)
- b. Within **twenty-five (25)** days of the Case Management Conference, parties must return to the court the completed *Stipulation and Order to ADR form*.
- c. No fewer than **sixty (60)** days before trial neutral evaluation must be completed.
- d. No more than **ten (10)** days following the completion of neutral evaluation, the neutral evaluator must submit a *Neutral Evaluator's Report*.

### 2. Tracking

- a. **Thirty (30)** days after the Case Management Conference, the ADR Administrator shall review cases for the *Stipulation and Order to ADR form*, and fees. If parties have not completed the form, indicating the neutral evaluator, the case may be ordered to Judicial Arbitration or the Court may issue an OSC.

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- b. **Ninety (90)** days before trial, the ADR Administrator shall review the case in the neutral evaluation program to see if the *Neutral Evaluator's Report* has been filed. If the form is not in the file, the ADR clerk shall call lead counsel to determine whether the neutral evaluation is completed or when it is scheduled to be completed. If counsel is non-responsive or no date for neutral evaluation has been set, the ADR administrator shall notify the Court and an OSC may be issued.
- c. **Fifty (50)** days before trial, or **ten (10)** days after the scheduled neutral evaluation, the ADR Administrator shall review the case for the *Neutral Evaluator's Report*. If the *Neutral Evaluator's Report* is not present then the ADR Administrator shall notify the Court. An OSC will be issued as to why neutral evaluation has not been completed.

### E. Order to Show Cause and Sanctions

#### 1. Order to Show Cause.

The Court may issue an Order to Show Cause to any party violating any provision of this rule.

#### 2. Sanctions.

The Court may issue monetary sanctions, vacate the trial date and/or, if appropriate, assign the case to Judicial Arbitration. (See Local Rule 3.08(F)). Monetary sanctions of up to \$300 may be issued to the parties or to their counsel for non-compliance with this Rule. (7/1/07)

### 3.12 Complaints Procedure - ADR

Complaints against mediators, neutral evaluators or arbitrators on the Court's panels shall be handled as follows:

- A. All complaints regarding the conduct of a mediator, neutral evaluator or arbitrator on the Court's panels should be directed to the ADR administrator. When the complaint is not in writing, a memorandum that includes the pertinent information should be made.
- B. A file shall be maintained showing each complaint and its disposition.
- C. The ADR Administrator shall review each complaint within **thirty (30)** days. A complaint that is frivolous or unfounded on its face may be disposed of without further action, but the complainant shall be informed of the disposition and a memorandum shall be placed in the file.

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- D. A preliminary inquiry shall be made on any complaint that has possible validity. A copy of the complaint should be supplied to the mediator, neutral evaluator or arbitrator who shall be allowed an opportunity to respond. The preliminary inquiry may be terminated if the complaint is found to be lacking in merit or an acceptable explanation is offered.
- E. When the preliminary inquiry indicates that a complaint, not minor in nature, appears to have validity or there is other good cause including other complaints, the ADR Administrator shall refer the complaint to the presiding civil judge who will appoint a committee of judges to conduct further investigation. The mediator, neutral evaluator or arbitrator should be presented a written statement of the allegations and provided an opportunity to respond either orally or in writing.
- F. At the conclusion of the investigation, the committee should make a written report and recommendation(s) for action to be taken by the court. The recommendations may include, but are not limited to: No further action be taken on the complaint; that a reprimand be given to the mediator, neutral evaluator or arbitrator; that the mediator, neutral evaluator or arbitrator be suspended or removed from the court's panels; or that the mediator, neutral evaluator or arbitrator be referred for additional training. The court in determining the disposition of the complaint should give due consideration to the committee's recommendation(s).
- G. Each complainant shall be notified promptly in writing of the receipt and of the disposition of the complaint.
- H. The complaint at all stages shall be handled as promptly as due process allows.
- I. Except as provided in paragraphs (C) and (G), all papers filed and proceedings conducted on a complaint against a mediator, arbitrator or neutral evaluator should be confidential until disciplinary action is ordered by the court. (7/1/06)

### **3.13 Judicial Arbitration**

#### **A. Arbitration Fee; Notice/Sanctions**

1. The parties will not be required to post fees to participate in arbitration. Arbitrators will continue to be reimbursed at \$150 per case. The funding source will be the Trial Court funding allocation for arbitration.
2. Parties are required to notify the Arbitration Hearing Officer and the Arbitration Clerk immediately in writing of the case settling with sufficient notice to allow the Arbitrator to schedule other matters.

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### B. Arbitration Fee Statement; Sufficient Notice

1. The Arbitration Hearing Officer shall immediately notify the Arbitration Clerk, in writing, of case settlement.
2. The Arbitrator's fee statement shall be submitted to the Arbitration Clerk at the time of the filing of the award. The award and fee statement shall be filed within **ten (10)** days after the conclusion of the Arbitration Hearing.
3. When two (2) or more cases arising out of the same transaction are heard at the same hearing or hearings, they shall be considered as one for purposes of determining the Arbitrator's fee.
4. The Arbitrator's award or a Notice of Settlement signed by the parties or their counsel must be timely filed with the Arbitration Clerk before a fee may be paid.
5. Arbitration Hearing Officers are expected to, and encouraged to, work and cooperate with the Court's Arbitration Clerk.

### C. Hearings; Notice; When and Where Held (California Rules of Court 3.821)

Where a trial has been set, the arbitration hearing shall be scheduled to take place not less than **forty (40)** days before a settlement conference, and if none, at least **forty (40)** days prior to trial.

### D. Failure to File Award

In the event the arbitrator fails to file his award within the time limits specified herein, respective counsel shall notify the Arbitration Administrator. The Arbitration Administrator shall notify the Presiding Judge and an order shall be made restoring the matter to the arbitration calendar and the arbitration proceeding shall again commence. The Presiding Judge may remove the arbitrator from the list and may have the right to make an order for non-payment of arbitration fees.

On written request of either or both parties, the Court may issue an Order to Show Cause directing the arbitrator to appear and show why the arbitrator should not be held in contempt for failing to timely file the award. The identity of the party making this request will not be disclosed to the arbitrator. (7/1/07)

### 3.14 Settlement

The Court supports and encourages the parties to engage in voluntary settlement discussions and in alternative dispute resolution such as arbitration and mediation. If the parties enter into a conditional settlement, such as payment over a period of time,

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the case will be dismissed without prejudice. If there is a default in the conditional settlement, the dismissal without prejudice will be vacated upon the filing of a declaration and lodging of an order by the non-defaulting party. The case will then be set for a case management conference.

### A. Settlement Conferences.

All "general civil cases" are required to have a settlement conference approximately **fifteen (15)** days prior to trial. Short cause matters (one day or less), other than limited jurisdiction collection cases, will not ordinarily be set for a settlement conference.

B. Each plaintiff or party seeking affirmative relief or recovery shall be prepared to make his or her minimum request and each defendant must come to the conference prepared to make his or her highest offer. In each case, counsel who attend the conference shall be thoroughly familiar with the case and shall be prepared to discuss it. The attorney responsible for the preparation and trial of the case should attend in each case.

C. Experience has demonstrated the importance and necessity of the presence of all persons whose consent will be required for a binding settlement agreement. Present at the settlement conference must be persons having full authority to settle the case. Only on good cause prior to the time of the settlement conference may the Court allow such persons to be available telephonically.

D. It is mandatory that all counsel shall, at least **five (5)** Court days prior to the scheduled Settlement Conference, file with the Clerk's Office a Settlement Conference Statement. The statement shall, at a minimum contain the following:

1. Names of parties including interveners and their representatives.
2. The party's summary of their version of the facts, injuries and the legal issues involved. Plaintiff's statement shall contain a list of all claimed damages.
3. In all cases, prior to settlement conference, the parties shall have communicated their settlement requests and offers to each other.

E. For a meaningful conference, all attorneys and/or the parties must agree to participate in good faith. Any failure of an attorney or party to prepare for, appear at, and participate in a settlement conference, unless good cause is shown for any such failure, may be considered as an unlawful interference with the proceedings of the Court.

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**F.**

1. If, at the time of the scheduled settlement conference, plaintiff or those parties seeking affirmative relief fail to appear, the Court may order the trial date vacated, impose monetary sanctions, and/or issue an Order to Show Cause why the matter should not be dismissed, and/or place the matter on the Court's Motion to Dismiss calendar. Written notice thereof will be mailed to all parties or their counsel of record as ordered by the Court. If the defendant or other responding party fails to appear at the settlement conference and good cause is not shown, the Court may impose sanctions by way of costs, actual expenses, and counsel fees and order the case to proceed to trial on the date assigned.

The following monetary sanctions will apply:

Failure to appear at Settlement Conference (per party and attorney or party in pro per)	\$300
Appearance without a Settlement Conference Statement on file	\$150
Appearance with unfiled Settlement Conference Statement or Settlement Conference Statement filed day of the Settlement Conference.	\$100
Settlement Conference Statement not timely filed	\$25

2. In any case where a party fails to appears at the Settlement Conference and no notice has been given to the Court as to why no appearance is being made, or where no party appears at the time set for trial and no notice has been given to the Court as to why no appearance is being made, the trial date will be vacated and the matter placed on calendar at 8:30 a.m. approximately **forty-five (45)** Court days later for the purpose of being dismissed in its entirety by the Court on its own motion for failure to timely prosecute the lawsuit.
3. In any case where the plaintiff intends to conclude the case with a default judgment, the date for obtaining that default judgment shall be prior to the end of the Track in which the case has been placed, or the trial date, whichever occurs first. "Default" cases where the default judgment has not been entered are subject to the same dismissal rule as cases where the parties fail to appear at the settlement conference or trial without prior approval of the Court.
4. Following a judgment or dismissal being filed wherein the only parties remaining are "DOE" defendants, the Court will automatically enter a dismissal as to all "DOES".

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### 5. Settlement.

If a case is conditionally settled, the case shall be dismissed without prejudice. If a default occurs in the settlement, the non-defaulting party may have the matter returned to the case management conference calendar by filing a declaration setting forth the default. (7/1/06)

### 3.15 Continuances of Trial, Settlement Conference and Case Management Conferences

Continuances are disfavored by the Court and will not be granted absent an affirmative showing of good cause.

- A. Stipulations, either orally or in writing, that any trial, settlement conference, case management conference, or any civil case scheduled for trial may be continued, require a declaration setting forth good cause in specific terms. Parties must contact the Courtroom Clerk of the assigned Judge to coordinate and reserve trial dates for all jury trial continuances. Such stipulations require the approval of the Judge assigned for all purposes. Stipulations and orders to continue settlement conference and trial dates received less than **five (5)** Court days prior to the trial or settlement conference date set shall be returned to the parties.
- B. Motions for continuance of trial, settlement conferences, and case management conference must be made in writing on notice supported by a declaration setting forth good cause in specific terms. Oral motions or oral stipulations for continuance will not be acceptable, except in case of emergency. Motions shall be noticed and heard by the Judge assigned for all purposes or the presiding judge of the civil department. (7/1/08)

## TRIALS

### 3.16 Posting of Jury Fees

When a demand for jury has been made, each party demanding a jury trial shall deposit with the Clerk's Office a fee in the amount of **\$150**. A party posting jury fees shall on the same date the fees were posted, mail written notice of the posting of fees to all opposing parties. The **\$150** fee shall be posted at least **twenty-five (25)** calendar days prior to the date of trial and shall be held therein accountable for the use of jurors as required for the case. Pursuant to CCP 631.3 jury fees shall not be returned in the event the action or proceeding is dismissed or the trial by jury is waived after deposit of jury fees unless at least **two (2)** working days notice of the dismissal or waiver is given by the posting party.

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Should the case proceed to trial on the date as set, the party who as demanded trial by jury and has deposited the **\$150** shall be charged the fees and mileage of all jurors who actually serve as trial jurors. The Clerk of the Court shall then assess the actual jurors' fees and mileage for the jurors sworn to try the case, including alternate jurors and costs of meals, against the **\$150** on deposit, and if thereafter a balance of monies remain, that amount shall be returned to the depositing party. If the Clerk of the Court finds that the **\$150** is not sufficient to cover the costs of trial jurors, the Clerk of the Court shall notify the demanding party that there is a balance due and owing, and the said party shall deposit that amount daily in the Clerk's Office.

Should any portion of the **\$150** be forfeited or used prior to trial or during a trial and a remaining balance remains on deposit pending a new trial on the matter, the demanding party shall deposit the difference between the remaining amount and **\$150** as required, making the total once again a sum of **\$150**. The new deposit shall be made **twenty-five (25)** calendar days prior to new date. (7/1/06)

### **3.17 Trial Readiness Conference**

Trial days for civil cases are generally Tuesday through Friday. If Monday is a Court holiday, then Wednesday through Friday. No later than 12:00 noon on the Friday (Monday if Friday is a court holiday) prior to trial, the parties shall notify the assigned civil department as to whether the case has settled or will be going to trial. If you cannot reach the assigned civil department, then call the Court Calendar Manager at (209) 525-6303. Failure to comply with this rule may result in the trial date being vacated. (7/1/06)

### **3.18 Lodging of Trial Exhibits/Jury Instructions**

Unless the case is settled or dismissed, the following items must be lodged no later than noon on the Friday before the date set for trial, and no sooner than five days prior to the date set for trial, with the assigned civil department, or, if the department is unavailable, with the Civil Clerks' Office, located at 801 10<sup>th</sup> Street, 4<sup>th</sup> Floor, Modesto, CA 95354, (209) 530-3100. The following items shall be served on all other parties no later than noon on the Friday before the date set for trial (if that Friday is a court holiday, then the documents must be lodged no later than the court day preceding the Friday holiday):

- A. in limine motions;
- B. exhibit lists, except impeachment exhibits;
- C. witness lists, except impeachment witnesses;
- D. jury instructions except for instructions that cannot reasonably be anticipated;
- E. proposed forms of verdict;
- F. stipulations on factual or legal issues;

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- G. concise, non-argumentative statement of the case to be read to the jury if jury trial;  
and
- H. trial briefs.

If the case does not proceed to trial on the date set, and/or a continuance of the trial date is granted, all lodged documents will be returned to the submitting party/parties. (7/1/09.)

### **3.19 Payment for Food, Lodging and Other Expenses**

In a civil action in which a jury has been sworn, the expenses for food, lodging and other reasonable necessities that are incurred shall be borne by the party or parties who have demanded the jury. Before any such expenses are incurred, the clerk at the trial shall require the party or parties, through their respective counsel, who have demanded the jury, to advance such sums of money as the Clerk of the Court deems reasonable necessary in order to pay for the anticipated expenses. Any surplus amount of money remaining after said expenses have been paid in full shall be returned to the party or parties who advanced said money by the Clerk, when the monies heretofore deposited are disbursed. If the parties fail upon the request of the Clerk to advance such necessary expense money, the jury will forthwith be dismissed and the cause shall proceed as if no jury has been selected and sworn. (7/1/06)

### **3.20 Court Reporters Certification**

A. All official and pro tempore reporters shall be licensed as Certified Shorthand Reporters (CSR) by the State of California, except as otherwise provided by law. If an attorney/litigant desires a court reporter for a civil case, and no official reporter of the Court is available, it shall be the responsibility of the attorney/litigant to make arrangements for and payment to a reporter.

#### **B. Court Reporter Fees**

Court reporter fees will be assessed on all adult non-criminal trials and proceedings where a Superior Court staff court reporter reports the proceedings.

1. Counsel or parties without counsel will be billed for this service. The billing statements will include the date, case number, time charged and amount due.
2. Unless otherwise ordered by the Court, all counsel and all parties, regardless of who requested the reporter, shall pay their proportionate share of reporter fees per the fee schedule in (6) below.

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When there is more than one attorney per side, each side will be billed 50%. That is, one attorney from each side will pay or be billed. It will be those attorneys' responsibility to collect from the other attorneys.

3. Non-payment of any court reporter fees shall result in the denial of future court reporter services to the non-paying party or attorney and the assessment of collection charges.
4. Civil law and motion and family law matters will not be presumed to be reported. Parties requesting a court reporter must independently notify the Office of the Superior Court Reporters at the time of the request for hearing that they are requesting reporting services. Availability of Staff Reporters will be pursuant to subsection (9) below.
5. The Court reserves the right to order proceedings reported if both sides waive reporting services and reporting services are deemed necessary by the Court. In that event, all parties will be ordered to share the cost. Billing will be pursuant to subsection (b).
6. The fee schedule below includes an administrative fee of \$10.

1 day	\$378.00
1/2 day (over 1 hour)	\$189.00

### 7. Daily Transcripts

Request for daily transcripts in civil cases must be made at least one week in advance of trial. Counsel requesting such daily transcript will be required to pay daily transcript rates and the per diem rate for an official court reporter.

### 8. Transcripts of Trial or Proceedings

Whenever a party requests a court reporter to furnish a transcript of all or part of a trial or proceedings, the court reporter shall forthwith inform all other parties of such request and inquire whether any of such parties desires, at his own expense, a copy of such transcript.

### 9. Availability of Staff Reporters -Civil Matters

If there are insufficient staff court reporters to report civil jury or court trials, or civil law and motion matters, attorneys may be required to furnish outside/contract court reporters at their own expense. Attorneys should check with the Court Calendar Manager or the Supervising Court Reporter regarding the availability of a staff court reporter. Contact can be made via court web address: [www.stanct.org](http://www.stanct.org).

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### **10. Notice Required at Settlement Conference**

Parties will be required to notify the Office of the Superior Court Reporters if a court reporter will be requested for any civil jury trial or civil court trial in any civil trial department. This notice should be given at the time of settlement conference when the matter is confirmed for trial. Notice must be given to the Office of the Superior Court Reporters of any change of scheduled request for reporter no less than 24 hours prior to scheduled trial date. Parties requesting reporter will be responsible for reporters' fees incurred for all requests. (7/1/08)

### **3.21 Jury Instruction**

#### **A. Service of Jury Instructions**

Pursuant to Local Rule 3.18, counsel shall lodge and serve copies of the proposed jury instructions upon all other parties participating in the trial. There shall be indicated on each of such instructions the party on whose behalf it is offered.

#### **B. Additional Instructions Submitted**

The parties shall have the right to submit typewritten instructions prepared by themselves, which instructions shall contain the authorities relied upon and shall be sequentially numbered.

#### **C. Judicial Council Civil Jury Instruction or BAJI**

Counsel desiring to submit instruction shall prepare a typewritten or computer generated copy thereof and submit it to the Court, identifying such instruction by its CACI or BAJI number. (7/1/06)

### **3.22 Civil Cases Prior to Judgment**

In civil cases prior to final judgment, no exhibits may be withdrawn except on stipulation of counsel for the parties or on motion after due notice to the opposing parties and order of the Court and the filing of a receipt for the exhibits with the Clerk, provided that the Court may require as a condition for such order that a certified copy of the exhibits if in writing be substituted in place of the exhibits so withdrawn. (7/1/06)

### **3.23 Civil Cases After Final Judgment**

In civil cases after final judgment, no exhibit may be withdrawn except upon stipulation of counsel for the parties or on motion after due notice to the opposing parties and order of the Court, and the filing of a receipt for the exhibits with the Clerk of the Court. (7/1/06)

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### 3.24 Return of Exhibits

After the time has expired for an appeal, the Clerk shall notify counsel for both parties that the exhibits are available and ready to be returned to the party introducing said exhibits. The parties shall have **sixty (60)** days from date of said letter to retrieve their exhibits. When the exhibits are turned over to counsel, the attorney or his/her representative shall sign a receipt for exhibits. The Clerk may obtain authorization from counsel for destruction of exhibits. If the exhibits are unclaimed within the **sixty (60)** day time frame the exhibits will be considered destroyed. (7/1/06)

### 3.25 Tape Recordings

No audio tape recordings shall be marked for identification, admitted as an exhibit, or played before the Judge or jury unless the proponent thereof first provides the Court with a written transcript of the tape recording. (7/1/06)

### 3.26 Interpreters

If an interpreter is needed by any party or witness intended to be called by a party, it shall be the responsibility of the attorney/party to give notice to the Court and the opposing party/attorney of this need and to make arrangements for the presence of and payment to the interpreter. (7/1/06)

### 3.27 Attorneys

#### A. Attorney Acting as Witness

Except by stipulation of all the parties to the action or by special order of the Court, an attorney who is a witness in the matter shall not argue the case before the Court or the jury. This shall be inapplicable if the attorney is a witness only by reason of being called to the stand by opposing counsel.

#### B. Number of Counsel Participating in Examination of Witness

Except by stipulation of opposing counsel or by express permission of the Court, only one lawyer representing the same party may examine or cross-examine the same witness.

#### C. Submitting Same Matter to Different Judges

No matter which has been called up and has been presented formally or informally for hearing or consideration by a Judge of one of the departments of this Court shall thereafter be presented for hearing and consideration by a Judge of the other departments of this Court without it being fully and fairly disclosed to this latter Judge or Judges the following:

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1. That the matter has been previously called up and presented to another Judge of this Court, and
2. What ruling or opinion, if any, was made or expressed by the Judge or Judges before whom the matter was previously called up and presented for consideration. (7/1/06)

### **3.28 Punctuality and Multiple Appearances**

Counsel and litigants are expected to be on time. Failure to appear in Court in a timely manner may subject the offending person to contempt and/or sanctions.

In an attempt to accommodate counsel, where counsel have multiple Court appearances scheduled for the same time, the bailiff in the waiting Court should be notified where counsel will be, how long counsel will be absent from the Court and the nature of the conflicting Court appearance. Counsel are encouraged to obtain coverage to avoid conflicts in their appearances.

In all cases where a matter is to be taken off calendar, notice must be given to the Court at least one day in advance. Failure to give notice may subject the attorney/litigant to contempt and/or sanctions in the amount of \$100.00. (7/1/06)

### **3.29 Judgments, Findings and Orders**

#### **A. Proposed Order**

Statements of decisions and proposals as required by Code of Civil Procedure §632, proposed orders and judgments shall bear the date and department in which the matter was heard and shall be presented directly to the Clerk of that department. All proposed statements of decision (when required) and orders and judgments in contested matters shall be served on the adverse party or approved by the adverse party or his attorney prior to the presentation to the Judge for signature. Decrees and orders shall be submitted to the Clerk of the department. The Clerk shall check the order against the minute order of the Court; and if said order complies with the minute order, the Clerk shall initial the document. Said document will then be presented to the Court for signature. See Rule 3.1590 of the California Rules of Court.

#### **B. Delivery to the Judge**

All memoranda or briefs which are prepared for the trial Judge shall be delivered or mailed to the clerk of the Judge hearing the case.

#### **C. Notification of Counsel**

Whenever the Court makes a minute order in a case or matter which has previously been submitted and taken under advisement, the Clerk is directed to promptly notify counsel of record for each party, in writing, of the date and contents of such

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order and place a written memorandum in the file by way of stamping the original order "copies delivered to" and indicating to whom the copies were delivered.

### **D. Notification -Statements of Decision and Judgment**

After a contested civil cause has been submitted, the Clerk of the Court shall promptly notify counsel of record of the date when the statements of decision and judgment have been filed with the Clerk of the Court.

### **E. Judgment -Signature by Judge**

In all civil cases in which a written judgment is required, counsel (or the party, if appearing in propria persona) shall prepare an original of all proposed orders or judgments. The original shall be presented to the Judge who heard the matter, on Unlawful Detainer matters, the judgment shall be presented at the time of hearing for signature by the Judge. For the purpose of this section, a judgment is defined as any written judgment, order or decree from which an appeal lies. See Rules 3.1590 (g) and 3.1312 of the California Rules of Court. Orders presented for signature in court shall be presented with an original and two (2) copies. The signature line must always be at the end of the order and not followed by any attachment. It should never be on a page by itself.

### **F. Unavailability of Judge for Signature**

In the event a Judge assigned to a particular department is not available to sign ex parte orders, writs, or other documents, such papers may be presented to any other civil Judge for signature or other appropriate action. (7/1/08)

## **3.30 Attorney Fees**

### **A. Minors, Insane or Incompetent Cases**

On application or petitions under the provisions of §372 of the Code of Civil Procedure or §1431 of the Probate Code, the following attorney's fee will normally be allowed:

1. Settlement prior to commencement of trial -25% of the amount recovered.
2. Recovery of judgment or obtaining settlement during trial and after a substantial part of plaintiff's case has been introduced -33 1/3% of the amount recovered.
3. Recovery of judgment or obtaining settlement in any situation falling between "A" and "B" above -not less than nor more than fees prescribed in "A" and "B".
4. In computing fees on the basis of the amount of the judgment or settlement, the costs paid or incurred by the attorney shall be deducted prior to the calculation

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of attorney's fees; such costs shall be itemized and appropriate vouchers or other evidence presented in support thereof.

### **B. Defaults and Contract Provisions**

When an attorney's fee is allowed on a recovery on a promissory note or other contract providing for payment of a reasonable attorney's fee, and no foreclosure of a mortgage or trust deed is involved, a reasonable attorney's fee shall normally be deemed to be in the amount computed by applying to the recovery by judgment, exclusive of costs, the appropriate schedule hereinafter set forth.

1. Default action on note or contract or where Plaintiff is entitled to recover attorney's fees by statute <not including costs>:

**25% of first \$1,000 with minimum fee of \$100**

**10% of next \$9,000**

**5% of next \$40,000**

**2% of any amount over \$50,000**

In an action upon contract providing for an attorney's fee, the Court Clerk shall include in the judgment an attorney's fee in accordance with this schedule, not to exceed the amount in the prayer.

2. In a contested case, the trial Court shall establish attorney's fees based upon the length of the trial, the difficulty of the issues, the experience of the attorney and any other factors which the Court deems relevant to establish reasonable attorney's fees.
3. Unlawful Detainer Defaults: without Appearance - \$250.00; with Appearance \$300. (7/1/06)

## SMALL CLAIMS

### **3.31 Proof of Service**

The original proof of service of any documents in a Small Claims case shall be filed with the Small Claims Court Clerk at least **five (5)** days prior to the date and time of trial. Failure to comply with this rule may result in the matter being dropped from calendar. (7/1/06)

### **3.32 Time of Trial**

Small claims cases are heard pursuant to the current Court schedule in accordance with the Code of Civil Procedure. (7/1/06)

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### **3.33 Small Claims Advisor**

Litigants in Small Claims matters may obtain advice from the Small Claims Advisor established pursuant to Code of Civil Procedures Section 116.940. Information can be obtained by calling (209) 524-3784. (7/1/07)

### **3.34 Continuances**

Small claims cases are to be heard at the earliest possible date; therefore, continuances may be denied for good legal cause and then only for a reasonable period of time. (7/1/06)

### **3.35 Appeals**

Appeals in small claims cases shall be conducted in accordance with California Rules of Court, Rules 8.900 through 8.916. (7/1/07)

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### RULE 4 CRIMINAL

#### 4.00 Direct Calendaring of Criminal Cases

The criminal departments shall consist of Judges as may be assigned by the Court's Presiding Judge. All felony and misdemeanor criminal cases shall be directly assigned to a criminal department judge for all purposes at the time of the arraignment on the complaint. Judges so assigned will preside at the trial of the matter and process the case in its totality following the arraignment. For felonies initiated by grand jury proceedings, the case shall be directly assigned to a criminal department judge at the time of the arraignment on the indictment.

The Executive Committee shall adopt assignment criteria to ensure an equitable distribution of the criminal cases. The Calendar Clerk shall be responsible for notifying the arraignment judicial officer of the judge assigned on each case according to the assignment criteria. By this rule, the Presiding Judge delegates to the judicial officer conducting arraignments the authority to make the all purpose assignment as determined by the assignment criteria or the direction of the Presiding Judge. The judicial officer conducting arraignments shall ensure that the assigned judge is named in the appropriate space on the arraignment minute order.

The assigned judge may change in the event that the attorney appointed by the court is relieved due to conflict. In such cases, the assigned judge is delegated authority by the Presiding Judge to reassign the case for all purposes to the criminal judge handling the new appointed attorney's cases, as determined by the assignment criteria. The judge reassigning the case is responsible for ensuring that the newly assigned judge is named on the minute order.

In the event of unavailability, another criminal judge or an assigned or temporary judge may handle cases directly assigned to the unavailable judge, but the case shall remain directly assigned to the unavailable judge who shall handle all matters related to the case upon his or her return.

(1/1/07)

#### 4.01 Assignment of Cases

Criminal cases which are subject to direct calendaring shall be randomly assigned to a criminal department judge for all purposes at the time of arraignment on the complaint. Clerks will stamp the complaint, which is distributed to the defendant and his/her counsel and prosecutor, with the following notice:

"THIS CASE HAS BEEN ASSIGNED TO JUDGE \_\_\_\_\_,  
DEPARTMENT \_\_\_\_\_ FOR ALL PURPOSES, INCLUDING TRIAL." (1/1/07)

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### 4.02 Misdemeanor Complaints

All traffic citations shall be filed at the Court location serving the area in which the offense is alleged to have occurred. (1/1/05)

### 4.03 Discovery in Criminal Cases

- A. Discovery in criminal cases is governed by Penal Code Section 1054, et. seq. and all parties are ordered to comply. This order shall be in effect in all criminal proceedings and there shall be no need to seek a further order of Court prior to seeking an enforcement of this order as long as the party seeking enforcement has made an informal request described in Penal Code section 1054.5(b).
- B. Any party asserting a work product or other privilege, pursuant to Penal Code Section 1054.6 or a good cause exception, must assert that privilege or exception by noticed motion, which shall be heard prior to the date of the trial readiness conference. The factual showing establishing a claim of work product, privilege, or good cause need not be set forth in the motion or accompanying points and authorities. The factual showing may be made to the court in-camera upon the moving party's request. The request to make an in-camera showing shall be made in the motion. If the Court hears the matter in-camera, the Court shall follow the procedure for establishing and sealing the record of the in-camera hearing set forth in Penal Code section 1054.7.
- C. In the event of a failure to comply with the obligations set forth in Penal Code Section 1054, et. seq., the Court may impose sanctions including, but not limited to:
  - 1. immediate disclosure;
  - 2. contempt;
  - 3. delaying or precluding the testimony or evidence;
  - 4. continuance;
  - 5. jury instruction commenting on the party's failure to comply with their discovery obligations;
  - 6. dismissal where required by the United States Constitution;
  - 7. imposition of monetary sanctions on counsel and/or;
  - 8. other sanctions deemed appropriate by the Court. (1/1/05)

### 4.04 Criminal Law and Motion

Motion dates must be reserved with the courtroom clerk of the assigned department prior to filing.

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Misdemeanor PC 1203.4 motions will be heard with the misdemeanor probation violation calendar.

- A. All motions and responses thereto shall be filed in writing unless good cause is shown. Said motions and responses shall include the department, date and time of hearing, the theories relied upon for the granting or denying of the motion, points and authorities and any required declarations. Said motion and accompanying documents shall be served and filed on all opposing parties at least **ten** (10) calendar days before the hearing; all opposing papers at least **five** (5) calendar days before the hearing; and any reply papers **two** (2) Court days before the hearing. Proof of service of the moving papers shall be filed at least **five** (5) calendar days before the hearing (California Rules of Court 227.5).

Orders presented for signature in court shall be presented with an original and two (2) copies. The signature line must always be at the end of the order and not followed by any attachment. It should never be on a page by itself.

Unless otherwise allowed or required by statute or Rule of Court, all motions made following the filing of a felony complaint shall be made so that they can be timely served and heard prior to the date the preliminary examination is scheduled to be heard. Unless otherwise allowed or required by statute or Rule of Court, all motions made following the filing of an Information or Indictment must be made so that they can be timely served and be heard at least **fourteen** (14) days before trial. Said motions must include the date of jury trial on the face sheet of the motion. Unless otherwise allowed or required by statute or Rule of Court, all motions made following the filing of a misdemeanor complaint must be made so that they can be timely served and filed to be heard at least **three** (3) Court days before trial.

- B. **Failure to File Memorandum of Points and Authorities/Failure to Address Issues**  
Absence of a memorandum of points and authorities shall be deemed by the Court to be a concession that the motion lacks merit. No issues other than those set forth in the memorandum of points and authorities will be considered unless the new issues were not reasonably discoverable before the motion was filed or there is other good cause shown.

A memorandum of points and authorities shall not exceed **fifteen** (15) pages, excluding exhibits, declarations or attachments. Any party may request by written notice to the court scheduled to hear the motion, a request to exceed the **fifteen** (15) page limitation **two** (2) days before the motion is to be filed or response due. Such written request set forth good cause why the **fifteen** (15) page limit needs to be exceeded. (7/1/08)

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### 4.05 Motions Under Section 1538.5 of the Penal Code

Failure to comply with any portion of this rule may constitute cause for denial of the motion.

In all cases, the motion must be written and must comply with Rule 4.04 and 1538.5 PC. The following requirements apply in addition to those specified in the aforementioned rules:

**A. List of Items to be Suppressed or Returned:**

The moving party shall include a complete itemized list of the specific items of property or other matters sought to be suppressed or returned. A general request to suppress or return "all evidence seized," without greater specificity, is not sufficient and shall be deemed an abandonment of the motion. Only the items listed in the motion will be considered by the court for suppression or return unless it is established the newly identified item could not reasonably be identified before the motion was filed.

**B. Specification of Factual and Legal Basis for Motion:**

The moving party's memorandum of points and authorities shall identify the specific legal and factual basis and cite the specific authority which will be offered to support the claim the search or seizure was defective. Failure to identify the specific legal and factual basis for the claim will be deemed a concession the search and/or seizure was lawful and will result in summary denial of the motion.

**C. Specification of Intended Witnesses:**

Moving and responding parties shall specify, on the first page of the notice of motion or response, the name of the witnesses, if any, they intend to call at the hearing.

**D. Copy of Search Warrant, Affidavit, and Inventory:**

If relevant to the motion, legible copies of the search warrant, affidavit in support of the warrant, and return and inventory shall be appended to the moving papers.

**E. Stipulation to Transcript of Preliminary Examination Superior Court:**

When any party is unwilling to stipulate to the transcript of the preliminary examination or grand jury hearing being received into evidence (supplemented by other testimony and argument of counsel, as needed), that fact shall be stated on the first page of the notice of motion or response. Failure to so indicate shall be deemed a stipulation of the transcript into evidence. (1/1/05)

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### 4.06 Motions At Trial

#### A. Felony Cases

In felony cases, **all motions in limine**, any extraordinary or complex trial motions, and any motions requiring **live testimony** shall be made in writing with a supporting memorandum of points and authorities. These motions must be served on opposing counsel and filed with the court no later than **three (3)** days before the first trial assignment date.

#### B. Misdemeanor Cases

In misdemeanor cases, all motions in limine requiring **live testimony** shall be made in writing with a supporting memorandum of points and authorities. In limine motions requiring live testimony shall be served on opposing counsel and filed with the court no later than **three (3)** days before the first trial assignment date. Any other in limine motions in misdemeanor cases may be made orally or in writing in the trial department. If other such motions are made in writing, the moving party must serve the opposing party no later than the first appearance in the trial department.

All evidentiary in limine motions necessitating testimony must be clearly labeled: LIVE TESTIMONY NECESSARY. All in limine motions seeking to exclude or admit evidence or testimony shall include the following:

1. an itemized list of the evidence the party is seeking to exclude or admit;
2. a summary of the expected testimony the party is seeking to exclude or admit and a list of the witnesses the party expects will give that testimony and;
3. points and authorities.

All motions made by the People seeking the admission of evidence pursuant to Evidence Code §1101(b), or 1108 or 1109, shall include, in addition to the items set forth in paragraph D, relevant portions of the police reports, transcribed witness statements, and preliminary hearing and trial transcripts, relating to the uncharged offense when such documents are available. (1/1/05)

### 4.07 Sanctions

The court may impose sanctions for failure to comply with rules pertaining to criminal law and motion which may include, but not limited to: monetary sanctions, refusal to hear the motion, continuance, exclusion of evidence, issue preclusion, or any other relief or sanction the Court deems appropriate. (1/1/05)

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### 4.08 Jury Instruction

Counsel or defendant shall file jury instructions with the Court by 1:30 p.m. on the first day of trial in completed form with supporting authorities. Upon good cause, defendant or prosecution may file additional instructions following the conclusion of all the evidence. Good cause includes the defendant not wishing to disclose his theory of defense to the prosecution prior to the conclusion of the evidence. (7/1/07)

### 4.09 Extraordinary Writs

All petitions for writ of mandate and/or prohibition involving a misdemeanor or infraction charge shall be filed with the clerk's office of the Superior Court Appellate Division, to be reviewed and determined by the assigned appellate panel. (Pursuant to Cal. Const. art. VI, section 10; C.C.P. 1068(b), 1085(b) and 1103(b)). All petitions for writ of habeas corpus shall be filed with the Superior Court Criminal Clerk's office, to be received and assigned by the presiding judge of the criminal department or his/her designee to a Superior Court judge for review and determination. Any and all other extraordinary writ petitions shall be handled by the presiding judge of the criminal department or his/her designee. (1/1/08)

### 4.10 Transcripts

Pleas of guilty or nolo contendere to a felony offense will be transcribed only upon the order of the judge presiding. (1/1/05)

### 4.11 Appointment of Counsel for Indigent Defendants

Indigent defendants not represented by the public defender or conflict firms shall upon request be appointed counsel from a list kept by the Court. The Court shall approve all counsel who request to be on the Court Appointed counsel panel. Appointed counsel shall follow the "Fee Claim Process" administered by the Criminal Courts Bar Association.

Attorneys requesting to be placed on the Court appointment list for capital cases shall meet the requirements provided for in California Rules of Court 4.117 and shall file a declaration of qualification with the Court per California Rules of Court 4.117. (1/1/05)

### 4.12 Tape Recordings

No audio tape or video tape recording having audio shall be marked for identification, admitted as an exhibit, or played before the Judge or jury unless the proponent thereof first provides the Court with a written transcript of the tape recording. Transcripts of

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any audio or video tape shall be exchanged **three** (3) days prior to trial and a copy filed with the court **three** (3) days prior to trial. (1/1/05)

### **4.13 Criminal Exhibits**

In criminal cases, exhibits may be withdrawn or disposed of as provided in the Penal Code and Code of Civil Procedure. (1/1/05)

### **4.14 Motion To Be Relieved As Counsel -Retained Counsel**

**A.** An attorney retained to represent a defendant in a criminal proceeding shall not withdraw from such representation except by order of the Court upon a timely motion.

**B.** Except when a defendant fails to appear and a bench warrant is issued, all motions to be relieved shall be in writing and served by counsel on defendant prior to the hearing and comply with Code of Civil Procedure sections 284 and 285 and California Rules of Court 3.1362. Counsel for defendant shall also serve a copy of the motion on the People.

**C.** Any motion to be relieved shall include a declaration stating the defendant's last known address along with facts indicating when that address was last confirmed as valid by counsel. If the whereabouts of the defendant are unknown, the declarations shall include facts constituting reasonable diligence in ascertaining the defendant's last known address. (7/1/07)

### **4.15 Fees**

Fees for various services in Criminal Cases shall be paid according to a schedule kept by the Clerk of the Court. The fees may be changed by a majority vote of the Judges of the Court without formal amendment of these Rules.

An administrative fee of \$75.00 will be charged to any party who informally requests a matter be placed on calendar and then fails to appear on the matter. (1/1/05)

### **4.16 Expert and Investigation Fees Requests**

Applications for hiring of and payment to investigators and experts shall be made in compliance with the established written policies and procedures on file with the Clerk of the Court. (1/1/05)

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### **4.17 Requests for Appointment of Keenan Counsel**

Requests for appointment of Keenan Counsel in capital cases shall be submitted in accordance with established written policies and procedures on file with the Clerk of the Court. (1/1/05)

### **4.18 Requests for Search Warrants**

All requests for search warrants must be submitted in proper and completed form. All requests made during hours of normal Court operation shall first be presented to the primary on-call judge and/or secondary on-call judge, preferably after an appointment has been made with the judge. In the event neither the primary nor secondary judge is available, any judge hearing a criminal law assignment may be contacted. All requests for search warrants made other than during hours of normal Court operation shall be made to the primary on-call judge or secondary on-call judge if primary judge is not available. (1/1/05)

### **4.19 Misdemeanor Appeals to the Appellate Division**

Appeals in misdemeanor cases to the Appellate Division of the Court shall be in accordance with California Rules of Court, Rules 8.781-8.793. The Court specifically adopts California Rules of Court 128 and directs that California Rules of Court 128 applies to every appeal in a misdemeanor case in which all or part of the proceedings were officially recorded electronically. (7/1/07)

### **4.20 Continuances**

Continuances of criminal matters are disfavored as such frustrates the public policy of prompt and early disposition of criminal matters, as well as often denying a party the right to a speedy trial and disrupting the Court's orderly process. Generally, no continuance will be granted, absent good cause, even if stipulated to, joined in or brought by all parties.

The Court recognizes that in criminal matters, the right of a party to a fair trial may prevail over lack of good cause for a continuance, thereby requiring a continuance to be granted even absent legal good cause, if such does not violate some other constitutional right. If the need for such a continuance is caused by an act or omission by counsel for either party, sanctions may be imposed. (1/1/05)

### **4.21 Tape Recorded Proceedings in Misdemeanor Cases**

A. All contested matters will be tape recorded. All other matters will be tape recorded only upon the request of a party.

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### B. Tapes shall be preserved by the clerk as follows:

1. In all contested matters (motions and trials), tapes will be preserved until **sixty (60)** days following final judgment. In cases involving multiple defendants, tapes will be preserved until **sixty (60)** days following final judgment of the last co-defendant. Tapes shall also be preserved until the appeals of all defendants are final.
2. In all other cases, the tapes will be preserved for **thirty (30)** days after the recording date, unless a party shall have delivered to the clerk a request, in writing, stating the particular case and date recorded, in which case the tapes will be preserved for **sixty (60)** days.
3. Unless otherwise ordered by the Court, tape recordings of proceedings are public records and may be examined under reasonable conditions, to be specified by the clerk.
4. Upon written request, specifying a particular case and tape number, the clerk may duplicate the tape for a fee. (1/1/05)

### 4.22 Specialty Courts

#### A. Drug Court

The mission of the Stanislaus County Drug Court Program is to hold accountable and treat non-violent substance abuse offenders through an intensive program that embraces the principles of regular judicial intervention, a highly structured treatment program, a system of graduated rewards and sanctions, and emphasizes maintaining family structure.

The intent of the Drug Court Program is to provide a system of treatment and accountability for substance abuse offenders in order to break the cycle of substance abuse and incarceration in state prison.

The Drug Court Team consists of the Drug Court Judge, the Drug Court Deputy District Attorney, the Defense Attorney, the Probation Officer assigned, and the substance abuse counseling staff. (1/1/08)

#### 1. Eligibility Criteria

- a. The program is open to a defendant who acknowledges current or significant and problem alcohol or drug use that is verified by the facts of the offense and/or past history (e.g. Criminal, Family Court, Treatment and Probation history).

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- b. The defendant must reside in Stanislaus County while participating in Drug Court.
- c. The defendant must currently be abusing alcohol, narcotics or controlled substances.
- d. The offenses for which a defendant is referred to Drug Court must include at least one felony.
- e. Acceptance into the Drug Court Program requires the unanimous agreement of the Drug Court Team.
- f. A defendant is not eligible for Drug Court if currently charged with sales or possession for sales or manufacturing. A defendant with any prior conviction for sales or possession for sales or manufacturing is not eligible, except with the unanimous agreement of the Drug Court Team.
- g. A defendant with a felony or misdemeanor conviction for a crime of violence within the last **five (5)** years is not eligible, except with the unanimous agreement of the Drug Court Team.
- h. A defendant is not eligible if the current charges allege, or if the facts of the offense involve, the carrying, possession, or use of a firearm or other dangerous weapon, or the use or threat of force against the person of another, or the death or serious bodily injury to any other person.
- i. A defendant with any current commitments to state or federal prison is not eligible.
- j. A defendant with any prior commitment to state or federal prison is ineligible, except in unusual circumstances where it appears in the discretion of the Drug Court Judge that the defendant will benefit from treatment and is not currently on State Parole.
- k. A defendant with a pending case, or pending pronouncement of judgment, on disqualifying charges is not eligible.
- l. A defendant with outstanding out-of-county warrants or foreign holds is not eligible.
- m. A defendant who qualifies for and is available for another treatment program, such as PC 1000 Deferred Judgment or Prop 36 (PC 1210.1), is not eligible.

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- n. A defendant currently charged with any offense listed in PC 1192.7 or PC 667.5 (c) is not eligible.
- o. A defendant with any prior conviction for any offense listed in PC 1192.7 or PC 667.5 (c) is not eligible, except with the unanimous agreement of the Drug Court Team.
- p. A defendant with either current charges or prior convictions for sex-related offenses, including, but not limited to, those enumerated in PC 290, PC 311, PC 314, PC 647 (a), and PC 647.6, is not eligible. (1/1/08)

### 2. Policies and Procedures

- a. Upon acceptance into Drug Court, the defendant must plead guilty or nolo contendere, waive all pretrial rights, and waive referral to the Probation Department for a pre-sentence report and investigation.
- b. Imposition of sentence, or execution of sentence, shall be suspended and the defendant shall be sentenced to formal probation under general terms and conditions and the following recommended specific terms of probation:
  - (1) Make full restitution (if appropriate).
  - (2) Totally abstain from the use or possession of intoxicating beverages or being in or about any place of business where the primary item sold is intoxicating beverages for consumption on the premises.
  - (3) Submit your person, vehicle, property to search for controlled substances, alcohol, and any other appropriate search required.
  - (4) Registration pursuant to 11590 H&S (if appropriate).
  - (5) Urine Testing.
  - (6) Do not use or possess narcotics, controlled substances, and restricted or prescribed drugs except with a valid prescription.
  - (7) Complete an AIDS Education Program pursuant to PC 1001.10 (if appropriate).
  - (8) Participate in and complete the Drug Court Program.
  - (9) Participate in and complete an in custody or residential treatment program (if appropriate).
  - (10) Comply with all directives in the Drug Court Contract.
  - (11) All required fees and fines be imposed but stayed pending successful completion.
- c. If participants have pled prior to entry into Drug Court then upon satisfactory completion of the Drug Court Program, the Drug Court Judge

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- will terminate probation and reduce any felony to a misdemeanor (if appropriate).
- d. A defendant who pleads guilty or no contest in order to enter Drug Court shall, upon successful completion of Drug Court and payment of restitution, if any, have the charges(s) dismissed.
  - e. Upon termination from the Drug Court Program, after consideration of factors in mitigation and aggravation, the Drug Court Judge will immediately pronounce judgment. (1/1/08)

### **B. Mental Health Treatment Court**

The mission of the Stanislaus County Facilitative Adjudication and Intensive Rehabilitative Services (FAIRS) program is to hold mentally ill offenders accountable while enlisting their participation in flexible and intensive treatment programs tailored to their specific assessed needs. The program provides Facilitative Adjudication through a dedicated Mental Health Treatment Court. As of March 2007, the program embraces the principles of regular judicial intervention, case management, targeted treatment and a system of graduated rewards and sanctions to encourage compliance and continued participation in the mental health and drug dependency treatment regimens. The key objective of FAIRS Mental Health Treatment Court is to prevent the incarceration of mentally ill offenders by securing their release from jail for appropriate community intervention and treatment services.

The Mental Health Treatment Court team consists of the Mental Health Treatment Court Judge, Deputy District Attorney, Deputy Public Defender, Behavioral Health Specialist, Psychiatric Nurse and Deputy Probation Officer. (07/01/09)

#### **1. Eligibility Criteria**

- a. The program is open to a defendant who is identified as suffering from a DSM IV Axis I disorder, whose primary diagnosis is not a substance abuse disorder; and to those with a non-substance abuse Axis I disorder and a co-occurring substance abuse disorder whose mental illness may likely contribute to his/her involvement in the criminal justice system.
- b. The defendant must reside in Stanislaus County while participating in the FAIRS program.
- c. Acceptance into the FAIRS program requires unanimous agreement of the Mental Health Treatment Court team.

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- d. A defendant is not eligible if the current charges allege, or if the facts of the offense involve, the carrying, possession or use of a firearm or other dangerous weapon; or the death or serious bodily injury to another person. However, in a misdemeanor case, following successful competency restoration, a defendant excluded under this section may be accepted into the FAIRS program, with unanimous agreement of the Mental Health Treatment Court team.
- e. A defendant with a felony or misdemeanor conviction for a crime of violence within the last five years is not eligible, except with the unanimous agreement of the Mental Health Treatment Court team.
- f. A defendant with current commitments to state or federal prison is not eligible.
- g. A defendant with any prior commitment to state or federal prison is ineligible, except in unusual circumstances in which it appears to the Mental Health Treatment Court Judge the defendant will benefit from treatment and is not currently on state or federal parole.
- h. A defendant with a pending case or pending pronouncement of judgment with disqualifying charges is not eligible.
- i. A defendant with outstanding out of county warrants or foreign holds is not eligible.
- j. A defendant currently charged with any offense listed in PC 1192.7 or PC 667.5(c) is not eligible.
- k. A defendant with any prior conviction for any offense listed in PC 1192.7 or PC 667.5 (c) is not eligible, except with the unanimous agreement of the Mental Health Court Team.
- l. A defendant with either current charges or prior convictions for sex-related offenses, including, but not limited to PC 290, PC 311, PC 647(a) and PC 647.6 is not eligible.

## 2. Policies and Procedures

- a. Upon acceptance into the Mental Health Treatment Court, the defendant must plead guilty or nolo contendere, providing they are able to do so, must waive all pretrial rights and waive referral to the Probation Department for a pre-sentence report and investigation. If a defendant is

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incapable of entering a plea, the defendant must comply with the terms set forth in the Mental Health Treatment Court Contract.

- b. For the purpose of participation in the Mental Health Treatment Court component of the FAIRS program, the defendant must agree to comply with the directives of the Mental Health Treatment Court contract, which will include the following conditions:
  - (1) Obey all laws, also orders of the Court and reasonable and proper directions of the Mental Health Treatment Court team.
  - (2) Totally abstain from the use of alcohol, drugs or other chemical substances not prescribed by a licensed practitioner.
  - (3) Attend and actively participate in group counseling sessions as directed by program personnel.
  - (4) Attend and actively participate in individual counseling sessions as directed by program personnel.
  - (5) Submit to urinalysis or other testing as directed by program personnel.
  - (6) Submit person, vehicle and place of abode to search for controlled substances and alcohol, at the direction of any peace officer, with or without probable cause or reasonable suspicion.
  - (7) Participate in other outpatient or residential treatment programs as directed by program personnel.
  - (8) Appear before the Mental Health Treatment Court Judge at such times and dates as directed by the Court or program staff.
  - (9) Immediately notify the Probation Officer of any change of address and/or telephone number.
  - (10) Participate in the Mental Health Treatment Court component of the FAIRS program for a minimum of one (1) year, to a three (3) year maximum.
  - (11) Be prohibited from having possession, custody or control of any weapon or ammunition, including any type of firearm.
  - (12) Comply with FAIRS individual treatment contract.

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(13) Take all **mental health** medications as prescribed.

(14) Pay restitution as ordered by the Court and directed by Probation.

If the defendant successfully completes the Mental Health Treatment Court program, (s)he may withdraw the guilty plea(s) and the criminal complaint(s) filed will be dismissed without having suffered a criminal conviction. If the defendant enters the program post-conviction, the felony charge(s) may be reduced to a misdemeanor and probation will be terminated. Failure to comply with all program requirements, and/or failure to comply with the directions of program staff, may result in imposition of sanctions, program termination and/or incarceration.(7/1/09)

### C. Domestic Violence Cases (See Local Rule 4.31)

#### TRAFFIC CASES

##### 4.23 General

The handling of bail forfeitures, proof of correction, initial continuances, and other ministerial or minor discretionary matters will be performed by the traffic clerks of this Court under the direction of the Clerk of the Court in conformity with the policies and procedures of the Court. (1/1/05)

##### 4.24 Bail

This Court will adhere to the bail schedule for traffic violations found in Rule 4.102 of the California Rules of Court including the footnotes requiring increase of bail because of prior convictions. (7/1/07)

##### 4.25 Trials -Infractions

This Court adopts the provisions of Vehicle Code Section 40901 for the trial of any alleged infraction involving a violation of the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code. (1/1/05)

##### 4.26 Continuances

A. The Clerk of the Court has authority to grant continuances for not more than **thirty (30)** days from the date the person was required to first appear. (Requests for continuances must be submitted no later than **ten (10)** days prior to the hearing date.)

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### B. Mechanical Defects:

The above rule authorizing the Clerk to continue infraction cases applies equally to mechanical defects charges.

### C. Requests for continuance to pay a fine may also be granted by the Clerk for a period not to exceed **thirty (30)** days.

### D. All other requests for continuances shall be presented to the judicial officer hearing the traffic calendar.

### E. No continuances are allowed for completion of traffic school. (1/1/05)

## 4.27 Parking Violations

This Court adopts the appeal procedures set forth in Vehicle Code Section 40230. (1/1/05)

## 4.28 Traffic School

A. The Court will permit attendance at a certified traffic school as a means of disposition and obtaining a dismissal of a minor traffic infraction. The type of infractions which qualify for traffic school and the procedures to follow are available at the clerk of the Court, Traffic Division.

B. Traffic school may be authorized by the Clerk of the Court or the traffic deputy without further referral to a Judge of this Court if the person otherwise qualifies under existing Court polices.

C. The full amount of the bail plus an administrative fee must be posted as a prerequisite to attendance at traffic school. (1/1/05)

## 4.29 Trial by Declaration

A. By this rule, the Court provides pursuant to Vehicle Code Section 40902, that a defendant may elect to have a trial by written declaration upon any alleged infraction, as charged by the citing officer, involving a violation of the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code, other than an infraction cited pursuant to Article 2 (commencing with Section 23152) of Chapter 12 of Division 11.

B. If the defendant elects to have a trial by written declaration, the defendant shall, at the time of submitting that declaration, submit bail in the amount established in the

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uniform traffic penalty schedule pursuant to Vehicle Code Section 40310.  
Declaration and bail shall be submitted no later than 5 days prior to Court date.

- C. If the defendant is found not guilty or if the charges are otherwise dismissed, the amount of the bail shall be promptly refunded to the defendant.
- D. Trials by written declaration may include testimony and other relevant evidence to be introduced in the form of a notice to appear issued pursuant to Section 40500 of the Vehicle Code, a business record or receipt, a sworn declaration of the arresting officer, or a written statement or letter signed by the defendant. Requests for continuances must be submitted no later than **ten (10)** days prior to the hearing date.
- E. A defendant who is dissatisfied with a decision of the Court in a proceeding pursuant to Vehicle Code Section 40902, shall be granted a trial de novo. (1/1/05)

### **4.30 Adjudication of Traffic Cases Pursuant to Vehicle Code § 40903**

Failure to appear as promised (FTA) on a traffic infraction may result in the following procedures:

- A. The Court may deem the defendant's failure to appear as the defendant's consent to proceed in absentia at the time of any trial.
- B. The case may be adjudicated solely on the merits of the citing document. (adopted 1/1/95)
- C. A notice of conviction shall be reported to the Department of Motor Vehicles.
- D. The Court will notify the defendant of the disposition of the case and the amount of imposed fines and penalties.
- E. Failure to pay (FTP) will result in a Department of Motor Vehicles hold on a driver's license pursuant to Vehicle Code Section 40509.5.
- F. If payment on a case has ever been past due, personal checks will not be accepted. (1/1/05)

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### DOMESTIC VIOLENCE CASES

#### 4.31 Domestic Violence Protocol

This Protocol is adopted in conformity with Penal Code 136.2, California Rule of Court 5.450, and Stanislaus County Superior Court Rule 4.31.

##### A. Definitions

For purposes of this protocol:

1. "Criminal court protective order" means any court order issued under California Penal Code §136.2 arising from a complaint, information, or an indictment charging a crime of domestic violence as defined in California Penal Code §13700.
2. "Court" means all divisions of the Superior Court of the County of Stanislaus.
3. "Cases involving child custody and visitation" include family (dissolutions, legal separations, nullities, Domestic Violence Prevention Act, parentage, petition for custody and support, Title IV-D child support matters where custody or visitation is an issue, and any other Family Law matters related to custody or visitation), juvenile and probate guardianship proceedings.
4. All references in this Protocol to Family Court include any division of the Superior Court, hearing matters involving child custody and visitation, including Juvenile Court and Probate Court.
5. "CLETS Restraining Orders" include personal conduct, residence exclusion, stay away, and other orders issued under the Domestic Violence Prevention Act in the Family Code or Section 213.5 of the Welfare & Institutions Code.

##### B. Purposes

This protocol is intended to set forth the procedures for communication and sharing regarding the issuance of Criminal Court protective orders and civil restraining orders, including those orders involving child custody and visitation, where the same restrained person and protected person are involved in both orders. It is important to permit appropriate visitation between a criminal defendant and his or her children pursuant to civil court orders, while simultaneously to provide for the safety of the protected person or witness by ensuring that a criminal court protective order is not violated. Since there are large numbers of cases in the criminal courts that relate to matters in the Family, Juvenile, or Probate Courts, it is vital that a process exists for communication and information sharing between the divisions of the Court dealing with the same parties and families, as well as a process for the

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modification of orders, to ensure consistency between various court protective orders.

### C. Procedure in the Criminal Domestic Violence Court

#### 1. Where the Restrained and Protected Persons have Children Together

When the Criminal Court issues Criminal Protective Orders protecting Victim(s), the Criminal Court shall inquire of the defendant (restrained person) whether there are any children of the relationship between the defendant and the protected person, and whether there are any Court Orders for custody/visitation of those children. If there are children, the Criminal Court shall consider whether peaceful contact should be allowed for purposes of visitation of the defendant with the children and shall give the **Restrained Person Pamphlet** containing informational material to the defendant concerning his or her rights to request a modification of the Criminal Protective Order. The Criminal Court shall also inquire as to whether there are any other protective/restraining orders involving the defendant, protected person and/or the witness. **Subject to available resources**, the Court shall examine the Court's local database for existing protective or restraining orders before issuing permanent orders. Court personnel shall relate the identified cases in the Court's local database to ensure future identification of these cases.

#### 2. When the Protected Persons Include Minor Children of the Restrained Person

When the Criminal Court issues No Contact and/or a Stay Away Orders from the minor children of the defendant, the Criminal Court shall forward a copy of the issued criminal protective order to the Family Law, Probate or Juvenile Division for placement in the related file.

#### 3. When the Protected Person is Present in the Criminal Court

If the protected person is present in Criminal Court when the Criminal Protective Order is issued, the Court shall provide the victim with a copy of the Criminal Protective Order, along with a **Protected Person Pamphlet**. If the protected person is not present in Court, the District Attorney's Office will provide the victim with a copy of the Criminal Protective Order, along with a **Protected Person Pamphlet**. The Protected Person Pamphlet shall advise the protected person of her or his rights to request restraining orders, custody and visitation orders, and child support orders through the appropriate Court.

#### 4. Modification of Criminal Protective Orders in Criminal Court

Because Criminal Protective Orders take precedence over Family Law Protective Orders, it is important that the process of modification be easily available.

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- a. The District Attorney's Office may, at any time, place the issue before the Court at the request of a protected person or the Family, Juvenile or Probate Court.
- b. The Probation Department may place the issue before the Court on the probation review calendar at the request of a defendant, protected person, or the Family, Juvenile or Probate Court.
- c. The defendant or his/her counsel may place the issue before the Court on the probation review calendar.
- d. An **Application for Modification of Criminal Protective Order** allows a defendant, protected person, another court or any other appropriate agency (see (f)) to request the Criminal Court to place the case on calendar to consider a request to modify the protective order. This form will be available in the Family Law, Probate, Juvenile and Criminal Court Clerk's Office, the Family Law Facilitator's Office, and any other appropriate agencies.
- e. Upon a proper request pursuant to this protocol, the appropriate Criminal Court may place the matter on calendar on its own motion.
- f. Copies of any applicable CLETS restraining orders and custody and visitation orders shall be attached to the Application to Modify Criminal Protective Order. The District Attorney, Probation, Defendant or their attorney, Protected Person or their attorney or any other division of the Court, may present the Application to Modify Criminal Protective Order to the Criminal Court. The application shall contain the case numbers of both the Criminal case and any Family, Juvenile, or Probate cases involving the defendant and the protected person and must be signed by the appropriate Judge prior to being presented to the Criminal Clerk's Office for scheduling of the hearing. The submitting party will provide copies of the application, which shall be placed in the applicable court files. The requesting party shall effect personal service no less than **ten** (10) calendar days before the hearing on the defendant and all other appropriate parties and agencies, including the District Attorney's Office, the Probation Department, and Defense Counsel. If someone other than the Protected Person submits the application, the District Attorney shall send a copy of the Application to the protected person at his or her last known address. If the Protected Person submits the application, the Sheriff's Office shall include service of these documents with their current process for civil restraining order service.

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### 5. **Procedure After the Criminal Court Hearing on Modification**

After the hearing on modification of the protective order, the Criminal Court shall provide copies of the Modified Protective Order or Minute Order denying the Motion to Modify Criminal Protective Order to the applicable Family, Juvenile, or Probate Court for inclusion in its file(s). If the application was submitted by someone other than the Protected Person, the District Attorney shall send a copy of the new Criminal Protective Order or the Minute Order denying the Motion to Modify Criminal Protective Order to the protected person at his or her last known address.

## D. **Procedure in Family, Juvenile and Probate Courts**

### 1. **Criminal Record Information to be made Available to the Family Court**

Subject to available resources, the Family, Juvenile, and Probate Courts shall review the Court's local database for existing restraining/protective orders involving the same restrained and protected parties, before issuing permanent CLETS Restraining Orders.

### 2. **Provisions for Safe Access to Children**

Any order of the Family, Juvenile, or Probate Court that permits contact between a restrained person subject to CLETS restraining orders and his or her children shall contain specific language setting forth the schedule for such contact and the safe exchange of the children. Such an order shall not contain language that conflicts with a Criminal Protective Order that provides for no contact, or limits access to, the other parent. The Court or a Court-related agency may, however, recommend contact and direct the defendant (restrained person) to the Family Court process for modification of the order.

## E. **Communication between the Courts and Related Agencies**

1. Subject to available resources, any Court issuing protective/restraining orders must make reasonable inquiries to determine the existence of other protective/restraining orders involving children of the protected and restrained parties in the Court's local database.
2. Any division of the Superior Court may provide copies of Criminal Protective Orders, CLETS Restraining Orders, Court Minutes, and applicable custody and visitation orders to other divisions of the Court. If any of such orders are confidential, they shall be sent in an envelope labeled Confidential and they shall not be made available to the public. Confidential orders will be stamped as "CONFIDENTIAL" and will be kept in confidential document envelopes according to current Stanislaus County Superior Court policy.

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3. Subject to appropriate confidentiality requirements, the Court may, upon written request, provide copies of CLETS Civil or Criminal Restraining Orders, along with applicable custody and visitation orders, to related agencies, including Probation, County or State Parole, and Community Services Agency (CSA).  
(7/1/07)

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### RULE 5 JUVENILE COURT

#### 5.00 General Competency Requirement

All attorneys appearing in juvenile dependency proceedings, and who are compensated with public funds, must meet the minimum standards of competence set forth in these rules. These rules are applicable to attorneys representing public agencies, attorneys employed by public agencies, attorneys appointed by the Court to represent any party in a juvenile dependency proceeding. (7/1/99)

#### 5.01 Screening for Competency

- A. Any attorney appearing in a dependency matter for the first time shall complete and submit a Certification of Competency to the Court within **ten** (10) days of his or her first appearance in a dependency matter.
- B. Attorneys who meet the minimum standards of training and/or experience, as set forth in **Local Rule 5.02**, as demonstrated by the information contained in the Certification of Competency submitted to the Court, shall be deemed competent to practice before the Juvenile Court in dependency cases except as provided in **Local Rule 5.02**.
- C. Upon submission of a Certification of Competency which demonstrates that the attorney has met the minimum standards for training and/or experience, the Court may determine, based on conduct or performance of counsel before the Court in a dependency case within the six month period prior to the submission of the certification to the Court, that a particular attorney does not meet minimum competency standards. In such cases, the Court shall proceed as set forth in Local Rule 5.02 D hereinafter.
- D. In the case of an attorney who maintains his or her principal office outside of this county, proof of certification by the Juvenile Court of the California county in which the attorney maintains an office shall be sufficient evidence of the competence to appear in a juvenile proceeding in this county. (7/1/99)

#### 5.02 Minimum Standards of Education and Training

Each attorney appearing in a dependency matter before the Juvenile Court shall not seek Certification of Competency and shall not be certified by the Court as competent until the attorney has completed the following minimum training and educational requirements.

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- A. Prior to certification, the attorney shall have either:
1. Participated in at least **eight (8)** hours of training or education in juvenile dependency law, which training or education shall have included information on the applicable case law and statutes, the California Rules of Court, Judicial Council forms, motions, trial techniques and skills, writs and appeals, child development, child abuse and neglect, family reunification and preservation and reasonable efforts, or
  2. At least **six (6)** months of experience in dependency proceedings in which the attorney has demonstrated competence in the attorney's representation of his or her clients in said proceedings. In determining whether the attorney has demonstrated competence, the Court shall consider whether the attorney's performance has substantially complied with the requirements of these rules.
- B. In order to retain his or her certification to practice before the Juvenile Court, each attorney who has been previously certified by the Court shall submit a new Certificate of Competency to the Court on the attorney's schedule for compliance with Minimum Continuing Legal Education Rules and Regulations as adopted by the State Bar Board of Governors on July 8, 1995, and as it may be later amended. The attorney shall declare under penalty of perjury on the renewal Certification of Competency that he or she has completed at least eight hours of continuing training or education directly related to dependency proceedings since the attorney was last certified. For the initial compliance period following the effective date of this rule the compliance requirements shall be as follows: Group 2, (names H-M) 2 hours by January 31, 1997; Group 3 (names N-Z) 4 hours by January 31, 1998; and, Group 1 (names A-G) 6 hours by January 31, 1999. The attorney shall maintain evidence of completion of the required training or education. Evidence of completion of the required number of hours of training or education may include a copy of a certificate of attendance issued by a California MCLE provider; a certificate of attendance issued by a professional organization which provides training and/or education for its members, whether or not it is a MCLE provider; a copy of the training or educational program schedule together with evidence of attendance at such program; or such other documentation as may reasonably be considered to demonstrate the attorney's attendance at such program. Attendance at a Court sponsored or approved program will also fulfill this requirement. The Court or Court Administrator may audit the evidence of compliance of an attorney upon demand.
- C. The attorney's continuing training or education shall be in the areas set forth in Rule 5.02 A (1) or in other areas related to juvenile dependency practice including, but not limited to, special education, mental health, health care, immigration issues, the rules of evidence, adoption practice and parentage issues, the Uniform Child

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Custody Jurisdiction Act, the Parental Kidnapping Prevention Act, state and federal public assistance programs, the Indian Child Welfare Act, client interviewing and counseling techniques, case investigation and settlement negotiations, mediation, basic motion practice and the rules of civil procedure.

- D. When a certified attorney fails to submit evidence that he or she has completed at least the minimum required training and education to the Court by the due date, the court shall notify the attorney that he or she will be decertified. That attorney shall have **twenty (20)** days from the date of the mailing of the notice to submit evidence of his or her completion of the required training or education. If the attorney fails to submit the required evidence or fails to complete the required minimum hours of continuing training or education, the Court shall order that certified counsel be substituted for the attorney who fails to complete the required training. (7/1/99)

### 5.03 Standards of Representation

All attorneys appearing in a dependency proceeding shall meet the following minimum standards of representation:

- A. The attorney shall thoroughly and completely investigate the accuracy of the allegations of the petition or other moving papers and the Court reports filed in support thereof. This shall include conducting a comprehensive interview with the client, contacting social workers and other professionals associated with the case to ascertain if the allegations and/or reports are supported by accurate facts and reliable information; and obtaining such other facts, evidence or information as may be necessary to effectively present the client's position to the Court.
- B. If the client is a minor child who is placed out of home, in addition to interviewing the child, absent exceptional circumstances, the attorney shall also interview with the child's caretaker.
- C. The attorney shall vigorously represent the client within applicable legal and ethical boundaries. This shall include the duty to work cooperatively with other counsel and the Court, to explore ways to resolve disputed matters without hearing if it is possible to do so in a way which is consistent with the client's interests, and to comply with local rules and procedures as well as the statutorily mandated time lines. This shall include the duty to work cooperatively with other counsel, CASA and the Court, to explore ways to resolve disputed matters without hearing if it is possible to do so in a way which is consistent with the client's interests, and to comply with local rules and procedures as well as the statutorily mandated time lines. (1/1/05)

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### 5.04 Time Lines

Attorneys for the parties are required to adhere to the statutory time lines for all hearings. Time waivers will be accepted and continuances granted only on a showing of exceptional circumstances. (7/1/99)

### 5.05 Procedures for Reviewing and Resolving Complaints

- A. Any party to a Juvenile Court proceeding may complain about the performance of his or her appointed attorney in a Juvenile Court proceeding. This complaint may be made orally at a court proceeding or by filing a written complaint with the Juvenile Court Clerk's Office. In the case of a complaint concerning the performance of an attorney appointed to represent a minor, the complaint may be lodged on the child's behalf by the CASA, the social worker, a caretaker relative or foster parent. (07/01/09)
- B. The Juvenile Court shall conduct a hearing to review the complaint as soon as possible, prior to any further substantive hearings on the matter, and no later than ten (10) days from receipt of the complaint. The Attorney will be given the opportunity to respond. (07/01/09)
- C. If, after reviewing the complaint, the response and any additional information, the Court finds that the attorney may have acted contrary to the local rules or incompetently the Court may appoint a panel of attorneys not associated with the particular case to review and comment on the complaint or question and report its findings and recommendations to the Court. The Court may accept or reject the recommendations of the panel or may conduct its own review, thereafter taking appropriate action as determined by the Court to be necessary. (1/1/05)

### 5.06 Procedures for Informing The Court Of The Interests Of a Dependent Child

- A. At any time during the pendency of a dependency proceeding, any interested person may notify the Court that the minor who is the subject of the proceeding may have an interest or right which needs to be protected or pursued in another judicial or administrative forum. If counsel for the minor becomes aware that the minor may have a right or interest which needs to be protected or pursued in another judicial or administrative forum, counsel for the minor shall notify the Court of such a right or interest as soon as is reasonably possible for counsel to do so.
- B. Notice to the Court may be given by filing of Judicial Council form JV-180 or by the filing of a declaration. In either case, the person giving notice shall set forth the nature of the interest or right which needs to be protected or pursued, the name and address, if known, of the administrative agency or judicial forum in which the right

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or interest may be affected and the nature of the proceeding being contemplated or conducted there.

- C. If the person filing the notice is the counsel for the minor, the motion shall state what action on the child's behalf the attorney believes is necessary, whether the attorney is willing or able to pursue the matter on the child's behalf, whether the association of counsel specializing in practice before that agency or Court may be necessary or appropriate, whether the appointment of a guardian ad litem may be necessary to initiate or pursue the proposed action, whether joinder of an administrative agency to the Juvenile Court proceedings pursuant to Welfare and Institutions Code section 362 may be appropriate or necessary to protect or pursue the child's interests and whether further investigation may be necessary.
- D. If the person filing the notice is not the attorney for the child, a copy of the notice shall be served on the attorney for the child, or, if the child is unrepresented, the notice shall so state.
- E. The Court may set a hearing on the notice if the Court deems it necessary in order to determine the nature of the child's right or interest or whether said interest should be protected or pursued.
- F. If the Court determines that further action on behalf of the child is required, the Court shall do one or more of the following:
  - 1. Authorize the minor's attorney to pursue the matter on the child's behalf;
  - 2. Appoint an attorney for the child if the child is unrepresented;
  - 3. Notice a joinder hearing pursuant to section 362 compelling the responsible agency to report to the Court with respect to whether it has carried out its statutory duties with respect to the child;
- G. Appoint a guardian ad litem for the child for the purposes of initiating or pursuing appropriate action in the other forum(s);
- H. Take any other action the Court may deem necessary or appropriate to protect the welfare, interests and rights of the child. (7/1/99)

### 5.07 Errors and Omissions Insurance

All attorneys appearing in juvenile dependency proceedings and who are compensated with public funds, other than those who are employed by a public agency or who represent a public agency, must possess a policy of errors and omissions insurance in an

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amount not less than \$100,000 for each occurrence and \$300,000 aggregate per year, or provide written alternative proof of financial responsibility in the same amounts. (7/1/99)

### 5.08 The Advocate Program (CASA)

The Juvenile Court may appoint child advocates to represent the interests of dependent or delinquent children. In order to qualify for appointment the child advocate must be trained by and function under the auspices of a Court Appointed Special Advocate program, formed and operating under the guidelines established by the California Judicial Council (W & I 1356.5).

The advocate program shall report regularly to the Presiding Judge of the Juvenile Court 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. (7/1/03)

### 5.09 Child Advocates

#### A. Advocates' 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 that 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 (probation officer/social worker);
7. to the fullest extent possible, to communicate and coordinate efforts with the child's attorneys; and

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8. to perform a fact finding function which serves 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/her services on behalf of the child to such other courts or tribunals.

### **B. CASA 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/Referee/Commissioner before beginning his/her duties and shall subscribe to the written oath set forth in Exhibit A attached hereto.

### **C. Specific Duties**

The Court shall, in its initial order of appointment, and thereafter subsequent order as appropriate, 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/her obligation to the child and the Court in accordance with the general duties set forth in these rules.

### **D. Procedures in Delinquency Cases (W & I 602)**

1. A request for appointment of a child advocate in a delinquency case may be made orally or in writing in open court or *ex parte* by the probation officer or any party to the case, or by the Court on its own motion. If the Court grants the request, it shall order that the case be referred to Court Appointed Special Advocates (CASA) for screening. The order shall be transmitted to CASA by the Courtroom Clerk.
2. When CASA receives a referral, it shall screen it, and if it determines that the minor is a suitable subject for the appointment of a child advocate and if there is a suitable child advocate available for appointment, CASA shall complete an application for the appointment of a designated child advocate and present the application *ex parte* to the referring Court, which may then grant the application or set the matter for hearing.
3. When the Court grants the application for appointment of a child advocate (either at the time of application or after hearing), CASA shall prepare and present to the Court an order appointing the child advocate.

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4. Any party to the proceeding may petition the Court for a hearing to reconsider the appointment.
5. A child advocate may petition the Court to set the minor's case for a review hearing.
6. The child advocate serves at the pleasure of the Court, and the appointment of the child advocate may be terminated by the Court. Any party or the Director of the Child Advocate Program may file a motion for termination of a child advocate. The Court will determine whether there will be a hearing on such a motion.
7. Any child advocate with a grievance concerning termination may petition the Court for a hearing. Such petition shall include facts indicating that the child advocate has exhausted all remedies available to him or her within the child advocate program. The Court will determine whether there shall be a hearing on such a petition.

### **E. Procedures in Dependency Cases (W & I §300)**

1. A request for appointment of a child advocate in a dependency case may be made orally or in writing in open court or *ex parte* by the Social Worker, any party to the case, by the Court on its own motion, or by an interested person. Unless there is opposition, the referral shall be forwarded to the child advocate office for screening and assignment.
2. When CASA receives a referral, it shall screen it, and if it determines that the minor is a suitable subject for the appointment of a child advocate and if there is a suitable child advocate available for appointment, CASA shall complete an application for the appointment of a designated child advocate and present the application *ex parte* to the referring Court, which may then grant the application or set the matter for hearing.
3. When the Court grants the application for appointment of a child advocate (either at the time of application or after hearing), CASA shall prepare and present to the Court an order appointing the child advocate.
4. When an appropriate child advocate has been identified, that person's name shall be submitted to the Court for appointment.
5. Any party to the case may petition the court for a hearing to reconsider the appointment.

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6. CASA will submit a finalized report to the Juvenile Court Clerk's Office at least **ten (10)** days prior to the hearing date. CASA will provide and distribute copies of the report to the social worker and the parties of record at least **ten (10)** days prior to the hearing.
7. The child advocate serves at the pleasure of the Court, and the appointment of the child advocate may be terminated by the Court. Any party or the Director of the Child Advocate Program may file a motion for termination of a child advocate. The Court will determine whether there will be a hearing on such a motion.
8. Any child advocate with a grievance concerning termination may petition the Court for a hearing. Such petition shall include facts indicating that the child advocate has exhausted all remedies available to him or her within the Child Advocate program. The Court will determine whether there shall be a hearing on such a petition. (1/1/05)

### 5.10 Release of Information to Advocate

#### A. To Accomplish Appointment

To accomplish the appointment of an advocate, the Judge/Referee/ Commissioner 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/she is appointed to represent as any case manager (social worker or probation officer) 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/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 he/she is appointed.

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### **D. Communication**

There shall be ongoing, regular communication concerning the child's best interests, current status, and significant case developments maintained among the advocate, case manager, child's attorney, attorneys for parents, relatives, foster parents and any therapist for the child. (7/1/03)

#### **5.11 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. (7/1/03)

#### **5.12 Calendar Priority**

In light of the fact that advocates are rendering a volunteer service to children and the Court, matters on which they appear should be granted priority on the Court's calendar, whenever possible. (7/1/03)

#### **5.13 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. (7/1/03)

#### **5.14 Family Law Advocacy**

Should the Juvenile Court dismiss dependency and create family law orders pursuant to W & I Code section 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. (7/1/03)

#### **5.15 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 he/she may be called to testify at some point in the proceedings. An advocate shall not be deemed to be a "party," as described in Title 3 of Part II of the Code of Civil Procedure. 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. (7/1/03)

#### **5.16 Access to Juvenile Court Records**

Juvenile court records may not be obtained or inspected by either civil or criminal subpoena. If a person/agency is not entitled to access under Welfare and Institutions

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Code sections 827 – 830.1, then he/she must obtain a court order from the Presiding Judge of the Juvenile Court, or another judicial officer designated by the Presiding Judge. An intentional violation of Welfare and Institutions Code section 827 is punishable by a fine of up to \$500.

### **A. Definition of Juvenile Case File**

Pursuant to Rule 5.552, subdivision (a) of the California Rules of Court, “juvenile case file” includes:

1. all documents filed in a juvenile court case;
2. reports to the court by probation officers, social workers of child welfare services programs, and CASA volunteers;
3. documents made available to probation officers, social workers of child welfare services programs, and CASA volunteers in preparation of reports to the court;
4. documents relating to a child concerning whom a petition has been filed in juvenile court that are maintained in the office files of probation officers, social workers of child welfare services programs, and CASA volunteers;
5. transcripts, records, or reports relating to matters prepared or released by the court, probation department, or child welfare services program; and
6. documents, video or audio tapes, photographs and exhibits admitted into evidence at juvenile court hearings.

Records relating to juvenile contacts or investigations which are maintained by a law enforcement agency, probation department or Department of Children and Family Services are confidential even if juvenile court proceedings have not been instituted.

### **B. Access and Copies of Juvenile Case File**

Pursuant to Welfare and Institutions Code Sections 827-830.1 and California Rules of Court, Rule 5.552, specified persons/agencies are entitled to access to juvenile records without a court order, excluding portions of the record which are otherwise confidential, and portions of the record which include the names and information of other children. To obtain access or copies of these records, the person/agency entitled to access or copies must file a Declaration in Support of Access Form which is available and maintained in the Superior Court Clerk’s Office, Juvenile Division. This requirement does not apply to discovery provided by probation to the parties and their attorneys of record. For all other requests to obtain access and copies of the juvenile case file, a petition for Disclosure of Confidential Juvenile Records must be filed with the Juvenile Court using the mandatory Judicial Council Form. (JV569

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and JV570). Any copying fees must be paid before copies of documents from the juvenile case file will be released. (07/01/09)

### **C. Access to Delinquency Records Where Petition Sustained on Offense Listed in Welfare and Institutions Code section 676(a)**

1. Pursuant to Welfare and Institutions Code section 676(d), when a petition has been sustained for an offense following information contained in the court file shall be available for public inspection: (a) the charging petition, (b) the minutes of the proceedings, and (c) the orders of adjudication and disposition of the court.
2. The name of a minor found to have committed one of the serious violent offenses listed in Welfare and Institutions Code section 676(a) shall not be confidential, unless the court orders the name to be confidential based on good cause.

### **D. Petitions to Prohibit Disclosure of Delinquency Records**

Pursuant to Welfare and Institutions Code section 676(e) any party may petition the juvenile court to prohibit disclosure to the public of any file or record. The juvenile court shall prohibit disclosure of such record if it finds that the harm to the child, victims, witnesses, or public from the disclosure outweighs the benefit of public knowledge.

### **E. Disclosure of juvenile police reports**

All Petitions to Obtain Reports of Law Enforcement Agency under Welfare and Institutions Code Section 828 must be filed with the Juvenile Court using Judicial Council Form JV-575. (07/01/09)

### **5.17 Electronic Filing Program/Scope.**

The Stanislaus County Superior Court hereby adopts an Electronic Filing Program and Policy for its Juvenile Dependency petitions in accordance with California Code of Civil Procedure Section 1010.6 and California Rules of Court, rules 2.255 et seq. There shall be no direct electronic transmission of any pleadings or papers to the court except where specifically authorized by the court in these rules. Electronic filing in these rules does not include telephone "fax" transmissions. (01/01/09)

### **5.18 Electronic Filing Process. (01/01/09)**

The Stanislaus County Superior Court will accept emergency electronic filings of juvenile dependency petitions from the Stanislaus County Community Service Agency. The filings must be sent via Novell GroupWise to the juv\_dependency GroupWise distribution list via a GroupWise client with a minimum version level of 7.0.1 (Build

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Number 364). All members of the juv\_dependency group must have a password set on his/her e-mail account. The filings shall include the GroupWise classification as both high priority and confidential. Electronically transmitted documents must be both submitted to the court and accepted for filing by the court in order to be considered duly filed with the court in accordance with these rules:

### **A. Date/Time of Filing**

A document may be electronically transmitted to the court at any time of the day. Acceptance of the document for filing with the court shall be deemed to occur (i) on the date the document was submitted to the court if the submission occurred during normal business hours of the clerk's office, or (ii) 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 9:00 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.

### **B. Receipt of Data**

Upon receiving a document submitted electronically for filing with the court, a Notice of Acknowledgment of Receipt shall be electronically transmitted to the filer. The Notice of Acknowledgment of Receipt shall confirm the date and time of receipt of the document by the court for review and filing. The clerk shall thereafter determine if the document is acceptable for filing with the court.

### **C. Errors or Malfunctions in Submissions**

If for any reason the court does not receive an electronically transmitted document for submission and filing with the court, the filer will not receive an electronically transmitted Notice of Acknowledgment of Receipt of the document from the court. The filer shall be solely responsible for the accuracy of the information contained in the filing and for obtaining confirmation of the filing of the document by the court.

### **D. Acceptance of Filing**

Documents electronically submitted to the court for filing shall be reviewed by the clerk for required data elements once the document has been submitted to the court. Upon the clerk's acceptance of the document submitted for filing the court, the clerk shall issue a confirmation that the document has been filed. The confirmation will include information concerning the date and time the document was in fact filed with the court. The confirmation of filing shall also include the transaction number associated with the filing, and the titles of the documents as filed by the court. The confirmation filing of the document by the court and verification of the accuracy of the document filed by the court shall be the sole responsibility of the filer.

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### **E. Rejected Filings**

If an electronically transmitted document is submitted to the court but subsequently determined to be unacceptable for filing, the clerk shall cause to be electronically transmitted to the filer a notice of rejection of the document for filing with the court. The notice shall set forth the grounds for rejection of the document. It shall be the responsibility of the filer to resubmit rejected documents, with appropriate corrections to the court for filing. The court will retain a log confirming the rejection of electronically transmitted documents.

### **F. Confirmation of Submission.**

The confirmation of submission, subsequent resubmission of rejected documents with correction and filing of documents with the court electronically is the sole responsibility of the filer. In the absence of confirmation of receipt and filing, there is no presumption that the court received and filed the document.

### **G. Endorsement**

The clerk's endorsement of documents electronically transmitted to the court for filing shall consist of the words "Electronically filed by the Superior Court of California, County of Stanislaus" followed by the date and time of filing and the printed name of the court clerk. Electronically filed documents so endorsed carry the same force and effect as a manually affixed endorsement stamp with the clerk's signature and initials.

### **H. Signed Documents.**

When the petition is filed, it shall be deemed to have been signed if filed electronically and if, prior to filing, a printed form of the document has been signed by that person. A party who electronically files a document represents that a signed copy of the document is in his or her possession or control. Within one business day after the filing of an electronically filed document, the signed copy of the electronically filed document must be filed with the court.

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EXHIBIT A

**Oath**

**Court Appointed Special Advocate**

I, \_\_\_\_\_, do solemnly swear that I will perform 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 the rules of the Court and will, to the best of my ability, maintain fairness, impartiality and integrity.

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 prior knowledge of the child or family members, and I will be directly responsible for the supervision of the child at all times he or she is under my care.

I will at all times honor the trust and confidence place in me as a Special Advocate by the Juvenile Court.

DATED:

\_\_\_\_\_

Subscribed and sworn to before me,  
this \_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
Presiding Judge of the Juvenile Court

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### RULE 6 APPELLATE DIVISION

#### 6.00 Sessions

Regular sessions of the appellate division of the Superior Court shall be held on the second Wednesday of each calendar month at 4:00 p.m. Special sessions shall be held at the call of the Presiding Judge of the appellate division or a majority of the judges of the appellate division. (7/1/08)

#### 6.01 Oral Argument

Unless otherwise ordered, counsel for each party shall be allowed ten (10) minutes for oral argument in limited civil and misdemeanor cases (Rule 8.885(d)(2)) and five (5) minutes for oral argument in infraction cases (Rule 8.929(d)(2)). (07/01/09)

#### 6.02 Briefs

Briefs shall be prepared and filed as provided by Rules 8.880 et seq. (limited civil and misdemeanor cases) and 8.925 et seq. (infraction cases). When filing the original brief, counsel shall provide three (3) copies for the Court's use. (07/01/09)

#### 6.03 Calendaring

When a matter is fully briefed or the time for briefing has expired, the Court Clerk shall, unless otherwise ordered, place the matter on calendar as set forth in Rule 8.885(a). (07/01/09)

#### 6.04 Motions

Pursuant to Rule 8.808(b), the Appellate Division is not required to conduct a formal hearing or entertain oral argument on law and motion matters. If the Appellate Division determines that oral argument is appropriate, it shall instruct the Court Clerk to place the matter on calendar for hearing at the next regularly scheduled session. (07/01/09)

#### 6.05 Transcript or Settled Statement Required

The Appellate Division will affirm any decision/judgment in a case in which there is no settled statement, written transcript of the proceedings taken down by a Court Reporter, or audio transcript of any electronic recording of the proceeding on file unless it appears from the nature of the appeal and a declaration by appellant or by appellant's attorney that the appeal can proceed without such transcript or settled statement. Audio transcripts are not generally available in connection with traffic infraction cases,

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as the electronic recordings of these proceedings are made for Court use only.  
(07/01/09)

### 6.06 Wende Briefs

If appellate counsel files a Wende brief (Peo. V. Wende (1979) 25 C3d 436), the Court research attorney shall review the record in its entirety and summarize it in a memorandum to the panel members. The research attorney shall also list any issues which should be raised. At oral argument, the assigned judge shall state that the research attorney has reviewed the entire record, summarized it for the panel, and that the panel has read the summary. (1/1/02)

- A. If Appellant's Counsel intends to file a brief pursuant to People v. Wende (1979) 23 Cal.3d 436, the following procedure shall be used:
- B. Appellant's Counsel files a brief summarizing the facts and proceedings. The brief must contain citations to the record on appeal;
- C. Appellant's Counsel informs Appellant of the nature of the brief and advises Appellant that he/she may file a brief on his/her own behalf. Appellant's Counsel should provide the Court with proof that Appellant has been so advised;
- D. Appellant's Counsel need not withdraw from the case so long as he/she has not described the appeal as frivolous and has advised Appellant that he/she may request that the Court have Appellant's Counsel relieved; and
- E. The Court shall conduct a review of the entire record. At its discretion, the Court may assign its Research Attorney to prepare a summary of the record, including a list of any non-frivolous grounds for appeal. If the Court determines there are non-frivolous grounds for appeal, it shall order briefing on these issues. If the Court determines the appeal is frivolous, it may proceed to decide the Appeal without further briefing. (07/01/09)

### 6.07 Traffic Infraction Appeals

Pursuant to CCP Section 77(h) traffic infraction appeals shall be heard by only **one** (1) appellate division judge who will be assigned on a rotating basis by the presiding appellate judge as each case arises. Such appeals shall be heard on the same date and at the same time as other appellate division matters. (7/1/07)

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### **6.08 Filing a Notice of Appeal**

Unless excused by a Judicial Officer or his/her designee, any party submitting a Notice of Appeal for filing in Superior Court must provide an original and **five** (5) copies of the Notice of Appeal and any accompanying documents for distribution to the appropriate parties. (7/1/03)

### **6.09 Clerk's Transcript**

Pursuant to Rules 8.833(a), 8.863(a) and 8.910(a)(1)(B), the Court elects to use the original trial court file instead of a Clerk's Transcript for Appellate Division matters. (07/01/09)

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### RULE 7 FAMILY LAW

#### 7.00 General Policy Statement

It is the policy of the Stanislaus County Superior Court to manage all family law cases from the time the first order to show cause is filed to allow focus on settlement at the earliest possible date, to reduce the cost of litigation and to reach a fair and final resolution of the case expeditiously. These rules are intended to provide generally uniform practice and procedures among departments involved in family law matters in Stanislaus County. Due to often unique facts or procedural inconsistencies, these rules should be considered as guidelines to which the Court will generally adhere. (1/1/05)

#### 7.01 Matters Assigned to the Family Law Department

All proceedings filed in the following matters are currently assigned to the Family Law Department:

- A. Matters arising from the California Family Code, including cases where the Department of Child Support Services appears on behalf of the County of Stanislaus or any party.
- B. Matters arising from the Uniform Divorce Recognition Act, Family Code §§2090-2093.
- C. Matters arising from the Uniform Child Custody Jurisdiction and Enforcement Act, Family Code §§3400-3430.
- D. Matters arising from the Uniform Parentage Act, Family Code §§7600-7644.
- E. Matters arising from the Domestic Violence Prevention Act, Family Code §§6200-6305.
- F. Matters arising from the Family Code §§4900-4976 (UIFSA) and orders to show cause, motions, or trials in actions brought by the Department of Child Support Services under the provisions of Articles 4 and 7 of Part 3, Chapter 2, Family Code §§17400-17540.
- G. Matters arising from Family Code §§3587-3910, Support of Adult Child(ren) or Parents.
- H. Post-dissolution judgment actions, involving omitted or reserved property issues.

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- I. Non-marital property right actions consolidated for trial with Family Code, except those cases in which a jury trial has been demanded.
- J. Conservatorships and Guardianships (both relative and non-relative) arising from Division 4 of the Probate Code. (1/1/09)

### 7.02 Direct Calendaring of Family Law Cases

- A. This rule applies to proceedings for dissolution of marriage, legal separation of the parties, nullity of marriage, dissolution of domestic partnerships, proceedings to establish a parent and child relationship, requests for domestic violence prevention orders, petitions for child custody and visitation, and proceedings for summary dissolution and guardianships.
- B. When a family law case is filed or received and filed as a transfer from another county, the Court shall assign the case to a judicial officer for all purposes including trial, except or otherwise as provided or required by law.
- C. Cases that are subject to direct calendaring shall be assigned depending upon whether the cases involve minor children of the parties. Those cases not involving minor children shall be assigned to the same Family Law judge. Those cases involving minor children shall be equally divided between the two other Family Law judges. These cases will be assigned on an alternating basis. At the time of the initial filing or initial receipt of the file, the Clerk's Office shall affix to the face of the petition and to the notice of case management conference, the following notice:

"THIS CASE HAS BEEN ASSIGNED TO  
JUDGE \_\_\_\_\_, DEPARTMENT \_\_\_\_\_ FOR ALL  
PURPOSES INCLUDING TRIAL"

- D. For cases filed before January 1, 2005 that have not been previously assigned, upon a party filing a request for case management conference, a response, an order to show cause, or notice of motion, the case shall be assigned in accordance with the procedures set forth above. The Clerk's Office will either affix to the face of said document or give separate notice of the assignment using the form of notice mentioned above.
- E. In the event of unavailability, another judicial officer or an assigned or temporary judge may handle cases directly assigned to the unavailable judge, but the case shall remain directly assigned to the unavailable judge who shall handle all matters related to the case upon his or her return.

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- F. After a case is assigned to a particular judge for all purposes, all related not previously assigned cases shall be assigned to the same judge. Assignments of these related cases may occur at the time of initial filing, upon the calendaring of matters for hearing or by order of a judicial officer.
- G. Petitioners shall notify all respondents of the direct assignment when so notified by the Court and a party that joins another party to the action shall notify the joined party of the direct assignment. Petitioners, or party joining another party to the action, shall file a proof of service of their notification of the direct assignment within **five (5)** days after the notice is served.
- H. In all family law cases assigned to a judge for all purposes, the face page of each filed document, under the case number, shall state the name and department of the judge assigned for all purposes. Additionally, each file will be color-coded with a particular color selected for each Family law judge.
- I. Time limits for peremptory challenges for petitioners shall be within **fifteen (15)** days after the filing of the petition and receiving notice of the assignment and, for respondents, within **fifteen (15)** days after filing the first pleading or appearance. (1/1/08)

### 7.03 Time for Service of Petition and Response

#### A. Applicability.

These rules apply to the service of pleadings in proceedings for dissolution of marriage, nullity of marriage, legal separation of the parties, dissolution of domestic partnerships, and proceedings to establish parent and child relationship pursuant to the Uniform Parentage Act, commencing with Family Code section 7600. Specifically excluded from these rules are requests for restraining orders pursuant to the Domestic Violence Prevention Act commencing with Family Code section 6200, summary dissolutions, and actions for exclusive custody pursuant to Family Code section 3120.

#### B. Service of petition.

The petition must be served on the respondent and proof of service on the respondent must be filed with the court within **sixty (60)** days after the filing of the petition.

#### C. Timing of responsive pleadings.

The parties may stipulate, without leave of Court, to one **fifteen (15)** day extension beyond the **thirty (30)** day time period prescribed for the response after service of the initial petition. The Court must approve any other extensions of time to respond.

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### D. Modification of timing and application for order for extending time.

The Court, on its own motion or on the application of a party, may extend or otherwise modify the times provided in subdivisions B and C. An application for a court order extending the time to serve a pleading must be filed before the time for service has elapsed. The application must be accompanied by a declaration showing why service has not been affected, documenting the efforts that have been made to effect service, and specifying the date by which service is proposed to be completed.

### E. Failure to serve.

Unless the Court has granted an order extending the time to serve a petition, the failure to serve and file pleadings as required under this rule may result in an Order to Show Cause being issued as to why sanctions shall not be imposed.

### F. Request for entry of default.

If a responsive pleading is not served within the time limits specified in this rule and no extension of time has been granted, the petitioner within **ten (10)** days after the time for service has elapsed must file a request for the entry of default. Failure to do so may result in an Order to Show Cause being issued as to why sanctions shall not be imposed.

### G. Default judgment.

When default is entered, the party who requested the entry of default must obtain a default judgment against the defaulting party within **forty-five (45)** days after entry of default, unless the Court has granted an extension of time. Failure to obtain entry of judgment against a defaulting party or to request an extension of time to apply for a default judgment may result in an Order to Show Cause being issued as to why sanctions shall not be imposed.

### H. Order to Show Cause.

When the Court issues an Order to Show Cause, responsive papers to the Order to Show Cause must be filed and served no less than **five (5)** court days before the hearing. The Court may issue monetary sanctions up to \$300 and/or dismiss the petition or response.

### I. All documents presented for filing are limited to an original plus **two (2)** copies.

Unless otherwise required by code, the Clerk's Office will conform a maximum of **two (2)** copies. (7/1/07)

## 7.04 Case Management Conference

In proceedings for dissolution of marriage, nullity of marriage, legal separation of the parties, dissolution of domestic partnerships, proceedings to establish parent and child relationship and proceedings for summary dissolutions filed **before January 1, 2005**, a

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party seeking to set the case for trial shall submit a request to the Family Law Clerk to set a case management conference. Upon assignment of a date for the case management conference, the requesting party shall serve all parties with notice of the case management conference and a blank Case Management Conference Statement. The requesting party must file a proof of service of these documents within **five (5)** days after the documents are served. The Notice of Case Management Conference shall be filed and served on lime green paper.

In proceedings for dissolution of marriage, nullity of marriage, legal separation of the parties, dissolution of domestic partnerships, proceedings to establish parent and child relationship and proceedings for summary dissolutions filed **on and after January 1, 2005**, the Court will set each case for a case management conference approximately **one hundred fifty (150)** days after the date of filing. In proceedings for summary dissolution only, a case management conference will be set approximately **two hundred seventy (270)** days after the date of filing of the joint petition. Petitioner shall serve the notice of the case management conference and a blank case management conference statement on the respondent. The party filing the joint petition for summary dissolution shall serve the notice of case management on the other party no later than **ten (10)** days after the filing of the joint petition.

### **A. Subjects to be considered at the case management conference.**

At the case management conference, the parties must address, if applicable, and the Court may take appropriate action with respect to the following:

1. Whether there are any related cases;
2. Whether any additional parties may be joined in the proceeding;
3. Whether there are any other matters (e.g. out of state custody orders) that may affect the court's jurisdiction or processing the case;
4. Whether the parties have agreements on issues such as child custody, child support, spousal support, or division of property;
5. Whether discovery has been completed and, if not, by when it will be completed;
6. Whether certain issues (e.g. marital status, date of separation, or date of valuation) should be bifurcated;
7. Whether the case is entitled to any statutory preference, and if so, the statute granting the preference;

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8. If the trial date has not been previously set, the date by which the case will be ready for trial and the available trial dates;
9. The estimated length of trial;
10. The nature of the disputed issues;
11. Any other matters that should be considered by the court or addressed in its case management order.

### **B. Meet and confer requirement.**

Unless the Court orders another time period, no later than **thirty (30)** days before the initial case management conference, the parties must meet and confer, **unless there exists a current restraining order prohibiting personal contact with the other party and both parties are self-represented**, in person or by telephone, to consider each of the issues identified in subdivision A, and, in addition, to consider the following:

1. Identifying and, if possible, informally resolving any anticipated motions;
2. Identifying the facts and issues in the case that are uncontested and may be stipulated to;
3. Identifying the facts and issues in the case that are in dispute;
4. Determining whether the issues in the case can be narrowed by eliminating any claims or defenses by means of a motion or otherwise;
5. Possible settlement; and
6. Other relevant matters.

### **C. Case Management Statement.**

No later than **fifteen (15)** calendar days before the initial case management conference date, each party must file an initial case management statement with the Clerk of the Court.

The parties must use the Mandatory Case Management Statement, Local Form FL-005, which is available on the Court's website under the "Forms" link and is also available at the Family Law Court Clerk's Office. All applicable items on the form must be completed. In lieu of each party filing a separate case management statement, any two or more parties may file a joint statement.

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In summary dissolution proceedings, the parties will not be required to file Case Management Conference Statements. However, the parties shall be prepared to explain to the Court why they have not submitted to the Court an application for judgment.

### **D. Appearance by attorneys whose offices are located outside Stanislaus County**

If a party is represented by an attorney whose office is located outside Stanislaus County, neither the party nor the attorney will be required to attend the initial or any subsequent Case Management Conference, unless ordered by the Court. In lieu of a personal appearance the attorney will be required to do the following:

1. Comply with the meet and confer requirements as set forth in section **B**.
2. File a Case Management Conference Statement in compliance with section **C**. In the statement, counsel shall set forth dates that he/she is not available for trial and/or settlement conference. The earliest the Court may set such hearings would be 90 days after the Case Management Conference.

The courtroom clerk will mail a copy of the Case Management Conference order to the attorney. This order will constitute notice of trial. Absent good cause for continuing a trial date, the Court will not grant a continuance to a party whose attorney has chosen not to make a personal appearance pursuant to this section (07/01/09)

### **E. Case management order.**

The Court will issue a case management order in each case. The order will set a schedule for subsequent proceedings and otherwise provide for the management of the case.(07/01/09)

### **F. Order to Show Cause.**

The Court may issue an Order to Show Cause to any party violating any provision of this rule. Responsive papers to the Order to Show Cause may be filed and served no later than **five (5)** court days before the hearing. The Court may issue monetary sanctions up to \$300 and/or dismiss the petition and/or strike the response.(07/01/09)

Sanctions that typically will be imposed at the Order to Show Cause Hearing:

Failure to file proof of service timely:

1st Violation

\$100 per party

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2nd and subsequent violations striking	\$150 per party/ dismissal of petition or of response.
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Failure to meet and confer	\$50 to \$250
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Failure to fully complete the Case Management Conference Statement	\$50 to \$100/ striking the statement
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The following sanctions will apply without issuing an Order to Show Cause:

Failure to appear at Case Management Conference	\$300
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Failure to file a Case Management Conference Statement	\$150
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Failure to timely file Case Management Conference Statement (\$100 if filed day of the conference)	\$25
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(7/1/06)

### MOTIONS AND ORDER TO SHOW CAUSE CALENDAR

#### 7.05 Date and Place of Hearing

- A. Unless otherwise set by the Court, all family law restraining orders, mediation matters dealing with custody and visitation issues will be at 8:30 a.m. or 1:30 p.m. and economic matters at 9:00 a.m. on a date set by the Clerk. Economic and miscellaneous issues will be heard at 9:00 a.m. Counsel shall state their names, appearances, whether moving or responding, and be prepared to state an accurate time estimate of their side of the case.
- B. Attorneys are expected to be thoroughly prepared to answer the questions of the Court concerning the facts of the case, and cite applicable statutory and case law if an unusual or contested point of law is involved.
- C. When an Order to Show Cause/Notice of Motion raise multiple issues, (i.e. custody and/or visitation and economic issues, etc.), upon the filing of the moving papers two separate hearing dates will be assigned. The first hearing will address the

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custody/visitation issues and the second hearing will address the economic or miscellaneous issues. Both dates will appear on the face of the moving document; therefore, a filing fee will be required for each of the hearing dates. (1/1/05)

### 7.05.1 Tentative Rulings

A. Tentative rulings will be provided by the Court in Family law matters for the following specific types of motions that have been identified as eligible for the tentative ruling process:

1. Motion to Compel Discovery
2. Motion to Withdraw as Attorney of Record
3. Motion for Alternate Valuation Date
4. Motion to Set Aside Default/Judgment
5. Motion for Reconsideration of Order
6. Motion for Bifurcation of Marital Status/Economic Issues
7. Motion/OSC for Joinder of Parties
8. Motion/OSC to Amend Pleadings (added 1/10/06)
9. Motion for Change of Venue
10. Motion for New Trial
11. Motion to Enforce Judgment
12. Motion to Award or Divide Omitted Assets or Debts
13. Motion to Modify Judgment
14. Any Motion or OSC Specifically Determined at Judge's Discretion

Other types of motions may also be considered by the Court in the future.

Parties shall file motions listed above using the Notice of Motion form (FL-301) rather than the Order to Show Cause form (FL-300).

B. A party filing any pleading within five (5) calendar days of the hearing shall, immediately after filing the pleading, deliver a courtesy copy to the Court's Family Law Research Attorney by placing a copy of the pleading in the drop box outside the Research Attorney's office (Room 210). In calculating the five (5) calendar day limit referenced above, holidays shall not be included. (1/1/09)

Failure to provide the Family Law Research Attorney with a courtesy copy of one's pleadings may result in the continuance of the hearing. Costs and attorney's fees may be awarded to a party when the opposing party's failure to provide a courtesy copy to the Research Attorney causes the party to incur additional expenses. (1/1/09)

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Tentative Ruling Announcements will be posted by 1:30 p.m. of the court day prior to the hearing in the following manner:

1. Court's website: [http://www.stanct.org/Content.aspx?page=family\\_tentative\\_rulings](http://www.stanct.org/Content.aspx?page=family_tentative_rulings).
  2. Telephone: A recorded message is available at the following phone number: (209) 558-6000. Select voice prompt 6 for family law and 4 for tentative rulings.
  3. Clerk's Office Lobby: A posting will be placed on the bulletin board in the Clerk's Office.
  4. Courtroom Doors: A posting will be placed on the outer doors of each family law courtroom.
- C. Requests for hearing must be received by phone by calling (209) 525-7710 or by e-mailing at [famlaw.tentatives@stanct.org](mailto:famlaw.tentatives@stanct.org) prior to 4:00 p.m. of the court day prior to the hearing. The requesting party must contact the opposing counsel or the opposing self-represented party and then notify the clerk of their request for hearing. E-mail requests must also be confirmed by return e-mail. If a party does not receive a confirmation e-mail from the clerk, the party must call to request a hearing.

When requesting a hearing, a party shall indicate as to which issue(s) and/or motion(s) a hearing is being requested. If requesting a hearing for a clarification of a tentative ruling, the party shall specify what matter(s) and/or issue(s) need clarification. (7/1/08)

### 7.06 Calling the Calendar

Prior to the call of the calendar at the designated time, counsel shall advise the bailiff of their presence, other Court appearances and the status of their matters. The settlement of matters resulting in stipulations is favored, and will take precedence over contested matters. (1/1/05)

### 7.07 Notification to Court of Other Proceedings

- A. Any motion, petition or order to show cause, or response thereto involving an issue of child custody, visitation, child support or domestic violence shall contain a statement notifying the Court and parties of any jurisdictional action pending or any present jurisdiction exercise by the Juvenile Court, either independently or pursuant to Welfare and Institutions Code §304, the Superior Court, or other Court, involving the child(ren) or the parties concerned in the motion, petition or order to show cause. Such information shall include the name and location of the Court, the file number therein, the statutory basis for said action and a copy of the most recent order made in the action.

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- B. At the hearing on the motion, petition, or order to show cause, the parties shall call to the attention of the Court any action pending or jurisdiction taken by the Juvenile Court subsequent to the filing of the motion, petition, or order to show cause.
- C. **IN ADDITION THERETO**, every moving party or counsel must disclose to the Court the existence of any prior applications for relief similar to that requested in the current moving paper of which said moving party or counsel have knowledge.  
(1/1/05)

### 7.08 Conflict with Other Court Appearances

To ensure the orderly administration of Court calendars and to minimize waiting for counsel, it is the responsibility of counsel to make suitable arrangements in the event of calendar conflicts. The attorney will not set more than **one (1)** case on the 8:30 a.m. or 1:30 p.m. mediation calendar and no more than **two (2)** cases on the 9:00 a.m. economic calendar (excluding motions to withdraw) per attorney (except Department of Child Support Services Attorneys) on the 8:30 a.m. DCSS Court. The Court may grant exceptions for good cause shown.

When an attorney learns that more than **two (2)** appearances are scheduled on any particular day, that attorney shall make reasonable effort well in advance of the hearing date to obtain a stipulation from opposing counsel to reschedule the conflicting date(s). Failure to make such effort or to unreasonably refuse to stipulate may result in attorney's fees to be awarded and/or sanctions to be imposed of not less than \$100.00.

It is the responsibility of counsel to notify the Clerk's Office if more than one Order to Show Cause/Motion is being submitted by any attorney on the same day or of any potential conflict(s) that may exist on a specific date(s). (1/1/05)

### 7.09 Time Limitations of Filing Moving Papers

Matters heard in the Family Law Calendar shall be called for hearing at the time and place shown on the moving papers.

Absent any provision in the law or an order shortening time, any declarations, or points and authorities by the moving party, including any required notice to the Department of Child Support Services, shall be served pursuant to law and filed no less than **ten (10)** Court days prior to the date of hearing so that they may be read and considered by the Court. Unless good cause is shown, failure to comply with this rule may result in the refusal by the Court to consider any papers not timely filed, or in the imposition of monetary sanctions on counsel, or both.

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If a late filing is made or the Court grants leave for filing a late document at the hearing, a minimum sanction of **\$25.00** will ordinarily be imposed on the delinquent party or counsel. (1/1/09)

A moving paper that requests the Court to set a hearing date within five (5) calendar days of its filing shall not trigger the courtesy copy requirement set forth in Rule 7.05.1. (1/1/09)

### 7.10 Time Limits on Responding Party

If the responding party, or retained counsel, has been served with the moving party's papers in accordance with CCP 1005, all responding party's papers shall be filed in accordance with CCP 1005. If the responding party, or retained counsel, has been served with the moving party's papers **ten (10)** or more days prior to the hearing, but not in accordance with CCP 1005, all responding party's papers shall be filed at least **five (5)** Court days before the hearing. Failure to do so may result in the same sanctions as could be imposed on the moving party as set forth in **Local Rule 7.09** above. (1/1/05)

### 7.11 Failure to Serve

If service is not affected by the date specified by law or in the Order to Show Cause/Notice of Motion and timely filed with the Court, the matter will remain on the Court's calendar to be dropped in open Court unless both parties appear or the moving party appears with proper proof of service. (1/1/05)

### 7.12 Continuances

If a motion for continuance is to be made the matter must be placed on calendar no less than **five (5)** Court days prior to the scheduled event along with payment of the filing fee.

If the parties and/or counsel agree that a continuance is necessary, a Stipulation and Order must be submitted to the Court no less than **five (5)** Court days prior to the scheduled event along with the filing fee. The stipulation and order must state the reason for the continuance, and the parties and/or counsel shall obtain the next available date from the courtroom clerk in the department that the case is assigned for all purposes. If the Stipulation and Order is timely filed (no less than **five (5)** Court days prior to the scheduled event) and the above-referenced criteria is met, the Stipulation and Order will be forwarded to the judge for approval. If the Stipulation and Order is not received timely a late fee of \$25.00 will be charged. The stipulation and order must state the reason for the continuance, and the parties or counsel shall

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obtain the next available date from the courtroom clerk in the department that the case is assigned for all purposes. (1/1/05)

### **7.13 Lack of Appearance or Tardiness**

Failure of the moving party or attorney to be present at the calendar call, or to have informed the clerk or bailiff of his/her presence in another department, may result in the matter being removed from the calendar and, if the responding party has appeared, attorney's fees and costs may be awarded to the appearing party.

In the event the responding party or attorney fails to appear, the Court may continue the matter and award attorney's fees, or enter an order on the pleadings and the declaration or testimony of the moving party.

Unexcused tardiness without prior notice is not acceptable. If, for any reason, the attorney or client is unable to be present at the time of the calendar call, the Court and opposing party shall be notified immediately by person or by phone of the reasons for, and the extent of, such delay. (1/1/05)

### **7.14 Pre-Hearing Settlement Efforts**

- A. When the attorneys have informed the Court staff that they are conducting settlement, neither the attorneys nor the parties need be present at the calendar call and the matter will remain on calendar until heard, or otherwise disposed.
- B. Counsel shall contact opposing counsel in advance of the hearing to ascertain whether or not the issues can be settled without a contested hearing. Failure to make such contact and conduct settlement in good faith may have a bearing on attorney's fees to be awarded and/or sanctions to be imposed.
- C. Copies of documents, intended to be offered as part of a case in chief, shall be provided to opposing parties prior to the Court hearing. A party may not wait until the time of the hearing to "surprise" the opposing party with proffered documentary evidence, except to impeach the veracity of a party or witness.
- D. If a case is settled after calendar call but before the hearing, one of the attorneys should inform the judge's bailiff of that fact, whereupon the stipulation will be taken ahead of all contested matters. No party shall represent that a case is settled when there is "only" one issue remaining to be determined by the Court. (1/1/05)

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### 7.15 Mediation and Family Court Services Evaluation

- A. All cases involving contested issues of custody and/or visitation shall be mediated. **The Policies, Procedures and Practices of Mediation in the Superior Court** of the State of California in the County of Stanislaus are immediately following these Family Law Rules as **Exhibit "A"**. The litigants and attorneys should expect that these Policies, Procedures, and Practices will be applicable to their cases.
- B. In the event counsel is appearing in a matter where mediation of child sharing issues will be required, it shall be the duty of counsel to advise all Courts where appearances are necessary that morning. Unless counsel is ordered directly into mediation by the Court, Counsel shall complete all other matters first, and then return as soon as possible to commence mediation proceedings.

Compliance with this rule does not excuse counsel from appearing for the call of Court trials on the same day that counsel is involved in mediation proceedings.

- C. Whenever there is an issue regarding child sharing, every moving and responding pleading should set forth a detailed proposed child sharing plan, including all orders the party would like the Court to issue.
- D. Mediation and Family Court Services Evaluations are not confidential, except as provided by law. If no agreement is reached, the mediator or evaluator, after a mediation session or evaluation, shall be called upon to make a recommendation to the Court regarding a resolution of the child sharing issues. If an agreement is reached and approved by the Court, or if no agreement and no Long Cause hearing was requested on the Court's order, said order is permanent and any change shall be only by way of written pleading identifying a change in circumstance.
- E. All complaints regarding mediation or a mediator, Family Court Services Evaluation or a Family Court Services Evaluator, including a request to change a mediator or evaluator, shall be directed in writing to the Family Court Services supervisor or designee, who shall take appropriate action upon the request. Any party dissatisfied with the action taken may bring a formal motion to the Court. This action may include appointing a co-mediator or replacing the mediator or evaluator. No peremptory challenge is allowed against a mediator or evaluator.
- F. In compliance with California Rules of Court, Rule 5.220, the following Local Rules of Court are adopted:
1. No peremptory challenge to an evaluator is allowed.

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2. The evaluator has discretion to discuss and disclose the lack of confidentiality with the child.
  3. If an evaluator sees the child with one parent/person seeking custody or visitation, the evaluator also shall see the child with the other parent/person seeking custody or visitation unless the other parent/person seeking custody or visitation refuses/fails to see the evaluator with the child or the evaluator feels it is not in the best interest of the child(ren) to be in the presence of the other parent.
  4. The evaluator has discretion to interview siblings separately or together or both.
  5. The evaluator is prohibited from making an evaluation based only on an interview with one parent/person seeking custody or visitation unless the other parent/person seeking custody or visitation refuses/fails to be interviewed by the evaluator.
  6. The grievance procedure in place for mediators (**Local Rule 7.15E**) is applicable to evaluators.
  7. All appointed persons who evaluate or investigate child custody matters are required to complete domestic violence training as set forth in California Rules of Court 5.225 and 5.230 and such person shall provide to the Court proof of required domestic violence training.
  8. Any Court ordered child custody evaluation shall be done in compliance with "Uniform Standards of Practice for Court -Ordered Child Custody Evaluation" as described in California Rules of Court 5.220.
- G.** The Mediator/Evaluator shall be allowed to have ex parte communication only during the evaluation process. The Mediator/Evaluator shall accept from the parties any and all information regarding the best interest of the child(ren) and the Mediator/Evaluator shall then determine if revealing any of that information would place the child(ren) at emotional or physical risk. The Mediator/Evaluator shall have discretion about revealing that information to the other party based on his/her determination. The Mediator/Evaluator shall maintain all information received during an evaluation in the event that the Court orders that material produced.
- H.** Domestic Violence Protocol: All Mediation clients are required to attend Mediation Orientation at which time each will be given verbal information and written materials that describe FCS policy and procedures with respect to domestic violence.

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On the day of the hearing, Mediation clients are given an individual intake sheet for a differential assessment of domestic violence. Clients are given the option of separate sessions with the Mediator when either party alleges domestic violence, and parties have the right to have a support person in the Mediation session. Support persons may be excluded if he/she disrupts the process of Mediation. The Mediator shall confer separately and privately with each party who does not report domestic violence to determine whether joint or separate sessions are appropriate.

- I. Prohibition on the issuance of Non-CLETS restraining orders: The past practice of this Court was to allow the parties in dissolution, legal separation and nullity actions to stipulate to Non-CLETS restraining orders. These orders are not enforceable by law enforcement agencies and often continue for an indefinite period of time. Although these orders are not subject to the firearm prohibition provisions under the state statute, under federal statute, a person subject to such an order is prohibited from possessing firearms.

The Court believes that public policy and better practice dictates that only CLETS restraining orders are to be issued pursuant to the Family Code commencing with section 6200. During mediation, the mediator will not recommend the issuance of a Non-CLETS restraining order. Further, the Court will not approve a stipulation by the parties to the issuance of a Non-CLETS restraining order.

This rule will not limit a party's right to seek other types of restraining orders as provided by statute, such as property restraints. Likewise, this rule does not in any manner affect the automatic restraining orders that apply in family law cases.

(7/1/08)

### 7.16 Calendar Management Short and Long Cause Matters

- A. Matters which the Court or counsel determine will take more than 15 minutes normally will be set for a long cause hearing in the department that the case is assigned for all purposes. Counsel shall meet and confer prior to the call of the case and determine if the anticipated hearing time exceeds 15 minutes. If both concur, they shall obtain a long cause date from the courtroom clerk in the department that the case has been assigned for all purposes.
- B. If the time estimate of either party is exceeded, the Court may in its discretion, rule without further hearing; defer the matter to the end of the calendar if time permits; continue the matter to the next available date as obtained from the courtroom clerk in the department that the case is assigned for all purposes; or order the matter off calendar.

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### C. Presentation of Evidence

Counsel shall be prepared to present their case based upon pleadings, declarations, and offers of proof. Counsel shall be prepared to explain why any live testimony is necessary. Generally no live testimony is allowed in Short Cause matters pursuant to California Rules of Court, Rule 3.1306 and *Reifler v. Superior Court* (1974) 39 Cal. App.3d 479.

### D. Attorney's Calendar

It is frequently required that matters be continued to another date at time of hearing. Attorneys must bring their calendars to Court if they want the Court to take into consideration prior commitments.

### E. Extra Pleadings and Papers

It shall be the responsibility of the attorneys to have a set of pleadings and papers at the hearing, as on occasion pleadings and papers previously filed are absent from the Court file or the Court file cannot be located.

### F. Witnesses

Whenever a witness has been subpoenaed to a Short Cause, Long Cause or Law and Motion Hearing, every reasonable effort shall be made to stipulate to the testimony of the witness, and thereafter excuse the witness from attendance. The unnecessary retention of witnesses in Court is not favored, and such retention may be considered by the Court in awarding fees and costs. (7/1/08)

### 7.17 Ex Parte Orders

Ex parte orders in family law matters shall be presented to the Clerk of the Court for delivery to a judge assigned to the family law calendar.

If a party to a dissolution or paternity action is seeking orders as a result of domestic violence and there is currently a Dissolution or Paternity action filed in this county, said request shall be filed by means of a Request of Domestic Violence Prevention Order, Form DV-100 and shall use the existing case number. This does not apply to Emergency Protective Orders (EPO) that are generated by law enforcement.

An ex parte order will be issued only if the application is accompanied by a specific declaration adequate to support its issuance. All declarations shall contain sufficient factual information within the personal knowledge of the declarant, which adequately supports the relief requested. Conclusions, feelings, wishes, or fears will not be adequate to support an ex parte order. Also, the form titled Declaration Re: Notice Upon Ex Parte Application for Orders must be filed. Ordinarily, an ex parte order will not be issued unless one of the following conditions exist:

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**Twenty-four (24)** hour prior notice was given to the adverse parties so that party might oppose the application by counter declarations filed with the clerk as soon as possible (no live testimony); or

- A. It clearly appears in the declaration that giving notice would frustrate the purpose of the proposed orders; or
- B. The applicant would suffer immediate and irreparable injury before the adverse party could be heard in opposition; or
- C. It appears by declaration that no significant burden or inconvenience will result to the adverse party.

An application for an order seeking confirmation of sole custody for a party shall specify the duration and other attendant circumstances justifying continued sole custody.

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

When preparing a proposed ex parte restraining order, the language of Judicial Council forms as applicable is the preferred language of restraint.

Ex parte conferences are to be discouraged except under circumstances where the moving party is required to notify the responding party of the relief sought **and** irreparable injury would be suffered by the moving party if the relief sought were not immediately granted. (1/1/05)

### 7.18 Standing Orders, Exceptions to Notice and Declaration Requirements

Issuance of certain ex parte orders may be obtained without compliance with the foregoing requirements of notice and supporting declarations. The Court will excuse compliance with the foregoing requirements under the following circumstances:

- A. Requests for mutual ex parte orders restraining removal of the minor child of the parties from the State of California, provided the child(ren) are currently within the State of California.
- B. Requests for mutual ex parte orders directing the parties to exchange state tax returns for the prior tax year, and payroll stubs for the prior **three (3)** pay periods, on a certain date at least **five (5)** Court days prior to the hearing of a Motion for Modification of Child or Spousal Support;

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- C. Requests for orders directing any party incurring expenditures, after the date of separation, in the ordinary course of business, or for the necessities of life, to pay for such expenses from his/her separate property income before using community assets. (1/1/05)

### 7.19 Order Excluding from Home or Stay Away

An application for an ex parte restraining order excluding either party from the family dwelling or the dwelling of the other, or a stay away order, causing the same result must be supported by a declaration showing the danger of immediate and serious harm specifying in detail the time and place of any past act or acts of alleged misconduct as required by Family Code §6321 and the availability of alternate housing for each party.

The declaration in support of any residential stay away order or move out order must contain information stating whether the residence involved is currently occupied by one or both parties, and if not occupied by both, the declaration must contain a statement as to when one or both parties left the residence and the reasons therefore.

If the respective residences cannot be determined from the application, or if a stay away order might result in a dwelling exclusion, the ex parte order will not issue. This rule applies also to domestic violence proceedings.

If violence has taken place or seems likely, the Court encourages a spouse to leave the home until after a Court hearing may be held; the Court will not penalize a parent for doing so. (1/1/05)

### 7.20 Modification of Custody/Visitation Arrangements

- A. All OSC's/Motions to Modify Child Custody and/or Visitation shall include on the face thereof the name of the Mediator if the matter has been previously mediated, either in the same or a different file or if the same parties together have been involved in mediation with other children.
- B. Applications to modify existing custody/visitation arrangements or orders filed within **three (3)** months of the issuance of an order to establish or modify support by the opposing party will be viewed with disfavor. Such modifications will be granted only:
1. To bring the existing order in conformity with the actual current practice of the parties, or
  2. Upon a strong showing such modification is necessary to protect the best interest of the child(ren). Attorney fees shall be awarded to the non-moving party unless the Court finds substantial justification for the application. (1/1/05)

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### 7.21 Order Changing Custody of Minor

An application for ex parte order to immediately change the custody of any minor child(ren) must be supported by a declaration showing by clear, specific allegations that the health and welfare of the child(ren) requires immediate change of custody. The declaration shall also set forth, in brief, the circumstances in which the child would be placed pending the hearing. The declaration shall also contain a statement of which party currently has actual physical custody of the child(ren) in question, how such physical custody was obtained and for how long the party has had such physical custody.

Such orders are viewed with disfavor, and the party seeking such will ordinarily be directed to seek relief through Child Protective Services, or other enforcement/investigative agencies. (1/1/05)

### 7.22 Temporary Child Custody

Factors which may be considered by the judge when making a temporary order of custody include the following:

- A. The child(ren) normally will be left in the home where they have been living on a regular basis, unless there are compelling circumstances dictating otherwise such as evidence of harm or violence to the child(ren) or parent.
- B. The closer the child is to the age of majority, the more likely the child's best interest is not to be motivated either by reward to the child, or by the playing of one parent off against the other. (1/1/05)

### 7.23 Exclusive Use of Vehicles

An ex parte order granting exclusive use of a vehicle will not be granted unless the declaration demonstrates that the opposing party has suitable transportation available or requires no such transportation. (1/1/05)

### 7.24 Modified Orders or Set Aside Ex Parte Orders

If the Court modifies any requested orders, it will be the responsibility of the applicant or attorney to conform all copies with the changes before filing and service.

If a responding party requests an ex parte order be set aside prior to the date set for hearing, notice shall be given to the moving party as provided in **Local Rule 7.17**. The Court may order an earlier hearing date or modify the orders on a proper showing in lieu of setting aside the orders. (1/1/05)

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### STIPULATIONS MODIFYING EXISTING ORDERS

#### 7.25 General

In any family law matter in which a modification of an existing order is sought by stipulation, the stipulation must be signed by both parties and their respective attorneys, if any. This includes Stipulations to Set Aside Defaults. Any document setting forth a stipulation between the parents regarding child support must be accompanied by Child Support Case Registry forms (FL-191) completed by each parent. Any stipulation addressing the issue of child support shall be returned unprocessed unless accompanied by a completed Child Support Case Registry form (FL-191).  
(1/1/07)

#### 7.26 Recipients of Public Assistance Benefits

If the custodial parent has assigned support rights to the County under Family Code §17400, the Department of Child Support Services and a supporting non-custodial parent (obligor) may stipulate, without the signature of the custodial parent (obligee), for an order modifying the method of payment or changing the amount of support.  
(1/1/05)

#### 7.27 Income and Expense Declaration

- A. Except upon good cause shown, no case in which monetary relief of any kind is requested, including any request for child support, spousal support or family support, or attorney's fees and/or costs, shall be heard unless a current Income and Expense Declaration (FL-150) in the form prescribed by Rule 5.128 of the California Rules of Court has been completed and filed by the moving party. A copy of that declaration must be served with the moving or responding papers. Good cause includes, without limitation, situations in which the custodial parent (obligee) is receiving a full TANF/CalWorks grant. The Court strongly encourages the parties to completely disclose all relevant financial information to each other and the Court whenever a financial matter is at issue. If a party is receiving public assistance benefits, that fact shall be disclosed in the Income and Expense Declaration (FL-150). In the event the moving party fails to comply, the matter may be dropped from the calendar. The Court shall impose sanctions if delay results from failure of the responding party to comply with these requirements.
- B. Except as may be defined elsewhere herein, "current" means executed within **forty-five (45)** days of the date matter is to be heard, or when the filed declaration requires no modification to correctly state the party's income and expense condition as of the date the matter is to be heard.

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- C. The Income and Expense Declaration (FL-150) will be considered as received in evidence at the hearing subject to amendment and/or cross-examination in the Court's discretion. Examination on matters covered by the Income and Expense Declaration (FL-150) will be heard only under exceptional circumstances within the Court's discretion and normally will be limited to testimony regarding unusual items not adequately explained in the Income and Expense Declaration (FL-150).
- D. The Income and Expense Declaration (FL-150) shall be fully completed as to both parties and shall include the gross income of all members of a declarant's household, the actual payroll deductions, cash in banks, savings and loans, or other depositories, the current market value of stocks, bonds, life insurance, and other liquid assets. All blanks on the form must be "answered." Notations such as "unk." for unknown, "est." for estimate, "n/a" for not applicable and "none" should be used to avoid leaving any item blank. If current facts are temporary, both the actual current facts and the estimated prospective facts may be shown if properly identified.

Information concerning the party's finances shall be stated, and if not exactly known, reasonably estimated, on each declaration. The Income and Expense Declaration (FL-150) shall also list all members of the declarant's residence.

### **1. Requirement of Completed Income and Expense Declaration**

An Income and Expense Declaration (FL-150) is not fully complete unless it contains the following:

- a. Schedules wherever required (including all business income, commission income, rental income, interest income, etc.). These schedules shall completely set forth the source of income, total gross income, an itemization of all deductions, and the net income after deductions. Business expense schedules shall identify depreciation and any other non-cash expenses.
- b. A fully completed section on attorney's fees, including the hourly rate, if any, even if attorney's fees have not been requested.
- c. A schedule of bonuses, if any, setting forth amount and date of the most recent bonus, the date on which the next bonus is expected to be received, and the amount of the next bonus (if known).
- d. A statement of overtime and a description of the frequency of receipt.
- e. Deductions from income based on withholding allowances or deductions from income based on dependency actions that reflect actual tax liability.

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### 2. Requirement of an Additional Factual Declaration

An additional factual declaration shall be provided where the following circumstances are applicable:

- a. If a party is unemployed, the declaration should describe previous employment, gross and net income derived there from, reasons for termination, and should state current efforts to seek employment.
- b. If there are other income-producing household members, including a new mate, the declaration shall state the relationship to the party, their gross and net income, their contributions to household expenses, and any financial arrangements between the party and those persons.

### 3. Requirement of Exchange of Financial Documents

Each party shall exchange, at least **five (5)** days prior to any hearing involving financial matters, wage stubs or other documents evidencing income for the preceding **three (3)** months. Additionally, each party shall provide to the other a copy of the party's most recent federal income tax return. If the hearing is scheduled between February 1 and the date the parties' tax return is filed, copies of all W-2 forms, 1099 forms, and other forms reflecting receipt of income during the previous year shall be exchanged. Where available, a self-employed party shall provide his/her most recent business profit and loss, or financial statement. (1/1/07)

## CHILD AND SPOUSAL SUPPORT

### 7.28 Introduction

This rule, including the schedules and attachments referred to herein, is set forth in the Court's policies on support. The Court shall consider any or all the factors set forth in the Family Code and case law.

In determining the amounts to be paid for temporary and permanent child support and temporary spousal support, the Court will be consistent with the DissoMaster (tm) program or other computer support program authorized by the Judicial Council.

To assist the Court, litigants and counsel in determining support and related issues and special situations, the Court has issued Family Law Guidelines "Rules of Thumb" for Family Court Support Orders (**Exhibit "B"**), which the Court will follow unless the Court, in exercising its discretion, determines it is appropriate to deviate therefrom.

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The support schedules allocate "net income" of the parties to meet the needs of all the parties, recognizing that, in most cases, there is not sufficient income to sustain either party in the same standard of living that existed prior to separation.

An order after hearing, stipulation to establish or modify child support, stipulation for judgment or judgment addressing the issue of child support shall be returned unprocessed unless accompanied by a completed Child Support Case Registry form (FL-191). Any document setting forth a stipulation between the parents regarding child support must be accompanied by Child Support Registry forms (FL-191) completed by each parent. (1/1/07)

### **7.29 Pleadings**

In all matters where support is at issue, a supporting declaration shall set forth the amount of support calculated pursuant to Family Code §§4070-4073. If it is contended that the guideline amount is inappropriate, a declaration shall set forth the calculation of the amount alleged to be proper, and the reasons therefore.

Earned income of a minor child below **\$300** per month shall be deemed the income of the minor child. Earned income of a minor child in excess of **\$300** per month shall be allocated as part of the income to the custodial parent of said minor child. Benefits received by the minor child through the Supplemental Security Income Program (SSI) shall not be considered income for the determination of child support (07/01/09)

### **7.30 Temporary Spousal Support**

Temporary spousal support shall be awarded consistent with the DissoMaster (tm) program or other computer support program authorized by the Judicial Council unless rebutted by admissible evidence. (See Family Law Guidelines "Rules of Thumb" for the Court's policy). Permanent spousal support shall be awarded pursuant to Family Code §§4320, 4330-4337, 4339, 3651, 3653, 3654 and relevant case law. (1/1/05)

### **7.31 Modifications (Increases/Decreases)**

(See Family Law Guidelines "Rules of Thumb" for the Court's policy.) (1/1/05)

### **7.32 Contempt**

- A. If a person cited for contempt appears without an attorney, one continuance normally will be granted to permit the citee to retain counsel.
- B. If the citee is found to be indigent, counsel shall be appointed.

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- C. The citee will be ordered to be present at the time and date set for the continued hearing, thus avoiding further service.
- D. In all contempt proceedings, a specific order of proof is preferred.
  - 1. The moving party shall introduce into evidence the prior order of the Court (by judicial notice or otherwise) which was in full force and effect at the time of the alleged contempt.
  - 2. The moving party shall establish that the opposing party had notice of that order.
  - 3. The moving party shall proceed to establish the violation of that order, and the willfulness of that violation.
- E. Counsel for the moving party shall be thoroughly prepared to present a prima facie case, i.e. the moving party should be able to make a prima facie case on the original declaration and have witnesses ready for cross examination by the citee, without calling the citee to testify.
- F. After the contempt hearing it shall be the responsibility of the moving party to prepare an order for the signature of the Court, setting forth the findings and orders of the Court. Such an order shall be submitted to opposing counsel, when there is an opposing counsel, for approval as to form and content prior to its submission to the Court. When the opposing party is a self represented litigant, the order will be submitted directly to the Court, without approval as to form and content by the self represented party.
- G. The party, or attorney, preparing the order after hearing must set forth all findings of the Court: factual findings of the existence and current validity of a described order, knowledge of the contemner of that order, the violation of that order, and the willfulness of that violation. The orders of the Court shall thereafter be set forth with regard to the finding of contempt, and the sentencing. No contempt order will be signed by the Court without compliance with the foregoing.
- H. After a finding of contempt and sentencing thereon, there is a Court policy that a stay of execution will not be granted, unless the moving party requests that the citee be given an opportunity to purge the contempt. Counsel are expected to advise their clients of this fact in advance of the Court hearing.
- I. In appropriate cases, the Court may permit a continuance of sentencing to assure compliance with Court orders. (1/1/05)

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### 7.32.1 Proposed Judgments/Writs of Execution Concerning Support Obligations

- A. Any proposed judgment submitted to the Court regarding support obligations or arrearages shall use Judicial Council form FL-630. In the event the proposed judgment sets forth an arrearage in item no. 6(c), the party submitting the form shall check item no. 5 and attach a supporting declaration setting forth the factual basis for the arrearage and how the arrearage has been calculated. Such declaration should contain, at a minimum, the months in which support was not received and the amount of support owing for each such month. When a proposed judgment is submitted by an institutional party, such as the Department of Child Support Services or other state of county agency, the supporting declaration shall be executed by an individual who can personally attest to the business record showing the arrears and interest owed.
- B. Any writ of execution submitted to the Court in connection with an outstanding support obligation or arrearage shall use Judicial Council form EJ-130. The Clerk of Court shall verify the amount of the judgment set forth in item no. 11 before any writ shall issue. Any writ of execution submitted to the Court shall contain a supporting affidavit setting forth the manner in which the amount set forth in item no. 11 has been calculated. Such affidavits shall be executed by an individual who can personally attest to the information contained therein and shall, at a minimum, set forth the initial amount of the judgment, the date and amount of any payments made toward the judgment and accrued interest. (1/1/07)

### DEFAULT OR UNCONTESTED JUDGMENT

#### 7.33 General Policy

Where a party proceeds by way of a default, a default hearing will be set only by a specific request by the party or by order of the court. All other defaults shall be submitted by way of affidavit.

Where a family law judgment is requested by written agreement of the parties after a response has been filed (by stipulation and waivers to proceed uncontested), the affidavit provisions of the Family Code may be used. However, a hearing may be set upon request of a party, or by Court order.

An order after hearing, stipulation to establish or modify child support, stipulation for judgment or judgment addressing the issue of child support shall be returned unprocessed unless accompanied by a completed Child Support Case Registry form (FL-191). Any document setting forth a stipulation between the parents regarding child support must be accompanied by Child Support Case Registry forms (FL-191)

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completed by each parent. Where applicable, Judicial Council forms and/or local forms are mandatory. (1/1/08)

### 7.34 Prerequisites to Obtaining the Uncontested Judgment

- A. Default or uncontested family law judgments may be obtained only after one of two events has occurred:
1. The default of Respondent, or
  2. Respondent has appeared by filing either a Response and/or an Appearance, Stipulation and Waivers form by which the parties have stipulated to proceed uncontested.
- B. If Respondent has filed a response, the parties may appear in open Court and orally stipulate to waive notice of time and place of trial, findings and conclusion, and statement of decision and agree that the matter shall be heard on the uncontested calendar.
- C. Any judgment or stipulation for judgment addressing the issue of child support shall be returned unprocessed unless accompanied by a completed Child Support Case Registry form (FL-191). Any judgment setting forth a stipulation between the parents regarding child support must be accompanied by Child Support Case Registry forms (FL-191) completed by each parent. (1/1/07)

### 7.35 Family Law Judgment by Declaration

All papers necessary to obtain a judgment by declaration under Family Code §2336 shall be delivered to the Clerk. A request to enter default, or appearance, stipulation and waivers, as applicable, is required to be submitted for filing as appropriate. (1/1/05)

### 7.36 Judgment By Default

- A. To obtain a default judgment of dissolution or legal separation, pursuant to Family Code §2336, the petitioner must file a request to enter default accompanied by a completed proof of service of the summons and the original summons (if not previously filed). Where the Court file contains evidence of proper service, and no responsive pleadings have been filed within the allotted time to respond, the Clerk will enter the respondent's default.

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- B. Unless the Court orders otherwise, a default will not be entered based on a notice and acknowledgment of receipt signed by a person other than the party to whom it is directed. (1/1/05)

### 7.37 Judgment for Default Dissolution or Legal Separation

The following paragraphs discuss what documents and information shall be provided by the party to obtain a default judgment. Those paragraphs also address cases that are proceeding as uncontested matters.

The Family Law Clerk's Office will provide self-represented litigants with information regarding the Court's Self-Help Center and Family Law Facilitator's Office. The Court has developed workshops for self-represented litigants in order to assist them in the preparation of those documents required in their family law cases.

After the default has been entered the petitioner must file a completed form FL-170 – Declaration for Default or Uncontested Judgment indicating which orders are to be included in the judgment of dissolution or legal separation. A party may not request orders in the judgment beyond the relief requested in the petition. The form FL-170 – Declaration for Default or Uncontested Judgment must include a proof of service of the preliminary declaration of disclosure. (Family Code §2110) A party may use form FL-002 – Prehearing Statement in lieu of inclusion of requested orders in form FL-170 – Declaration for Default or Uncontested Judgment.

If there are assets and/or debts to be disposed of by the Court, the petitioner must file a completed declaration that proposes the division of property and/or debts. The declaration shall list each item of community property with current market values, encumbrances and equities. The declaration shall also include a list of all community obligations with identities of creditors and balances due. The legal description and common street address of any real property to be disposed of by the Court must be included.

Where a child custody and visitation order is requested by default the moving party must state under Number "23" on declaration for default the following:

- A. Date of parties' separation
- B. Custodial arrangement since separation;
- C. Extent of contact between the child and the non-custodial parent; and
- D. If the moving party seeks to deny visitation to the defaulting party, a statement concerning the reasons. (1/1/08)

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### 7.38 Completed Income and Expense Declaration Requirement

An Income and Expense Declaration (FL-150) must be submitted where any one of the following orders is requested: child support, spousal support (except where a party seeks reservation of the Court's jurisdiction to award spousal support in the future), waiver or termination of spousal support in a long-term marriage (**10** years or more between the date of marriage and the date of separation), family support, or attorney's fees. This declaration shall include the submitting party's best estimate of the other party's income. Refer to **Local Rule 7.27** for additional Income and Expense Declaration (FL-150) requirements. (1/1/05)

### 7.39 Format of the Default Judgment

All provisions relating to property and injunctive orders may be set forth in the judgment, or incorporated by attaching a marital settlement agreement addressing these issues. (1/1/05)

### 7.40 Order Reserving the Court's Jurisdiction to Award Child Support

When child support has not been assigned, a party may reserve the Court's jurisdiction to award child support by stating in the judgment: "The Court reserves jurisdiction to award child support without prejudice to any action brought by a party or the Department of Child Support Services." No such reservation of jurisdiction shall be granted unless the party files a declaration stating that neither the party nor the child(ren) are receiving or have applied for TANF or CalWorks or so testifies. (1/1/05)

### 7.41 Spousal Support

The petitioner must address the issue of spousal support for both parties in the proposed judgment. The petitioner may request spousal support for either party, terminate the Court's jurisdiction to award spousal support to either or **both** parties, or reserve the Court's jurisdiction to award spousal support in the future to either or both parties. All orders for spousal support shall state the amount of support, the date(s) payable, and unless there is an agreement to the contrary, that support shall terminate on the death of either party or remarriage of the supported party. A marriage of **ten (10)** or more years is presumptively a long-term marriage. In a long-term marriage petitioner may not automatically waive the right to receive spousal support or terminate respondent's right, absent a showing of the ability of self-support (see Family law "Rules of Thumb, Exhibit B, subsection "B"). Petitioner should complete and file an Income and Expense Declaration (FL-150) listing both parties' incomes. (1/1/05)

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### **7.42 Support Orders Where Custodial Parent and/or Children are on TANF or CalWorks (formerly known as AFDC)**

Where a party wishes to obtain a child, spousal or family support order by default and the custodial parent receives TANF or CalWorks, the Department of Child Support Services, (or other appropriate representative of the County to which support rights have been assigned) must be served with **ten (10)** calendar days notice of the request by mail. All such orders for support must specify that payment is to be made to the Department of Child Support Services and include all other orders required by the Department of Child Support Services. Petitioner should modify the child support attachment to the judgment to so reflect. (1/1/05)

### **7.43 Property Orders**

All real property referred to in the judgment must be described by its complete common street address and legal description. A judgment will not be signed if it contains only the street address. (1/1/05)

### **7.44 Attorney's Fees Orders**

Any request for an award of attorney's fees over **\$1,000.00** must be supported by a factual declaration indicating the amount of time the attorney spent on the case and attorney's hourly rate. (1/1/05)

### **7.45 Restraining Orders (Non-Domestic Violence/Harassment)**

All restraining orders issued pursuant to Family Code §2035, et.seq., must be stated in the body of the judgment (or as an attachment to the judgment) and followed by the date of expiration (See Family Code §2049, FC6218 and 6360). (1/1/05)

### **7.46 Termination of Marital Status**

The marital status for all dissolutions will terminate **six (6)** months from the date the Court acquired jurisdiction over the Respondent. When a Judgment is not presented to the Court for signature until after the **six (6)** months has lapsed, the marital status will terminate on the date that the Court signs the Judgment. A Judgment for Legal Separation shall not state a marital termination date. (1/1/05)

### **7.47 Orders Concerning Child Custody, Child Visitation, Child Support, Spousal Support and Attorneys Fees**

Copies of current orders concerning child custody, child visitation, child support, spousal support, and attorney's fees, as applicable, shall be attached to the Judgment.

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An order after hearing, stipulation to establish or modify child support, stipulation for judgment or judgment addressing the issue of child support shall be returned unprocessed unless accompanied by a completed Child Support Case Registry form (FL-191). Any document setting forth a stipulation between the parents regarding child support must be accompanied by Child Support Case Registry forms (FL-191). (7/1/07)

### **7.48 Division of Community Estate and Confirmation of Separate Property**

The division of the community estate and confirmation of separate property, as applicable, may be set forth either in the body of the judgment, or in an attached agreement incorporated in the Judgment by reference. (1/1/05)

### **7.49 Notice of Entry of Default/Request to Enter Default**

In a proceeding for dissolution of marriage or legal separation of the parties, where a request to enter default is submitted, the petitioner **shall** provide the Court Clerk with a stamped envelope bearing sufficient postage addressed to the spouse who was defaulted, with the address of the Court Clerk (Clerk of the Superior Court, P.O. Box 1098, Modesto, CA, 95353-1098) as the return address, and the Court clerk **shall** mail a copy of the request to enter default to that spouse in the envelope provided. A judgment of dissolution or legal separation, including relief requested in the petition, shall not be denied solely on the basis that the request to enter default was returned unopened to the Court. The Court Clerk **shall** maintain any such document returned by the post office as part of the Court file. (1/1/05)

### **7.50 Notice of Entry of Judgment, Envelopes**

Petitioner must submit, together with the proposed judgment and any forms required above, an original and two copies of the notice of entry of judgment. Petitioner shall also submit **two (2)** stamped envelopes addressed to the parties as listed on the notice of entry of judgment. Envelopes must be of appropriate size with regard to the amount of documents submitted and must have sufficient postage affixed to them for document (7/1/06)

### **7.51 Property Settlement Agreements and Stipulated Judgments**

In a default or uncontested dissolution action, no property settlement agreement or stipulated judgment shall be approved by the Court unless:

- A. Allegations in the petition refer to the making of the property settlement agreement or the agreement, or a separate agreement signed and filed by the parties and their respective attorneys provides that the agreement may be presented for Court

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approval, or the adverse party and his attorney have endorsed their approval of the agreement on the form of judgment; and

- B. The parties thereto are represented by separate counsel and the agreement or stipulated judgment is signed by such parties and their respective attorneys. If only one party is represented, an affidavit filed by the other party to the agreement stating that s/he has been advised to consult an attorney in reference to the agreement, but declined to do so, will be accepted in lieu of the signature of an attorney for such party. Such affidavit shall be a separate document limited solely to a waiver of counsel; and
- C. All property settlement agreements and stipulated judgments are to be submitted **three (3)** Court days before the hearing, if scheduled for hearing. (1/1/05)

### 7.52 Signature of Judge

The signature of the judge shall not follow any attached agreement of the parties, but shall be set forth on the judgment following the orders of the Court. Where appropriate, signatures of the parties and/or their attorneys shall be set forth immediately above the space provided for the date and signature of the judge. (1/1/05)

### 7.53 Restraining Orders (Domestic Violence/Harassment)

All restraining orders in a judgment issued pursuant to Family Code §§6320 and 6322 must be followed by the date of expiration of such order (See F.C. §6360 et.seq.); good cause for granting any such order(s) shall be set forth in an attached declaration(s). (1/1/05)

### 7.54 Status Only Judgments

A "status only" or "bifurcated" judgment (Family Law) may be obtained pursuant to Family Code §2336, or upon duly noticed motion. (See F.C. §2338 et.seq.) (1/1/05)

### 7.55 Finality of Judgment of Dissolution

- A. No Judgment for the dissolution of marriage shall be final until **six (6)** months have expired from date of service of summons and petition, or date of appearance of Respondent. The judgment shall specify the date on which the judgment is finally effective for the purpose of terminating the marriage relationship of the parties. (See F.C. §2338 et.seq.)
- B. Upon noticed motion and good cause shown, or stipulation of the parties, the Court may retain jurisdiction over the date of termination of the marital status, or order the

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marital status terminated at a future specified date. (Family Code §2339 et.seq.)  
(1/1/05)

### 7.56 Nunc Pro Tunc Judgments

To be entered nunc pro tunc, a judgment must comply with Family Code §2346.  
(1/1/05)

### 7.57 Uncontested or Default Family Law Hearings

Documents required to be filed at least **ten (10)** Court days prior to an uncontested or default hearing are:

- A. A declaration regarding service of a current final declaration of disclosure pursuant to Family Code §§ 2100 et seq. is required in Uncontested hearings where a Response was filed. In Default hearings only proof of service of the preliminary declaration of disclosure is required.
- B. Except for good cause shown, a prehearing statement and a current Income and Expense Declaration (FL-150) pursuant to Family Code Sections 2101 and 2106. Good cause is shown where the party(s) submit(s) a marital settlement agreement addressing all issues. The marital settlement agreement shall be attached to the judgment of dissolution. The prehearing statement shall include the following:
  1. **Community Property**  
A list of all items of community property with current market values, encumbrances and equities. All real property referred to in a judgment shall be described by its complete common address and legal description.
  2. **Community Obligations**  
A list of all current community debts and obligations with the identities of the creditors and balance due.
  3. **Funds Held by Others**  
To the extent that either separate property or community property consists of funds held by others, such as insurance policies, pensions, profit sharing, or other trust or retirement funds, the statement shall fully identify the policy or fund, including policy, serial or account numbers, the present values and basis for calculation, and all terms or conditions imposed upon withdrawal of such funds. If loans exist against any of these funds, the details regarding those loans should be set forth.

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### 4. Division of Community Property and Obligations

A proposal showing the requested equal division of the community property and community obligations.

### 5. Child Custody and Visitation

a. Where the judgment is taken by default, and there is no existing order or no attached written agreement of the parties concerning custody and visitation, an attached factual declaration shall set forth the following:

(1) Where the party is seeking joint custody, what contact with the child the defaulting party shall have.

(2) Where the party is seeking to deny visitation between the child and the defaulting party, the reasons why visitation should not be ordered.

b. In preparing the declaration the party shall inform the Court when the parties were separated, who has been the primary caretaker of the child during the immediate past **six (6)** months and the extent of contact between the child and the non-caretaker parent during that time.

### 6. Child Support

a. Where judgment is obtained by default, and there is no attached written agreement concerning child support, an attached declaration shall state the effective date of the order sought, the amount of support sought per child and in total, the net incomes of each party, the name and birth date of each child, the amount of support suggested in the case of each child by guidelines, and whether this amount is below the statewide guidelines, and if so, the factual basis pursuant to Family Code §§ 4055-4069.

b. Where a support order is sought and the party to whom support is to be paid is receiving public assistance, that fact shall be set out in the judgment and support shall be ordered payable to the Department of Child Support Services.

### 7. Spousal Support

a. The issue of spousal support for each party must be addressed. A support amount may be requested, support may be terminated, or the issue of support may be reserved.

b. If a request for support is by default attach a declaration which states the effective date of the order sought, the amount of support sought, and the net incomes of each party.

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- c. A short term marriage is not in and of itself a sufficient basis for termination of spousal support.

### **8. Proposed Orders**

A proposal of the wording of such other orders as desired in the judgment of dissolution of marriage. Restoration of a wife's name shall be ordered in a judgment only upon her written request or request in open court (See Family Code §§ 2080-2082).

### **9. Appearance, Stipulation and Waivers**

An uncontested judgment, except in Department of Child Support Services support matters, may be obtained only upon the filing of an appearance, stipulation and waivers form wherein the parties agree that the matter may be tried as an uncontested matter, waive their rights to notice of trial, Statement of Decision, agreed that the matter may be tried by a commissioner sitting as a temporary judge; and that none of the stipulations and waivers shall apply unless the Court approves the written settlement agreement or stipulation for judgment. The moving party must file a completed declaration for default or uncontested dissolution.

### **10. Incorporation of the Marital Settlement Agreement**

Where parties want the terms of the marital settlement agreement to become the terms of the judgment, the marital settlement agreement must be incorporated into the judgment.

### **11. Stipulated Nullity Judgments**

Stipulated judgment for nullity may be signed by the Court, absent a hearing, where the stipulation or an accompanying factual declaration contains facts supporting the grounds for the nullity judgment. Stipulations for nullity judgments shall be presented to the Clerk along with an original plus two (2) copies of all documents submitted, including the Judgment for Nullity and the Notice of Entry of Judgment. Also required are two (2) addressed stamped envelopes as required by Family Code 2338.5(c).

### **12. Notice of Entry of Judgment, Envelopes**

- a. The moving party must submit, together with the proposed judgment and any forms required above, an original and **two (2)** copies of the notice of entry of judgment. The moving party shall also submit **two** stamped envelopes addressed to the parties as listed on the Notice of Entry of Judgment.
- b. When a judgment of dissolution of nullity, of marriage, or legal separation of the parties is to be granted upon the default of one of the parties; the

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signature of the spouse (who was defaulted) or any marital settlement agreement or any stipulated judgment **shall be notarized** pursuant to Family Code §2338.5. (7/1/07)

### 7.58 Proceedings Involving Recipients of Public Assistance Benefits

Notwithstanding any other rule, if a party or the minor child(ren) are receiving public assistance benefits:

- A. That fact shall be disclosed on the Income and Expense Declaration (FL-150); and
- B. Proof of service of a notice of hearing and all moving papers upon the Department of Child Support Services at least **ten (10)** Court days prior to the hearing shall be filed; and
- C. All orders submitted to the Court shall comply with Family Code §§ 4200-4203. (1/1/05)

## CONTESTED TRIALS

### 7.59 Joint Settlement Conferences and Statements

- A. A Joint Settlement Conference must be held in all family law matters requiring a case management conference before the case will proceed to settlement conference and trial. A Joint Settlement Conference is mandatory requiring, except in cases where there exists a current restraining order prohibiting personal contact with the other party and both parties are self-represented, the parties and their respective attorneys to meet together to attempt to settle all issues in the case. Attendance by the attorneys and parties is mandatory; attendance by experts and professional advisors is permitted at the option of each party. The Joint Settlement Conference shall take place no sooner than **ninety (90)** days and no later than **thirty (30)** days before the date initially set for the settlement conference.

At its conclusion, a Settlement Conference Statement signed by each party or his/her attorney shall be filed. Said Settlement Conference Statement shall be fully completed utilizing Local Form FL-008, which is available on the Court's website under the "Forms" link and is also available at the Family Law Court Clerk's Office. Parties may submit a Settlement Conference Statement. Issues not so specified in the Settlement Conference Statement may be added later only with the consent of the trial judge, who has discretion to refuse or permit the addition of such issues with whatever qualifications or restrictions the Court deems appropriate.

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In the event a party/attorney fails to meet or fails to submit a Settlement Conference Statement, that party will then be precluded from requesting the addition of issues not set forth in the other party's Settlement Conference Statement. In addition, sanctions may be imposed at the time of the mandatory court settlement conference or trial for the unwarranted refusal to meet or the failure to submit a Settlement Conference Statement.

In cases where there exists a current restraining order prohibiting personal contact with the other party and both parties are self-represented, each party is required to submit a settlement conference statement utilizing Local Form FL-008 as mentioned above which is available on the Court's website under the "Forms" link and is also available at the Family Law Court Clerk's Office.

- B. The Settlement Conference Statement must be filed with the Court at least **ten (10)** Court days prior to the Settlement Conference.
- C. All proceedings listed in paragraph A., above, are required to have a settlement conference within approximately **fifteen (15)** days of trial. In each case, counsel who attends the conference shall be thoroughly familiar with the case and shall be prepared to discuss it. The attorney responsible for the preparation and trial of the case should attend in each case.

Experience has demonstrated the importance and necessity of the presence of all persons whose consent will be required for a binding settlement agreement. Only on good cause prior to the time of the settlement conference may the Court allow such persons to be available telephonically.

For a meaningful conference, all attorneys and/or the parties must agree to participate in good faith. Any failure of an attorney or party to prepare for, appear at, and participate in a settlement conference, unless good cause is shown for any such failure, may be considered as an unlawful interference with the proceedings of the Court.

If, at the time of the scheduled settlement conference, petitioner or respondent fails to appear at the settlement conference and good cause is not shown, the Court may impose sanctions including dismissal when permitted by law, order the trial date vacated, impose monetary sanctions, including attorney fees and actual costs or order the case to proceed to trial on the date assigned.

The following monetary sanctions will apply:

Failure to appear at Settlement Conference (per party and attorney or self-represented party)	\$300.00
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Appearance without participating in the preparation of a Settlement Conference Statement or submission of a settlement conference statement (1/1/06)	\$150.00
Appearance with an unfiled Settlement Conference Statement or Settlement Conference Statement filed the day of the Settlement Conference	\$100.00
Settlement Conference Statement not timely Filed (1/1/06)	\$ 25.00

### 7.60 Settlement Conference Policy Statement

It is the policy of the Superior Court of Stanislaus County to settle issues and cases to the extent legally possible, to allow focus on settlement at the earliest possible date, to reduce the cost of litigation, and to reach a final conclusion of the case fairly and expeditiously. Therefore, compliance with these Settlement Conference Rules, attendance at Joint Settlement Conference, and full participation by both parties and attorneys are mandatory. Sanctions will be imposed for non-compliance. (1/1/05)

## TRIAL EVIDENCE

### 7.61 Documentary Evidence

- A. Documentary evidence should be offered by stipulation to avoid the need for foundational witnesses.
- B. Copies should be exchanged by counsel and identified by the Clerk prior to the commencement of trial.
- C. Original transcripts of depositions must be lodged with the Court if they will be referred to at trial. (1/1/05)

### 7.62 Post Trial Proceedings

Motions for Reconsideration are to be made to the Court in compliance with Code of Civil Procedure § 1008, and are not to be requested merely to have a rehearing of the matters tried. Counsel are especially directed to Code of Civil Procedure § 1008 (c) which states, "A violation of this section may be punished as a contempt..." (1/1/05)

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### 7.63 Judgment-Duty to Prepare

After a contested trial, the party directed by the Court shall prepare the judgment or order in accordance with the Court's decision and shall comply with California Rule of Court 3.1590. (7/1/07)

### 7.64 Required Contents

#### A. Child Support-Amount and Duration

All judgments providing for child support shall state the name, date of birth, amount of support for each child, and shall state the date of commencement, shall be payable as provided in Family Code §3901, et.seq., provide that each party keep the other party informed of that party's current address during the minority of the child.

#### B. Spousal Support

All judgments shall state the amount, commencement date, and duration of spousal support, and shall provide that each party keep the other party informed of that party's current address until spousal support is terminated.

#### C. Real Property

All judgments shall contain a sufficient description to identify any real property affected by the Court's decision.

#### D. Recipients of Public Assistance Benefits

If a party is receiving public assistance benefits for a minor child, the judgment shall comply with Family Code §4200, et.seq.

E. Any other provision that is subject to enforcement by contempt should be set forth in full in the Judgment. If the parties have executed a written marital settlement agreement, or stipulation, no other language from said agreement should be included in the Judgment, i.e., only those portions subject to enforcement by contempt shall be fully set forth.

#### F. Identification of Moving Party

Every judgment shall state in the upper left-hand corner the name and address of the person presenting it to the Court for signature.

#### G. Personal Conduct Restraining Order

If the Judgment contains personal conduct restraining orders, a CLETS form must be attached. If a restraining order is in effect on Form DV-130, a copy of the restraining order, along with the date of expiration of the restraining order must be attached. (1/1/05)

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### 7.65 Signature-Ordinary Dissolution

In ordinary dissolution cases, the judgment shall be presented for signature to the judge together with: (1) the Court's file, (2) an original and **two (2)** copies of a Notice of Entry of Judgment in the form prescribed by Rule 1290, a California Rules of Court, and (3) **two (2)** stamped envelopes addressed to each party to whom copies are to be mailed. (1/1/05)

### 7.66 Signature-Summary Dissolution

In summary dissolution cases, an original Request for Judgment, Judgment of Dissolution of Marriage, and Notice of Entry of Judgment (one form, FL-820) and **two (2)** copies shall be presented for the signature of the judge. **Two (2)** stamped envelopes addressed to each party to whom the copies are to be mailed are also required. (1/01/05)

### 7.67 Attorney's Fees

#### A. Authority for an Award of Attorney's Fees and Costs

##### 1. Statutory Authority

Family Code §§270 et.seq., 2030 et.seq. & 3557. The Family Code empowers the Court to order any party, except a governmental entity, to pay such amount as may be reasonably necessary for the cost of maintaining or defending the proceeding, and for attorney's fees. The award may be made payable directly to the attorney (See Family Code §270 et.seq.).

##### 2. Factors to Be Considered in Setting Fees and Costs

The party seeking an award of attorney's fees and costs should expect to present evidence on the following issues:

- a. The nature of the litigation;
- b. Its complexity;
- c. The nature and extent of the conflict;
- d. The amounts involved;
- e. The financial circumstances of the parties ("need" and "ability to pay");
- f. The skill required; and
- g. The professional standing and reputation of the attorneys.

The conscientious efforts of counsel to resolve as many areas of disagreement as possible without judicial intervention is entitled to serious consideration in awarding attorney's fees.

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### **B. Documentation in Support of An Award of Fees or Costs**

The following rules apply whether the request for an award is noticed or without notice.

#### **1. Income and Expense Declaration**

Fees and costs will not be awarded unless an Income and Expense Declaration (Judicial Council form FL-150) is submitted with each item fully and accurately completed. If special circumstances warrant it, the facts in support should be set forth at item 13 of the Application for Order and Supporting Declaration.

Examples of special circumstances would include the need for an appraiser, accountant, actuary, doctor, extensive discovery, or out-of-state discovery, etc.

#### **2. Declaration Testimony and Billings**

Declaration testimony of experts in support of prospective cost awards will be allowed. Where an expert submits a report, a billing based on that service may be admitted at any hearing where the report itself may be received.

If a request is made for a combined amount of fees and costs in excess of **\$1,000.00**, the request shall include a separate written declaration signed by the attorney, describing the factors relevant to the request which may include:

- a. Services performed and costs incurred to date;
- b. Time expended;
- c. Hourly rate charged, if applicable;
- d. Best estimate of the future services to be performed, costs to be incurred and necessity therefore;
- e. Each party's access to community assets;
- f. Specific amounts requested;
- g. A full disclosure of all amounts paid by or on behalf of the party requesting fees and costs;
- h. History of prior appearances and awards; and.
- i. Any other relevant factors.

### **C. Bifurcation (Separate Hearing) Re: Fees and Costs**

Counsel may request the opportunity to present evidence of opposing counsel's/opposing party's failures to respond to attempts to resolve the domestic dispute prior to trial. This evidence may be considered relevant to the issue of attorney's fees and costs and/or sanctions, but be inadmissible as "settlement negotiations". In this case, counsel should advise the opposite side and the Court by a statement in the pre-trial statement that the issue will be raised and that counsel requests the issue be bifurcated for hearing after the Court renders its dissolution judgment. The trial judge has the discretion to order the bifurcation. It is

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anticipated that bifurcation will occur only in those cases where there is substantial request for fees.

### **D. Sanctions**

In addition to the foregoing factors, the various factors set forth in Code of Civil Procedure § 128.5 and Family Code §270 et seq. may bear on the award of attorney's fees to either side, including the resistance of a request for an award on the basis that the services were not "reasonably necessary" to the prosecution or defense of the proceeding. (1/1/05)

### **7.68 Family Law Facilitator**

The Family Law Facilitator shall perform the duties outlined in Family Code Section 10004, and any additional duties as directed by the Supervising Judge of the Family Law Facilitator Program pursuant to Family Code Section 10005. The additional duties shall be made party of any Agreement reached between the Court and the Facilitator. (1/1/05)

### **7.69 Preparation and Submission of Order for Signature by Court**

All family law orders after hearing, and all decrees of dissolution/nullity shall be submitted to the Court for signature no later than **fifteen (15)** days after the date of hearing, unless the proposed order requires the approval of opposing counsel pursuant to this rule, in which case the proposed order shall be submitted to the Court for signature no later than **thirty (30)** days after the hearing.

Unless otherwise ordered by the Court, the moving party shall prepare a written order following any hearing or trial. The preparing party shall submit all orders on order to show cause or motions, and all decrees of dissolution/nullity (except summary dissolution cases) per proposed order to the opposing party for approval and as to form and content prior to submitting the proposed order and/or decrees to the Court for signature.

In the event opposing counsel fails or refuses to approve the order as submitted, the proposed order shall be submitted to the Court together with a letter of explanation by the preparer of the order stating the date the proposed order was forwarded to opposing counsel, the attempts made by the proponent to have opposing counsel approve the order, and the reasons given by opposing counsel, if any, for refusal to approve or return the proposed order.

If the responsible party fails to prepare or mail the order as required, then the responding party may prepare the proposed order and/or decree and mail it directly to the hearing Judge without seeking the approval of opposing counsel, along with a letter

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to the hearing judge (with a copy to opposing counsel) setting forth the applicable days according to this rule and requesting the judge to sign it.

If there is a disagreement between the parties concerning the accuracy of the prepared order and/or judgment or the other party/attorney fails to respond, one of the parties may request the Court, with written notice to the other party, to resolve the language in dispute and may refer the Court to applicable portions of a hearing transcript if prepared.

The Court will hold all non-approved orders for a period of **five (5)** days after which, regardless of any objection received, the Court will either sign the proposed order, order the preparing party to modify the order as the Court shall direct or hold a hearing to determine the appropriate language.

After an order has been signed by the judge and filed, the party preparing the order shall mail **two (2)** filed marked copies to opposing counsel or **one (1)** copy to a party appearing in Pro Per and **one (1)** copy to the Department of Child Support Services office if a party or the child(ren) are on public assistance, and the order relates to child support, spousal support, or child custody.

In the event the Judge who heard the hearing or trial is unavailable for longer than **two (2)** weeks from submission of the order or judgment, the order or judgment shall be signed by the family law presiding judge.

All orders signed in Court and presented to parties for filing must be filed with the Clerk's Office within **one (1)** business day of the hearing. (7/1/06)

### 7.70 Proof of Service

If a responding party fails to appear at a hearing, the moving party must immediately submit proof of timely service to the Court; otherwise the matter will be taken off calendar.

All parties shall comply with the provisions of Family Code §215, requiring service of moving documents (for modification of orders) upon a party after entry of a Final Judgment of Dissolution.

After a Final Judgment has been entered, the attorney of record for the party remains as attorney of record, and is entitled to timely notice unless there is on file a proper withdrawal by stipulation, order, or pursuant to Code of Civil Procedure § 285.1. (1/1/05)

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### 7.71 Miscellaneous Family Law Rules

- A. A finding having been made, the Superior Court adopts a Family Conciliation Court pursuant to Sections 1800-1842 of the Family Code.
- B. In the event that any party or attorney fails at any stage of the proceedings to substantially comply with the requirements of the current Guidelines, Local Rules, or California Rules of Court, the Court may order the case off calendar, proceed to hear the matter on default basis, proceed under any conditions the Court finds proper, award attorney's fees, or impose other appropriate sanctions.
- C. All documents filed in cases with pending hearings must reflect the next upcoming hearing date on the face of the document, near the title. For all documents that already reflect a specific hearing date, this rule does not apply. (1/1/05)

### 7.72 Limitation on Conformed Copies

All documents presented for filing are limited to an original plus **two (2)** copies unless otherwise required by code, the Clerk's Office will conform a maximum of **two (2)** copies. (1/1/05)

### 7.73 Domestic Violence Protocol

The Court has adopted a Domestic Violence Protocol in conformity with Penal Code section 136.2 and California Rule of Court 5.450. The Domestic Violence Protocol is set forth in Stanislaus County Superior Court Criminal Rule 4.31. (7/1/07)

## GUARDIANSHIPS

### 7.74 Consolidation of Adoption and Guardianship Proceedings

If an adoption proceeding is pending involving a minor who is also the subject of a petition for guardianship, the proceedings will be consolidated and heard in the department designated by the presiding judge to hear adoption and guardianship proceedings. (1/1/06)

### 7.75 Appointment of Temporary Guardian

- A. If a Temporary Guardianship is needed, a Petition for Appointment of a Temporary Guardian must be filed concurrently with, or subsequent to, the filing of a petition for appointment of a general guardian. If a temporary petition is to be presented ex parte, notice of such application is required pursuant to Prob. Code § 2250(c). A proof of service shall be filed in the action.

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- B. If a minor has been living with the proposed guardian for a considerable time and there is sufficient reason to believe that a parent(s) will remove the child from the petitioner's custody upon being served with the notice of the temporary guardianship application, the Court will consider an ex parte temporary guardianship.

At the hearing on the temporary guardianship, the matter may be referred to the Court Investigators' Office for mediation.

Prior to the date set for the ex parte appointment, all petitions and documents pertinent to the temporary application shall be reviewed by the Court Investigator. The petition shall state the facts giving rise to the need for the guardianship and for issuance of ex parte orders.

Temporary petitions will be reviewed by the Court Investigators. A petition will go to the judge only if it is procedurally correct and if the required notice has been given or dispensed with. Unless some degree of urgency is present, the Court ordinarily will not entertain an ex parte application for appointment of temporary guardian.

If no opposition is presented and the matter appears appropriate, the Court may grant the petition without an appearance. (7/1/08)

### 7.76 Reconsideration of Temporary Guardianships

Each petition for temporary guardianship granted on an ex parte basis will be set for a hearing pursuant to Prob. Code § 2250(d) no more than **thirty (30)** days from the date the judge signs the order. That hearing date will be assigned and calendared by the Superior Court Clerk's Office at Window 1. (1/1/06)

### 7.77 Appointment of General Guardian

- A. Hearings on guardianship proceedings are held on Monday through Thursday mornings in the Family Court. In cases where there are no objections or the parties are present and agree the Court Investigator/Mediator will interview the parties to obtain pertinent information. The matter will be continued for appropriate criminal and Child Protective Services checks on the Petitioner. A brief report will be submitted at the court hearing recommending either for or against the proposed guardianship. Appearance of the proposed guardian and counsel are required. The Court does not favor dispensing with statutory notice for the appointment of a general guardian of a minor. However, the Court may dispense with notice if sufficient grounds are given to justify that notice cannot be given with reasonable diligence or that the giving of such notice is contrary to the interests of justice. In all

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cases the Court will require nomination or consent of a minor if such minor is **twelve (12)** years of age or older and if such minor has the capacity to nominate.

Endorsed filed copies of all documents shall be served by first class mail on the Court Investigator, P.O. Box 3488, Modesto, CA 95353 or given to the Clerk's Office at Window 1, or personally delivered to the Court Investigators' Office, Room 221, at the Courthouse, no less than **forty-five (45)** days prior to the hearing, or on the date of the filing of such documents.

- B. A detailed statement under penalty of perjury of the facts giving rise to the necessity for the guardianship shall be filed with each petition. The statement shall be given to the Family Law clerk or be in pleading form and marked "**Confidential**". It shall be placed in a confidential envelope by the clerk.
- C. Where a petition seeks the appointment of a non-petitioning guardian, a consent to serve as guardian must be filed for each non-petition guardian. (1/1/06)

### 7.78 Notice of Hearing

#### A. Relative Guardianships.

When a petitioner requests appointment of a relative (by blood or marriage) as guardian of the person and/or estate of a minor, a filed marked copy of the notice of the hearing and a file marked copy of the petition shall be mailed by first class mail to the Court Investigators' Office at P.O. Box 3488, Modesto, CA 95353, or personally delivered to the Court Investigators' Office in Room 221 of the Courthouse on the day the petition is filed.

#### B. Non-Relative Guardianships.

When a petition requests appointment of a non-relative as guardian of the person of a minor, notice of the hearing and a copy of the petition must be mailed to Child Protective Services-Intake, Stanislaus County Department of Social Services, P.O. Box 42, Modesto, CA 95353. Petitions for appointment of a guardian shall be set for hearing at least **twenty (20)** days after the date of filing. Although only **fifteen (15)** days notice is required by the Probate Code, the additional time is necessary to insure that the proceeding is not delayed because the agencies did not have sufficient time to complete their investigation. (1/1/08)

### 7.79 Investigation Fees re: Guardian

Contact the Superior Court Clerk at Window 1 for the amount of the current investigation fee in Relative and Non-relative Guardianship cases. If it appears that the payment of the fee would cause a hardship, the fee may be waived upon application to

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the Court. The fact of the hardship may be established in the same manner as in a domestic relations proceeding. (1/1/06)

### 7.80 Guardianship of the Person – Documents to Court Investigator

In all matters affecting the custody of a minor, in addition to endorsed filed copies of all petitions, notices and proofs of service, the following shall be provided to the Court Investigator:

- A. Judicial Council form Declaration Under Uniform Child Custody and Jurisdiction Act;
- B. A copy of the minor's birth certificate;
- C. The local form "Relative Guardianship Questionnaire". The questionnaire is available from the Superior Court Clerk's Office or the Court Investigator's Office; and
- D. A detailed statement under penalty of perjury of the facts giving rise to the necessity for the guardianship shall be filed with each petition. The statement shall be in pleading form and marked "**Confidential**". It shall be placed in a confidential envelope by the clerk. (1/1/06)

### 7.81 Mediation of Guardianship

Hearings on guardianship proceedings are held Monday through Thursday mornings at 8:30 a.m. in the Family Court.

In any case where the Petitioner and parent are present and the parent objects to the guardianship, the matter will be referred to the Court Investigators' Office for mediation. The Court Investigator will meet with the parties for the purposes of assisting them in reaching an agreement on custody and/or visitation. The matter may be resolved, wherein an order will be prepared by the Investigator's Office setting forth the nature of the guardianship if appropriate, conditions of the child being returned to the parent and any visitation that is agreed upon. Other guidelines may be set forth to bring the matter to a resolution that is in the best interest of the child. The matter may be continued for review by the mediator to allow the parties to modify and/or change the circumstances of the parent in such a fashion that an agreement is reached to either return the child to the parent or continue with the guardianship.

Regardless of whether an agreement is reached, the matter will be referred to the Court Investigators' Office for an investigation and report. A temporary recommendation shall be made by the mediator regarding the placement of the minor pending the

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investigation. That recommendation may include a visitation plan to either party during the period of continuance. If no resolution is ultimately reached, a long cause hearing will be required. (7/1/08)

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### EXHIBIT A MEDIATION POLICIES, PRACTICES AND PROCEDURES

#### **A. MATTERS TO BE MEDIATED**

Family Code, Section 3170 requires all contested issues of custody and visitation be mediated. The Court has interpreted this section to mean that "all" means "all" and accordingly, every time a party contests any matter dealing with custody or visitation, the issue will be mediated. (FC 3173) The Court has included Guardianship proceedings in the mediation process. However, as to Guardianships, mediation of visitation during the term of the guardianship will be performed by the court investigator assigned to the case. The Court has concluded that personal conduct and stay-away issues are an integral part of the custody/visitation process and will be mediated. Exclusive possession of the family residence will be mediated where exigent circumstances and the best interests of the child(ren) require an immediate order granting one party exclusive possession of the family residence. Where exclusive possession of the family residence is primarily an economic issue, it will be litigated in the Economic Department if not stipulated to in the Custody/Mediation Department. Exclusive possession of personal property and property restraining orders are considered economic in nature and will not be mediated. While the party being responsible for transportation of the children is considered a custody/visitation issue, payment for the cost of transportation is a non-mediated economic issue. A denial of paternity does not prohibit mediation with interim custody and visitation orders being made pending the determination of the paternity issue. (FC 3172) Where a party is seeking to modify a previous order as to custody and the responding party claims there is no change of circumstances, the matter will be sent into mediation WITH the Mediator to advise the Court, with counsel/pro per parties having the opportunity to address the issue, whether there has been a change of circumstances. The Court will initially determine whether there are any other impediments to the matter being mediated. A recent modification in a child/spousal support Order is not a change of circumstances and upon a Mediator advising the Court that such is the primary reason for initiating the proceedings to modify the custody/visitation Order and the parties/attorneys do not convince the Court to the contrary, the moving party may be responsible for all of reasonable expenses incurred by the responding party (Stanislaus County Local Rules of Court Rule, Rule 7.17).

#### **B. MEDIATION ORIENTATION**

The Court has a Mediation Orientation Program. All parties, except those who live outside of Stanislaus County are required to attend the Mediation Orientation Program before going into mediation. A party who has attended a Mediation Orientation Program within 18 months before the current hearing will be excused from attending a further program. A Party who resides outside the County of Stanislaus will be excused from attending the program. However, the Court

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encourages out-of-county residents, if possible, to attend the program. Currently, the Program is held in Department 13 at 3:15 p.m. every Wednesday. The Court may allow mediation where only one party has attended the Mediation Orientation Program if to deny mediation would work a disservice to the attending party or child(ren) involved. On a showing of good cause and in the best interests of the children involved, the Court may allow mediation where neither in-county party has attended the Mediation Orientation Program. The Mediator may request the Court to postpone mediation where one or both parties have not attended the Mediation Orientation Program if after commencing mediation, the Mediator concludes that a/the parties should attend Mediation Orientation before participating in mediation.

All motions involving child custody or visitation issues must bear the following language on the face of the motion that is filed and served: "If this motion involves issues regarding child custody or visitation, the parties are required to attend mediation orientation on any Wednesday before the Court date at 3:15 p.m. in Department 13."

### C. FEES

The initial case filing fee includes one Mediation hearing. For subsequent sessions, in the form of Family Court Services Evaluation or Family Court Services Review Evaluation, a \$500.00 (effective 10/13/03) fee is charged. The Court has concluded that the fee shall be divided equally among all parties who do not have additional fee waivers rather than have the parties argue over who should pay for the evaluation. The Court has concluded that the negative effect of the cost and animosity of litigating who should pay the relatively modest fee for evaluations outweighs the positive effect of each party paying an equal share. An evaluation fee will not be charged for the Family Court Services Evaluation arising out of the filing of a Domestic Violence Petition unless there is an existing Family Law or Guardianship action involving the same parties and children. However, if there is, or should be, a related Family Law or Guardianship proceeding, the Court will consolidate the Domestic Violence action with the related case and charge the appropriate evaluation fee in the other case. If one or more of the parties have not paid their share of the evaluation fee by the time of the next hearing, the Court will either direct the party to the Clerk's Office to pay the fee before the hearing or proceed with the hearing and make an order that the fee will become a civil judgment if not paid by a specified date. Court Investigation Fees are not waived pursuant to a general fee waiver under California Rule of Court 3.61.

Upon the same theory expressed above, generally the Court Investigator's Fee, currently \$50.00 per hour (subject to change without notice) will be divided equally among all parties, unless the Court Investigator recommends to the contrary and the recommendation is appropriate. The costs of counseling, therapy, evaluations and

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similar matters are expenses to be borne by the parties and are an economic, not a mediation or evaluation, issue.

### **D. DEPARTMENT ASSIGNMENT AND PRESENCE**

The Stanislaus County Superior Court Family Law Department hears mediation matters on Mondays through Thursdays at 8:30 a.m. and Thursdays at 1:30 p.m. If both custody/visitation and other family law issues are raised in the pleading leading to a hearing, the matter will be calendared for the Mediation Department and custody/visitation issues to be dealt with first. The matter will then be continued to the date and time set for economic hearing, unless the parties have a stipulation, which will be recited and become part of the order following Mediation. In unusual circumstances (usually a party or attorney having traveled from out of state), the Court (Mediation or Economic Department) will endeavor to hear the other issues on the same date as Mediation. Where a case cannot be mediated because of time constraints not caused by a party/attorney (generally noontime has arrived), the matter will be continued to the next date convenient to the parties, and if the matter has been previously mediated, when the mediator will be present.

In situations where a party or attorney has two or more appearances scheduled in the Stanislaus County Superior Court, one of them being mediation, the following procedure applies: (a) The party/attorney shall report to the Mediation Department and advise the Clerk or Bailiff of where that party/attorney will be and their expected time of return; (b) the party/attorney shall complete all 8:30 non-mediation matters first (unless the party/attorney appears in the Mediation Department and is immediately ordered into mediation). (c) the Party/attorney will return to the mediation department for mediation. (d) if the party/attorney is engaged in a jury trial and mediation has not concluded by the time the jury trial is to commence, mediation will be continued until another date. (e) if the party/attorney is engaged in other non-jury Stanislaus County Superior Court proceedings, those other proceedings will be recessed so that the party/attorney can participate in Mediation. (f) where one of the other appearances by the party/attorney is in the Family Support Court, the attorney/party shall endeavor to have the Family Support Court Commissioner call their Family Support Court case first or put at the end of the calendar and return to the Mediation Department for mediation. If the party/attorney is still in the Family Support Court, the attorney/party shall immediately return to the Mediation Department upon being summoned by the bailiff unless the party/attorney is before the Court when summoned by the bailiff.

### **E. AGREEMENT, RECOMMENDATION, PARTICIPANTS, REIFLER**

The Court has adopted the mediation procedure where the function of the mediator is (a) to obtain an agreement of the parties as to what is in the best interests of the child(ren) and present that to the Court as the Order which should be made or (b) to make a recommendation to the Court as to what Order most serves the best interests

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of the child(ren) where the parties cannot agree. (FC 3161; 3183) Absent an order of the Court to the contrary, the mediator has the discretion to exclude an/the attorney(s)/support person from mediation and may permit another person to attend mediation with a party or the children. (FC 3182) Separate mediation will be conducted where appropriate.

The Court has adopted the "Reifler" procedure where no live testimony is accepted on the 8:30 a.m. and 1:30 p.m. short cause Custody/Mediation Calendar. The Court will base its Order on the declarations filed by the parties, the comments of the mediator and the argument of counsel or the pro per litigant.

### **F. DISQUALIFICATION, COMPLAINTS, CONFLICT OF INTERESTS, REFERRALS**

A mediator's recusal of him/herself is within the sole discretion of the mediator. There are no peremptory challenges to mediators. Any party or attorney involved in mediation may request to have a mediator disqualified by filing a written complaint on the complaint form available from the Court with the Director of Family Court Services (F.C.S.) The written objection may be left with the Court Executive Officer. The Director may grant the request, deny the request, or appoint a co-mediator. The Director shall advise the complainant in writing of the decision and reasoning. In the event that the complaint is against the Director of F.C.S. either in his/her role as Director or Mediator, or the Director of F.C.S. has a conflict of interest, the complaint will be handled by the Court Executive Officer who will assign the complaint for review and determination to another member of the F.C.S. staff. The F.C.S. staff member responding to the complaint shall advise the complainant in writing of the decision and reasoning. If the complainant is dissatisfied with the decision he/she may appeal in writing to the Judge of the Mediation Department, who after review of the complaint and decision, will issue the appropriate Order in response to the complaint. (FC §3163)

All Family Court Services (F.C.S.) staff shall disclose any actual or potential conflicts of interest. These conflicts shall be resolved or the mediator shall recuse him/herself before mediation begins or before mediation continues in the case where the conflict arises during the course of mediation. If the conflict cannot be resolved it should be submitted to the Judge for resolution. F.C.S. staff shall not provide mediation or investigation services as Court personnel to any individual whom he/she has previously provided professional services to outside the Court without specifically disclosing that information to all parties involved and getting prior permission from the Judge. F.C.S. staff shall not provide professional services outside the Court to any individual whom he/she has previously provided mediation or investigation services in their role as Court personnel without specifically disclosing that information to all parties involved and getting prior permission from the Judge. The Director of F.C.S. is not the clinical supervisor of the decisions made by individual

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mediators and does not have authority to intervene in or overrule the clinical case decision making process of any mediator. The Director of F.C.S. shall disclose any actual or potential conflicts that may arise in either his/her role as Director or Mediator and the conflict shall be resolved or the Director shall recuse him/herself from the case.

Family Court Services (F.C.S.) personnel are often called upon to make referrals to professional persons and agencies outside the Court. F.C.S. personnel have a responsibility to keep current on the services available in the community. When making referrals for outside professional services, F.C.S. personnel shall provide the names of at least three individuals and/or an agency fully qualified to provide such services within the community or in a locale convenient to the parties. Appropriate referrals shall be made in concert with the particular individual needs of the parties, the expertise of the service providers, and keeping in mind the relevant financial constraints of the resources available. F.C.S. personnel shall make referrals across a spectrum of services providers, and shall not refer exclusively to an individual or group.

### G. SCHEDULING

The contested custody/visitation cases arrive in the Mediation Department by way of Order to Show Cause, Notice of Motion or referral from another hearing. **Three (3) or four (4)** mediators are present each day. Their schedules are published and well known in advance. The same mediator will handle a case for its duration unless the mediator is removed, recuses him/herself or is no longer a mediator. The party initiating the particular hearing is responsible for having the case set on a day when the mediator who has previously heard the case (if there was a prior mediation) is scheduled to be present. If the party fails to do so, absent exigent circumstances, the matter will be continued until a date convenient to the Court's calendar when the mediator will be present. Temporary Orders favorable to the party scheduling the case on the "wrong" day may be vacated. If the party properly scheduled the case and the mediator is absent, absent exigent circumstances, the case will be continued until the next date convenient to the parties that the mediator is scheduled to be present. In emergency situations where the Court concludes the child may be in immediate danger if the case is not mediated at once, a different mediator may mediate the case at once.

Cases where at least one party is represented by an attorney will be called first and cases where no party has an attorney will then be called. In that order, so long as all parties and attorneys for the particular case are present, cases will be assigned to mediators until all mediators are occupied. The Court will then call, or recall, the balance of the calendar, dropping cases where there is no or improper service, no appearances or stipulation, continuing cases where appropriate, taking stipulated orders and hearing cases where only one party is present. Thereafter, as a mediator finishes his/her session with the parties, the mediator and the parties/attorneys

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return to courtroom and the mediator recites the agreement/recommendation, arguments may be made and the judge makes the appropriate order. Cases remaining to be mediated are then sent in to the mediators as they become available.

### **H. LOCAL LEGAL CULTURE**

Local legal culture has resulted in certain "cues" being given by the mediator to the judge. If the mediator says the parties have reached an agreement, the judge knows that the parties have agreed to and expect an order to be made in accord with the recitation of the mediator. If the mediator says there is a recommendation with a review, the judge knows that while one or more of the parties may not be in agreement with the recommendation, they will accept it, pending the review, and expect an order in accord with the recommendation. If the mediator says there is a recommendation, the judge knows that one or more of the parties objects to the recommendation and either will accept it or will accept it pending a full trial on the issue(s). If the mediator says there is a recommendation and that one or more of the parties wants to immediately address the Court or objects to certain specified portions, the judge knows that the parties will immediately argue for or against their positions on that/those issues. Pursuant to local legal culture, the mediator may or may not recite the agreement or recommendation word for word, but only give a synopsis to the Court, which will specifically include any term to which a party objects and wishes to immediately address the Court. It is common for the Mediator to request permission of the parties/attorneys to speak ex parte to the Mediation Judge regarding procedural or legal matters and then speak ex parte to the Judge if the requested permission has been given. It is common for the Mediation Judge and Mediators to converse with each other ex parte as is allowed under California Code of Judicial Conduct, Canon 3B(a)&(b).

### **I. RETURN HEARINGS**

Where no agreement is reached, the mediator may recommend, and the Court, if appropriate, Order, (a) that the parties and/or children meet at a later date in FCS Evaluation and/or that a FCS Evaluator be provided further information and schedule a further hearing after those meetings/receipt of further information; (b) refer the matter to the Court Investigator to investigate certain specified matters and schedule a further mediation hearing after the investigation has been concluded; (c) schedule a mediation review hearing of a recommended or agreed Order; (d) schedule a hearing where the Court will consider a Report written by the FCS Evaluation after additional meetings/information have occurred.

### **J. FINAL ORDERS AFTER HEARING**

The Court has a computer/word processing based ability to produce a final Findings and Order After Hearing at the time of the hearing in almost all cases which go to mediation. In those cases, once the Court has made its oral order, the mediator's worksheet and any additional orders made by the Court are delivered to

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the Mediation Order Preparer who prepares the proposed order. The proposed order is then returned to the courtroom where all parties in cases where at least one party is represented by an attorney are given the opportunity to review and acknowledge their approval as to form and content of the proposed order. Their failure to remain in the courtroom to review the proposed order is a waiver of that right. If the parties choose not to wait, they may pick up their order between 8:00 a.m. - 4:00p.m. in the Family Law Clerk's Office the next day or any day thereafter. Errors in the proposed order will be corrected by the Mediation Order Preparer. Additions, deletions or modifications first expressed by the attorneys/pro per parties after the Mediation Order Preparer has prepared the proposed order will not be made and may be obtained only by filing a later stipulation or Order to Show Cause or Notice of Motion. Once the proposed order has been approved as to form and content (or where the approval has been waived) by the attorneys/pro per parties, the proposed order is given to the Judge for signature and the original Findings and Order After Hearing will be filed and copies given to the parties.  
(1/1/08)

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### EXHIBIT B STANISLAUS COUNTY SUPERIOR COURT FAMILY LAW GUIDELINES/"RULES OF THUMB"

These policies will apply to temporary and permanent orders, at the Court's discretion. They will not apply in a given case when contrary to law or when the application results in undue hardship.

#### A. CHILD SUPPORT

##### 1. Use of New Spouse Income

The Court will follow Family Code section 4057.5 in determining when to consider the income of a new spouse or non-marital partner in calculating child support.

The Court will continue to use the income of the new spouse to calculate the net income for the obligor/obligee for tax impact calculation only.

##### 2. Timeshare

The Court discourages timeshare calculations based on hours and minutes. Absent good cause, the Court will generally calculate timeshare by looking at the days and half-days each parent has custody of the child(ren).

##### 3. Modifications

Absent a significant change of circumstances, modification of child support orders should not be filed with the Court more than one time per year. Any document setting forth a stipulation between the parents regarding child support must be accompanied by Child Support Case Registry forms (FL-191) completed by each parent. A stipulation to modify child support shall be returned unprocessed unless accompanied by a completed Child Support Case Registry form (FL-191).

##### 4. Calendar Settings for Mediation and Economic Issues

The Court understands that in many cases the issues of custody/visitation and economic issues go hand in hand. However, the time it takes for mediation precludes the handling of both issues on the same calendar. In all matters which involve both issues the Court now requires that two calendar dates be received at the time papers are filed. The initial date will be for mediation with a second date for economic issues.

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### **B. SPOUSAL SUPPORT**

This Court will follow the **Santa Clara County Guideline** in determining temporary spousal support. The DissoMaster can be defaulted to the Santa Clara option for attorneys to refer to in counseling their clients.

Pursuant to Family Code section 4336, there is a presumption that a marriage of 10 years or more is a long term marriage. The Court's policy is to reserve jurisdiction over spousal support in all long term marriages. Waivers of spousal support are viewed with disfavor and will only be approved where the record clearly establishes that the supported party will be able to adequately meet his or her financial needs at the time selected for termination of jurisdiction. If the record of financial support is not clear, spousal support in a long term marriage must be reserved.

### **C. CUSTODY/VISITATION**

The Court discourages the use of Domestic Violence Petitions to obtain custody and visitation orders more properly obtained in Dissolution of Marriage, Legal Separation, Paternity and Guardianship actions and any such orders made may be limited in duration to that which is reasonable for the parties to pursue these other actions.

### **D. CONFIDENTIAL INFORMATION SHEET**

Upon filing of any petition or response in any family law case type, the filing party shall file a confidential information sheet entitled "Confidential Declaration of Parties in Family Law Case" to help the Court identify the parties in the case. The confidential information sheet shall be placed in a confidential envelope maintained within the Court's case file and shall not be made available to any parties other than the Court absent a court order. The confidential information sheet form is available on the Court's website under the "Forms" link and is available at the Family Law Court Clerk's Office.

### **E. WAIVED COURT FEES AND COSTS**

#### **1. Fee Waiver Expiration Dates**

The Court will require that all Fee Waivers will be renewed at 6-month intervals to have an accurate reflection of income. At any hearing and prior to Entry of Judgment, Government Code Sec. 68511.3(d) provides the opportunity for the Judge to inquire if the applicant's financial status has changed and subsequently order payment of any outstanding fees.

#### **2. Payment of Court Fees and Costs**

Any outstanding or waived Court fees or costs are due and payable within 30 days of entry of judgment pursuant to Government Code Sec. 68511.3(c)(d) and shall be included in judgments submitted for signature by the Court. (1/1/08)

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### **RULE 8 PROBATE, GUARDIANSHIP CONSERVATORSHIPS AND ADOPTION RULES**

#### **GENERAL**

##### **8.00 Probate Days, Hearings**

Probate matters will be heard Monday through Thursday of each week at 8:30 a.m. Conservatorship matters will be heard on Tuesday at 8:30 a.m. The Probate Judge will determine when LPS Conservatorship hearings will be held.

Probate matters will be calendared for hearing by the Probate Unit of the Clerk's Office. All petitions and applications which require a hearing will be assigned a calendar date upon being filed. Any request for early setting must be approved by the Court and will be granted only for good cause.

Telephone calls to the Probate Examiner may be made between the hours of 8:00 a.m. and 5:00 p.m. at (209) 530-3180. (7/1/09)

##### **8.01 Applicability of Rules to All Proceedings**

All rules as hereinafter set forth shall apply to estate proceedings, guardianships, adoptions, conservatorships or trusts, except as otherwise specifically noted. (1/1/04)

##### **8.02 Time for Filing**

In estate and trust cases, all papers necessary to hearing (such as proof of service, posting, orders, etc.) shall be filed with the Clerk at least **five (5)** Court days before the date of hearing, so that such documents may be placed in the file and checked by the Probate Examiner prior to hearing. The Court recognizes that the proof of publication is not always available **five (5)** days prior to the hearing date, and will allow such filing up to **three (3)** Court days prior to the date of hearing. Saturdays, Sundays, and holidays shall not be considered Court days. Other exceptions to this rule will be made at the discretion of the judge, but only for good cause.

A late filing fee of \$25 per document will be charged for each document received for filing less than **five (5)** Court days prior to the hearing. The filing party must deliver file-marked copies of all late filed documents and proof of late fee payment to the probate examiner by having a copy placed in the probate examiners' box at window 4 of the civil clerk's office, at City Towers, 801 Tenth Street, Fourth Floor, or by delivery to the probate examiners' box on the sixth floor at City Towers, at least **three (3)** Court days prior to the hearing. Failure to do so may result in such late filed documents not

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being reviewed prior to the hearing and may cause the matter to be continued.(07/01/09)

### **8.03 Form of Papers Presented for Filing**

- A. Papers presented for filing with the Clerk shall conform to California Rules of Court 2.100 and 3.1110 except that descriptions of assets may be single spaced within each item.
- B. All documents presented for filing are limited to an original plus two (2) copies. Unless otherwise required by Code, the Clerk's Office will conform a maximum of **two (2)** copies. (7/1/07)

### **8.04 Caption of Petitions [SUPERSEDED]**

[See California Rules of Court 7.1 - 7.1060]

### **8.05 Hearing Date Required on Documents**

The date of the hearing shall be placed immediately below the case number on the first page of every document filed which relates to a matter already set for hearing. Failure to include the hearing date on documents filed less than **five (5)** court days prior to hearing could delay matching the document with the court file and may result in a continuance. (7/1/06)

### **8.06 Signing and Verification of Pleadings [SUPERSEDED]**

[See California Rules of Court 7.1 - 7.1060]

### **8.07 Amendments to and Amended Pleadings [SUPERSEDED]**

[See California Rules of Court 7.1 - 7.1060]

### **8.08 General Instructions to Fiduciaries Form Required for Appointment [SUPERSEDED]**

[See California Rules of Court 7.1 - 7.1060]

## NOTICES

### **8.09 Preparation of Notices [SUPERSEDED]**

[See California Rules of Court 7.1 - 7.1060]

### **8.10 Notice for Special Letters [SUPERSEDED]**

[See California Rules of Court 7.1 - 7.1060]

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### **8.11 Probate Matters Once Noticed Cannot Be Advanced**

When a hearing on a probate matter has been noticed, or when it has been noticed and continued to a definite date, the matter cannot be heard before the date set. (7/1/99)

### **8.12 Notice of Petition to Administer Estate**

Notice of petition to administer estate must be published pursuant to PC§8120. Defects in publication will cause the matter to be continued and will require that the notice be republished. (7/1/06)

### **8.13 Notice: by Whom Given [SUPERSEDED]**

[See California Rules of Court 7.1 - 7.1060]

### **8.14 Notice by Posting [SUPERSEDED]**

[See California Rules of Court 7.1 - 7.1060]

### **8.15 Heirs Without Known Addresses [SUPERSEDED]**

[See California Rules of Court 7.1 - 7.1060]

### **8.16 Notice to Foreign Consuls**

Notice must be given to a recognized diplomatic or consular official as required under Prob. Code § 8113. If a devisee or heir is an American citizen residing in a foreign country, that fact should be alleged and notice to the diplomatic or consular official is not required.

Whether a country has recognized diplomatic or consular representation in the United States may be ascertained from the United States Department of State. (7/1/99)

### **8.17 Notice to Director of Health Services**

If a deceased person has received or may have received health care through the Department of Health Services, or if the decedent was the surviving spouse of a person who received that health care, notice of the decedent's death must be given to the Director of Health Services pursuant to Prob. Code §215. A copy of the proof of service or a declaration that notice is not required must be filed in all decedent's estate matters. (7/1/99)

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### APPOINTMENT OF EXECUTORS AND ADMINISTRATORS

#### 8.18 Declination to Serve

If the person named in the decedent's will as executor declines to act as such, his written and signed declination to act must be filed with the Court unless evidence is produced that he is incompetent or refuses to act. (7/1/99)

#### 8.19 If Will Is Impeached, Both Witnesses Must Be Produced [SUPERSEDED]

[See California Rules of Court 7.1 - 7.1060]

#### 8.20 Petition for Temporary or Special Letters [SUPERSEDED]

[See California Rules of Court 7.1 - 7.1060]

#### 8.21 Multiple Representatives [SUPERSEDED]

[See California Rules of Court 7.1 - 7.1060]

#### 8.22 Continuance to Permit Filing of Will Contest [SUPERSEDED]

[See California Rules of Court 7.1 - 7.1060]

#### 8.23 Proving Wills -Declaration or Self Proving

- A. The Court prefers that both formal witnessed wills and holographic wills be proven by declaration rather than by testimony. The declaration shall have a photographic copy of the will or codicil attached. (Prob. Code § 8220)
- B. Proof as to the admissibility of each testamentary document must be submitted except that, in the event there is a codicil which expressly republishes the will, proof of the execution of the codicil may be deemed sufficient.
- C. To avoid a continuance of the hearing, an affidavit or declaration proving the will should be filed with the Clerk at least **five (5)** Court days before the time set for the hearing of the petition for probate of will.
- D. In uncontested proceedings self-proving wills need no additional proof unless requested by the Court. A will may be considered self proving if the attestation clause contains the following:
  - 1. The testator requested the witnesses to sign as witnesses to the signature.
  - 2. The witnesses and the testator signed in the presence of each other.
  - 3. The testator is of sound mind and is not acting under duress, menace, fraud, or undue influence of any person whomsoever.

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4. The witnesses are over the age of 18 years.
5. The testator is over the age of 18 years.
6. The witnesses signed under penalty of perjury. (7/1/99)

### **8.24 Copy of Will to Be Attached to Petition for Probate**

- A. If the will is holographic or handwritten, in addition to a photocopy, a typewritten copy of the will must be attached to the petition, to the original will and to the proof of holographic instrument.
- B. The Court encourages reducing the copy of any original will on legal sized paper (14 inches) to standard size (11 inches). (1/1/04)

### **8.25 Executor Identified in Will**

In the event that the will exceeds **five (5)** pages in length, a statement shall be included in the petition for probate indicating the page and line where the nomination of the Executor and waiver of bond, if any, are to be found. (7/1/99)

### **8.26 Naming Heirs and Beneficiaries in Petition**

All persons and entities mentioned in decedent's Will and Codicils must be listed in item 9 of the petition for probate regardless of any lack of devise or bequest to said person or entity. If item 9 of the petition for probate includes a spouse or any other person who is deceased as of the date of the petition, the petition must include the person's date of death. If the person to be listed in item 9 died after the decedent, the name and address of the personal representative or other successor in interest of such deceased person's estate must be listed. (1/1/07)

### **8.27 Designations Whether Separate or Community Property [SUPERSEDED]** [See California Rules of Court 7.1 - 7.1060]

### **8.28 Trustee and Guardian to Be Named [SUPERSEDED]** [See California Rules of Court 7.1 - 7.1060]

### **8.29 Heirs of Predeceased Spouse [SUPERSEDED]** [See California Rules of Court 7.1 - 7.1060]

### **8.30 Contingent Heirs, Devisees, and Legatees [SUPERSEDED]** [See California Rules of Court 7.1 - 7.1060]

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### **8.31 Complete Address in Petition [SUPERSEDED]**

[See California Rules of Court 7.1 - 7.1060]

### **8.32 Lost or Destroyed Will [SUPERSEDED]**

[See California Rules of Court 7.1 - 7.1060]

### **8.33 Bonding of Personal Representatives**

In the event a minimum bond is imposed by the Court, the minimum bond amount shall be \$20,000. (1/1/06)

## MOTIONS AND PETITIONS

### **8.34 Signatures and Verifications [SUPERSEDED]**

[See California Rules of Court 7.1 - 7.1060]

### **8.35 Petitions for Ex Parte Orders**

All ex parte petitions must be verified and accompanied by a separate order complete in itself. An order is insufficient if it merely provides that the petition has been granted as set forth in the petition.

If there is an urgent need for the order, attach a note to the first page of the documents that states RUSH.

Since no testimony is taken in connection with ex parte petitions, the petition must contain sufficient evidentiary facts to justify granting the prayer. Conclusions or statements of ultimate facts are not sufficient. A foundation should be set forth establishing the affiant's personal knowledge.

If, because of the apparent emergency nature of the application, the Court elects to consider the matter ex parte, but the need for an opportunity to be heard is apparent, the Court may require moving counsel to give at least **twelve (12)** hours informal notice of the nature of the application to counsel for other interested parties, or in the absence thereof, to the other interested parties, themselves, together with the proposed time and place of the hearing. The time may be shortened by agreement of the parties and the Court. Before the hearing is held, moving counsel shall submit a declaration to the Court setting forth facts, if any, relating to the efforts to give such notice, or facts supporting the conclusion that it was impossible to give such notice. (7/1/99)

### **8.36 Waiver of Special Notice Required for Ex parte Order [SUPERSEDED]**

[See California Rules of Court 7.1 - 7.1060]

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### **8.37 Property Specifically Bequeathed [SUPERSEDED]**

[See California Rules of Court 7.1 - 7.1060]

### **8.38 Petition for Instructions-Limitations [SUPERSEDED]**

[See California Rules of Court 7.1 - 7.1060]

### **8.39 Petitions for Determination of Persons Entitled to Estate Distribution [SUPERSEDED]**

[See California Rules of Court 7.1 - 7.1060]

### **8.40 Petitions for Permission to Continue Operation of a Decedent's Business [SUPERSEDED]**

[See California Rules of Court 7.1 - 7.1060]

## ORDERS

### **8.41**

#### **A. Probate Orders**

Attorneys or self-represented litigants are to prepare all orders. If counsel wish to obtain orders on matters that are approved on the day of hearing, those orders must be delivered to the Probate Unit of the Clerk's Office at least **five (5)** Court days prior to the hearing. The orders should be submitted separately and not attached to any other document or pleading. All orders or decrees in probate matters must be complete in themselves. They shall set forth all matters actually passed on by the Court, the date of hearing, the relief granted, the names of persons, and descriptions of property or amounts of money affected, with the same particularity required of judgments in civil matters.

All orders must be prepared so that the general effect may be determined without reference to the petition on which it is based. No order shall merely recite that the petition as presented is granted.

The signature line must always be at the end of the order and not followed by any attachment. It should never be on a page by itself.

No additions or deletions are to be made to court orders after they have been signed unless approved by the Court.

All orders except for conservatorship and guardianship cases signed in open Court or in ex parte hearings and presented to attorneys for filing must be taken to the Clerk's Office for filing immediately after the conclusion of the court proceeding in which the order is signed. Only attorneys are allowed to present original probate

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court orders for filing. Surrendering an original court order to anyone other than court personnel or a member of the bar association, or failure to present a signed order to the Clerk's Office for filing immediately after the proceeding in which the order is signed, shall render that order null and void. (7/1/08)

### **B. Inventory Review Hearing**

At the time an order is made appointing a personal representative of an estate, a review hearing will be scheduled six (6) months from the date of appointment. The purpose of this hearing is to monitor the filing of the Inventory and Appraisal. All inventories are due four months from the date of issuance of Letters. PC§8800(c). (1/1/08)

## FAMILY ALLOWANCE

### **8.42 Late Requests**

Requests for a family allowance should be made in a timely fashion. The Court discourages requests for retroactive payment of family allowance beyond **two (2)** months.

If the application is made more than **six (6)** months after the administrator or executor has qualified, it must be noticed and placed on the calendar. (7/1/99)

### **8.43 Duration**

The duration of an order for family allowance is limited to **six (6)** months if no inventory and appraisal has been filed and is limited to one year if an inventory and appraisal has been filed. For good cause shown in writing, such orders may be renewed. The order shall state the commencement date and the period payments are to be made; i.e., "commencing with date of death and continuing until the inventory is filed, but not to exceed **six (6)** months." (7/1/99)

### **8.44 Contents of Petition**

The application for an allowance shall include at least the following data:

- A. The applicant's income from sources outside the estate,
- B. An itemized list of the applicant's assets, and a statement of the appropriate value of each,
- C. A general statement of the assets and of the liabilities of the estate,
- D. The date of the application,
- E. The date of the decedent's death,
- F. A general statement of other applications (if any) on file for allowances. (7/1/99)

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### 8.45 Ex Parte Orders-When Permitted

If the petition is made before an inventory has been filed, it may be presented ex parte to the Court unless it is a petition for a second or additional allowance, in which event it shall be noticed and placed on the calendar.

The petition will not be granted ex parte under either of the following circumstances:

- A. If the application is made more than **six (6)** months after the administrator or executor has qualified, or
- B. If the petitioner is someone other than the personal representative and the petition is not accompanied by either of the following documents signed by the personal representative: (1) Consent to the allowance or (2) Waiver of Notice. (7/1/99)

### 8.46 When Court Approval Not Required

If the estate is being administered under the Independent Administration of Estates Act, the personal representative may pay a reasonable family allowance in accordance with Prob. Code § 10535. (7/1/99)

## CREDITORS CLAIMS

### 8.47 Form of Claim [SUPERSEDED]

[See California Rules of Court 7.1 - 7.1060]

### 8.48 Allowance or Rejection of Claims [SUPERSEDED]

[See California Rules of Court 7.1 - 7.1060]

### 8.49 Claims of Representatives and Their Attorneys [SUPERSEDED]

[See California Rules of Court 7.1 - 7.1060]

### 8.50 Approval of Funeral Claims [SUPERSEDED]

[See California Rules of Court 7.1 - 7.1060]

### 8.51 Listing of Creditor's Claims [SUPERSEDED]

[See California Rules of Court 7.1 - 7.1060]

### 8.52 Payment of Debts Without Claims [SUPERSEDED]

[See California Rules of Court 7.1 - 7.1060]

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### SALES OF PROPERTY

#### **8.53 Sale or Encumbrance of Specifically Devised or Bequeathed Property**

No specifically devised or bequeathed real property shall be encumbered or offered for sale unless first approved by the Court after not less than **ten (10)** days notice to the specific devisee or legatee, or unless the consent of the devisee or legatee is on file.  
(7/1/99)

#### **8.54 Appraisal of Real Property Within One Year**

Real property must have been appraised within **one (1)** year of the time of sale. Since the first appraisal reflects the value at the time of death of the decedent, if the date of death is more than one year prior to the date of sale, a reappraisal for sale is required.  
(7/1/99)

#### **8.55 Published Notice of Sale of Real Property**

Unless a personal representative has full authority under the Independent Administration of Estates Act or a will exists which specifically grants an executor the authority to sell without notice (Prob. Code § 10303), a publication of notice of sale of real property is required. A power of sale given by a will to a named executor does not extend to an administrator with will annexed unless the sale is authorized by the will.(07/01/09)

If publication of the notice of sale is performed, the following requirements shall be met:

- A.** Any sale must be in substantial accordance with the terms and conditions set forth in the notice.
- B.** The published notice of sale of real property constitutes a solicitation for offers. A petition must not be filed and an offer must not be accepted prior to the date of sale specified in the published notice. If this situation occurs, the sale will be denied.
- C.** When the personal representative accepts an offer and files a petition for confirmation of sale, there cannot be a material variance in the terms of sale as between the notice and the petition. Also, if the notice solicits cash offers only, the Court cannot confirm a sale on terms other than cash.
- D.** In conservatorships and guardianships, absent an order under Prob. Code § 2591(d) granting the conservator or guardian the independent power to sell real property of the estate, publication shall be required. (07/01/09)

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### **8.56 Mailed Notice of Sale**

For all sales, notice of hearing and a copy of the petition must also be served by mail at least **fifteen (15)** days before the hearing on each of the proposed purchasers (Prob. Code § 10308(c)). (7/1/99)

### **8.57 Description of Property**

All legal notices for the sale of real property and the petition for confirmation of sale shall contain, in addition to the legal description, the common street address of the property. If there is no common street address, some indication of the location of the property shall be included. (7/1/99)

### **8.58 Bond on Sale of Real Property**

If a bond or additional bond is required in an order confirming sale of real estate, the Court must not file the order until the additional bond is filed. (1/1/02)

### **8.59 Broker's Commission on Sale of Real Property**

Upon the confirmation of the sale of improved real property, a broker's commission of a maximum 6 percent (6%) of the gross sales price will be allowed. For the sale of unimproved real property, the maximum allowable commission will be ten percent (10%). (7/1/99)

### **8.60 Deposit**

Bids for the purchase of real property must be accompanied by a minimum deposit of ten percent (10%) of the purchase price unless the buyer's committed loan proceeds exceed ninety percent (90%) of the purchase price. In addition, overbids shall be accompanied by a cashier's check, equal to ten percent (10%) of the amount of the first overbid. On a showing of good cause, the Court may consider other terms. (7/1/99)

### **8.61 Personal Property -Appraisal Before Sale [SUPERSEDED]**

[See California Rules of Court 7.1 - 7.1060]

### **8.62 Presence of Attorney for Estate at Confirmation of Sale [SUPERSEDED]**

[See California Rules of Court 7.1 - 7.1060]

### **8.63 Conditional Sales of Real Property**

The Court will ordinarily not approve a sale of real property which is conditioned upon the occurrence of a subsequent event (such as change in zoning or obtaining approval

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from an environmental control board). However, if unusual and extraordinary circumstances exist and the necessity and advantage to the estate are set forth in detail the Court may approve such a sale. (7/1/99)

**8.64 Sales of Real Property When Buyer Assumes Encumbrance**

Sales of real estate will not ordinarily be confirmed where the buyer assumes or takes subject to an existing encumbrance if the estate is subject to a contingent liability. The return should set forth the facts pertinent to such assumption agreement and any contingent liability. (7/1/99)

**ACCOUNTS AND REPORTS**

**8.65 Summary, Schedules, Supporting Information, Summary of Account Form**

A. All accountings shall contain a Summary of Account (Prob. Code §1061).

The Summary of Account shall contain and be in the format as set forth below. It shall be the first page of the account and should not be in the body of the report.

**SUMMARY OF ACCOUNT**

This account covers the period from \_\_\_\_\_ to \_\_\_\_\_ inclusive.

**CHARGES**

Property on hand at beginning of account period (or inventories)	\$ _____
Additional property received (or supplemental inventories)	\$ _____
Receipts (Schedule _____)	\$ _____
Gains on sale or other disposition (Schedule _____)	\$ _____
Net income from trade or business (Schedule _____)	\$ _____
Total Charges	\$ _____

**CREDITS**

Disbursements (Schedule _____)	\$ _____
Losses on sale or other disposition (Schedule _____)	\$ _____
Net loss from trade or business (Schedule _____)	\$ _____
Distributions (Schedule _____)	\$ _____
Property on hand at close of account period (Schedule _____)	\$ _____
Total Credits	\$ _____

Total charges must equal total credits (Prob. Code § 1061(10)(c)).

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All accounts filed in decedent estates, guardianship, conservatorship and trust accounts, shall comply with Prob. Code § 1060 et seq., Prob. Code §2620 et seq., and Prob. Code § 10900 et seq.

For additional requirements in conservatorship and guardianship matters refer to **Local Rules 8.124 and 8.125.**

For additional requirements in decedents' estates and in trust matters, refer to **Local Rule 8.83.**

**B.** The following schedules are required to be attached to the accounting (Prob. Code §1062):

1. Receipts showing the nature and purpose of each item, the source of the receipt, and the date thereof;
2. Disbursements, including the nature or purpose of each item, the name of the payee, and the date thereof;
3. Net income or loss from a trade or business, which shall be sufficient if it provides the information disclosed on Schedules C or F of the federal income tax return;
4. Calculation of gains or losses on sale or other disposition of assets;
5. Distributions of cash or property to beneficiaries, ward or conservatee, showing the date and amount of each, with the distribution of property shown at its carry value;
6. Itemized list of property on hand, describing each item at its carry value.

Reference should be made to Prob. Code §1063 for additional schedules required to be attached to all accountings.

**C.** Petition for approval of Account/Contents Filing: Additional information to be provided either in the body of the petition or in separate schedules or exhibits with a reference to the schedules or exhibits in the body of the petition (Prob. Code § 1064).

1. A description of all:
  - a. sales
  - b. purchases
  - c. changes in the form of assets

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- d. other transaction occurring during the period of the account that are not otherwise readily understandable from the schedule.
2. An explanation of any unusual items appearing in the account.
3. Statement of all compensation paid to the fiduciary or to the attorney for the fiduciary other than pursuant to a prior Court order.
4. A statement disclosing any relationship between the fiduciary or the attorneys for the fiduciary and any agent hired by the fiduciary during the account period.
5.
  - a. Per Probate Code §1064 (a)(5); 1064(b)(c): An allegation disclosing whether all of the cash has been invested and maintained in interest bearing accounts or in investments authorized by law or the governing instrument, except for an amount of cash that is reasonably necessary for the orderly administration of the estate.
  - b. The filing of an account shall be deemed to include a petition requesting its approval, and may include additional petitions for authorization, instruction or confirmation authorized by the **code**, including, but not limited to, a request for an order for compensation of the fiduciary and the attorney for the fiduciary.
  - c. For purpose of this section, "family" means a relationship created by blood or marriage. For purposes of this section, "affiliate" means an entity that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with, the fiduciary. (1/1/08)

### **8.66 Trust and Specifically Bequeathed Property-Allocation of Receipts and Disbursements (Refer to Prob. Code §1063.) (7/1/99)**

### **8.67 Debts Paid Without Verified Claims**

Payment of debts of the decedent arising upon contract or funeral expenses of the decedent must be supported by verified claims presented or filed within the statutory period and allowed and approved. This rule also applies to debts and funeral expenses paid by the personal representative from his own funds, in which case a claim by the representative for reimbursement must be presented and filed in the usual way, supported by a receipt or other sufficient evidence of payment.

Although a verified claim has not been filed, the Court may, under Prob. Code §§9154 and 11005, approve the payment of a debt if the accounting shows that such debt was

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paid during the time within which such claim could have been filed and the estate is solvent. Such approval, however, is discretionary with the Court and must be justified by allegations in a verified petition or by testimony in open court as to the factors referred to in Prob. Code §9154. [See Estate of Erwin, 117 C.A.2d 203 (1953).] (7/1/99)

### **8.68 Withholding Funds from Distribution**

In the event the Petition for Final Distribution requests the withholding of funds for tax purposes or closing expenses in excess of \$500, the Decree based upon that Petition shall provide that an accounting be filed with the Court within **nine (9)** months of the date of the hearing setting forth a complete accounting of the monies withheld. The Court, in its discretion, may require a noticed hearing of the accounting on retains. (1/1/08)

### **8.69 Petition for Distribution Without an Account -Waivers of Account**

Although a preliminary or final distribution may be made without an accounting, sufficient facts must be set forth in the petition to allow the Court to ascertain that the estate is solvent. The Court will not permit distribution in an insolvent estate without an account.

The effect of the waiver is to make it unnecessary to list the detail of receipts and disbursements. The calculation of statutory commissions and/or attorney's fees must include losses on sales and include gains on sales. All other matters contained in Prob. Code §§1062, 1063 and 10900 must be presented in the report. Creditors' claims, property on hand to be distributed, computation of attorney's fees and executor's fees, and costs of administration, must be listed in the report. (Also refer to **Local Rule 8.83**).

A waiver of account or an acknowledgment that an interest has been satisfied on final distribution must comply with Prob. Code § 10954. A notarized acknowledgement of the signature of the heir or beneficiary shall be included on each waiver of account. (7/1/08)

### **8.70 Signing of Account**

Any account and report required to be filed by a fiduciary must be personally signed by the fiduciary. When more than one fiduciary is serving, the account and report must be signed by each of them, or the absence of one signature satisfactorily explained. (7/1/99)

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### **8.71 Vouchers**

Vouchers supporting accounts are not to be filed with the Clerk unless the Court orders them filed. (Prob. Code § 10900) (7/1/99)

### **8.72 Damages for Wrongful Death, Physical Injury and Property Damage**

Recovery of damages for wrongful death, as distinguished from physical injury and property damage, may be held by the fiduciary and are not part of the estate. (CCP § 377.60) If an executor or administrator collects damages and costs arising out of the physical injury of decedent, or property damage as distinguished from wrongful death, he shall hold such money in his representative capacity as property of the estate. (CCP §377.20) (7/1/99)

## FEES AND COSTS

**8.73 General Information on and Computation of Compensation [SUPERSEDED]**  
[See California Rules of Court 7.1 - 7.1060]

**8.74 Compensation When Accounting Waived [SUPERSEDED]**  
[See California Rules of Court 7.1 - 7.1060]

**8.75 Allowances on Account of Statutory Compensation [SUPERSEDED]**  
[See California Rules of Court 7.1 - 7.1060]

**8.76 Attorney Incurred Costs Reimbursed or Included in Fee [SUPERSEDED]**  
[See California Rules of Court 7.1 - 7.1060]

**8.77 Property in Lieu of Fee [SUPERSEDED]**  
[See California Rules of Court 7.1 - 7.1060]

**8.78 Notice to Prior Representative or Attorney [SUPERSEDED]**  
[See California Rules of Court 7.1 - 7.1060]

**8.79 Compensation for Extraordinary Services [SUPERSEDED]**  
[See California Rules of Court 7.1 - 7.1060]

**8.80 Compensation for Extraordinary Services by a Paralegal [SUPERSEDED]**  
[See California Rules of Court 7.1 - 7.1060]

**8.81 Reimbursement for Costs Advanced [SUPERSEDED]**  
[See California Rules of Court 7.1 - 7.1060]

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### DISTRIBUTION AND DISCHARGE

#### 8.82 Petition or Status Report Required Filing Time

Within **one (1)** year from the date of issuance of letters in estates not required to file a federal estate tax return and within **eighteen (18)** months from the date of issuance of letters in estates where such return is required, the executor or administrator must either petition for final distribution of the estate or file a verified report of status of administration. If such report is filed, it shall show the condition of the estate and the reasons why the estate cannot be distributed and closed. Said report shall comply with Prob. Code § 12200.

A status review hearing will be set six months from the date of the successful inventory review hearing. The purpose of this status review hearing is to monitor the case to verify that either a petition for final distribution or a status report has been filed.

(1/1/08)

#### 8.83 Report of Administration

The following shall be included in a report of administration, whether filing an account or a waiver of account:

- A. Whether notice has been given to reasonably ascertainable creditors. Prob. Code § 10900.
- B. Schedule of Creditor claims filed, including the date of filing the claim, the name of the claimant, the amount of the claim, and the action taken on the claim.
- C. An allegation that all taxes due or owing by the estate have been paid or arrangements made.
- D. An allegation that the requirements of the Revenue and Taxation Code §480 have been met. Prob. Code §8800(d)
- E. An allegation that a notice of death has been provided to the Department of Health Services as required by Prob. Code §§215 and 9202, or that no such notice if required.
- F. Petitions for distribution must contain allegations regarding whether or not, the general personal representative or estate attorney knows or has reason to believe that an heir is confined in a prison or facility under the jurisdiction of the Departments or Corrections or Department or Youth Authority or confined in any county or city jail, road camp, industrial farm, or other correctional facility. If

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distribution will be made to such person, the petition for distribution must contain an allegation that no such notice is required or that a notice of death has been provided to California Victim Compensation and Government Claims Board as required by Prob. Code §9202, and whether or not the Director of the California Victim Compensation and Government Claims Board has demanded collection of any outstanding restitution fines or orders. (1/1/09)

- G. An allegation that a notice of administration has been provided to Franchise Tax Board as required by Prob. Code §§1215 and 9202, or that no such notice is required.
- H. An allegation as to the character of the property, whether separate or community.
- I. An allegation that all cash in the estate has been invested in interest bearing accounts, except for an amount of cash that is reasonably necessary for the orderly administration of the estate.
- J. A computation of the attorney fees and representative commissions requested, including the fee base, including gains or losses on sales. If the fee or commission is being waived, the petition shall so state.
- K. An itemization of all costs of administration, whether or not reimbursement is requested.
- L. For decedent's estate proceedings commenced during the period August 18, 2003, through January 1, 2008, the information required by subdivisions (a) and (b) of California Rule of Court 7.552, if a refund of graduated filing fees is sought.
- M. If the estate is inventoried at more than \$1,000,000 and more than \$250,000 is distributable to a non resident of California, a state income tax certificate issued by the Franchise Tax Board must be filed. Revenue & Taxation Code §19513.
- N. The caption of a petition must be all-inclusive as to the relief sought. This includes, but is not limited to, a request for final distribution, distribution to a trust, request for statutory or extraordinary fees or commissions.
- O. A full and complete description of all assets on hand, including the legal description, assessor's parcel number, carry value and current fair market value. There shall also be a schedule setting forth the proposed distribution.
- P. In any petition for distribution, all independent acts taken without prior Court approval shall be set forth. If the act required giving notice of proposed action, the notice with proof of service attached shall be filed with the clerk. (7/1/08)

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### 8.84 Distribution to Minors

The Court will require the following documents to be on file before making an order for distribution:

- A. If distribution is to be made to the guardian of a minor, a certified copy of the letters of guardianship;
- B. If a minor's estate is to be deposited in Blocked account, MC-355, "Order to Deposit Money" shall be presented at the hearing for distribution.
- C. If distribution is to a custodian under the California Uniform Transfers to Minors Act (Prob. Code §3900 et seq.), the written notice of acceptance of the office by the custodian as described on Prob. Code §6347 (b).
- D. If distribution is to be made to a parent for the benefit of a minor under Prob. Code §3401, a copy of the written assurance, pursuant to Prob. Code §3300 by such parent. (1/1/04)

### 8.85 Distribution to a Trust (Testamentary or Irrevocable) [SUPERSEDED]

[See California Rules of Court 7.1 - 7.1060]

### 8.86 Distribution to an Assignee [SUPERSEDED]

[See California Rules of Court 7.1 - 7.1060]

#### 8.86.1 Distribution Care-of Attorney.

The Court will not order distribution of an heir's or devisee's interest in the estate care-of his or her attorney, unless the written consent of the heir or devisee is filed with the Court. (1/1/09)

### 8.87 Distribution Pursuant to Agreement

If the distributees seek distribution in a manner other than that provided by the will or by the laws of intestate succession, that fact should be alleged, and a written agreement (signed by all involved distributees with signatures acknowledged before a notary public) must be filed. If an Agreement for Distribution contains an assignment of interest from one party to another, the agreement must contain specific wording as to the assignment or a separate form of Assignment of Interest which has been signed and acknowledged before a Notary Public must be filed in the proceeding.

Note: If any such distributee is a minor or is under disability, the agreement must be signed by the minor's legal guardian. Either earlier Court approval of the agreement in

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the guardianship proceeding must be proved in the probate proceeding or a petition for approval of the agreement in both the guardianship proceeding and the probate proceeding must be brought on for hearing at the same time. (7/1/08)

### **8.88 Disclaimers**

A copy of any disclaimer must be on file prior to the hearing of any petition for distribution of any affected asset. (7/1/99)

### **8.89 Notice to Trust Beneficiaries [SUPERSEDED]**

[See California Rules of Court 7.1 - 7.1060]

### **8.90 Notices in Accounts [SUPERSEDED]**

[See California Rules of Court 7.1 - 7.1060]

### **8.91 Orders Dispensing with Accounts**

If a guardianship or conservatorship estate meets the requirements of Prob. Code §2628, a petition to waive accounts should be submitted. The petition may be submitted ex parte. A suggested form is available from the Superior Court Clerk's Office or the Court Investigator's Office. (7/1/99)

### **8.92 Discharge Review Hearing**

- A. At the time an order for final distribution is made, a review hearing will be scheduled for the purpose of monitoring the filing of receipts on distribution and, if appropriate, the filing of a request for discharge of the personal representative.
- B. In matters where there are retains of \$500 or less, the discharge review hearings will be scheduled two months from the date of the order of final distribution.
- C. In matters where there are retains in excess of \$500, the discharge review hearing will be scheduled nine months from the date of the order of final distribution to allow time for filing the accounting required by Local Rule 8.68 (7/1/09)

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### JOINT TENANCIES AND LIFE ESTATES

#### 8.93 Proceedings in Name of Decedent

A petition to establish the fact of death must be filed in the name of the deceased person whose interest has been terminated. The petition must be verified. (7/1/99)

#### 8.94 Separate Petition Preferred

Probate Code §200, et seq. authorizes a petition to establish fact of death to be included in a verified petition for probate of will or for letters of administration. However, attorneys are encouraged to file a separate petition under the same number in order to avoid administrative difficulties. No such separate petition may be filed after the filing of a petition for final distribution; and, if a petition to establish fact of death is then filed, it should be in a new proceeding under a new number. (7/1/99)

#### 8.95 Obtaining Order

The order can be obtained ex parte if the petition is accompanied by:

- A. An affidavit or declaration by petitioner that petitioner has no reason to believe that there is any opposition to, or contest of the petition.
- B. A death certificate.
- C. A copy of the deed or other document that created the joint tenancy, and
- D. The proposed order.
- E. Filings not accompanied by these documents must be set for hearing in accordance with the appropriate Probate Code section.
- F. If a check for the certification fee and a stamped self-addressed envelope are furnished, the Clerk will obtain the Judge's signature, file the order, certify the copy, and mail it to the petitioner's attorney. (7/1/99)

#### 8.96 Fees

There is no provision in the code for the determination by the Probate Court of attorneys' fees in proceedings for termination of joint tenancy or a life estate. No request for fees for services of this character shall be included in any petition for fees in an estate matter, and if so included, will be disallowed. (7/1/99)

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### PETITIONS SETTING ASIDE ESTATES AND SPOUSAL PROPERTY PETITIONS

#### 8.97 Petition to Set Aside Under Probate Code §6600-§6613 or For Letters

A petition to set aside under Prob.Code §6600, et seq. may be filed as a separate petition or may be worded in the alternative, i.e., the petition may pray for admission of the will and for letters testamentary or for letters of administration if the petition to set aside should be denied. If a petition to set aside is filed separately and concurrently with a petition for admission of the will or for letters of administration, the petitions should be set for hearing at the same time. (7/1/99)

#### 8.98 Spousal Property Petition-Probate Code §13650

- A. The petition must list, on separate schedules, the decedent's interest and the surviving spouse's interest in the property. For example, if it is alleged the decedent and surviving spouse owned as community property a piece of real property, the decedent's undivided one-half (1/2) interest in such property should be listed on one schedule and the surviving spouse's one-half (1/2) interest in the same property listed on another schedule.
- B. In addition to the allegations required by law, a petition to determine and/or confirm community property should contain as many of the following allegations as are relevant:
1. Date and place of marriage to surviving spouse.
  2. Whether or not decedent owned any real or personal property on date of marriage, and if so, descriptions and appropriate values.
  3. Decedent's net worth at time of marriage.
  4. Whether decedent received any property after date of marriage by gift, bequest, devise, descent, proceeds of life insurance or joint tenancy survivorship, and if so, descriptions, approximate value and date of receipts.
  5. Whether any property so received by decedent under (d) above is still a part of this estate, and if so, identification of such property.
  6. Date decedent first came to California after marriage.
  7. Any additional facts upon which claim of community property is based. If the claim of community property is based on any document, a photocopy thereof

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(preferably a photocopy showing signatures) should be attached to the petition.  
(7/1/99)

### **8.99 Petition to Succeed to Real and Personal Property Probate Code § 13150**

If the distribution requested in the petition is pursuant to the decedent's will, a proof of subscribing witness shall be filed in the proceedings. (7/1/99)

## INDEPENDENT ADMINISTRATION

### **8.100 Notice and Publication Requirements**

- A. If the request for authority to administer the estate under the Independent Administration of Estates Act (IAEA) is made by separate petition, notice must be given for the period and in the manner applicable to the petition for appointment. (Prob. Code § 10451).
- B. If notice of proposed action is required prior to performance of an act under IAEA authority, the original of the Notice of Proposed Action, with attached affidavit of mailing, shall be filed with the Court. (7/1/99)

## TRUSTS

### **8.101 Trustees' Accounts [SUPERSEDED]**

[See California Rules of Court 7.1 - 7.1060]

#### **8.101.1 Special Needs Trust Accountings:**

When rendering an accounting in a Special Needs Trust, notice must be given to the California State Department of Health Services, State Department of Mental Health, and the State Department of Developmental Services.(07/01/09)

### **8.102 Beneficiaries to Be Identified - Notice [SUPERSEDED]**

[See California Rules of Court 7.1 - 7.1060]

### **8.103 Trustees' Fees [SUPERSEDED]**

[See California Rules of Court 7.1 - 7.1060]

### **8.104 Removal of Trust from Court Jurisdiction [SUPERSEDED]**

[See California Rules of Court 7.1 - 7.1060]

### **8.105 Trustees' Report [SUPERSEDED]**

[See California Rules of Court 7.1 - 7.1060]

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### GUARDIANSHIPS

#### **8.106 Consolidation of Adoption and Guardianship Proceedings**

See Family Law Rules 7.74 – 7.81 for rules pertaining to guardianships. (1/1/08)

#### **8.107 Appointment of Temporary Guardian**

See Family Law Rules 7.74 – 7.81 for rules pertaining to guardianships. (1/1/08)

#### **8.108 Reconsideration of Temporary Guardianships**

See Family Law Rules 7.74 – 7.81 for rules pertaining to guardianships. (1/1/08)

#### **8.109 Appointment of General Guardian**

See Family Law Rules 7.74 – 7.81 for rules pertaining to guardianships. (1/1/08)

#### **8.110 Notice of Hearing**

See Family Law Rules 7.74 – 7.81 for rules pertaining to guardianships. (1/1/08)

#### **8.111 Investigation Fees re: Guardian**

See Family Law Rules 7.74 – 7.81 for rules pertaining to guardianships. (1/1/08)

#### **8.112 Guardianship of the Person – Documents to Court Investigator**

See Family Law Rules 7.74 – 7.81 for rules pertaining to guardianships. (1/1/08)

#### **8.113 Mediation of Guardianship**

See Family Law Rules 7.74 – 7.81 for rules pertaining to guardianships. (1/1/08)

### CONSERVATORSHIPS

#### **8.114 Appointment of Temporary Conservator**

- A. If a Temporary Conservatorship is needed, a Petition for Appointment of a Temporary Conservator must be filed concurrently with, or subsequent to, the filing of a petition for appointment of a general conservator. Notice of the ex parte application is required to be given pursuant to Prob. Code § 2250(c).
- B. Prior to the date set for the ex parte hearing, all petitions and documents pertinent to the temporary application shall be reviewed by the Court Investigator. The petition shall state the facts giving rise to the need for the conservatorship.

Temporary petitions will be reviewed by the Court Investigators. A petition will go to the judge only if it is procedurally correct and if the required notice has been given or dispensed with.

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Unless some degree of urgency is present, the Court ordinarily will not entertain an ex parte application for appointment of temporary conservator.

If no opposition is presented and the matter appears appropriate, the Court may grant the petition. (7/1/00)

### 8.115 Appointment of General Conservator

Petitions for appointment of general conservators are set on calendar for hearing at 8:30 a.m. Tuesday. A copy of all filings along with the Conservatorship Questionnaire will be kept at the time of filing by the Clerk's Office for forwarding to the Court Investigator's Office.

- A. Ex-Parte hearings before the Judge are set at 1:20 p.m., Monday through Thursday. Proof of notice to the Court Investigator's Office by fax at (209) 525-5740 must be provided to the Court. Said faxed notice to the Court Investigator's Office must be received by the Court Investigator's Office no later than 10:00 a.m. on the morning the date the hearing is sought.
- B. Subpoenas for long cause matters set out 30 days or more must be personally served on the applicable Court Investigator 30 days prior to the hearing along with the required \$150.00 payable to the Stanislaus County Superior Court. The Court finds that 30 days is a reasonable period of time as required by statute.

Petitions for appointment of a conservator shall be set for hearing at least **forty-five (45)** days after the date of filing. Although only **fifteen (15)** days notice is required by the Probate Code, the additional time is necessary to insure that the proceeding is not delayed because the Court Investigator did not have sufficient time to complete the investigation. (1/1/08)

### 8.116 Investigation Fees re: Conservator

When a petition requests appointment of a conservator of the person or estate, a conservatorship investigation fee must be paid to the clerk in addition to the regular filing fee. Counsel and parties are advised to contact the Clerk's Office for the amount of the current investigation fee. If it appears that the payment of the fee would cause a hardship, the fee may be waived upon application to the Court. (7/1/99)

### 8.117 Conservator's Handbook and Orientation Program

Each proposed conservator (including proposed temporary conservators) must purchase the Conservator's Handbook from the Probate Division of the Clerk's Office before the Court will consider the person's petition for appointment.

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Each proposed conservator (other than a proposed temporary conservator) should attend an orientation program provided by the Court before the hearing date on the petition for appointment. The Conservator's Handbook must be purchased and taken to the orientation program. For an appointment to attend the orientation, contact the Court Investigators' Office at (209) 525-4433.

The Public Guardian, corporate fiduciaries, banks and other entities authorized to conduct the business of a trust company are exempt from these requirements. All other proposed conservators, including private professional conservators, must meet these requirements once. (7/1/99)

### **8.118 Proceedings for a Proposed Transaction Probate Code § 3100 et. seq.**

Before a petition for an order authorizing a proposed transaction can be granted, the Court must make several findings, including those listed in Probate Code § 3144, and specifically that one spouse lacks the legal capacity to complete the transaction and that the other spouse either has legal capacity or has a conservator. The petition and order shall include a request for those findings.

In order for the Court to make a finding that a spouse lacks legal capacity, there must be presented with Petition a declaration from a doctor or medical practitioner that complies with Probate Code § 810, 811 and 812. The declaration must specifically state that the person lacks the capacity to make a decision or perform the specific act required to complete the transaction. (1/1/02)

### **8.119 Substituted Judgment – Special Needs Trust Probate Code § 2580**

Any party filing a petition for substituted judgment must fully inform the Court of all relevant circumstances. The petitioning party must use due diligence to inform the Court of all relevant circumstances. The petitioning party must use due diligence to inform the Court of everything a reasonable person in the conservatee's position would have wanted to know before deciding whether or not a proposed action should be taken.

The Court may appoint counsel for the conservatee. If the matter is contested, the Court may also order the Court Investigator to investigate and report to the Court.

If the Court grants a petition for the exercise of substituted judgment, the order after hearing shall contain the findings required by Probate Code § 2582.

If a trust is established pursuant to the substituted judgment statutes for a conservatee, the Court will require annual accountings of all trust assets and the trust shall remain under the jurisdiction of the Probate Court. (7/1/99)

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### GUARDIANSHIPS AND CONSERVATORSHIPS

#### 8.120 Independent Powers

The Court may, on the petition of the conservator or guardian, either at the time of appointment or later, grant additional independent powers to the conservator or guardian as authorized by Probate Code §§ 2590 and 2591. Additional independent powers are not lightly granted. The petition must state for each Probate Code § 2591 power requested, the facts and reasons which justify the independent exercise of the power. Additionally, if the power to sell or encumber a conservatee's present or former personal residence is requested, the information required under Probate Code § 2540(b) must be included in the petition by way of a declaration the first time the conservator seeks authority to encumber, list or sell the conservatee's present or former personal residence. The Court will grant only those independent powers necessary or proper under the specific circumstances of each case. Any powers so granted must be set forth at length in the order and in the letters of conservatorship.

Where the power is granted to sell real property (thereby eliminating the need to publish notice of sale), the Court requires the sale to be confirmed by the Court.  
(7/1/99)

#### 8.121 Bonds [SUPERSEDED]

[See California Rules of Court 7.1 - 7.1060]

#### 8.122 Waiver of Bond [SUPERSEDED]

[See California Rules of Court 7.1 - 7.1060]

#### 8.123 Inventory and Appraisalment

An inventory and appraisalment of the estate, as of the day of appointment, shall be filed by the guardian/conservator with the Clerk of the Court within **ninety (90)** days after the appointment unless the Court has granted a petition for further time for filing (Prob. Code § 2610). (1/1/04)

#### 8.124 Accounts - When Due [SUPERSEDED]

[See California Rules of Court 7.1 - 7.1060]

#### 8.125 Accounts - Matter to Be Included

All accounts must include the information required by Prob. Code §§2620 and 1060 et. seq.

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Market values for assets without a ready market shown on the schedule of estimated market values required pursuant to Prob. Code § 1063(a) should not reflect changes from carry value unless the method of evaluation is fully explained. If there is no reasonable method of valuation that complies with Prob. Code § 1063(a), but there has been a significant event that affects the value of the asset, such as a flood or other damage, the event should be disclosed in footnote to the schedule.

Where there are multiple wards joined in a single guardianship proceeding an account shall reflect a separate accounting for each of the respective wards.

A copy of the bank statements which include the ending date of the accounting period for each bank account, mutual fund account, brokerage account or other investment account, shall be attached to every accounting filed.

Final accounts for deceased wards or conservatees shall include separate accounts for transactions before the date of death and transactions after the date of death in accordance with Prob. Code § 2620. If the distribution upon termination of guardianship or conservatorship of the estate is to be made to a fiduciary appointed in another Court action, such as a probate estate, a certified copy of the Letters of Appointment shall be filed with the account. If distribution is to be made pursuant to Prob. Code § 13100, the affidavit or declaration required therein shall be filed with the report. (1/1/08)

### **8.126 Report by Court Investigator**

The Court Investigator shall file a report with the Court in respect to each accounting filed unless the conservatee is deceased. In addition to those requirements set forth in Prob. Code §§ 1826, 1951, 1894, 2684 and 1513, the Investigator shall review the account to ascertain that it is in compliance with Prob. Code § 1060 et. seq. and whether the disbursements are appropriate. (1/1/08)

### **8.127 Dispense with Account - When Permitted**

A. The Court will consider dispensing with accounts so long as the estate of the ward or conservatee meet the requirements of Prob. Code § 2628. In certain circumstances, the Court may approve an order dispensing with accounts on an ex parte basis. In order to avoid additional expense to the estate, a party may make such an application using Ex-Parte Petition to Dispense with Accounts and Order Thereon.

Final Accounts of guardianship estates will not ordinarily be waived unless all funds are in a blocked account. Final accounts will not be waived in guardianship or conservatorship estates where a bond has not been posted.

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B. In the instance of funds being placed in a blocked account, the Court may dispense with accounts upon verification from the bank that the account is blocked. (7/1/99)

### **8.128 Papers to Be Delivered to Court Investigator**

A copy of all filings along with the Conservatorship Questionnaire will be kept at the time of filing by the Clerk's Office for forwarding to the Court Investigator's Office.  
(1/1/08)

### **8.129 Compensation for Guardians, Conservators, Trustees, and their Counsel, and for Counsel for a Conservatee or Ward [SUPERSEDED]**

[See California Rules of Court 7.1 - 7.1060]

### **8.130 Investment by Guardian or Conservator [SUPERSEDED]**

[See California Rules of Court 7.1 - 7.1060]

### **8.131 Termination of Conservatorship [SUPERSEDED]**

[See California Rules of Court 7.1 - 7.1060]

## FUNDS BELONGING TO MINORS

### **8.132 Deposit of Funds of Guardianship Estate in Blocked Account [SUPERSEDED]**

[See California Rules of Court 7.1 - 7.1060]

### **8.133 Money Belonging to Minor - Total Estate Less Than \$5,000 Proceedings Under Probate Code § 3410, et. seq. [SUPERSEDED]**

[See California Rules of Court 7.1 - 7.1060]

### **8.134 General Information on Blocked Accounts [SUPERSEDED]**

[See California Rules of Court 7.1 - 7.1060]

### **8.135 Request for Withdrawal of Minor's Funds [SUPERSEDED]**

[See California Rules of Court 7.1 - 7.1060]

### **8.136 Withdrawal on Minor Reaching 18 Years of Age [SUPERSEDED]**

[See California Rules of Court 7.1 - 7.1060]

## OTHER PROTECTIVE PROCEEDINGS

### **8.137 Settlement of Minor/Conservatee/Incompetent's Claim [SUPERSEDED]**

[See California Rules of Court 7.1 - 7.1060]

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### **8.138 Payment of Expenses, Costs and Fees [SUPERSEDED]**

[See California Rules of Court 7.1 - 7.1060]

### **8.139 Disposition of Remaining Balance [SUPERSEDED]**

[See California Rules of Court 7.1 - 7.1060]

### **8.140 Payment to a Special Needs Trust, Trust Requirements - Jurisdiction of Court [SUPERSEDED]**

[See California Rules of Court 7.1 - 7.1060]

## ADOPTIONS AND RELATED MATTERS

### **8.141 General**

Upon the filing of any adoption petition or adoption-related matter (including termination of parental rights and freedom from custody and control), the clerk of the Court will send notice of pendency of action to the appropriate investigating agencies. Petitioners are responsible for submitting all moving papers, the appropriate fees, and all additional information required, to the investigating agency. (1/1/04)

### **8.142 Finalization**

Adoptions may not be set for finalization hearing until all of the following have been completed:

- A. The written consents of both birth parents, if living, have been filed with the Court by the Petitioners or by the adoption agency, **or** all birth parents' rights have been terminated and the appeal period has expired on the order terminating parental rights (an exception is required by termination cases filed under Prob. Code § 8604). Termination of parental rights is required prior to adoption finalization in every case where a living parent does not consent, even if the identity or location of the non-consenting parent is unknown.
- B. The adoption agency or investigating agency has filed with the Court its written report to recommend granting or denying the petition, and the agency has also filed with the Court the completed and signed Court Report of Adoption (State Form VS-44).
- C. Petitioners have submitted to the adoption clerk an unsigned Consent and Agreement to Adoption; the proposed Decree of Adoption; and a Request for Default or Uncontested Hearing (Stanislaus County Local Form). (7/1/99)

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### 8.143 Independent Adoptions

Within **thirty (30)** days of filing, Petitioners shall be responsible for forwarding a file marked copy of the adoption petition to the appropriate District Office of the State Department of Social Services. For Stanislaus County residents, this is: SDSS Adoptions Branch, Oakland District Office, 1515 Clay Street, Suite 308, Oakland, CA 94612; tel: (510) 622-2650. (7/1/99)

### 8.144 Agency Adoptions

Within **thirty (30)** days of filing, Petitioners are responsible for forwarding a file marked copy of the Petition to the adoption agency which placed the child in Petitioner's custody. (7/1/99)

### 8.145 Step-Parent Adoptions

Within **thirty (30)** days of filing, Petitioners are responsible for forwarding a file marked copy of the Petition to the agency designated by the county to perform step-parent adoption investigations: Stanislaus County Community Services Agency, Child Welfare Section, P.O. Box 42, Modesto, CA 95353-0042, Attn: Step-Parent Adoption Worker. Petitioners must also forward all documentation required by the agency, and must pay the investigation fee within **one (1)** year of filing the petition. The Court may, on its own motion or on the motion of the investigating agency, dismiss any petition which petitioners have failed to finalize within **eighteen (18)** months of the original filing date, unless Petitioners can demonstrate good cause for the delay. (7/1/99)

### 8.146 Kinship Adoption Agreements

Upon request of either party or on its own motion, the Court may refer the parties private mediation for the purpose of working out the terms of a potential Kinship Adoption Agreement. (7/1/99)

## TERMINATION OF PARENTAL RIGHTS, FREEDOM FROM CUSTODY AND CONTROL OF PARENTS, AND DECLARATION TO DISPENSE WITH CONSENT OF BIRTH PARENT

### 8.147 General

Upon filing of a petition for termination of parental rights or to free a minor from the custody and control of a parent, the Clerk of the Court will send a notice of pendency of action to the appropriate investigating agency. However, petitioners are responsible for forwarding all moving papers and other required documentation to the investigating

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agency within **ten (10)** days of the filing date. Petitioners must provide the investigating agency with contact information, including phone numbers and addresses, for themselves, the minor(s), and the birth parents (to the extent known). (7/1/99)

### **8.148 Termination of Parental Rights Pursuant to Family Code § 7600 et. seq.**

#### **Investigation under Family Code § 7663**

Prior to the hearing on termination parental rights pursuant to these sections, the Court must receive and review the investigation report mandated by Family Code § 7663. It is Petitioners' responsibility to forward a file marked copy of the petition to the appropriate investigating agency within **ten (10)** days of filing, and to cooperate as necessary for the agency to complete that investigation. Petitioners will be expected to provide the investigating agency with all possible information regarding the identity whereabouts of the alleged father.

- A. If the termination action is filed pursuant to an agency adoption, the adoption agency is responsible for filing the report.
- B. If the termination action is filed pursuant to an independent adoption, the Oakland District Office of the State Department of Social Services, Adoptions Branch, is responsible for filing the report.
- C. If the action is filed pursuant to a step-parent adoption, the Stanislaus County Community Services Agency, Child Welfare Section, or their designee is responsible for filing the report.
- D. Notice to Alleged Fathers --Petitioners who are unable to locate or identify alleged fathers may request the Court to dispense with notice of the hearing by filing with the Court a sworn written statement specifically describing the attempts to identify and locate the alleged father. Petitioners may then submit the matter to the Clerk's Office for ex parte consideration by the Court to dispense with notice under Section 7666 and terminate the parental rights. Petitioners must use due diligence in attempting to locate and serve alleged fathers with notice of the action to terminate parental rights, unless the alleged father has signed a Waiver of Notice (State Form #AD590) or Denial of Paternity (State Form #AD588). Due diligence will normally include, but is not limited to, checking telephone listings; searching on the Internet, conducting postal and voter registration records searches; and contacting known relatives, friends, and former employers of the alleged father or information. Refer also to Local Rule 8.15B. (7/1/00)

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### 8.149 Freedom From Parental Custody and Control

#### A. Investigation Pursuant to Section 7851

Prior to ruling on the petition, the Court must receive and review the investigation report required by Family Code § 7851. Petitioners must pay the investigation fee of \$380 at the time the petition is filed. Within **ten (10)** days of filing, Petitioners must forward a file marked copy of the petition to the Office of the Family Court Investigator, located in the Courthouse. Petitioners must also provide the Investigator with contact information such as telephone numbers and addresses, for themselves, the minor(s), and the birth parents (to the extent known).

#### B. Notice to Parent

At least **ten (10)** days prior to the hearing, Petitioners must effect personal service of the citation on the parent(s) from whom the child is being freed from custody. If the whereabouts of a parent is unknown, Petitioners may submit an ex parte application to the Court for an order permitting service by publication in a newspaper of general circulation in the area of the parent's last know residence. In accordance with Family Code § 7882, this application will only be granted if it is supported by a declaration from Petitioners and other persons with knowledge as to the efforts made with due diligence to locate the absent parent. Due diligence will normally include, but is not limited to, checking telephone listings; searching on the Internet; conducting postal and voter registration records searches; and contacting known relatives, friends, and former employers of the alleged father for information. Once publication has been ordered, the hearing on the Petition will normally be set approximately **seventy-five (75)** days from the date of filing, to permit sufficient time for publication and return of the proof of publication to the Court file. (7/1/99)

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