

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN
222 E. Weber Avenue, Room 303
Phone: (209) 468-2827
Stockton, CA 95202
Effective January 1, 2013

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[RESERVED FOR FUTURE USE]

RULE 1.GENERAL

1-100. EFFECT OF RULES, CITATION OF RULES AND CONSTRUCTION

- A. These rules shall be known and cited as "Local Rules of the Superior Court of California, County of San Joaquin" and shall at all times be supplementary to and subject to any and all rules adopted by the Judicial Council of the State of California. These rules shall become effective July 1, 1998, and these new rules shall have no retroactive effect or application whatsoever. These rules shall, on the date when they become effective, supersede all rules previously adopted by this court and all previously adopted rules are repealed.
- B. Unless otherwise provided in these rules, all rules set forth herein are applicable in all judicial districts in this county. (Eff. 1/99)

1-101. COURT CALENDARS

The court's business is distributed in accordance with its latest "General Calendar," which sets forth the time, place, and any special requirements adopted by the court for hearing the various types of court business. Before applying or noticing any matter for hearing or for trial, the moving party should ascertain the latest calendar requirements from the Clerk of the Superior Court. (Eff. 07/01/98)

1-102. SELECTION AND IMPANELMENT OF JURORS

- A. Source Lists: As authorized in Code of Civil Procedure section 197(b), the juror source list used by the Jury Commissioner shall be a list consisting of the combination of the list of registered voters in San Joaquin County and the Department of Motor Vehicles lists of licensed drivers and California identification cardholders who are 18 years old or older who reside in San Joaquin County.
 - 1. Prospective jurors shall be summoned for jury service for limited and unlimited jurisdiction cases heard in the Stockton branch from the countywide master list. Prospective jurors summoned for trials transferred from Stockton to the Lodi, Manteca, or Tracy branches shall also be summoned from the countywide master list. Prospective jurors summoned for limited jurisdiction trials and misdemeanors trials transferred from Stockton to the Lodi, Manteca, or Tracy Branches shall be summoned from the master list for the area served by the court to which the case is transferred.
 - 2. Prospective jurors shall be summoned for jury service for limited jurisdiction cases heard in the Lodi branch from a master list consisting of residents who live in the area served by that court. The area served by that court is defined by the following zip codes: 95220, 95227, 95237, 95240, 95241, 95242, 95253, 95254, 95258, 95632 and 95686.
 - 3. Prospective jurors shall be summoned for jury service for limited jurisdiction cases heard in either the Manteca and Tracy branches from a master list consisting of residents who live in the area served by both of those courts. The areas served by those courts are defined by the following zip codes: 95231, 95320, 95330, 95336, 95337, 95361, 95366, 95367, 95304, 95376, 95377, 95378, 95385 and 95391.
- B. Deferral of Jurors Who Appear Pursuant to Summon: When a summoned juror appears for jury service and advises the trial court of a circumstance that amounts to a temporary

or marginal hardship, the juror shall be deferred instead of excused. Except when necessary to avoid a temporary or marginal hardship, deferrals should be granted for no longer than 90 days. Hardships that warrant deferral under this section include:

1. A temporary illness of the juror or temporary illness of a person for whom the juror renders care;
2. A medical appointment that cannot be rescheduled or postponed;
3. A scheduled vacation which involves prepaid commitments, involves the scheduled vacation of the juror's family, or a vacation that cannot otherwise be conveniently rescheduled.
4. A work hardship or important business demand such as the temporary unavailability of someone to take the place of the juror, a training program the juror is scheduled to attend, or some other work demand of a nonrecurring nature which cannot be conveniently rescheduled;
5. Seasonal employment;
6. Jury service would jeopardize the academic standing of a prospective juror who is a student or set the prospective juror back in completing an academic program; and
7. Any other legitimate temporary or marginal hardship not expressly defined that, in the opinion of the trial court, would justify a deferral. (Proposed Eff. Date 11/27/06)

1-103. "RESERVED FOR FUTURE USE"

1-104. INTERPRETERS

- A. It is the responsibility of the parties in civil proceedings to provide their own language (non-English) interpreters. Any party in a civil proceeding who is deaf or hearing impaired should contact the Court's interpreter coordinator to determine what services the court will provide. The court is required to provide interpreters for hearing-impaired parties or witnesses per Evidence Code section 754. In criminal proceedings, the court will provide interpreters for the defendant and defense witnesses. In juvenile proceedings, the court will provide interpreters for the parties at all hearings when the court is aware that an interpreter is required. (Eff. 07/01/06)
- B. When defense counsel of record in a criminal case has knowledge that the defendant or defense witness(es) is in need of assistance of a court interpreter at criminal proceedings, defense counsel shall notify the court in writing of the need for interpreter(s) 10 days before the hearing. The cost for the interpreter is paid by the county only in criminal proceedings.
- C. The prosecution is responsible for provision and payment of its own interpreters. (Eff. 07/01/99)

1-105. TRANSFER OF ADMINISTRATIVE PROCEDURES

A majority of the judges may appoint an Executive Officer of the Superior Court pursuant to Government Code section 68114.6 to serve as the chief administrative officer of the court, who shall also act as Clerk of the Superior Court and perform the duties of Jury Commissioner of the

County. His or her duties are those contained in his or her job description, in California Rules of Court, Rule 207, and as further assigned by the Presiding Judge. (Eff. 01/01/99).

1-106. FIREARMS

Except as specified below, no person shall bring any firearm into:

- A. the south wing of the Courthouse, housing Departments 11-16, 21-26 and 31-36, located at 222 E. Weber Avenue in Stockton, California;
- B. Departments B1, 17, 41 and 42 located in the Courthouse at 222 E. Weber Avenue, Stockton, California;
- C. the court wing of Dept. L1 located at 230 W. Elm Street, Lodi, California;
- D. the building which houses Department L2 located at 315 W. Elm Street, Lodi, California;
- E. the main lobby entrance or courtrooms of Departments M1 and M2 located at 315 E. Center Street, Manteca, California;
- F. the main lobby entrance or courtrooms of Departments T1 and T2 located at 475 E. Tenth Street, Tracy, California;
- G. the court wing beginning at the door entry to the metal detectors of the building that houses Departments J1 and J2 located at 535 W. Matthews Road in French Camp; or
- H. any courtroom located anywhere in the county.

The following persons are exempt from the above rule:

- I. A duly appointed peace officer of this state, or of another state or the federal government who is carrying out official duties while in California, who is on official business and not a litigant in any matter for which they are present. No peace officer, or any other person, shall carry a firearm into a courtroom when they are a litigant in any matter for which they are present;
- J. A peace officer as described above, attorney in a matter, or investigator who is not a litigant and has a firearm that is evidence in the matter in that courtroom. Such individual must notify the bailiff of the presence of the firearm and provide the firearm to the bailiff for inspection prior to entry into the courtroom or immediately thereafter.

Failure to abide by this rule will be punishable as contempt of court. (Eff. 07/01/99)

1-107. MEDIA COVERAGE

- A. This rule is established under the authority recognized in subdivision (e)(4) of California Rule of Court 980 to supplement Rule 980. The words and phrases used in this rule have the same meanings as in Rule 980. Nothing in this rule changes or affects the procedures established in the California Rules of Court regarding the coverage of court proceedings by electronic media.
- B. Knowledge of the Rule

California Rule of Court 980, subdivision (e)(4) requires that each media agency is responsible for ensuring that all of its personnel who cover court proceedings know and

follow Rule 980. Each media agency shall also be responsible for ensuring that its personnel know and follow this rule.

C. Media Requests

1. The approved Judicial Council form shall be filed with the court's Public Information Office. This shall be done at least 5 court days before the hearing unless the request involves a new case, advanced hearing, or there is other good cause for filing the form less than 5 court days before the hearing.
2. Media personnel, representatives of media agencies, and attorneys for media agencies shall not communicate with the assigned judge or presiding judge concerning a request to modify an order issued under Rule 980 or this local rule other than by the approved Judicial Council form, written application noticed to the litigants, or at a public hearing. Any media agency aggrieved by the provisions of this local rule or aggrieved by an order made pursuant to this local rule concerning areas outside a courtroom may apply to the presiding judge to modify the application of the rule or order or to be exempted from it. A written application to the presiding judge shall be filed with the Public Information Office, but shall first be served upon the parties in any litigation that is the subject of the media request. An oral application may only be made at a hearing and only when any affected parties in the subject litigation have been given notice of the hearing. Media personnel, representatives of media agencies, and attorneys for media agencies shall not make ex-parte contact with the presiding judge when applying for a modification or exemption. The hearing shall be scheduled by contacting the Public Information Office.

D. Coverage Inside of the Courthouse

(1) Purpose

Metal detection and other security measures are installed at the entrance of the court's courthouses. The hallways in the Stockton Branch are used to walk in-custody prisoners to and from courtrooms because there is no other access. Prospective and sworn jurors often congregate in the same hallways. There are only seven jury deliberation rooms at the Stockton Branch. Prospective and sworn jurors, witnesses, spectators, litigants, and their children also congregate in the same hallways. Often these hallways are quite congested. The Lodi, Manteca, Tracy, and Juvenile Justice Center have lobby areas where prospective and sworn jurors, witnesses, spectators, litigants, and children congregate. Photographing, videotaping, filming, broadcasting in these areas may interfere with those activities, including security operations. (Eff.07/01/05)

Accordingly, this subdivision is established to:

- (a) Protect the privacy rights of prospective jurors, seated jurors, witnesses, victims, and court spectators as contemplated by subdivisions (e)(3)(v) and (e)(6)(iv) of Rule 980.
- (b) Preserve the security of the court and the safety of people in the courthouse as contemplated by subdivision (e)(xv) of Rule 980.
- (c) Preserve the dignity of the court and prevent interference with the orderly conduct of proceedings in courtrooms as contemplated in subdivisions

(e)(3)(xv), (xvii), (xviii) of Rule 980 which could be affected by disruptions in the hallways outside of courtrooms.

(2) Jurors

Photographing, videotaping, filming, broadcasting, and electronic recording of jurors in the courtroom is prohibited by subdivision (e)(6)(iv) of California Rule of Court 980. Except as provided below, the photographing, videotaping, filming, broadcasting, and electronic recording of anyone wearing a juror badge, whether intentional or inadvertent, anywhere in any San Joaquin County Superior Court courthouse shall also be prohibited. The photographing, videotaping, filming, broadcasting, and electronic recording of anyone standing in line going into the Jury Assembly Room at the Stockton Branch is also prohibited. The faces of anyone wearing juror badges or anyone standing in line going into the Jury Assembly Room at the Stockton Branch inadvertently depicted in the background of any photograph or videotape must be blurred or digitized beyond recognition before being published or broadcasted. Photographing, videotaping, filming, broadcasting, and electronic recording of prospective jurors who have been discharged from service, seated jurors who have been discharged from service or alternates who have been discharged from service is permitted in the courthouse only when that person consents.

(3) Spectators

- (a) Photographing, videotaping, filming, broadcasting, and electronic recording of courtroom spectators is prohibited by subdivision (e)(6)(iv) of California Rule of Court 980. This prohibition shall apply to the photographing or videotaping of any person while seated in any San Joaquin County courtroom audience, regardless of whether that person participated in the case or is scheduled to participate in the case as a witness or any other capacity. The faces of spectators depicted in the background of any photograph or videotape must be blurred or digitized beyond recognition before being published or broadcasted. When courtroom photography or videotaping is permitted, the court will work with the media to situate photographers in positions where spectators are not likely to be depicted in the background.
- (b) The prohibition against photographing, videotaping, filming, broadcasting, or electronic recording of spectators shall not apply to any person situated in the audience who becomes disruptive or who addresses the court if 980 authorization has previously been granted for those proceedings. However, the judge who authorizes a 980 request may prohibit in advance the photographing, videotaping, filming, broadcasting, or electronic recording of spectators who become disruptive or who address the court when granting the 980 request.

(4) Stockton Branch

Unless approved by written order of the presiding judge of this court or a judicial officer designated by the presiding judge, photographing, videotaping, filming, broadcasting, and electronic recording of any kind, other than handheld recording devices used for personal note taking, is prohibited in the following parts of the Stockton Branch courthouse:

- (a) In any hallway by a photographer who is situated within a 10 foot radius of the doors to any courtroom. Photographers must situate themselves

outside 10 foot radius so as to not inhibit or obstruct entry into or exit from the courtroom. Unless there is consent, photographers and media personnel shall not inhibit or obstruct any person's movements anywhere in the courthouse.

- (b) Through a door window or open courtroom door from the hallway outside of any courtroom into that courtroom unless authorized by order of the judge presiding in that courtroom.
- (c) In the Jury Assembly Room, from the hallway into the Jury Assembly Room, or in jury deliberation rooms.

(5) Stockton Branch - Hallways and Lobby

- (a) Sheriff's court security staff has the authority to order members of the public, including members of the media, to move out of the way during prisoner escort in courthouse hallways. Members of the media must comply whenever sheriff's court security staff performing prisoner escort or other security procedures orders them to move to some other location in the hallway.
- (b) Members of the public, including members of the media, shall not obstruct or compromise the security operations in the lobby and shall not obstruct the movement of people in the lobby. Sheriff's court security staff has the authority to determine when security operations are compromised or obstructed by persons in the lobby. Members of the media must comply whenever a sheriff's court security supervisor or supervisor of weapons screening determines that security operations are compromised or obstructed by the media presence and orders them to move out of the lobby.
- (c) Members of the media shall not obstruct the movements of any individual walking anywhere in the courthouse without that person's consent.

(6) Juvenile Justice Center

Unless approved by written order of the presiding juvenile judge or a judicial officer designated by the presiding juvenile judge, photographing, videotaping, filming, broadcasting, and electronic recording of any kind other than handheld recording devices used for personal note taking is prohibited anywhere in the Juvenile Justice Center branch. Cameras and recording devices shall be turned off while being transported in any area within this branch.

(7) Handheld Audio Recording Equipment

Other than in the courtrooms, the use of handheld audio recording equipment for note-taking purposes is not prohibited in the courthouse.

(8) Obstructions Outside of the Courthouse

Photographing, videotaping, filming, broadcasting, and electronic recording at or near the entrances of any of the branches is not prohibited, but such media coverage shall not obstruct pedestrian traffic or compromise security.

(9) Additional Orders

On occasion, the media interest in given court proceedings may be so intensive that additional prohibitions are warranted to satisfy the concerns listed in section 1-107D(1). Accordingly, when such is the case or when other circumstances warrant, the presiding judge or judicial officer designated by the presiding judge shall make whatever orders are necessary governing photographing, videotaping, audio recording, and broadcasting in the hallways, stairwells, elevators and other areas within any of the courthouse branches.

(10) Media Coverage in Courtrooms

Photographing, videotaping, filming, broadcasting inside of courtrooms shall continue to be governed by California Rule of Court 980 and any other rules established by the California Judicial Council.

E. Rule Violations

Violations of this local rule or any orders of the court may be addressed in the ways listed in subdivision (f) of California Rule of Court 980. Additionally, any media agency who violates any provision in Rule 980 or this local rule may be prohibited from photography, videotaping, filming, broadcasting or electronic recording of future court proceedings inside courtrooms. (Eff. 07/01/05)

1-108. USE OF CAMERA PHONES, OTHER PHOTOGRAPHIC EQUIPMENT AND AUDIO RECORDING EQUIPMENT

- A. This rule covers the use of any photographic, video and audio recording or transmission equipment by people not working in a media capacity. For purposes of this rule, photographic equipment includes, but is not limited to: cameras, camera phones, and video recording cameras.
- B. The use of photographic equipment and audio recording or transmission equipment in any courtroom, through a courtroom door window into any courtroom, or from an entryway into a courtroom is prohibited without the advance permission of the judge.
- C. The use of photographic equipment or audio recording or transmission equipment in any jury assembly room or juror deliberation room, through a window into such rooms, or into any such rooms from any vantage point outside of such rooms is prohibited without advance permission of the Presiding Judge, Jury Commissioner, or their designees.
- D. Photographing, videotaping, filming, and electronic recording of anyone wearing a juror badge anywhere inside a courthouse is prohibited. Photographing, videotaping, filming, and electronic recording of anyone standing in line awaiting entry into a jury assembly room is also prohibited.
- E. Photographing, videotaping, filming, and electronic recording of anyone involved in any case, including litigants, witnesses, and spectators, anywhere inside a courthouse is prohibited.
- F. Unless approved by written order of the presiding juvenile judge or a judicial officer designated by the presiding juvenile judge, photographing, videotaping, filming, broadcasting, and electronic recording is prohibited anywhere in the Juvenile Justice Center.

- G. The prohibitions against photographing, videotaping, filming, and electronic recording outside of a courtroom any persons listed in this rule do not apply if such person consents. Nothing in this rule shall be read to prohibit photography associated with weddings as long as persons who are prohibited from being photographed in this rule are not depicted in such photos.
- H. Photography, video and electronic recording equipment used in violation of this rule is subject to confiscation. Any person who is a party, witness, or attorney of a party and who violates this rule is subject to punishment under Code of Civil Procedure section 177.5. Any other person who violates this rule is subject to punishment for contempt of court. (Eff. 07/01/05)

1-109. COMMISSIONERS JUVENILE COURT REFEREES APPOINTED JUDGE PRO TEMPORE

Commissioners and Juvenile Court Referees of the San Joaquin County Superior Court are appointed Judge Pro Tempore in all matters calendared, or otherwise assigned, to them. They are granted full judicial power until a final determination of the matter. (Eff. 07/01/06)

The form of the posted notice is: "Commissioners and Juvenile Court Referees are appointed Judge Pro Tempore for all hearings and trials before them. Your appearance, without prompt notice to the contrary, constitutes your stipulation to this appointment, which grants full judicial powers until a final determination of the cause." (Eff. 01/01/04)

1-110. DANGEROUS, LARGE OR BULKY EXHIBITS

- A. Permission from the judge assigned to the hearing or trial must be obtained before a party may bring dangerous, large or bulky exhibits into the courthouse. If possible, the party should substitute a photograph, technical report, or dummy object for proposed exhibits which are either:
 - 1. Inherently dangerous, such as:
 - a. Firearms;
 - b. Any type of explosive powder;
 - c. Explosive chemicals, toluene, ethane;
 - d. Explosive devices, such as gasoline, kerosene, lighter fluid, paint thinner, ethylether;
 - e. Flammable liquids such as gasoline, kerosene, lighter fluid, paint thinner, ethylether;
 - f. Canisters containing tear gas, mace;
 - g. Rags which have been soaked with flammable liquids;
 - h. Liquid drugs such as phencyclidine (PCP), methamphetamine, corrosive liquids, pyramiding, morphine, or piperidine;
 - i. Samples of any bodily fluids, liquid or dried; or
 - j. Controlled or toxic substances.

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

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

- B. Evidence received in any case shall be limited to those items required in the case and shall be retained by the court for the minimum time required by law, unless good cause is shown to retain the evidence longer.
- C. No exhibits shall be accepted by the clerk or exhibits custodian unless:
 1. All containers of controlled or toxic substances are securely sealed to safeguard court personnel, so that the contents cannot be spilled and odors cannot be emitted;
 2. All containers of liquid substances, including bodily fluids, are securely sealed to safeguard court personnel, so personnel are not exposed to the contents and odors cannot be emitted;
 3. All objects containing bodily fluids or dangerous, controlled or toxic substances (e.g., bloody shirt, gasoline soaked rag, etc.) are placed in securely sealed containers so that odors cannot be emitted and court personnel are safeguarded.
 4. All firearms are secured by a nylon tie or trigger guard, and have been examined by the bailiff to determine that they have been rendered inoperable;
 5. All sharp objects, such as hypodermic needles, knives, and glass are placed in securely sealed containers which will safeguard personnel;
 6. All containers with liquid substances are clearly marked and identified as to type and amount;
 7. All containers of controlled substances are clearly marked, identified, weighed and sealed;
 8. All cash is specifically identified, whether individually or packaged, as to the total amount and number of each denomination.
- D. All exhibits must be individually tagged with the proper exhibit tag, properly completed and securely attached to the exhibit. Any exhibit improperly tagged, marked, weighed, or identified will not be accepted by the court. Unless otherwise ordered, unidentified or improperly identified liquids, containers, controlled substances, or other suspect substances shall be returned to the party offering them.
- E. When a dangerous, large or bulky exhibit that has been marked and identified or received in evidence poses a security, storage or safety problem, on recommendation of the clerk of the court or any party or the court's own motion, the court may order that all or a portion of it be returned to the party that offered it. In the case of exhibits offered by the prosecutor in a criminal case, the court may order that the exhibit be returned to the law enforcement agency involved. The order shall require that a full and complete photographic record of the exhibit or the portion returned by substituted for the exhibit. The party who offered the exhibit shall provide the photographic record. The party or

agency to whom the exhibit is returned shall be responsible for maintaining and preserving the exhibit until there is a final disposition of the action or proceeding. All exhibit tags and other identifying markings or information concerning each exhibit shall remain in place and shall not be disturbed. Each exhibit shall be maintained intact and in the same condition as during trial. In the event further proceedings of any court having jurisdiction of the matter require the presence of the exhibit, the party or agency to whom it was returned shall promptly deliver the exhibit to the court, with notice to all parties.

EXHIBITS

- A. Exhibits submitted by plaintiff, petitioner or the People should be marked consecutively with numbers. Exhibits submitted by defendant or respondent should be marked consecutively with letters.
- B. All exhibits must be individually tagged with the proper exhibit tag. Each exhibit tag must be properly completed and security attached to the exhibit. Any exhibit improperly tagged will not be accepted by the court. Original photographs or 8 1/2 x 11 inch copies shall be substituted for any photographically enlarged or oversized exhibits.
- C. Prior to the final determination of an action or proceeding, only attorneys of record, self-represented parties and court employees may view the exhibits. All other interested persons must obtain an order of the court to view the exhibits. Viewings shall take place in the presence of an exhibit custodian. Exhibits may not be altered or taken apart, except by court order.
- D. Any party to the action may seek temporary release of exhibits for copying or laboratory testing. An order for temporary release may be obtained by stipulation of the parties or by noticed motion. The party seeking the release may be obtained by stipulation of the parties or by noticed motion. The party seeking the release must present the original signed order and one copy to the exhibit custodian. The order must include the case number, names of the parties, name and telephone number of the person to whom the exhibits are to be released, a description of the exhibits, and the date the exhibits are to be returned. The party seeking release may be required to provide a full and complete photographic record of the exhibit before it will be released.
- E. Exhibits received in a criminal matter may be used in a civil action, upon stipulation signed by the prosecutor and criminal defense counsel (including appellate counsel, if applicable) or on noticed motion, with notice being given to all parties in the civil and criminal cases. The stipulation or motion shall bear the criminal case caption and number, be filed in the criminal case, and reference the civil case by name and number.
- F. On order of the court, at the conclusion of the trial or hearing, any exhibit that has been marked for identification but not introduced or received in evidence at trial, may be returned to the party that offered it. Counsel must preserve and maintain all returned exhibits until the time for appeal has passed.
- G. Exhibits received in evidence at the trial or a hearing in a criminal case may be returned by the court to the party who offered them, in accordance with Penal Code §§ 1417.2, 1417.3 and 1417.5. Exhibits received in evidence at the trial or a hearing in a civil case may be returned by the court to the party who offered them, in accordance with Code of Civil Procedure §§ 1952(a) and 1952.2. (Eff. 07/01/05)

1-111. JUDICIAL VACATION DAY DEFINED

Time away from the court for more than one-half day for vacation purposes shall be deemed as a full day of vacation.

1-112 SELECTION OF COURT COMMISSIONERS

The following procedure for the hiring of court commissioners is adopted by the judges of San Joaquin County:

1. Initial applications for commissioner positions shall be screened by the Human Resources Department to ensure applicants meet the minimum qualifications required for the position.
2. The presiding judge, with the advice of the Executive Committee, shall establish two committees for the purpose of first reviewing and selecting the most qualified applications and then interviewing candidates for the commissioner position. For each committee, the presiding judge shall select among judges who volunteer for the committees and shall choose at least one representative from those judges with a current criminal assignment, one with a current civil assignment and one judge who was formerly a commissioner. In the event the opening is for a 1058 commissioner, then the committees shall include a judge with family law experience. The number of judges who serve on each committee shall be at the discretion of the presiding judge.
 - a. The first committee shall review the qualified applications and select the applicants that the committee deems most qualified.
 - b. The second committee shall interview the applicants chosen by the first committee. This committee shall determine which of these applicants shall make a presentation to the entire bench.
3. The bench shall choose the most qualified candidate following a presentation by each of the applicants chosen by the second committee. (Eff. 07/01/10)

RULE 2. CRIMINAL

2-100. DISCOVERY IN CRIMINAL CASES

- A. Discovery in criminal cases is governed by Penal Code Section 1054, et. seq. It is the order of this court that all parties comply with the obligations set forth in those provisions. This order shall be in effect in all criminal cases and there shall be no need to seek a further order of the court prior to seeking enforcement of this order as long as the party seeking enforcement has made the 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 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:
 - (ii) contempt;
 - (iii) delaying or precluding the testimony or evidence;
 - (iv) continuance;
 - (v) jury instruction commenting on the party's failure to comply with their discovery obligations;
 - (vi) dismissal where required by the United States Constitution;
 - (vii) imposition of monetary sanctions on counsel. (Eff.07/01/98)

2-101. PRE-TRIAL MOTIONS

A. Felony Cases

Except for good cause, all pre-trial motions shall be filed and served within sufficient time to be heard and determined prior to the date of the first readiness conference.

B. Misdemeanor Cases

Except for good cause, all pre-trial motions shall be noticed by the parties or scheduled by the court for no later than a day in the week prior to the readiness conference.
(Eff. 07/01/98)

2-101.1 MOTIONS TO STRIKE PRIOR CONVICTIONS

To the extent that a motion to strike prior convictions based upon the validity of those convictions is authorized by statutory or decisional law, such a motion must be made pretrial within the time

prescribed in Rule 2-101(a). (Eff. 01/01/99)

2-102. MEMORANDUM OF POINTS AND AUTHORITIES

A. Facts and Issues

A memorandum of points and authorities must include a statement of the case and/or a statement of facts setting forth any procedural or factual matters relevant to the issues presented. The memorandum must clearly specify the precise factual and legal issues raised in the motion and the specific legal authority relied upon for the motion. If reference is made in the memorandum of points and authorities to the transcript of the preliminary hearing, the specific page and line number of the transcript shall be cited. If reference is made to the transcript of a hearing other than the preliminary hearing, a copy of the relevant excerpt of that hearing shall be attached to the memorandum of points and authorities.

B. Citations

Citations to California cases must be by reference to the official reports and should indicate the year of the decision, the volume number, the first page of the case, and the specific page or pages on which the pertinent matters appear. New California cases not yet published in the advance sheets may be cited by reference to the Daily Appellate Report. Copies of cases cited in the Daily Appellate Report must be attached to the memorandum of points and authorities.

If authorities other than California cases, United States Supreme Court cases, and Witkin are cited in the memorandum of points and authorities, a copy of such authorities must be attached thereto.

C. Previous Motions at the Preliminary Hearing

The moving party's memorandum of points and authorities shall state whether the motion was heard at the preliminary examination. If so, the moving party's memorandum of points and authorities shall specify the factual findings and legal conclusions made by the court.

D. 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. (Eff. 07/01/98)

2-102.1 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 rules 2-101, 2-102 and 1538.5 PC. The following requirements apply in addition to those specified in those rules:

1. 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.

2. 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.

3. 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.

4. 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.

5. 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 to the admission of the transcript into evidence. (Eff. 07/01/98)

2-102.2 DEMURRERS, MOTIONS TO DISMISS, MOTIONS TO STRIKE

In addition to the above requirements, defendants shall attach a copy of the current complaint, information, or indictment to the memorandum of points and authorities filed in support of any demurrer, motion to dismiss based upon the pleadings, or motion to strike. In addition, demurrers, motions to dismiss, and motions to strike shall specify in the notice whether the defendant seeks to dismiss or strike the entire complaint, information, or indictment. If the defendant does not seek to dismiss or strike the entire complaint, information, or indictment, the defendant shall set forth in the notice of motion the count, enhancements, allegations, special circumstances, or other aspects of the pleading defendant seeks to dismiss or strike. (Eff. 07/01/98)

2-103. MOTIONS AT TRIAL

A. Felony Cases

In felony cases, all motions in limine, any extraordinary or complex 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 one week 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 one week before the first trial assignment date. Any other in limine motions in misdemeanor cases may be made orally or in writing after assignment to 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.

- C. All evidentiary in limine motions necessitating testimony must be clearly labeled: LIVE TESTIMONY NECESSARY.
- D. 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.
 - 3. points and authorities as described in 2-102.
- E. All motions 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.(Eff. 01/01/08)

2-104. SANCTIONS

In the event of a failure to comply with 2-101, 2-102,2-102.1, 2-102.2, or 2-103, the court may impose sanctions including a monetary fine, a refusal to hear the motion, continuance, exclusion of evidence, issue preclusion, or any other relief or sanctions the court deems appropriate. (Eff. 07/01/98)

2-105. PRE-TRIAL CONFERENCES

A. Preparation of Attorneys

In felony and misdemeanor cases, the attorneys who attend the pre-trial conference should be thoroughly familiar with the case and authorized to make an offer for early resolution of the case. It is preferable that the attorneys assigned to the case attend the pre-trial conference. The assigned attorneys should review all existing investigative reports, preliminary hearing testimony, and rap sheets prior to the pre-trial conference.

B. Felony Cases - Pretrial Conference Questionnaire

In felony cases, the People shall be required to fill out a pre-trial conference questionnaire form. The form will be a standard form adopted for this court's use after consultation with the District Attorney's Office, Public Defender's Office and Lawyers Referral Service.

The People must serve and deliver the pretrial conference questionnaire to the courtroom where the conference is to be held no later than two court days prior to the scheduled pre-trial conference. Counsel for the defense are encouraged to submit a pre-trial conference questionnaire as well. These questionnaires shall remain confidential. (Eff. 07/01/98)

2-106. JURY INSTRUCTIONS

All requested instructions, including special instructions or modified CALJIC instructions, shall be presented to the trial court and served on opposing counsel at a time deemed appropriate by the trial court. Unless otherwise ordered by the trial court, all requested instructions shall be presented in their entirety and not simply referred to by CALJIC numbers. All special instructions shall be labeled People's Special Instruction or Defendant's Special Instruction and numbered sequentially. All proposed jury instructions shall comply with the California Rules of Court. (Eff. 07/01/98)

2-107. MATTERS IMPROPERLY SET FOR HOLIDAYS AND NON-JUDICIAL HOLIDAYS

A matter that is improperly set for a time other than as specified by these rules or as allowed by law will be automatically set for the next court day (unless that date would exceed the legal time limit) and then shall be continued by the court as is appropriate. (Eff. 07/01/98)

2-108. 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 Rule of Court 376. 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. (Eff. 01/01/99)

2-109. TAPE RECORDED PROCEEDINGS IN MISDEMEANOR CASES

- A. Unless a Certified Shorthand Reporter is present, all contested matters will be tape recorded. All other matters will be tape recorded only upon the request of a party.
- B. Where tape recorders are employed instead of court reporters to record proceedings, tapes shall be preserved by the clerk as follows:
 - 1. In all contested matters (motions and trials), tapes will be preserved until 60 days following final judgment. In cases involving multiple defendants, tapes will be preserved until 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 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 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. No fee shall be required of the court appointed counsel, District Attorney, or County Counsel. (Eff. 01/01/99)

2-110 ATTORNEY FEES IN CRIMINAL AND JUVENILE MATTERS

Payment to court appointed counsel in criminal and juvenile matters will be made in such amount and manner set forth in the "Payment Policy and Fee Schedule" of the Lawyer Referral Service, available from that office. (Eff. 07/01/99)

2-111 REQUESTS TO MODIFY JUDGMENT

Requests to modify judgment must be by a noticed motion, specifying the order sought and the support for it, filed with the clerk of the court not less than five (5) days in advance of the hearing date. Notwithstanding the foregoing, a noticed motion is not required for non-substantive modifications, for example, jail report date, fine due date, manner of fine payment, authorization to complete a commitment in another county. (Eff. 01/01/03)

2-112 CRIMINAL APPLICATIONS FOR TEMPORARY ORDERS FOR RELEASE OF INMATE DUE TO MEDICAL, DENTAL, FUNERAL AND OTHER APPLICABLE APPOINTMENTS

No application for an order allowing release from jail for medical, dental, funeral or other appointments shall be made ex-parte. All requests for release involving Stockton Branch cases shall be made to the presiding criminal judge. All requests for release involving Lodi, Manteca or Tracy branch cases shall be made to the sentencing judge, or if that judge is not available, the request shall be made to another judge sitting in the branch. The applicant must show by declaration that notice was given to the District Attorney's Office and the custodial institution.

A hearing date and time for the application and order must be made 24 hours in advance or within less time upon good cause by contacting the judge's courtroom clerk. (Eff. 07/01/06)

2-113 BAIL SCHEDULE RULE

Pursuant to Penal Code section 1269b, subdivision (d), the Court's Bail Committee is authorized to prepare, adopt and annually revise the Uniform County Bail Schedule as required by Penal Code section 1269b, subdivision (c) (Eff. 01/01/10).

RULE 3. CIVIL RULES

3-100. IMPLEMENTATION

These Civil rules are intended to implement the consolidation of the trial courts within San Joaquin County.

These rules shall prevail unless in conflict with the specific provisions of the Unification Agreement between the courts, entered into on May 22, 1997, or by other state statute. (Eff. 07/01/98)

3-101. DIRECT CALENDARING OF CIVIL CASES

UNLIMITED JURISDICTION CASES ONLY

- A. All cases described as personal injury, eminent domain, collection or other actions denominated as civil in nature shall be subject to assignment to a judicial officer for all purposes at the time of filing of the action. This section shall not apply to abandonment, adoption, mental health, petitions for approval of minors' compromises and family law cases. Nothing herein shall be construed to interfere with the Presiding Judge's authority to assign or reassign cases. This section also applies to writs. (Eff. 07/01/05)
- B. Cases which are subject to direct calendaring shall be numerically, by last digit of the court case number, assigned to a judicial officer for all purposes, who shall thereafter handle all proceedings involving the matter, including trial, except as otherwise provided or required by law. At the time of the initial filing of any case, the Clerk's office shall affix to the face of the complaint or petition, and also upon the face of the Notice of Case Management Conference, by stamp or other writing, the following notice:

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

Time limits for peremptory challenges of magistrates under CCP Section 170.6 for Plaintiffs shall be within ten (10) days after the filing of the complaint and receiving notice of the assignment, and for defendants, within ten (10) days after filing the first pleading or appearance. (Eff. 07/01/05)

3-102. ADMINISTRATION OF GENERAL CIVIL LITIGATION

NOT APPLICABLE TO LIMITED CIVIL CASES

- A. It is the policy of the San Joaquin County Superior Court:
 - 1. To manage all cases except civil petitions, probate, mental health, domestic and paternity actions from the time of filing the first document invoking court jurisdiction through final disposition.
 - 2. The time frame for unlimited civil cases is 75% within 12 months, 85% within 18 months and 100% within 24 months. (Eff. 07/01/06)
 - 3. To use these rules as outside limits in the management of civil cases. Parties are encouraged to proceed at a more accelerated pace, especially in those cases involving promissory notes, simple breach of contract, money due and other cases susceptible to early disposition. In such cases, a party may file its own at-

issue memorandum prior to case management conference to secure an early trial date.

4. Nothing in this section shall prevent the court from issuing an exception order based on a specific finding that the interest of justice requires a modification of the routine processes as prescribed.
5. Uninsured motorist (California Insurance Code Section 11580.2) and eminent domain cases shall be deemed exempt from this rule upon the filing by plaintiff of a Declaration of Exemption (Form Sup. Ct.56). Plaintiff is required to file a dismissal within ten (10) days after receipt of monies or 60 days after the arbitration hearing in all uninsured motorist cases.
6. All civil cases filed which are statutorily limited civil cases shall remain subject to the "Economic Litigation Rules" (CCP Section 90, et seq.) regardless of which department or magistrate handles such case. (Eff. 07/01/05)

B. PROCEDURE

1. Any party seeking a change of hearing date set under this section must file a written application containing a showing of good cause together with a proposed order five (5) court days in advance of the hearing.
2. Order to show cause hearings for violations of these rules will be held by the assigned judge approximately 20 days from the mailing of the order to show cause.
3. Written response to orders to show cause must be filed five (5) court days in advance of the hearing.
4. If a written response to an order to show cause is filed before the hearing, NO appearance will be required. Counsel will not be penalized for nonappearance if a written response is on file (i.e., increase of sanctions or less weight given to reasons for non-compliance). All communications regarding orders to show cause shall be in writing, not by telephone.
5. All stipulations for request to continue any proceeding shall be signed by all attorneys involved in the case.

C. RESPONSIVE PLEADINGS

1. If a Certificate of Inability to Respond is timely filed the court will conduct a hearing to determine a date when response must be filed.
2. If the responsive pleading is a demurrer and the demurrer is overruled, the court shall fix the time for filing a further response. If a demurrer is sustained with leave to amend, the court shall fix the time for filing an amended pleading and may fix the time for filing a response.

Absent the filing of responsive pleadings, the plaintiff is required, within 10 days after the statutory times for filing the responsive pleadings, to request the entry of default. Upon the plaintiff's failure to request entry of default, as here provided, an order to show cause will issue as to why sanctions should not be imposed, unless a written stipulation and order to set aside the default has been filed with

the court. Said stipulation shall not extend the time restraints of the status conference or filing of the at-issue memorandum.

After entry of default, plaintiff must set the matter for default hearing or submit a declaration under Code of Civil Procedure section 585 within 30 days or the matter will be dismissed.

D. STAYS OF ACTION/ALTERNATIVE DISPUTE RESOLUTION REQUIREMENTS

1. To stay any action pending any type of alternative dispute resolution (ADR), stipulations and proposed orders must provide that the ADR shall be binding and that a dismissal of the entire action will be filed.
2. Any stay for ADR shall not exceed one hundred eighty (180) days.
3. The filing of a Notice of Filing of Petition for Removal to the Federal Court, prior to the trial setting conference, will result in the court staying the action for a period of ninety (90) days pending remand.
4. The stay provided by 11 U.S.C. Section 362 shall not affect this section. (See 3-102(d))

E. EXTENSIONS BY THE COURT

1. The court may extend any time standard set forth in these rules upon a showing of good cause on noticed motion or ex-parte appointment with the assigned judge.

"Good cause" includes the existence of those conditions stated in C.C.P. section 583.240. When applying to the court to extend time for service of process based on the conditions stated in C.C.P. section 583.240, plaintiff shall suggest to the court the earliest time within which the impediment to service may reasonably be eliminated so that the court is able to continue its supervision of the case on a date certain.
2. Further, in all civil actions, "good cause" for an extension of time to serve the defendant with process is established where plaintiff's declaration affirmatively shows that defendant's insurance carrier or other authorized representative has been advised that an action has been filed and that settlement negotiations are in progress which could resolve the case without further litigation. Upon such showing, it is the policy of the court to extend the time for service of the complaint to a date certain, within which time it appears reasonable that negotiations can be concluded.

F. CASE MANAGEMENT CONFERENCE (CMC)

1. Upon filing a complaint, the plaintiff shall receive the following from the clerk:
 - (a) Summons and complaint,
 - (b) Notice and date of the first case management conference (the first conference will be set within 150 days of the filing date of the original complaint), and
 - (c) a blank Case Management Conference Statement (CMCS).

Any cross-complainant naming new parties will also receive a notice of case management conference and a blank CMCS.

If a case is transferred from another jurisdiction after a responsive pleading has been filed, the first status conference will be set within 45 days from the order of transfer. If no responsive pleading has been filed, the first case management conference will be set within 90 days from the Order of Transfer. In all other particulars, the plaintiff in a transfer case will receive the same information and items as described above.

2. At the time of serving the summons and complaint (and a cross-complaint upon a new party) the responding party shall be served with the notice of the case management conference and a blank CMCS by the plaintiff.
3. Each appearing party shall file and serve the completed Case Management Conference Statement at least fifteen (15) calendar days prior to the hearing. (Eff. 07/01/06)
4. The assigned judge shall conduct the case management conference, at which each trial attorney, or attorney familiar with the case, and each self-represented party must appear. At the CMC, the court may make all orders it deems appropriate, including but not limited to any one or more of the following:
 - (a) A preliminary determination regarding judicial arbitration or Alternative Dispute Resolution (ADR);
 - (b) Transfer to another court;
 - (c) Designating the case as "complex litigation";
 - (d) Order an early settlement conference;
 - (e) Order a trial setting conference; or
 - (f) Order the setting of a "short cause" court trial.
5. If none of the parties object to the court referring the matter to arbitration (and therefore without limit) and both sides have initiated discovery, no appearances will be required at the case management conference.
6. If a case is not ordered to judicial arbitration, the court will order a trial setting conference date.
7. Any attorney who practices out of county may appear at the case management conference telephonically and, when this occurs, local attorneys have the same option.
8. The court will consider those factors outlined in Judicial Council Rule 2106 in evaluating a management plan for each individual case

G. COMPLEX LITIGATION

1. A complex case is one which involves complex issues, difficult legal questions or unusual proof problems.

2. The court, on its own motion, may at any time declare an action a complex case, or may do so pursuant to motion by a party.
3. Once a case is designated as complex by the court, it shall be assigned to a judge for all purposes, including trial.

H. ARBITRATION DETERMINATION

1. Cases are ordered to arbitration at the case management conference. (Eff. 07/01/06)
2. Parties shall be noticed with a trial setting conference date once a request for trial de novo has been filed. The trial setting conference will be held approximately 21 days from the request for trial de novo.

I. TRIAL SETTING CONFERENCE

1. If a case is not ordered to arbitration at the case management conference, the assigned judge will set the case for a trial setting conference.
2. Each trial attorney or attorney familiar with the case and self-represented party must attend, at which time the assigned judge will set any final deadlines for completion of discovery. A trial date shall be assigned with a mandatory settlement conference being set 15 to 30 days prior to trial. Settlement conferences will be governed by Rule 3-104.
3. All trial attorneys or attorneys familiar with the case and self-represented parties shall attend trial setting conference, unless a Declaration in Lieu of Personal Appearance has been filed. Said declaration must be filed with the Court Clerk's Office at least ten (10) days prior to the trial setting conference.

J. SANCTIONS

1. If the court finds that any party has not proceeded with due diligence or otherwise failed to comply with this rule, sanctions may be imposed pursuant to Government Code section 68608(b). (Eff. 01/01/03)

3-103. TELEPHONE APPEARANCES

- A. Subject to the provisions of this rule, parties may appear at case management conferences, law and motion hearings, and fast track hearings by telephone. For ex- parte matters, only defendants or respondents may appear by telephone.
- B. All persons appearing telephonically must use the telephonic services designated by the court.
- C. Each party or counsel wishing to appear by telephone shall be available on the date of the hearing at the designated time and shall be responsible for contacting the teleconferencing service. Such party or counsel shall remain available until completion of the hearing of the matter. Failure to remain immediately available as required by these rules will be deemed a non-appearance at the hearing and may result in sanctions.
- D. For good cause shown, the court may deny a request for telephone appearance, or require that a party or counsel be personally present at any hearing. (Eff. 01/01/03)

3-104. SETTLEMENT CONFERENCE PROCEDURES

Section 1: Settlement Conference Statements

Each party must file with the court and serve all other parties with a Settlement Conference Statement at least ten calendar days prior to the hearing. In addition to the items required by California Rules of Court, Rule 222 (d), the Settlement Conference Statement shall contain a concise summary of the case, a description of the matters agreed upon and the matters in dispute, and the factual and legal contentions as to the matters in dispute. In a personal injury action, the statements shall set forth the medical condition of the party(s), medical treatment received and by whom, a listing of the medical bills, the amount of the general damages claimed and supporting documentation, offers and counter offers of settlement and all other information which will assist the court in settling the case.

Section 2: Necessary Preparation

All discoveries should be completed prior to the hearing. If there is a dispute which requires an accounting, the accounting should be completed. If there is a material dispute as to the value of property, appraisals must be completed. If there is a substantial dispute as to medical condition of a party, all medical examinations should be completed.

Section 3: Materials to be Brought to Conference

In a personal injury case, copies of medical reports, copies of medical bills, and if loss of earnings are claimed, documentation therefore is to be brought to the conference. If economists are to be used to support loss of earnings, a copy of the economists' reports and all other material necessary to substantiate general and specific damages will be required. In other cases, copies of accountings, appraisals and other documentation will be required.

Section 4: Duties of Attorneys and Parties Attending Settlement Conferences

- (a) Each party claiming damages shall furnish to all other parties at least ten days before the settlement conference, the amount of general damages claimed, an itemized list of special damages and medical billings, and in a personal injury or wrongful death case, a settlement offering.
- (b) The trial attorneys shall attend the conference. If this is not possible, the attorney attending the conference shall have a thorough knowledge of the case and shall be prepared to have the authority to negotiate settlement. All parties, and when a party is insured, a representative of the insurance company who has authority to settle a case, shall attend the conference. The court may excuse the attendance of a party or insurance company representative for good cause, such as excessive distance, if the person excused agrees to be immediately available by telephone at all times during the conference.
- (c) Each attorney shall have read, considered, and be ready to respond to the Settlement Conference Checklist, set forth in Rule 3-104, Section 5, immediately following.

Section 5: Settlement Conference Checklist

- (a) Upon notification of a settlement conference date, recheck:
 - 1. California Rules of Court
- Rule 222 - Mandatory Settlement Conferences

Rule 225 - Duty to Notify Court of Disposition

Rule 227 - Sanctions

2. San Joaquin County Unified Court Local Rules, Rule 3-104.

(b) Review and evaluate liability (what a jury is likely to do).

1. Consider and itemize strong liability points.
2. Consider and itemize weak liability points.
3. Consider facts which depend on conflicting testimony.
4. Consider facts which depend on testimony of witnesses weak on credibility.
5. Are there factual contentions on your side which will be difficult to prove?
6. Are there factual contentions of your opponent which will be difficult to prove?
7. Have you discussed your factual contentions with opposing counsel and considered his/hers?
8. Consider law applicable to liability.
 - a. Is there a dispute as to law re liability?
 - b. Have you discussed your legal contentions with opposing counsel and considered his/hers?
9. Take into consideration liability factors for the type of case.
10. Rate liability on a scale of 0% liability to 100%.

(c) Review and evaluate damages (what a jury is likely to do.)

1. Have current medical reports on all claims of injury and all medical reports prepared by any doctor.
2. Itemize special damages and total. Attach copies of each bill or originals.
3. Itemize possible future special damages and total. Attach report and other data showing basis of claim of future special damages as to dollar amount.
4. Supply opposing counsel with copies of all medical reports and your itemization of special damages to date and future special damages at least ten (10) days before settlement conference.
5. Itemization of claimed injuries and evaluation of extent of each injury:
 - a. Temporary or permanent
 - b. Disabling or non-disabling
 - c. Disfiguring or not

6. Consideration of whether future medical care of time will improve physical condition.
7. Your range of estimation of verdict range assuming liability.
8. Your reduction of verdict range for:
 - a. Comparative negligence
 - b. Problems of proof of injuries claimed
 - c. Reduction for your liability rating
9. Consider verdict range for the injuries in this case.
10. Give opposing counsel, in writing, your settlement figure at least ten (10) days before settlement conference.
11. Have you discussed your settlement figure with opposing counsel and considered his/hers?
12. Have you discussed your settlement figure with your client within one (1) week of the settlement conference?
 - (d) Counsel should be prepared to respond to questions by the court as to matters referred to in this Settlement Conference Check sheet. (Eff. 07/01/98)

3-105. PROPOSED FINDING, ORDER, JUDGMENT OR DECREE

Unless otherwise ordered by the court, the preparation of the order of finding, order, judgment or decree shall be in accordance with Rule 391 of the California Rules of Court. (Eff. 07/01/98)

3-106. EX PARTE APPLICATIONS AND ORDERS

Except as provided in this rule and in Rule 3-120, no application for an order shall be made ex parte unless the applicant shows by written declaration under oath either that a reasonable effort has been made to give notice to the adverse party or attorney, that notice would be inappropriate or impractical or would result in irreparable injury, or that the order would not result in a significant direct burden or inconvenience to the adverse party.

A hearing date and time for ex-parte applications and order must be made in advance. Reservations may be made by telephoning the calendaring division of the Superior Court Clerk's office at (209) 468-2867.

Temporary restraining orders to prevent personal harassment may be granted ex-parte upon a proper showing.

Every application for an order made ex-parte shall be accompanied by a written declaration under oath, made by a person with knowledge of the facts, stating the facts for determining the amount of a bond and any facts supporting any requested waiver of a bond. The declaration shall state the maximum loss, including any attorney fees, which is likely to occur from the granting of the order. (Eff. 07/01/98)

3-107. PETITION AND ORDER FOR APPOINTMENT OF GUARDIAN AD LITEM

In cases where a minor, or other person for whom a guardian ad litem will be necessary, is the plaintiff, the Petition to Appoint Guardian Ad Litem shall be filed simultaneously with the complaint and the summons to be issued. The summons shall not be issued until the Order Appointing Guardian Ad Litem has been signed. (Eff. 01/01/09)

3-108. PLEADINGS AND RECORDS IN EMINENT DOMAIN PROCEEDINGS

A. Proceeding involving more than one parcel of property.

1. Pleadings- In proceedings involving more than one parcel of property, the complaint shall set forth in addition to the matters required by Code of Civil Procedure, section 1250.310, numbers or symbols identifying each parcel of property. An answer, demurrer, disclaimer, written appearance, or other pleading shall set forth, in the space below the number of the case and in parentheses, the parcel numbers or symbols that identify the property claimed by that defendant.
2. Copies of Pleading - Within seven (7) court days after service of each defendant's initial pleadings, the plaintiff shall file a duplicate copy of the complaint, summons, lis pendens and other documents.
3. Index - The Clerk shall include in the index opposite the name of each defendant the numbers or symbols identifying the property in which each defendant is alleged to have an interest.
4. Waiver of Requirements - The court may, for good cause shown, order any paper to be filed without a parcel number or symbol.

B. Petition for possession prior to judgment or for withdrawal of funds.

A petition for possession prior to judgment or for withdrawal of funds shall include an original and one copy of the proposed order. A petition for possession prior to judgment shall also include a declaration or affidavit setting forth the facts supporting the condemner's right to such possession and the facts showing the just compensation for the taking of the property and any damages incidental thereto. In proceedings involving more than one parcel of property, the plaintiff, in accordance with Section a.2, shall file a copy of the petition and other documents for each defendant appearing in the case.

C. Application for final order of condemnation.

An application for final order of condemnation shall be made upon notice to all parties appearing in the action or upon the stipulation of such parties, and it shall include an original and one copy of the proposed final judgment. (Eff. 07/01/98)

3-109. DEATH OF A PARTY

When a party to an action dies, the attorney for that party shall forthwith serve and file a notice of death and pendency of probate proceeding, if any. (Eff. 07/01/98)

3-110. CLAIM OR ACTION ON BEHALF OF A MINOR OR DISABLED PERSON

Where there is a judgment or settlement of claim, including a covenant not to sue, relating to a minor or a person with disability, as defined by Probate Code section 3603, the procedures set

forth in these rules in Part Eight of the Probate Rules, commencing with 4-801, apply.
(Eff. 01/01/09)

3-111. ATTORNEY FEES IN ACTIONS ON PROMISSORY NOTES, CONTRACTS PROVIDING FOR
PAYMENT OF ATTORNEY FEES, AND FORECLOSURES

The following attorney fees shall, under normal circumstances, be awarded in actions on promissory notes, contracts providing for the payment of attorney's fees, and foreclosures:

A. Default Action on Note or Contract- Exclusive of costs:

25% of first \$1,000 with minimum fee of \$150

20% of next \$ 4,000

15% of next \$ 5,000

10% of next \$10,000

5% of next \$30,000

2% of the amount over \$50,000

In an action upon contract providing for an attorney fee, the Clerk shall include in the judgment an attorney fee in accordance with this schedule.

B. Contract Based Upon a Book Account

Reasonable attorney fees for the prevailing party bringing the action on the book account shall not exceed the lessor of: (1) EIGHT HUNDRED DOLLARS (\$800) for book accounts based upon an obligation owing by a natural person for goods, moneys, or services which were primarily for personal, family or household purposes; and ONE THOUSAND DOLLARS (\$1,000) for all other book accounts to which this section (Civil Code section 1717.5) applies, or (2) 25% of the principal obligation owing under the contract.

Whenever the obligation sued upon provides for the recovery of reasonable attorney fees, the fees may be set according to the schedules below in default judgment cases and may be looked to as a guide to reasonable attorney fees in contested matters. In any case where the attorney feels he or she is entitled to fees in excess of the schedule, he or she may apply to the court and the fees shall be fixed in accordance with the proof. (Eff. 01/01/08)

C. Contested Action on Note or Contract

The same amount as computed under subdivision a., increased by such reasonable compensation computed on an hourly or per-day basis for any additional research, general preparation, trial, or other services as may be allowed by the court.

D. Foreclosure of Mortgage or Trust Deed

The same amount is computed under subdivision a. or b. increased by 10 percent.

E. Foreclosure of Assessment or Bond Lien Relating to a Public Improvement

The same amount as computed under subdivision a. or b. except that the minimum fee shall be \$75.00 in an action involving one assessment or bond, and an additional \$40.00 for each additional assessment or bond being foreclosed in the same action. (Eff. 01/01/04)

- F. In actions for unlawful detainers for possession of residential property, except for property governed by Civil Code section 798, et seq., the attorney's fees awarded by the court will not, under normal circumstances, exceed THREE HUNDRED DOLLARS (\$300).

3-112. ORDERS SHORTENING TIME

The court will not shorten time for service of orders to show cause and notices of motion except upon a written declaration or affidavit clearly showing the necessity therefore through an ex-parte hearing or by stipulation. (Eff. 01/01/02)

3-113. CIVIL LAW AND MOTION

- A. Except where there is an order setting the date, the moving party must call the Law and Motion clerk to reserve the date of hearing at 468-2867 subject to mandatory time provisions of statutes and Rules of Court. Motions are heard Tuesdays through Fridays at 9:00 a.m. (Eff. 01/01/02)

(STOCKTON BRANCH ONLY)

- B. Matters not requiring more than fifteen (15) minutes may be set for the 9:00 a.m. calendar on Tuesdays through Fridays. Special settings may be made by the courtroom clerk with prior approval. (Eff. 01/01/03)
- C. Other than in contempt matters or where allowed by statute, evidence shall be presented by matters of which the court may or must take judicial notice, affidavits, and declarations, unless prior arrangements are made with the court for the taking of oral testimony.

(STOCKTON BRANCH ONLY)

- D. Judges assigned to civil law and motion matters will prepare a tentative ruling for each matter on calendar and a ruling will be available to counsel and litigants on the first court day before the scheduled hearing. If the tentative ruling is satisfactory to counsel, he or she need not appear and the tentative ruling will become final. If counsel wishes to appear, he or she may do so only after appropriately notifying the court and other counsel of that intent.

The tentative ruling shall become the ruling of the court unless there is opposition by counsel. Counsel is responsible for reviewing the tentative ruling and notifying the superior court, by calling (209) 468-2867, and all other counsel no later than 4:00 p.m. on the day preceding the scheduled hearing of his or her intent to appear to argue. (Eff. 01/01/03)

The tentative rulings will be recorded on a telephone answering machine and posted to the court's web page. Counsel or litigants may call the court or access the court's website beginning at 1:30 p.m. on the court day immediately preceding the date for which a matter is calendared. On a specially provided phone number a continuous play tape recording will provide the following for cases on the next day's calendar:

- (1) a tentative ruling in each case;

- (2) instructions for responding to the tentative ruling;
- (3) information as to whether the court is inviting counsel or parties to appear for limited argument.

In addition, the tentative rulings will be posted outside each law and motion courtroom and on the third floor calendar board.

Tentative rulings in all cases will be available beginning at 1:30 p.m. on the court day preceding the scheduled hearing by calling (209) 468-2868 or logging onto the court's website: www.stocktoncourt.org.

Matters may be continued by stipulation up to five court days before the hearing date by contacting the calendar unit of the superior court at (209) 468-2867. To prevent the judges from unnecessarily preparing matters to be continued, court approval will be required before a continuance will be allowed when the request for continuance is made within five court days of the scheduled hearing.

It is imperative that format requirements and the time limits for filing motions and supporting or opposing papers, as set forth in the Code of Civil Procedure and the California Rules of Court, be followed. The court will strictly enforce these requirements and sanctions may be imposed for failure to comply. (Eff. 01/01/03)

- E. When reserving a hearing date for a summary judgment motion, the moving party shall contact the law and motion division of the clerk's office and reserve a date for the hearing that is at least seventy-five (75) days prior to the date on which the motion and supporting papers will be served on all other parties to the action. If a trial date has been scheduled, the hearing date shall also be at least thirty (30) days before the scheduled trial date. If the motion and supporting papers are to be served other than by personal service, the seventy-five (75) day period shall be increased as set forth in California Code of Civil Procedure section 437c(a). (Eff. 07/01/06)

Once a hearing date is reserved, and if the summary judgment motion is set within thirty (30) days of a trial date, the parties cannot stipulate to its being continued. If a continuance is necessary, the parties shall seek an ex-parte order from the judge before whom the motion is pending. (Eff. 07/01/06)

3-114. CHAMBERS CONFERENCES AND EX PARTE MATTERS

- A. Chambers conferences and hearings regarding ex-parte matters should be scheduled only with the approval of the Law and Motion Judge or his clerk through the Superior Court Clerk's office. (See Rule No. 3-106.)
- B. When ex-parte relief, other than that involving attachments, is sought, opposing counsel (or if unknown, opposing parties) should be given reasonable notice, orally or in writing, of the time and place that such application will be made, unless there is good cause for proceeding without notice, so that an informal hearing or conference may take place. Applicant's counsel should be prepared to explain to the court the efforts which have been made to give this informal notice, or the reasons supporting a claim that notice should be required.
- C. Temporary restraining orders, stay orders, and appointments of a receiver will be granted only if the moving party or counsel is personally present.

- D. Orders staying a Department of Motor Vehicles suspension or revocation will not be considered unless the petitioner's driving record is made available to the court.
- E. Declarations should be submitted setting forth facts bearing on the amount of probable damage, upon which the court may determine the amount of probable damage, upon which the court may determine the amount of bond, in any case where a bond may be considered or required. (Eff. 07/01/98)

3-115. PAGE LIMIT FOR PRETRIAL MEMORANDUM OF POINTS AND AUTHORITIES

Except in a summary judgment or summary adjudication motion, no opening or responding memorandum of points and authorities shall exceed 15 pages in length. In a summary judgment or summary adjudication motion, no opening or responding memorandum of points and authorities shall exceed 20 pages in length. No reply or closing memorandum of points and authorities shall exceed 10 pages in length. The page limit shall not take into account exhibits, declarations, attachments, and a table of contents. A party may apply to the court, ex-parte but with written notice of the application to the other parties, at least 24 hours before the memorandum is due, for permission to file a longer memorandum. The application shall state reasons why the argument cannot be made within the 15-page limit. A memorandum of points and authorities that exceeds 10 pages shall include a table of contents and table of authorities. A memorandum of points and authorities that exceeds 15 pages shall also include an opening summary of argument. A memorandum that exceeds the page limits of these rules shall be fined and considered in the same manner as a late filed paper. (Eff. 07/01/98)

3-116. JURY FEES AND EXPENSES

- A. Standard Panel Size- A standard jury panel in a civil case shall be 60 jurors. The size shall be increased only upon the request of the party demanding the jury and by order of court. (Eff. 07/01/99)
- B. Refund of Jury Fee Deposits - If a case is settled, continued or dismissed and the court is so notified on or before the day of trial, the Jury Fee Deposit will be returned upon a letter requesting refund within 20 business days of the dismissal, continuance or settlement pursuant to Section 631.3 CCP. (Eff. 07/01/99)
- C. Reimbursement for Voir Dire Jurors - The party who has demanded a jury in a civil case shall reimburse the county for the fees and mileage incurred for jurors. No fees or mileage reimbursement will be required for jurors on the first day of jury service, except for those who are sworn to hear the trial. Reimbursement will be made for all jurors serving more than one day. (Eff. 07/01/05)

3-117. "RESERVED FOR FUTURE USE"

3-118. "RESERVED FOR FUTURE USE" (Eff. 07/05)

3-119. "RESERVED FOR FUTURE USE" (Eff. 07/05)

3-120. SUBSTITUTE SERVICE

If service is at a party's residence, one attempt of serve must be at a time other than usual business hours, i.e., other than between 9:00 a.m. and 5:00 p.m. The substituted service could then be executed on a new calendar day following the second attempted personal service (Eff. 07/01/05).

3-121. ARBITRATION

Any Municipal or Superior Court civil case filed after the operative date of this rule shall be submitted to arbitration pursuant to this rule upon order of court, stipulation of counsel or Plaintiff's election, where, in the opinion of the court, the amount in controversy does not exceed twenty-five thousand dollars (\$25,000) for each Plaintiff in Municipal Court cases or fifty thousand dollars (\$50,000) for each Plaintiff in Superior Court cases. Court ordered arbitrations are not subject to these limits in Superior Court. The Judicial Arbitration program is administered by the Court under the provisions of Sections 1140.10 through 1141.31 CCP and 1600 through 1618 CRC.

The provisions of this rule shall not apply to Municipal Court collection agency cases and any section exempt from arbitration pursuant to Rule 1600.5, and based upon the discretion of the individual judges.

A case may be ordered to arbitration at status conference from information submitted on the status conference questionnaire. Long cause cases not ordered to arbitration from status conference shall be set for trial. If a referral to arbitration is desired prior to the status conference, an at-issue memorandum/memorandum to set case for trial may be filed and the case may be ordered to arbitration from the information submitted thereon. (Eff. 07/01/98)

3-122. CONTINUANCE OF MATTERS ORDERED TO ARBITRATION

The continuance of arbitration hearings once scheduled is disfavored. Keeping within the provisions of CRC 1607(c), a first continuance may be granted by the arbitrator not to exceed forty-five (45) days. A second continuance, however, cannot be had except by stipulation showing good cause and signed order of a judge.

In all instances in which a continuance is requested, the arbitrator must be given at least five (5) days' notice. If sufficient notice is not given, the arbitrator may impose sanctions in the amount of \$150 on the party seeking the continuance. These sanctions will be paid to the court's arbitration division, who shall then pay them to the arbitrator.

No penalty will be imposed when the arbitrator is advised less than three (3) days prior to the hearing that a case has been dropped or settled. (Eff. 07/01/98)

3-123. SETTING AFTER REQUEST FOR TRIAL DE NOVO

When a request for trial de novo has been timely filed, the case will be restored to the civil active list and set for the earliest available trial setting conference. If the case is within six (6) months of the expiration of the statutory period, it shall be given the earliest available trial date. (Eff. 07/01/98)

3-124. PAYMENT OF ARBITRATORS

The arbitrator's award or a notice of settlement must be timely filed with the Arbitration Administrator before a fee may be paid. The arbitrator shall receive the sum of \$150 for each case as a fee for services. If the arbitration hearing extends beyond one day, the arbitrator is entitled to \$150 per day for each additional day or portion thereof. (Eff. 07/01/98)

3-125 CIVIL MEDIATION PROGRAM

A. Civil Mediation Program

The Civil Mediation Program is a voluntary court-connected program designed to deliver high-quality affordable mediation services to attorneys and litigants in general civil cases. Mediation gives litigants a voice in settlement decisions and thereby allows them to play a more direct role in managing the outcomes of their own cases. The Superior Court of California, County of San Joaquin, is pleased to offer this important and valuable option for resolution of litigation.

B. Eligibility

All types of general civil cases are eligible to participate in the Civil Mediation Program. Please see California Rules of Court, Rule 1.6(4) for the definition of “general civil cases”.

C. Stipulation to Mediation

1. Parties at any time may stipulate to participate in mediation.

All parties stipulating to mediation must complete a Stipulation and Order to Participate in ADR form and file it at the Clerk’s Office. An original and a copy for the Court’s use shall be submitted to the Clerk’s Office.

There is no filing fee for the filing of the stipulation. An incomplete stipulation will be returned to the parties by the Clerk’s Office. All stipulations must include the following:

- a) Original signatures for all attorneys (and/or parties in pro per);
- b) The name of the mediator;
- c) Date of the mediation session; and
- d) Service List (Counsel need not serve the stipulation on parties)

Parties mutually agree on a mediator and schedule the mediation session directly with the mediator.

2. Filing the Stipulation Prior to an Initial Case Management Conference

To stipulate to mediation prior to the initial case management conference, parties must file a completed stipulation at least **ten (10) days** before the scheduled case management conference. The clerk will send notice of a new case management conference date approximately **one hundred and twenty (120) days** from the current date to allow time for the mediation process to be completed.

3. Filing the Stipulation Following a Case Management Conference

When parties come to an agreement at a Case Management Conference to utilize mediation, they have **21 days** from the date of the case management conference to file a Stipulation and Order to ADR with the Court.

If the Stipulation and Order to ADR is not filed with the Court within the time allowed, the Clerk will send out an Order to Show Cause to have the parties appear in Court and explain why the Stipulation and Order to ADR has not been filed.

D. Selection of Mediator

Parties choose a mediator who is mutually agreeable based on the mediator's experience, market rate, and other information listed on the Mediator Panel List. Parties are not, however, limited to choosing a mediator from the Court's panel and may select a mediator based on their own research.

E. Mediators

1. Mediator Qualifications

Court panel mediators appointed to the Court Panel must meet specific requirements related to basic training and experience. The following are the requirements needed to qualify to become a Court panel mediator:

- a) Track A- An attorney in good standing with the California Bar Association AND have completed Pepperdine University School of Law's Straus Institute for Dispute Resolution 42-hour training program organized through San Joaquin County Superior Court.
- b) Track B- An attorney in good standing with the California Bar Association AND have completed at least 5 days (40 hours) of continuous, participatory education or training including role playing in mediation AND have participated as a mediator or co-mediator in at least 5 mediations.
- c) Track C- An attorney in good standing with the California Bar Association AND have completed at least 2 days (16 hours) of continuous, participatory education or training including role playing in mediation AND have participated as a mediator or co-mediator in at least 15 mediations.
- d) Track D- Provide other satisfactory evidence of mediation skills and experience.

2. All mediators must:

- a) Comply with California Rules of Court §§3.850-3.860, 10.780-10.782;
- b) Agree to conform to the Court's Ethical Standards of Professional Conduct; and
- c) Comply with the Court's rules and procedures for the Civil Mediation Program, as determined by the ADR Committee.

F. Mediation Fees

The Civil Mediation Program is a party-pay system. Parties pay the market rate set by their selected mediator. Mediators serving on the Court's panel have their rates published on the Panel List.

G. Confidentiality

Except as provided below, Court-connected mediation shall be confidential and subject to the mediation privilege set forth in Evidence Code sections 703.5 and 1115-1128. Except

as provided below, no communications made in connection with mediation, including the evaluation, may be disclosed to the assigned judge or to anyone else not involved in the mediation, unless otherwise agreed to by all parties.

This rule does not prohibit:

1. disclosures as may be stipulated by all parties and the mediator;
2. a report to or inquiry by the ADR Administrator concerning a complaint against an mediator;
3. the evaluator from discussing the mediation session with the Court's ADR staff, who shall maintain the confidentiality of the mediation session;
4. any participant or the mediator from responding to an appropriate request for information made by persons authorized by the ADR Committee to monitor or evaluate the Court's ADR program;
5. disclosures as are otherwise required by law.

The mediator shall require the parties and all persons attending the mediation session to sign a confidentiality agreement on a form provided by the Court.

H. Post-Mediation Evaluations and Forms

All *Post-Mediation Evaluations* will NOT be filed in the Court's file. The information collected will be used to assess the impact of the program on the Court, to track quality, to provide feedback to mediators and to inform the Court's decisions regarding redesign of program procedures. This information will be aggregated for blind statistical reports to the Judicial Council, the Court and the community. Additionally, information collected in the Evaluation will not be shared with the involved parties.

1. Mediators- All mediators shall complete and submit a *Mediator Post-Mediation Evaluation AND Statement of Agreement or Non-agreement form (Judicial Council Form ADR-100)* within **ten (10) days** of the mediation session regardless of the outcome of the case mediated. The *Statement of Agreement or Non-agreement* shall be filed in the Court's file. This form must be used by mediators in Court-connected ADR programs.
2. Attorneys- All attorneys shall complete and submit an *Attorney Post-Mediation Evaluation* within **ten (10) days** of the mediation session regardless of the outcome of the case mediated.
3. Parties- All parties shall complete and submit a *Client Post-Mediation Evaluation* within **ten (10) days** of the mediation session regardless of the outcome of the case mediated.

I. Modification to the Program

The Court may publicize additional procedural requirements and guidelines for the San Joaquin County Superior Court Civil Mediation Program, as it deems necessary for the successful implementation of the program. Such further rules and procedural requirements will be timely published by the Court on the Court's web page www.stocktoncourt.org and will be made available to attorneys at the clerk's office upon their publication. (Eff. 05/01/09)

RULE 4. PROBATE

PART ONE

GENERAL PROCEDURAL GUIDE

4-101. ALL PETITIONS

A. Calendaring

Petitions shall be set as follows: 1) all Decedent's Estate, Summary Probate, Trust and other Probate proceedings will be set on Monday, Wednesday or Friday; and 2) all Conservatorship and Guardianship of the Estate proceedings shall be set on Tuesday or Thursday consistent with the following filing requirements:

1. Petitions with all supporting papers, including the Notice of Hearing, but excepting the proof of service, must be on file four weeks before the hearing date. Questions regarding hearing dates, and requests to continue, can be addressed to the Probate Clerk at (209) 468-2843.
2. Every petition or motion must include the appropriate Judicial Council "Notice of Hearing" form. This document initiates the clerk's calendaring process. Without the Notice of Hearing the matter will not appear on calendar.
3. Matters involving the Public Defender, or the Public Conservator, must be set for hearing Tuesdays or Thursdays only. (Eff. 01/01/12)

4-102. UNCONTESTED MATTERS

A. Tentative Rulings

Tentative rulings and the probate examiner's notes appear on the court's web site.

B. Evidence

At a hearing on a verified petition oral testimony will not be permitted. All evidence should be stated in the petition, or accompanying declaration. (Eff. 01/01/11)

4-103. CONTESTED MATTERS

If a contested matter can be submitted on the pleadings with argument, it will be heard at the end of the probate appearance calendar. As time permits, brief offers of proof will be allowed.

Contested matters requiring 2 hours or less will be heard on a date certain in the Probate Department. Contested matters estimated to take more than 2 hours will be set, Counsel may reserve a mutually agreeable date by speaking to the Probate Clerk. Caveat: The court does not mail notices of continued hearings.

(Eff. 01/01/12)

4-104. WHEN PERSONAL APPEARANCE REQUIRED

- A. The petitioner and the petitioner's attorney shall appear on all petitions for appointment of a guardian or conservator and on petitions for confirmation of sale of real property.
- B. The attorney for a conservatee, or ward, shall personally appear on petitions which concern the conservatee, or ward, respectively.

4-105. CONSOLIDATION WITH THE LOWEST NUMBER

Whenever it appears that actions or petitions with different numbers have been filed with reference to the same decedent or the same ward or conservatee or the same trust, the court will on its own motion consolidate all of the matters and assign the appropriate case number as the lead number. (Eff. 01/01/11)

4-106. EX PARTE APPLICATIONS

Where statute and the California Rules of Court make no express provision for notice of an ex parte petition, notice in the manner provided in California Rule of Court 3.1200 is required. (Eff. 01/01/09)

4-107. ADDITIONAL INFORMATION REGARDING BENEFICIARIES

Where any petition calls for the relationship of the heirs or devisees, the lineage must be included, e.g., "Bill Smith, Jr., grandson by son, Bill Smith, Sr." If any beneficiary named in the Will has predeceased the testator, the fact must be stated. (Eff. 01/01/09)

4-108. ORDERS – CONTENTS, ATTACHMENTS & SIGNATURE PAGE

- A. All orders and judgments in probate matters must be completed in themselves so that their general effect may be determined without reference to the petition on which they are based. All matters actually passed on by the court, including the relief granted, the names of persons and description of property (and if real property involved, the legal description and/or APN thereof), amounts of money affected, the terms of trusts, and the provisions of leases or other agreements, must be set forth with the same particularity which is required in judgments in civil matters.
- B. Riders and exhibits should not be attached to an order or decree; except that an exhibit setting forth legal descriptions, a statement of trust terms, and the like may be attached if specifically incorporated in the body of the order or decree.
- C. The Judge's signature should appear at the end of the last attachment with an appropriate indication of that fact on the last page of the body of the order or decree or if the signature is at the end of the body of the order or decree, there should be a specific reference in the body of the document to the number of pages contained in the attachment. The Judge's signature should not appear on a page that doesn't contain any other text. (Eff. 01/01/11)

4-109. WHEN COPY OF PETITION MUST BE INCLUDED WITH NOTICE OF HEARING

In the following cases a copy of the petition as well as a copy of the Notice of Hearing must be served on all interested parties:

Where the petition contains the accounting of a trustee, or

Where a fiduciary or attorney is requesting extraordinary fees or commissions. (Eff. 01/01/11)

4-110. PROHIBITION AGAINST ADVANCEMENT OF PROBATE MATTERS ONCE NOTICED

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, neither by means of a new petition, an amended petition, a new notice, or otherwise. (Eff. 01/01/11)

4-111. REQUESTING A CONTINUANCE

The Court will allow an initial request to continue a hearing on any Noticed matter be made by telephone or other communication with probate staff. The Court will consider and rule on the request at the hearing. Any subsequent request for a continuance(s) will need to be made in person at the hearing. (Eff. 01/01/13)

4-112. CAPTION ON PLEADINGS

The caption of each pleading shall include the date and the department of the hearing. (Eff. 01/01/09).

4-113. COURT CREATED TRUSTS

Where a trust is created in a conservatorship, guardianship, or Probate Code section 3100 petition, or by a decree of distribution in a decedent's estate, all future proceedings relating to the trust must be filed as a new separate case. (Eff. 01/01/09)

4-114 PROBATE CODE 850 PETITIONS CONFIRMING PROPERTY

Whenever a Petition is filed under the authority of Property Code §850, et seq, which seeks to establish the owner of an interest in property, the Petition shall plead facts which establish, and list, the persons to be served pursuant to Probate Code §851, including, but not limited, to the following persons:

Each person claiming an interest in or having title to, or possession of, the property,

Each known intestate heir,

Each known devisee whose interest in the property would be affected. (Eff. 01/01/13)

PART TWO

DECEDENTS' ESTATES

4-201. NOTICE TO NAMED CONTINGENT LEGATEES AND BENEFICIARIES

In addition to the Notice of Hearing required to be mailed by Probate Code sections 8110-8113, notice shall also be mailed to all contingent devisees and beneficiaries named in the Will.

4-202. ADVISEMENT FORM REQUIRED FOR APPOINTMENT OF PERSONAL REPRESENTATIVE

An official printed form, entitled "ADVICE TO HEIRS" is available at the Clerk's Office and on the Court's website. The Advice to Heirs shall be mailed prior to the hearing of the petition for appointment of a personal representative to the following:

In intestate estates, each person entitled to receive a copy of the Notice of Hearing;

In testate estates, each person or institution named in the Will to receive an asset of the estate.

The fact of such mailing must be proved by a Proof of Services of Mailing on file prior to the hearing on the petition. (Eff. 01/01/11)

4-203. REPEALED [Eff. 01/01/11]

4-204. COURT CONFIRMATION OF SALE BY REPRESENTATIVE WITH FULL AUTHORITY UNDER I.A.E.A.

An executor or administrator who has been appointed with full powers under the I.A.E.A. but who voluntarily petitions for court confirmation of the sale of real property must meet the requirements for sale by a representative without full authority. (Eff. 01/01/09)

4-205. BROKER'S COMMISSION

Upon the confirmation of the sale of real property, justification is required for a commission in excess of six percent.

4-206. APPLICATION FOR FAMILY ALLOWANCE

The petition shall include:

1. The applicant's income from sources outside estate;
2. An itemized list of the applicant's assets, and a statement of the approximate value of each;
3. A general statement of the assets and of the liabilities of the estate;
4. The date of the application;
5. The date of the decedent's death; and
6. A general statement of other applications (if any) on file for allowances. (Eff. 01/01/11)

4-207. PETITION FOR PRELIMINARY DISTRIBUTION

A. The petition shall not be granted unless the inventory and appraisal has been filed.

B. The petition for preliminary distribution must state:

The approximate value of the property remaining in the estate after the proposed distribution, and an estimate of the total amount of unpaid taxes, unpaid claims and other liabilities.

C. If waiver of bond for any distribution is sought, the petition shall include allegations that:

1. Notice to any known and reasonably ascertainable creditors has been given;
2. The estate is solvent; and

3. The good cause, if any, why bond should not be required, including that time for filing or presenting claims against the estate has expired and that all taxes and uncontested claims have been paid or are sufficiently secured. (Eff. 01/01/11)

4-208. REQUEST FOR PARTIAL ALLOWANCE ON STATUTORY COMPENSATION

- A. The petition must contain the following allegations:

That the requested sums can be paid without detriment to the estate or to any person interested in it or to any creditor thereof.

The percentage that the requested amount bears to the total statutory compensation to which the petitioner or the attorney will be entitled on final settlement of the estate, and that (1) the same percentage, or more, of the total ordinary work required in the estate has been completed, and (2) payment of the requested allowance would leave a reserve exceeding the ordinary work remaining to be done.

- B. If an allowance of statutory attorney fees is requested, the attorney shall sign a declaration at the end of the petition attesting to the truth of the allegations and serve notice of the request. (Eff. 01/01/11)

4-209. STATUS REPORTS REQUIRED ALLEGATIONS

The status report required by Probate Code Section 12200 shall include, the following allegations:

1. The date of decedent's death;
2. The date of issuance of Letters;
3. The filing date of the Inventory (or Inventories), and the total value thereof;
4. A statement whether the value of the estate required the filing of the federal estate tax return, and if so, the date filed and the amount of tax paid;
5. A statement of the condition of the estate in regard to the payment of debt and claims, and the general nature and value of the assets on hand;
6. A statement of the reason or reasons the estate has not been distributed and closed;
7. A statement of the estimated time required to complete the administration; and
8. A statement of the reason, if any, why continued administration would be in the best interest of the estate and the persons interested in it. (Eff. 01/01/11)

4-210. FORM OF ACCOUNT FOR INCOME AT FINAL DISTRIBUTION

When all or any part of the estate is to be distributed to a trustee, and income accumulated during probate is to be paid by the trustee to the trust beneficiaries, the form of account shall properly allocate receipts and disbursements between principal and income.

When a specifically devised or bequeathed asset has earned income and/or incurred expenses during probate administration, the form of account shall segregate such income and/or expenses from the general income and expenses of the estate. This may be done by a schedule attached to the accounts and incorporated by reference.

4-211. COMPENSATION MUST BE CALCULATED IN THE PETITION

In a petition for distribution, whether or not accompanied by accounting, there shall be set out a calculation of the statutory compensation of the personal representative and the attorney.

4-212. FEES AND COMMISSIONS MUST BE FIXED BEFORE PAYMENT

A petition for partial allowance on statutory compensation, filed prior to the petition for final distribution must contain a recital of the work actually completed. Ordinarily the last 30 percent of the statutory compensation will not be allowed prior to the approval of the final accounting.

4-213. EXTRAORDINARY ATTORNEY FEES

- A. The following types of legal services are considered to be outside the scope of services contemplated by the statutory fee provisions of the Probate Code, and additional compensation may be allowed on an individual basis upon a detailed statement of services rendered:

Spousal Set-Asides

Preliminary distribution to residuary beneficiaries and trustees

Petitions for Authority to Carry Out Decedent's Contracts

Representation of the fiduciary in the following tax matters

Leases

Petitions to Borrow Money

Heirship Proceedings

Petitions for family Allowance

Sales (personal and real property)

Operation of decedent's farm or business

- B. Petition and Prayer

1. Application for extraordinary compensation will not be considered unless both the caption and the prayer of the Petition and the Notice of Hearing contains a reference to such application.
2. The services claimed to be extraordinary must be stated in detail, including time spent, dates, results accomplished, and other facts that would guide the Court in assessing the compensation. If more than one category of extraordinary service was rendered, the services must be separately stated and a value assigned to each. The total amount requested for all such services must be stated. The total number of hours spent on each category of extraordinary service should be summarized.

C. Notice of Hearing

In every case, notice shall be sent to all persons entitled to a share in the estate, except those whose shares will not be charged with the compensation requested. Notice shall include a copy of the petition served with the notice. An appearance by the attorney will normally be required.

D. Order

The order should list separately, and provide separate compensation for, each category of service. The amounts requested should be typed in the proposed order.

4-214. FEES TO ATTORNEY AND PERSONAL REPRESENTATIVE WHO ARE ASSOCIATED

If both the representative and the attorney for the personal representative have a fee sharing arrangement with respect to the estate or law practice, only the statutory commissions as representative will be allowed unless: the Will expressly provides otherwise, or, an order allowing statutory attorney fees has been granted by the court prior to the filing of the petition for final distribution. Such order will not be granted except in cases involving compelling circumstances. The petition must be set for hearing. The petition must be set for hearing and fifteen (15) days' notice thereof must be given to all persons. (Eff. 01/01/11)

4-215. REQUIRED ALLEGATIONS IN A PETITION FOR FINAL DISTRIBUTION

In addition to other items required by law, a petition for final distribution shall contain the following:

- A. A full and complete description of all assets on hand, including the legal description of real property. The descriptions may either be set forth in the body of the petition, or by an attached schedule incorporated by reference.
- B. Facts specifically showing the entitlement of each heir to the portion of the estate to be distributed to that heir, including any information concerning predeceased children.
- C. A computation of the attorney's fees and representative's commissions requested, or a statement concerning the waiver thereof.
- D. If there is insufficient cash available to pay the statutory commissions, attorney fees, court costs, and any other items requested to be ordered by the Court to be paid, the Petition must include a statement setting forth the source of the funds for such payment. (Eff. 01/01/13)
- E. A schedule of claims showing the name of the claimant, the amount claimed, the date presented, the date allowed, and if paid, the date of payment; as to any claims rejected, the date of rejection. The original of the notice of rejection for each rejected claim must be filed together with declaration of mailing.
- F. A schedule showing the pro-ration of fees and costs.
- G. The Federal Estate Tax has been paid, or, the Federal Estate Tax has not been paid because the estate is too small to require payment of tax, or, the Federal Estate Tax has been deferred by agreement with the taxing agencies. If deferred, whether a lien has been imposed, and pertinent information about the lien.

When proration is required by Probate Code Section 20111, the accompanying account should include a schedule indicating the method by which the proration has been computed.

H. One of the following allegations concerning creditor's claims:

1. A notice to creditors was given, in the form prescribed by the Probate Code, to all known and reasonably ascertained creditors of the estate; or
2. Notice to creditors was not required because of the provisions of Probate Code Section 9054; or
3. No notice to creditors was given because there were no known or ascertainable creditors.

I. A Proposed Distribution Schedule setting forth in detail the specific items being distributed to each distributee. (Eff. 01/01/11)

4-216. MISCELLANEOUS ADDITIONAL ALLEGATIONS IN A PETITION FOR FINAL DISTRIBUTION

The following allegations, if applicable, should be included in a petition for final distribution:

A. Distribution to Minors

Where distribution is to be made to a minor a guardian of the estate is ordinarily required and a current certified copy of the letters of guardianship should be attached to the petition. Where distribution is proposed to be made under Probate Code sections 3400 through 3402 or under section 3410, the Petition for Distribution must meet the requirements of the statute.

B. Distribution to a Trust

If distribution is to be made to a trust, an acknowledged statement by the trustee accepting the property under the terms of the trust must be filed with the petition for distribution. Lacking this, a declination to act must be filed, in which case it should be accompanied by a petition by the personal representative for the appointment of a substitute trustee.

C. Distribution to an Assignee

If distribution is to be made pursuant to an assignment of interest, the assignment must be filed and the details of the consideration set forth in the petition. The assignment must contain a notarial acknowledgment.

D. Distribution Pursuant to Agreement

If the distribution is sought other than as provided by the will or by the laws of intestate succession, that fact should be alleged, and a written agreement must be filed signed by all distributees and acknowledged before a notary public.

NOTE: If any such distributee is a minor, or conserved, the agreement must be signed by that party's appointed legal representative. Court approval of a fiduciary's agreement must be provided with the distribution petition or a petition for approval of the agreement may be noticed for hearing together with the petition for distribution.

E. A Statement of the Status of Assets

If decedent left a surviving spouse or if distribution is to be made to heirs of a predeceased spouse pursuant to Probate Code Section 6402.5, the petition must contain a statement of the community or separate status of all assets to be distributed.

F. Reimbursement for Costs Advanced

If counsel or the personal representative is seeking reimbursement for costs in excess of \$750.00, an itemization of those costs must be set forth. (Eff. 01/01/11)

4-217. REQUIRED MATTERS IN A DECREE OF FINAL DISTRIBUTION

A. Distribution to a Minor or Conserved Person

A decree ordering distribution to minor or conservatee shall provide that the property be distributed to the fiduciary or other person approved by the Court on behalf of the distributee and identify under what authority. The fiduciary or other person shall sign the distributee's receipt and identify under what authority the fiduciary or other person acts. (Eff. 01/01/09)

B. Distribution to Testamentary Trustee

The terms of the trust and the powers of the trustee must be set out in full in the decree of distribution, and not merely incorporated by reference. When appropriate, the language of the will should be paraphrased in the decree to eliminate references to "my" and to substitute "the decedent's". (Eff. 01/01/11)

4-218 NOTICE OF MOTION TO WITHDRAW AS ATTORNEY OF RECORD

When presenting a Motion to Withdraw as Attorney of Record, Notice shall be provided to all beneficiaries as required by Probate Code §1220 in a Decedent's Estate where the withdrawal is being requested due to the fiduciary's failure to cooperate. (Eff. 01/01/13)

PART THREE

SPOUSAL PROPERTY PETITIONS

4-301. PROCEDURE WHERE WILL CONTAINS MINIMUM SURVIVAL TIME

If a Will contains a period of survival as a condition precedent to the spouse's right to receive assets, the petition cannot be set for hearing until the survival period has expired.

4-302. WHERE PASSAGE OF TITLE TO COMMUNITY PROPERTY IS SOUGHT

In a petition for order confirming the passage of property to the surviving spouse without administration (Probate Code Sections 13650, et seq.), unless specifically devised, the ultimate facts which establish the community character of the property must be stated, including:

The date the asset was acquired and the date of the marriage.

The manner in which the asset was acquired, e.g., purchase, exchange, gift, or inheritance, and, if acquired by purchase or exchange, how the source of the consideration was community property, or, if acquired by gift or inheritance, how the asset is now community property, e.g., gift or bequest to both spouses, transmutation agreement, etc. (Eff. 01/01/09)

PART FOUR

TRUSTS

4-401. FEES

- A. If the court has jurisdiction of the trust, no trustee or attorney fees shall be paid until there has been an order of court fixing the same or unless the fees qualify as "Advance Payments" as outlined in these Rules.
- B. If the petition for fees is part of a petition seeking other relief, the title of the petition embodying such application for fees and the notice of hearing shall include a reference to the request for fees.
- C. Trustee's Fees: In the absence of a formula in the trust for fees, the normal fee allowed by the court for an annual accounting covering a twelve-month period is three-fourths of one percent of the market value of the trust assets on the date of the close of the account. However, the normal fee for a licensed Private Professional Fiduciary, bank, entity authorized to transact business as a trust company, any public officer or agency of the State of California, is one per cent of the market value of the trust assets on the date of the close of the account. If the account period contains more or fewer than twelve months, the normal fee will be proportionately increased or decreased. A trustee who seeks greater compensation must detail in the petition facts that would justify the request; if more than one category of unusual services was rendered, the services must be separately stated and a value assigned to each. (Eff. 01/01/09)
- D. Attorney's fees: In the absence of a formula in the will for fees of the attorney for the trustee, the attorney fees for preparation, filing, and presenting the report and order (in absence of demonstration to the contrary) will generally be:
 - 1. For counsel to a licensed Private Professional Fiduciary, bank, or entity authorized to transact business as a trust company, an amount equal to one-third of the trustee's normal fee, as computed in Section C, for a twelve-month period, or \$1,000.00, whichever is greater;
 - 2. For counsel to a trustee who is not a licensed Private Professional Fiduciary, bank, or entity authorized to transact business as a trust company, an amount equal to one-half of the trustee's normal fee, as computed in Section C, for a twelve-month period, or \$1,000.00, whichever is greater.
 - 3. An attorney who seeks greater compensation must detail in the petition the time spent, the difficulty of the services, the results accomplished, and other facts to guide the court in assessing the merit of the request. If more than one category of services was rendered, the services must be separately stated and a value assigned to each.
 - 4. Attorney fees for accountings for periods longer than twelve months will not automatically increase, proportionately or otherwise. (Eff. 01/01/11)

4-402. REPORT OF TRUSTEE, INCLUDING SPECIAL NEEDS TRUSTEE

A report shall contain:

- A. A concise reference to the purposes of the trust and how they have been satisfied by the trustee during the period of the account;

- B. The names and addresses of the beneficiaries (both present and future interests);
- C. A brief summary of distribution made to or for the benefit of the beneficiaries, and, in the case of a special needs trust, a brief summary establishing that the distributions do not disqualify the beneficiary from public benefits.
- D. The investment objectives and results with reference to the purposes of the trust, when appropriate;
- E. A statement of the percentage rate of return on all property invested. The purpose of the report is to provide a brief summary of the account measured in terms of the specific trust objectives and requirements. It should not merely recite what has been done, but should relate the activities reflected in the account to the purposes and persons for which the trust was created.
- F. In the case of a special needs trust, a statement establishing that at the current rate of return and the current rate of distribution the trust corpus will be preserved for the anticipated lifetime of the beneficiary. (Eff. 01/01/09)

4-403. RESERVED FOR FUTURE USE [Repealed 01/01/13]

PART FIVE

CONSERVATORSHIP

4-501. APPOINTMENT OF COURT INVESTIGATOR

The Court Investigator of the Superior Court is hereby appointed to investigate all petitions for appointment of conservator, grant of extraordinary powers, sale of personal residence, exercise of substituted judgment, annual conservatorship accounts and petitions regarding proceedings for particular transactions. In these matters no petition for appointment is necessary. To avoid such automatic appointment, a petition to waive appointment must be filed concurrently with the underlying petition. (Eff. 01/01/11)

4-502. CONFIDENTIAL SCREENING FORM

The Confidential Conservator Screening Form shall contain both the California, or other state, driver's license number and the social security number of the proposed conservator. (Eff. 01/01/11)

4-503. TEMPORARY CONSERVATORSHIP BEFORE NOTICED HEARING

A petition for appointment of temporary conservator, made in advance of the regularly noticed hearing, must be delivered to the Court Investigator five calendar days in advance of the ex parte hearing. (Eff. 01/01/11)

4-504. SETTING PETITIONS TO BE INVESTIGATED FOR HEARING

The date for hearing a petition which requires a report from the Court investigator, except ex parte petitions, shall be no sooner than six (6) weeks after the filing of the petition. A copy of a petition which requires a report from the Court investigator shall be submitted to the Court Investigator at the time the original is filed marked in red in the upper left-hand corner "Investigator's Copy". (Eff. 01/01/09)

4-505. COMPENSATION AND FEES

A. Compensation of Conservator/Guardian

1. Conservator/Guardian of the estate or of the person and estate

A fee will be routinely allowed by the court at the time an annual accounting is filed for services during the preceding twelve month period of three-fourths of 1% of the market value of the assets on the date of the current accounting.

(a) If the account period contains more or fewer than twelve months, the normal fee will be proportionately increased or decreased.

(b) A fiduciary who seeks greater compensation must detail in the petition facts that would justify the entire fee request. If unusual services were rendered in more than one category, the services must be separately stated and a value assigned to each.

2. Conservator/Guardian of the person only

A guardian or conservator of the person may at any time obtain an order compensating him or her on an hourly basis, by filing a noticed petition for periodic compensation. If no order has been sought prior to an annual accounting, the guardian or conservator of the estate may include at that time a petition for compensation of the guardian or conservator of the person for services during the preceding accounting period, on an hourly basis. The basis for the requested hourly rate must be set forth. The nature of the tasks and the actual or anticipated hours for the tasks must also be set out. Consideration will be given to the degree of difficulty, the training or experience required. The efficiency and the effectiveness shown or reasonably anticipated, the prevailing market rate for the same or similar tasks and the benefit to the conservatee or ward.

B. Fees of Attorney

The fee usually allowed to the attorney for the preparation, filing, and presentation of the report and order in connection with an annual accounting is:

1. For counsel to a licensed Private Professional Fiduciary, bank, or entity authorized to transact business as a trust company, an amount equal to one-third of the fiduciary's normal fee, as computed in Section B1, for a twelve-month period, or \$1,000.00, whichever is greater;
2. For counsel to a fiduciary who is not a licensed Private Professional Fiduciary, bank, or entity authorized to transact business as a trust company, an amount equal to one-half of the fiduciary's normal fee, as computed in Section B1, for a twelve-month period, or \$1,500.00, whichever is greater;
3. An attorney who seeks greater compensation must detail in the petition the time spent, the difficulty of the services, the results accomplished, and other facts to guide the court in assessing the merit of the request. If more than one category of services was rendered, the services must be separately stated and a value assigned to each.

4. Attorney fees for accountings for periods longer than 12 months will not automatically increase, proportionately or otherwise. (Eff. 01/01/11)

C. Fees of Attorney for a Conservatee or a Minor

1. The Conservator(s) or attorney for the Conservator(s) and the attorney for the Conservatee shall communicate with each other regarding the issue of attorney fees for the attorney for the Conservatee. A request for fees for the attorney for the Conservatee shall be addressed in all accounts.
2. The Court will ordinarily allow a sum not to exceed \$750.00 as fees for the attorney for the Conservatee without specific itemization. The work covered by this fee includes the review of the Court Investigator's report, review of an account, if any, conferring with the Conservatee, and a report to the Court, either orally or in writing.
3. An attorney for the Conservatee who requests attorney fees not to exceed \$750.00 may make the request by way of Ex Parte Application as follows:
 - a. The Ex Parte Application must be accompanied by a Notice of Hearing with a Proof of Service of Mailing of the Application and Notice to all parties otherwise entitled to Notice of a Petition for Fees.
 - b. The Ex Parte Application must be submitted with the filing fee required by GC §70657(a)(2), as amended, which as of July 1, 2012 is \$60.00.
 - c. The Ex Parte Application will be set for hearing on the Court's 8:45 am calendar on ten (10) days' Notice. No appearance will be required at the Ex parte hearing. If there are any issues at the time of the Ex Parte hearing, the Court will continue the matter so that the attorney will have an opportunity to appear.
 - d. An Order shall be submitted with the Ex Parte Application. If there are no Objections to the Ex Parte Application, the Court will issue the Order for Fees at the hearing. (Eff. 01/01/13).

4-506. WAIVER OF ACCOUNTING—WHEN PERMITTED

Ordinarily, neither a minor nor a conserved person may waive an accounting. However, a minor who has attained majority will be permitted to waive a final accounting upon a showing of unusual circumstances, and upon personal appearance in court at the hearing on the petition for termination without an accounting. A conserved person may waive an account upon a showing of competence. (Eff. 01/01/09)

4-507. SALE OF REAL PROPERTY UNDER INDEPENDENT POWERS

A conservator or guardian who has been granted the independent power to sell real property, but who petitions the court for confirmation of sale, sale, must meet the requirements for sale as if the power had not been granted. (Eff. 01/01/09)

4-508. SUBSTITUTED JUDGMENT

A. Court Investigation

A proceeding brought under Article 10, commencing with Section 2580 of the Probate Code, for court order authorizing or requiring a proposed transaction requires investigation by the court investigator.

B. Documents Which May Have Testamentary Effect

The petition shall be supported by copies of any known documents which may have testamentary effect or which purport to gift any property of the Conservatee before death. Such documents may be submitted with a request and proposed order that they be kept under seal, not to be examined except upon order of the court. The court shall seal any such document for which a request is made by the party submitting the document.

C. "Community Resource Allowance" and "Minimum Monthly Maintenance Needs Allowance"

The court will not hear petitions, nor issue orders, regarding "Community Resource Allowance" or "Minimum Monthly Maintenance Needs Allowance" unless such petition is accompanied by points and authorities specifying the jurisdiction and authority of the Probate Court to hear and decide such matters.

D. The Effect upon the Conservatee

The petition shall set forth the circumstances of the Conservatee should the petition be granted, including, but not limited to, assets remaining, the projected needs of the Conservatee and the manner in which those needs will be met.

E. Where a petition seeks transfer of all, or a major portion, of a spouse's assets for the purpose of eligibility for public benefits the estate plan of the receiving spouse for those assets must be set forth for the court. Estate plan documents may be submitted under seal and after the hearing, the documents shall not be subject to inspection except upon order of the court.

F. When a trust is created under PC Section 2580 or 3100 the Order shall provide, as a condition of approval that the Trustee shall commence a separate trust proceeding with a probate case number in this county by filing an Acceptance of Trust by Trustee, with a certified copy of the Order for Substituted Judgment and the Trust attached. This shall be done within 30 days of the Order being filed. A Receipt of Assets by the Trustee shall be filed in the new case file along with the Acceptance of Trust, as well as the Bond, if there is a bond to be posted under the terms of the trust. (Eff. 01/01/11)

4-509. DOCUMENTS ACCOMPANYING AN ACCOUNT TO BE LODGED, NOT FILED

- A. The documents required by Probate Code section 2620(c) shall be lodged, not filed, at the time the accounting is filed. The documents shall be attached to a cover sheet containing the case heading and a caption identifying the petition they accompany and the date time and department of the hearing. Upon settlement of the account, the documents shall be returned to the party who lodged them to be held until such time as the appeal period has run, unless the Court orders otherwise. If the documents are not otherwise retrieved, they shall be destroyed by the clerk. (Eff. 01/01/11)
- B. If there are investments with a brokerage firm, the annual brokerage account statement shall be included with the required documents (Eff. 01/01/11)
- C. If original documents cannot be obtained and copies are lodged in lieu of the originals, lodge a Declaration setting forth the reason why the originals are not available.

4-510. START UP FEE

Where a petition seeks a fee for an attorney pursuant to Probate Code section 2640 for the bringing of the successful initial petition to conserve and the start up of the conservatorship, the court will ordinarily allow \$3000.00 without specific itemization. (Eff. 01/01/09)

PART SIX

PARTICULAR TRANSACTIONS

4-601. PROCEEDINGS SHALL CONFORM TO SUBSTITUTED JUDGMENT

Insofar as possible, the requirements of the Probate Code in Article 10, commencing at Section 2580, and the California Rules of Court and the Court's local rules, shall be applied to Proceedings for Particular Transactions under Chapter Three of Part Six of the Probate Code, commencing with Section 3100. The requirements of the Rules for Substituted Judgment in Conservatorship shall apply to Proceedings for Particular Transactions. (Eff. 01/01/09)

PART SEVEN

GUARDIANSHIP

4-701. GUARDIANSHIP RULES

The rules for conservatorship apply to guardianship insofar as possible.

4-702. APPOINTMENT OF GUARDIAN

Note: The court will routinely deny ex-parte applications which will result in a change of custody. Child Protective Services of the San Joaquin County Human Services Agency and peace officers have the authority to remove children in an emergency.

- A. A petition seeking appointment of a guardian of the person shall be accompanied by the completed local form entitled "CARE PLAN."
- B. A petition seeking appointment of a guardian of the person using Judicial Council form GC-210, rather than GC-210(P), shall be accompanied by a declaration explaining why a guardianship is necessary. Local form, "Guardianship: Supporting Declaration" is approved for that purpose.
- C. A request for order dispensing notice shall be supported by a declaration setting forth the factual basis for the proposed order. The local form "10(b) to Judicial Council form GC-210(P)" is approved for that purpose.
- D. Completed proposed orders and letters shall be submitted with the petition. (Eff. 01/01/11)

4-703. APPOINTMENT OF TEMPORARY GUARDIAN OF THE PERSON

- A. A petition seeking the temporary appointment of a guardian before the regularly noticed hearing using Judicial Council form GC-110, rather than GC-110(P), shall be accompanied by a declaration explaining the emergency that requires a guardian be appointed before the regularly noticed hearing. Local form, "Guardianship: Supporting Declaration" is approved for that purpose.

- B. An application for ex parte appointment of temporary guardian shall comply with California Rule of Court 3.1203 and 3.1204 for those persons, other than the minor(s), entitled to notice of the petition. The form set forth in these rules for ex parte notice in Family Law matters may be used, Rule 7-100. A declaration establishing compliance with Probate Code Section 2250 is also required.
- C. Completed proposed orders and letters shall be submitted with the petition.

4-704. GUARDIANSHIP OF PARTICULAR PROPERTY

Proposed orders and letters must specifically identify the property to which the guardianship is limited. (Eff. 01/01/09)

PART EIGHT

MINORS COMPROMISE

4-801. ATTORNEY FEES IN CASES INVOLVING MINORS OR DISABLED PERSONS

- A. Fees - In cases compromised under Code of Civil Procedure, section 372 or Probate Code, section 3500, the attorney fees awarded by the court shall, under normal circumstances, not exceed the following amounts:
 - 1. 25% of the amount recovered when the case is settled before trial.
 - 2. 33-1/3% of the amount recovered when the case is settled during trial after a substantial part of plaintiff's case has been introduced or after judgment.
 - 3. Not more than the fees prescribed in subdivision A.2 when the case is settled between the times specified in subdivisions A.1 and A.2.
 - 4. 40% of the amount recovered when the case is settled after the filing of respondent's brief on appeal.
 - 5. An amount less than A.1, which shall reflect actual work done, when the recovery is under an uninsured motorist clause in an insurance policy.

Where a greater amount of attorney's fees are requested, a declaration from the attorney explaining the basis of the fees must be attached to the petition. The declaration shall be in the form required by the California Rules of Court 7.702.

- B. Computation of Fees - In computing fees, parents claiming reimbursement for medical expenses and other special damages shall, except in unusual cases of hardship, pay their proportionate share of the attorney fees. Expenses of litigation to be reimbursed shall not be included in the "amount recovered" for the purpose of fixing fees. Such expenses of litigation shall be separately itemized.

If the settlement includes the purchase of a single premium deferred annuity, attorney fees shall be based on the premium, not the payout.

- C. Court Approval of Employment Contract - Except for good cause shown, no contract of employment providing for attorney fees shall be approved by the court in advance. Under no circumstances shall the contract be considered for approval in advance without the client's appearance on the application for court approval. (Eff. 01/01/09)

4-802. SETTLEMENTS WITH AN ANNUITY

Where the settlement includes the purchase of a single premium deferred annuity, an exemplar of the proposed annuity contract and schedule of payments to be made must be attached to the petition. The annuity shall provide that the contingent beneficiary is the minor's or the disabled person's estate. The rating of the company issuing the annuity shall be disclosed in the petition. (Eff. 01/01/11)

4-803. SETTLEMENTS CREATING A TRUST

Where the settlement includes establishment of a special needs trust, or other trust:

1. Both the petition, and the proposed order, shall set forth the trust in its entirety,
2. A copy of the petition must be submitted to the probate clerk four weeks before the hearing to approve the settlement and be marked "attention: Probate Examiner", and
3. The order approving the settlement shall provide, as a condition of final approval of the settlement, that the trustee shall commence a separate trust proceeding with a probate case number in this county by filing an Acceptance of Trust by Trustee within 30 days of the order being filed. A certified copy of the court order establishing the trust, together with the trustee bond, and a copy of the Trust shall be filed with the court by presenting the documents with a caption page, identifying the trust, for the assignment of a probate case number. (Eff. 01/01/11)

4-804. SETTLEMENTS CREATING A BLOCKED ACCOUNT

At the hearing which orders deposit to a blocked account, the court shall calendar a compliance date.

The party representing the minor, or disabled person, and the attorney for the representative, shall appear at the compliance hearing. The compliance hearing will be dropped and no appearance will be necessary where the proof of deposit and acknowledgment of blocking order are on file.

It is the duty of the attorney to assure that funds are deposited in accordance with the order. Attorney's fees shall not be paid until the money is deposited in the blocked account and the receipt is filed with the court. (Eff. 01/01/11)

RULE 5.

JUVENILE

5-100. PRE-HEARING DISCOVERY IN DEPENDENCY ACTIONS

- A. All discovery shall be by State Rules of Court (Rule 1420), there shall be no discovery by Code of Civil Procedure. Title III of Part IV §1985 et seq., except as provided in this rule.
- B. Without further order, parties have leave to use §2020(d), the deposition subpoena, for copying of business records. This use is limited to health care providers, excluding mental health providers, without further order of the court. Notice under § 1985.3, where the consumer is the minor subject of the dependency action, shall be given to Department of Child Protective Services of the Human Service Agency of San Joaquin County in addition to the person or persons specified in §1985(b)(1).
- C. Order for further use of provisions of Title III, shall be sought by motion for pre-hearing discovery, as set forth in State Rules of Court (Rule of Court 1420 § (f)).
- D. Motions for pre-hearing discovery, under the State Rules of Court, shall be made upon five (5) judicial days notice to all parties and shall be heard on a Monday, Tuesday, Thursday or Friday, at 8:30 a.m., in the dependency department or other department where the otherwise next hearing is scheduled. Motions for discovery shall be in writing and shall be accompanied by a declaration affirmatively alleging, where appropriate, (i) a timely and specific request, (ii) a specific refusal or circumstances reasonably implying a refusal to produce, and (iii) that the moving party has met the other party and conferred in good faith. (Eff. 07/01/98)

5-200. EX PARTE APPLICATIONS

- A. Except as provided in this rule, no application for an order shall be made ex-parte unless the applicant shows by written declaration, or statement under oath, that a reasonable effort has been made to give notice to all other parties, who have appeared in the matter, or that notice would be inappropriate or impractical or would result in irreparable injury, or that the order would not result in a significant direct burden or inconvenience to any other party.
- B. This rule shall not apply to applications for protective custody warrants for dependent minors. (Eff. 07/01/98)

5-300. PETITIONS TO MODIFY (§388 W&I)

- A. Notice of the application for modification, pursuant to rule 8-200, shall be made to all counsel of record and to any parent appearing in pro per.
- B. Application shall be made to the Court in a timely manner following discovery of the circumstances alleged to support the petition to modify, and in no event, at a later time which prejudices any party. Applications requesting return of a minor to a parent shall be made not less than 20 judicial days before any previously set hearing pursuant to §366.26 W&I. Where hearing for any petition is requested within 20 judicial days, good cause must be shown in a supporting declaration.
- C. Where hearing is granted:

1. Evidence for the case-in-chief of the requesting party shall be, and for any responding party may be, by declaration, or, in the case of the petitioner being the requesting party, by report of the probation officer/social service worker.
2. The hearsay statements of the declarations, or report, shall not be sufficient to support the petition unless admissible over objection in a civil action or unless the hearsay declarant is made available for cross examination. The requesting party shall produce the hearsay declarant at the hearing upon written notice by any other party, personally served 10 days prior to hearing or within two judicial days of receipt of the declarations, whichever is later. The responding parties shall produce their hearsay declarant at the hearing upon written notice by any party, personally served five judicial days prior to the hearing or within two judicial days of receipt of declarations whichever is later.
3. The requesting party shall serve the petition, order for hearing and supporting declarations, or report, on all parties ten judicial days before the hearing, if by personal service or fifteen judicial days, if by mail. Responsive declarations, or report, shall be served five judicial days before the hearing, if personally served, or ten judicial days, if by mail. (Eff. 07/01/98)

5-400. GENERAL COMPETENCY REQUIREMENT

Every party in a dependency proceeding who is represented by an attorney is entitled to competent counsel. Because juvenile justice is a specialized area, court-appointed attorneys must meet minimum training and continuing legal education standards as a condition of their appointment in juvenile court matters. Attorneys who seek to represent or to continue to represent individuals in juvenile dependency proceedings shall obtain and comply with the competency rules promulgated by the San Joaquin County Bar Association and as set forth in Rule of Court 1438. (Eff. 07/01/98)

5-401. PRACTICE GUIDELINES

Practice guidelines will be developed and submitted by the San Joaquin County Bar Association to the Juvenile Court Judge for approval. These practice guidelines will be given to the Juvenile Dependency Court Judge, each member of the San Joaquin County Superior Court Juvenile Dependency Lawyer Referral Service Panel, the San Joaquin County Public Defender's Office and Child Protective Services County Counsel. A copy of these practice guidelines may be obtained from either the Juvenile Court or the San Joaquin County Bar Association. Each attorney practicing in the dependency court is expected to be familiar with these practice guidelines. (Eff. 07/01/98)

5-402. SCREENING FOR COMPETENCY

Effective July 1, 1996, all attorneys who represent parties in dependency court proceedings shall meet minimum standards of training and experience as set forth in Rule of Court 1438(b). (Eff. 07/01/98)

5-403. REPRESENTATION OF MINORS

- A. Non-public agency attorneys who wish to be appointed to represent minors must comply with additional minimum requirements as promulgated by the San Joaquin County Bar Association and approved by the Juvenile Dependency Court Judge.

- B. Non-public agency attorneys who wish to be appointed to represent minors must so inform the San Joaquin County Bar Association and the Juvenile Dependency Court Judge.
- C. Non-public attorneys who do not wish to be appointed to represent minors need not comply with these additional requirements. (Eff. 07/01/98)

5-404. MINIMUM REQUIREMENTS NECESSARY TO CONTINUE TO RECEIVE COURT APPOINTMENTS IN JUVENILE DEPENDENCY COURT

Each attorney must complete a minimum of continuing education hours each year as set forth in Rule of Court 1438(b). (Eff. 07/01/98)

5-405. PENALTY FOR NONCOMPLIANCE WITH RULE 5-403 AND RULE 5-404

- a) If an attorney fails to comply with Rule 5-403, the Juvenile Dependency Court Judge shall no longer appoint said attorney to represent minors in Juvenile Dependency Court until the requirements set forth in Rule 5-403 have been satisfied by that attorney.
- b) If an attorney fails to comply with Rule 8-404, the Juvenile Dependency Court Judge shall no longer appoint said attorney to represent parties in Juvenile Dependency Court until the requirements set forth in Rule 8-404 have been satisfied by that attorney. (Eff. 07/01/98)

5-406. TERMINATION OF PANEL MEMBERSHIP-ADDITIONAL GROUNDS

- A. Lawyer Referral Service Panel attorneys must also comply with the rules and regulations of the San Joaquin County Lawyer Referral Service in order to qualify for and to maintain their current standing with said organization.
- B. Lawyer Referral Service Panel attorneys receive appointments and service on the Panel at the pleasure of the Superior Court. (Eff. 07/01/98)

5-407. APPLICATION OF THESE RULES

Rules 5-400 through 5-409 apply to whatever organization, law firm or entity, whether a group or individual, which holds the contract with the San Joaquin County Superior Court to represent clients in Juvenile Dependency Court. (Eff. 07/01/98)

5-408. ATTORNEY COMPLAINT PROCESS

Parties shall be informed of the process to voice a complaint about attorney performance within 30 days of their first court appearance in the Juvenile Dependency Court and when a complaint is lodged with the court, the court shall take appropriate action. (Eff. 07/01/98)

5-409. MINORS' INTERESTS IN OTHER PROCEEDINGS

When a minor who is the subject of a Juvenile Court Dependency case has an interest in any other proceedings which may need to be protected, such interest shall be immediately brought to the attention of the Juvenile Court so that appropriate action may be taken pursuant to Rule of Court 1438(d). (Eff. 07/01/98)

5-410 THE ADVOCATE PROGRAM

The Juvenile Court may appoint child advocates to represent the interests of dependent 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 1356.6).

The advocate program shall report regularly to the Judge of the Juvenile Dependency 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. (Eff. 01/01/03)

5-411 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
8. to investigate the interests of the child in other judicial or administrative proceedings outside Juvenile Court; report to the Juvenile Court concerning same; and, with the approval of the Court, offer his/her services on behalf of the child to such other courts or tribunals.

B. Sworn Officer of the Court

An advocate is an officer of the Court and is bound by these rules. Each advocate shall be sworn in by a Superior Court Judge/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.

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, or by the Court on its own motion. Unless there is opposition, the referral shall be forwarded to the child advocate office for screening and assignment (See Referral Form Exhibit B).
2. When an appropriate child advocate has been identified, that person's name shall be submitted to the Court for appointment. (See Order of Appointment of CASA in Exhibit C).
3. Any party to the case may petition the court for a hearing to reconsider the appointment.
4. 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.
5. 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. (Eff. 01/01/03)

5-500. 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 per Section 11166 of the Penal Code.

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. (Eff. 01/01/03)

5-501 RIGHT TO TIMELY NOTICE

In any action concerning the child for whom the advocate has been appointed, the moving party shall provide the advocate timely notice. (Eff. 01/01/03)

5-502 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. (Eff. 01/01/03)

5-503 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. (Eff. 01/01/03)

5-504 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. (Eff. 01/01/03)

5-505 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. (Eff. 01/01/03)

5-506 ORDER OF JUVENILE COURT THAT DIRECT CALENDAR SYSTEM, "ONE CHILD ONE JUDGE" RULE SHALL APPLY TO ALL DELINQUENCY CASES

A. All cases described as Juvenile Delinquency cases within the provisions of Welfare & Institutions Codes section 602 shall be subject to assignment to a judicial officer for all purposes at the time of filing of the Petition. This has been the practice of the Juvenile Delinquency Court for the past three years, as authorized by the Presiding Judge of the Juvenile Court, although the practice has not previously been set forth in these Local Rules. Nothing herein shall be construed to interfere with the Presiding Judge's authority to assign or reassign cases.

- B. Cases which are subject to direct calendaring shall be numerically, by last digit of the court case number, assigned to a judicial officer for all purposes, who shall thereafter handle all proceedings involving the matter, including trial, except as otherwise provided or required by law. An exception will be that in co-participant cases, those matters will remain in the courtroom of first appearance if co-participants are arraigned at the same time; an additional exception is that all auto theft cases will be handled in J-2 before that regularly assigned judge. At the time of the initial filing of the Petition, the Clerk's office shall affix to the face of the Petition by stamp or other writing, the following notice:

"This case has been assigned to Judge _____ in department ____ for all purposes, including trial".

Time limits for peremptory challenges of magistrates under California Code of Civil Procedure section 170.6 will be within ten (10) calendar days after the first appearance. (Eff. 01/01/07).

5-507 RECIPROCAL DISCOVERY

The reciprocal discovery rules set forth in Penal Code sections 1054, et. seq., shall apply to all juvenile delinquency cases in San Joaquin County. California Rule of Court 1420 shall continue to apply to juvenile delinquency cases as well. (Eff. 07/01/06)

RULE 6.
DIRECT FACSIMILE (FAX) FILING - CIVIL MATTERS

6-100. IMPLEMENTATION

Pursuant to California Rules of Court Rule 2001 et seq., a party may file by FAX directly with the Superior Court using facsimile transmission under the following provisions:

1. The first sheet transmitted shall be the Judicial Council Transmission Cover Page (Form #C1211JC) followed immediately by the document to be filed.
2. The document to be filed by the Court shall include the words "BY FAX" immediately below the title of the document.
3. The Superior Court toll free fax filing number can be obtained by calling 1-800-322-4945. To fax directly to the court's 800 fax number, filing attorneys and parties need to register their fax number, credit card number and expiration date when calling. While the fax will be in operation 24 hours a day, any fax received after 5:00 p.m. or on court holidays or weekends shall be deemed filed on the next court business day. (Eff. 07/01/98)

6-101 JUVENILE COURT FAX FILING

- A. Pursuant to California Rules of Court (CRC) Rule 1406.5, certain persons and agencies may file specified documents by facsimile (FAX) with the court. Each document must be accompanied by Judicial Council form Facsimile Filing Cover Sheet - Juvenile (JV-520), which shall be the first page transmitted.
- B. For those persons and agencies as defined in Rule 1406.5(d) CRC, the FAX filing telephone number for Juvenile Delinquency documents is (209)468-5573. The FAX filing telephone number for Juvenile Dependency documents is (209)468-9343. FAX documents will be accepted by the Clerk's Office during regular business hours of 8:00 a.m. to 5:00 p.m. (Eff. 07/01/99)

RULE 7.

FAMILY LAW

7-100. EX-PARTE ORDERS

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 of Ex-parte Application (See Exhibit A) must be attached as a cover sheet. (Eff. 07/01/98)

7-101. ORDER EXCLUDING A PARTY FROM THE HOME

A temporary restraining order enjoining a party from the use of the family home will not be granted unless the request is supported by a declaration setting forth a factual basis showing immediate and serious harm. Said declarations shall state, in detail and in competent evidentiary form, the time and place of the act or acts and the exact injuries suffered by the moving party. The moving party has the burden of convincing the court an ex-parte order is an appropriate alternative to an order shortening time. (Eff. 07/01/98)

7-102. 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 action which involves the children or the parties concerned in the motion, petition or order to show cause which is pending in any other jurisdiction or in the juvenile court. 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.
- 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. (Eff. 07/01/98)

7-103. MEET AND CONFER REQUIREMENT

- A. All parties and all attorneys are required to meet and confer prior to a case being heard on the family law calendar.
- B. Before the mother and father are eligible for mediation, it is required that they meet and confer. The sole purpose in requiring them to meet and confer is to allow them an opportunity to work out a plan for the sharing of time and responsibility for the raising of their child or children, i.e. formulate their own parenting plan.
- C. It is expected that any attorney who represents either the mother or father will meet with the other side in order to determine what issues can be resolved by agreement and what issues are really contested.

Attorneys must meet with the opposing side even if the other side is not represented by an attorney. A bona fide attempt must be made to settle all issues prior to mediation.

- D. Parties not having attorneys must still meet and confer. If either side is not represented by an attorney, they are still required to meet with the other side in order to try to resolve the parenting plan. A party who is not represented must remember that meeting and discussing the case with the other side does not mean that they must make an agreement, they must simply make an honest attempt to settle all the issues they can and determine the issues that are contested.
- E. Complete meet and confer required. In order to expedite the process, it is required that even if a complete settlement is not possible, all issues should be discussed even if only conditional agreements are made. For example, if the parties cannot agree, they should determine how holidays will be shared and what shared time they would have if they were not granted the primary custody of the child or children. (Eff. 07/01/98)

7-104. MEDIATION

- A. In any mediation pursuant to Family Code §3183, the mediator may make an oral or written recommendation as requested by the court, and at the request of a party or attorney, the mediator shall be subject to cross-examination.
- B. No peremptory challenge of a mediator is permitted.
- C. A party may challenge a mediator for good cause by the filing of a formal motion to disqualify a mediator. The court shall continue the date of any mediation to allow the filing of a motion to disqualify. The court shall shorten time for a hearing on a motion to disqualify a mediator upon the request of either party.
- D. A mediator may decline to mediate a case in the event the mediator determines he or she cannot be unbiased or has a conflict that would prevent a meaningful mediation. (Eff. 07/01/98)
- E. Ex-parte communication with Superior Court mediators by any party or attorney to the action is prohibited, except for limited contact necessary to schedule or continue hearings, mediation sessions and/or testimony of mediators at trial or hearing. (Eff. 01/01/04)

- F. The purpose of mediation is to facilitate an agreement between the parents. If counsel attends a mediation session they shall do so in a support capacity and not to advocate for a position. The mediator may exclude either or both counsel from a mediation session if in the discretion of the mediator such exclusion will facilitate the mediation process.
- G. When any Notice of Motion or Order to Show Cause is filed placing custody and/or visitation at issue, the parties are required to attend an orientation session provided by Family Court Services prior to the court date on the motion. Non-compliance may result in the case being continued until such time that the parties have attended the required orientation. (Eff. 01/01/08)

7-105. SUPPORT

These guidelines have been adopted to comply with the California Family Code operative January 1, 1994.

The Court will determine the appropriate amount of child support and discretionary spousal support according to the Santa Clara County guidelines and the Code.

- (a) These guidelines are not intended to limit the Court's discretion concerning spousal support except as otherwise provided by the Code or other applicable case and statutory law.
- (b) The Court will take all circumstances into consideration (e.g., reduced expenses because of income of a new spouse or co-habitors) to the extent permitted by the Code. (Eff. 07/01/98)

7-106. "RESERVED FOR FUTURE USE" [Repealed 07/01/06]

Rule 7-106 repealed effective July 1, 2006. The repealed rule related to Family Law Commissioner.

7-107. DEFAULTS

The Clerk of the Court shall not enter a default in a dissolution or legal separation unless a Declaration of Disclosure has been served at least 30 days prior to the entry of the default or unless the parties have filed a Marital Settlement Agreement. (Eff. 07/01/98)

7-108. AT-ISSUE MEMORANDUMS

Prior to the filing of an at-issue memorandum, the party requesting the trial date must have submitted a good faith settlement proposal to the opposing side and must have served a current Income and Expense Declaration and a completed Declaration of Disclosure including attachments. The at-issue memorandum must include a declaration or proof of service evidencing compliance with this section. (Eff. 07/01/98)

7-109. RESULT OF FAILURE TO COMPLY WITH RULES

Failure of a party(ies) to comply with these rules may result in one or more of the following on the request by the other party or on the Court's own motion:

- (a) Dropping the matter from calendar.
- (b) Continuance of the matter.

- (c) The award of attorney's fees and costs against the non-complying party and/or the party's attorney, without the necessity of filing an Income and Expense Declaration, or any noticed motion, included but not limited to a motion under California Code of Civil Procedure Section §128.5 or Family Code §§270 through 275.
- (d) The rendering of an order based solely upon the pleadings properly before the Court.
- (e) Other orders as the Court deems appropriate under the circumstances. (Eff. 07/01/98)

7-110. "RESERVED FOR FUTURE USE" [Repealed 07/01/06]

Rule 7-110 repealed effective July 1, 2006. The repealed rule related to Original Dissolution Filings.

7-111. FAMILY LAW TENTATIVE RULINGS

Parties are responsible for reviewing the tentative ruling and notifying the Superior Court Clerk's Office by calling (209) 468-2363 and all other counselor parties if there are no attorneys, no later than 4:00 p.m. the day preceding the scheduled hearing of his or her intent to appear and argue. The family law tentative ruling announcements telephone number is (209) 468-9325. (Eff. 07/01/05)

7-112. DUTIES OF FAMILY LAW FACILITATOR

In addition to the duties set forth in Family Code section 10002 et seq., the Family Law Facilitator may perform the following:

- A. Meet with pro per litigants to mediate issues of child support, spousal support, and maintenance of health insurance.
- B. Draft stipulations for pro pers to include all issues agreed to by the parties, which may include issues other than those specifically set forth in Family Code section 10003.
- C. Prepare formal orders after hearing consistent with the court's ruling when both parties are unrepresented.
- D. Serve as a special master in contested dissolutions for the purpose of hearing pretrial settlement conferences in hopes of reducing the contested dissolution calendars.
- E. Develop programs for bar and community outreach through day and evening programs, videotapes and other means that will assist unrepresented and financially disadvantaged litigants in gaining access to family court.
- F. Assist the court with research and such other responsibilities as may be assigned by the court, enabling the court to be as time efficient as possible in helping litigant and reducing the family court's caseload.
- G. Sit as judge pro tempore subject to the stipulation of the parties, when the Family Law Commissioner is unavailable. (Eff. 07/01/98)

7-113. JUDICIAL CAVEAT

While it is intended that the Court will follow the policies set forth, the rules do not prevent the exercise of judicial discretion when appropriate. (Eff. 07/01/98)

7-114 COURT COMMUNICATION RULES FOR DOMESTIC VIOLENCE AND CHILD CUSTODY AND/OR VISITATION ORDERS

This rule is intended to comply with the provisions of California Rules of Court, Rule 5.500 regarding communication between courts about the existence of criminal protective orders and children custody and/or visitation orders to avoid the issuance of conflicting orders.

A. Court Communication

Until the court has an operational case management system capable of automatically coordinating domestic violence orders, the court's criminal family, and juvenile law departments shall to the best of their abilities communicate with one another to identify families with existing orders.

B. Avoiding Conflicting Orders

No department or the family or juvenile court shall issue a protective order or custody order in conflict with an order of the criminal court. In the event such an order is issued inadvertently, the orders of the criminal law proceeding shall control.

C. Modification of Criminal Protective Order

Upon notice of an existing criminal protective order, the family or juvenile court shall refer the parties requesting custody and visitation to the Clerk's Office in the Criminal Department. At the Clerk's Office, the person restrained by a criminal protective order or protected by a criminal protective order may request a hearing to modify the criminal protective order to expand or restrict contact between the person restrained by the order and his or her children.

The family court may prepare a custody and visitation order, however, it is explained to the parties that the order cannot be enforced by law enforcement if the criminal protective order is not modified accordingly.

D. Co-Existing Criminal and Family or Juvenile Orders

A family or juvenile court order may coexist with a criminal protective order, subject to the following:

1. Any order that permits contact between the restrained person and his or her children shall provide for the safe exchange of the children and shall not contain language either printed or handwritten that violates a "no contact order" issued by a criminal court.
2. After having knowledge of existing child custody and visitation order, the criminal court issuing a protective order shall indicate on the order that contact and visitation between the restrained person and his or her children is pursuant to court orders previously ordered by the family or juvenile court.
3. Safety of all parties shall be the court's paramount concern. The family or juvenile court shall specify the time, day, place, and manner of transfer of the child as provided in Section 3100 of the Family Code. (Eff. 07/01/06)

RULE 8.
ADOPTION PROCEEDINGS

8-101. KINSHIP AGREEMENTS

A. Petitions to Adopt

A Petition for Adoption with Contact After Adoption shall not be filed unless the agreement contains the signature of court-appointed counsel for the minor acknowledging agreement with the terms. (Eff. 07/01/05)

B. Petitions to Enforce, Modify and Terminate

1. Notice, and the application, and any response thereto, shall be served upon all parties, including the Human Service Agency or other adoptive placement agency with which the minor had first been placed, and to appointed counsel for the minor.
2. All evidence to be submitted at the hearing of the application, whether in support or opposition, shall be presented by written offers of proof, declaration, or otherwise admissible documentation. The moving party shall serve their evidence with the application. Any responding evidence must be served with the response.
3. On order of the court, a witness or declarant shall appear for cross examination. Upon failure of the declarant to appear and submit to examination, the offer of proof or declaration of that witness shall be stricken.
4. No application shall be filed unless accompanied by a declaration setting forth the good faith attempt to resolve the dispute. (Eff. 01/01/99)

8-201. TERMINATION OF PARENTAL RIGHTS IN ADOPTION PROCEEDINGS - CAPTION

Whenever termination of parental rights is sought in an adoption proceeding, each petition shall include in the caption the code section under which the petition is brought. This includes petitions and motions which are ancillary to the adoption or termination of rights. (Eff. 07/01/98)

8-202. TERMINATION OF PARENTAL RIGHTS IN ADOPTION PROCEEDINGS NOTICE AND CONSENT

A. Necessity of Consent by Mother or Presumed Father in an Adoption

If it is claimed that the consent of the mother or a presumed father of a child who is to be adopted is not required pursuant to section 8604(b) or 8606(c) of the Family Code, the petitioner may set a hearing to determine the request in advance of the hearing on the adoption. This "necessity of consent" hearing shall be heard on the regular adoption calendar.

The court will not consider the request unless the required adoption report is submitted and, in the case of request pursuant to section 8604(b), proof of service of the required citation is on file.

The citation pursuant to section 8604(b) shall require the parent served show cause why the court shall not find the minor to have been abandoned and the consent for adoption by the named parent not required.

B. Notice to Alleged Father in an Adoption

1. Where a petition to terminate an alleged father's rights has been filed and there is a petition, motion or other request that notice of the adoption proceeding to the alleged natural father be dispensed under section 7666(b) of the Family Code, or that rights be terminated without notice of the adoption proceeding under section 7665, the petitioner may set a hearing to determine the request in advance of the hearing on the adoption. The hearing is to be set on the regular adoption calendar. Alternatively, the petitioner may submit the request on the pleadings and the court will hear it without appearance.

Whether set for a calendar hearing or otherwise, the court will not consider the request unless the report required under section 7663 is submitted.

Where there is a petition, motion or other request that no further notice of the adoption proceeding to the alleged natural father is required under section 7662(b) or 7664(a) of the Family Code, the petitioner may set a hearing to determine the request in advance of the hearing on the adoption. The hearing is to be set on the regular adoption calendar. Alternatively, the petitioner may submit the request on the pleadings and the court will hear it without appearance.

2. Whether set for a calendar hearing or otherwise, the court will not grant the request unless there is evidence of a record search in the county set forth in the notice as required by subsection (c) below.

If it is further requested that the alleged father's rights be terminated in advance of an order of adoption, the court shall grant the termination contingent on an order of adoption.

3. Notice to be given pursuant to section 7662(b) or 7664(a) of the Family Code shall set forth the title, action number and location of the court of any then pending adoption proceeding and any petition to terminate the alleged father's rights regarding the child allegedly fathered. If there is not then pending an adoption proceeding, or petition to terminate the alleged father's parental rights, the notice shall set forth the location of the court of the County wherein the person having custody of the child resides. (Eff. 01/01/99)

RULE 9.
SMALL CLAIMS E-FILING

9-100. ELECTRONIC FILING PROGRAM/SCOPE

The Superior Court of California, County of San Joaquin, hereby adopts an Electronic Filing Program and Policy for its Small Claims Court Division in accordance with California Code of Civil Procedure Section 1010.6. 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 specifically does not include telephone “fax” transmission. (Eff. 10/15/02)

9-101 ELECTRONIC FILING PROCESS

Electronically transmitted documents must be both submitted to the court and accepted for filing by the court in order to be considered duly filed in accordance with these rules.

A. Date/Time of Filing

A document may be electronically transmitted to the Small Claims Division of 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, and (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 7:30 a.m. through 5:00 p.m., Monday through Friday, excluding court holidays. Nothing in this section shall limit the clerk’s ability to reject filings.

B. Receipt of Date

Upon receiving a document submitted electronically for filing with the court, a 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. Error or Malfunctions

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, the clerk shall cause to be electronically transmitted to the filer an endorsed copy of the document confirming the date and time the documents was in fact filed with the court. The confirmation of filing of the document by the court and verification of the accuracy of the document filed shall be the sole responsibility of the filer.

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 and any required filing fee. 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 corrections and/or fees, as well as the filing of documents with the court electronically is the sole responsibility of the filer.

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 San Joaquin" followed by the date and time of filing and the Executive Officer/Clerk's printed name. 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. Payment

All applicable filing fees shall be prepaid as a condition for processing an electronically filed document. Any applicable refunds shall be made in the same manner as fees were originally paid.

I. Waiver of Fees/Costs for Party in Pro Per

1. Any party receiving public assistance benefits as defined in Government Code Section 68511.3(a)(6)(A) will be permitted to electronically file an application for such waiver of fees/costs.

(a) If the party seeking a waiver of fees/costs electronically provides his or her social security number and date of birth or Medi-Cal number, the application for waiver of fees/costs will be accepted. If the party filing the application is not eligible for a waiver of fees/costs, the court will notify the party submitting the application, by electronic mail, of the reasons for its denial of the application within five court days after the application is filed. If payment of the applicable fees/costs is not made within ten calendar days after denial of the application, the claim will be dismissed by the court.

(b) In the event the party seeking a waiver of fees/costs elects not to electronically provide his or her social security number and date of birth or Medi-Cal number, the electronically submitted application for waiver of fees/costs will be granted on a conditional basis. The party will then be required to provide the court, by mail or in person, within ten calendar days after the application is submitted, proof that he or she is receiving public assistance benefits. If the required documentation is not provided, the court will issue an order denying the application and the claim will be dismissed by the court.

2. Any party who seeks a waiver of fees/costs on grounds that the party's income is to pay applicable fees/costs pursuant to Government Code Section 68511.3(2)(6)(B) and (C) will also be permitted to electronically submit a fees/costs waiver application. Such application will be granted on a conditional basis but the party seeking the waiver of fees/costs will be required to provide to the court, within ten calendar days following submission of the application for waiver of fees/costs, verification of income in the form of two consecutive payroll subs or the equivalent. If this documentation is not provided, the court will issue an order denying the application and the claim will be dismissed by the court. If documentation is submitted but deemed insufficient by the court, the party will be notified by electronic mail of the reasons why the documentation was insufficient and will be given ten calendar days to furnish additional information or pay the applicable fees/costs. If eligibility for waiver of fees/costs is still not demonstrated following expiration of the ten-day period, the court will issue an order denying the application for waiver of fees/costs and the claim will be dismissed.

J. Signed Documents

A party who electronically files a document represents that a signed copy of the document is in his/her possession or control. At any time after filing or service of an electronically filed document, the court or any part to the action may require the filing party to produce the signed copy of the electronically filed document. The demand shall be served on all other parties but shall not be filed with the court.

K. Change of Electronic Mail Address

An attorney or in pro per party appearing whose electronic mail address changes while an action is pending shall serve and file written notice of the change of address.(Eff. 10/01/02)