MERCED COUNTY SUPERIOR COURT

LOCAL RULES OF COURT

EFFECTIVE JULY 1, 2013

Superior Court of California, County of Merced

Judges of the Superior Court

Hon. Carol Ash
Hon. Mark Bacciarini
Hon. Marc A. Garcia
Hon. Ronald W. Hansen
Hon. Harry L. Jacobs
Hon. John D. Kirihara
Hon. Brian L. McCabe
Hon. David W. Moranda
Hon. Donald Proietti

Gerald W. Corman, Commissioner
Jeanne E. Schechter, Commissioner

Linda Romero Soles, Executive Officer

SUMMARY OF CHANGES
Revisions effective July 1, 2013

IMPORTANT INSTRUCTIONS FOR USING THESE RULES

1. State Rules and Corresponding Local Rules

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

2. Purchasing Local Rules and Local Forms

Copies of the Local Rules and Local Forms may be obtained for free online at www.merced.courts.ca.gov or purchased from the court clerk's office.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MERCED

Courthouse Locations and Telephone Numbers

Administration
627 W. 21st Street, Merced, CA 95340 (209) 725-4101

Criminal Division
2260 N. Street, Merced, CA 95340 (209) 725-4113

Civil (Unlimited & Limited)/Small Claims
627 W. 21st Street, Merced, CA 95340 (209) 725-4111

Family Law Division
2260 N. Street, Merced, CA 95340 (209) 725-4117

Human Resources
627 W. 21st Street, Merced, CA 95340 (209) 725-4103

Jury Office
2260 N. Street, Merced, CA 95340 (209) 725-4121

Juvenile Division
2840 Sandy Mush Rd, Merced, CA 95341 (209) 725-4119

Los Banos Division
445 "I" Street, Los Banos, CA 93635 (209) 725-4124

Traffic Division
670 W. 22nd Street, Rm 6, Merced, CA 95340 (209) 725-4107

Mailing Address for All Judicial Officers

Superior Court of California
County of Merced
627 W. 21st Street
Merced, CA 95340

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Merced Superior Court

SERVES THE CITIES AND COMMUNITIES OF:

Atwater

Ballico

Cressey

Delhi

El Nido

Dos Palos

Gustine

Hilmar

Hopeton

Irwin

LeGrand

Livingston

Los Banos

Merced

Planada

Santa Nella

Snelling

South Dos Palos

Stevinson

Winton

RULE 1: COURT ORGANIZATION

a. Adoption and Amendment of Rules

These rules shall be known and cited as "Local Rules for the Superior Court of California, County of Merced." These rules shall become effective as of July 1, 2013, and on that date all other rules previously adopted by this Court are repealed, provided that no action heretofore taken in compliance with such rules shall be made invalid or ineffective by such repeal. (*1/1/10, 1/1/12, 01/01/13, 07/01/13*)

b. Presiding Judge

The business of the Court shall be directed by one of the Judges, designated as the Presiding Judge, who shall act in such capacity for a term of two calendar years. The Judges of this Court shall meet during the month of September of every other year, commencing with September 2004, and by a majority secret vote select the Presiding Judge and Assistant Presiding Judge for the succeeding two-year term commencing January 1st . The Assistant Presiding Judge shall be assigned such duties as the Presiding Judge deems necessary and shall be the acting Presiding Judge when the Presiding Judge is absent or unable to act. In the event a Presiding Judge leaves office before the end of his or her term, the Assistant Presiding Judge shall assume the position of Presiding Judge and a new Assistant Presiding Judge shall be elected. Each shall serve in such capacity until the next regularly scheduled election.

c. Authority and Duties

The Presiding Judge shall have the authority and duties prescribed by California Rules of Court and rules as adopted by the Superior Court.The Presiding Judge's duties shall include, but are not necessarily limited to, the following:

-Presiding over regular and special Courts meetings.
-Presiding over executive committee meetings.
-Setting and implementing Policies and Procedures.
-Planning for the Court's future needs.
-Supervising the Court Executive Officer.
-Conducting the day to day affairs of the Court.
-Issuing Standard Orders

d. Executive Committee of the Court

The Executive Committee shall have the duties designated in the California Rules of Court. The committee shall be comprised of at least three (3) Judges, including the Presiding Judge and the Assistant Presiding Judge. The remaining Judge members shall be appointed by the Presiding Judge. The Presiding Judge shall serve as the chairman.

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

1. Terms:

The term of office of Executive Committee members shall be two (2) years, coinciding with the term of the Presiding Judge, commencing January 1, immediately following their election.

The Executive Committee should hold regular meetings at least twice every month. Any Merced Superior Court Judge may attend any meeting of the committee. Notice of the time and place of the meeting shall be provided to all Judges at least 24 hours before the meeting.

2. Duties of the Executive Committee:

The Executive Committee shall advise and assist the Presiding Judge on all matters related to Court Administration, including recommending major personnel and administrative polices with the assistance of the Court Executive Officer. The Executive Committee shall adopt an annual budget for submission to the Administrative Office of the Courts.

e. Meeting of the Judges

There should be a meeting of the Judges held on the first Friday of each month to conduct such business as may properly come before them. If the first Friday falls on a holiday, then the following Friday is the meeting day. Additional meetings may be called by the Presiding Judge or by a majority of the Judges.

Each Judge shall have one vote at the Judges' meetings. Any Judge that does not attend a regular or special meeting (except a meeting to select the Presiding Judge) may authorize another Merced Superior Court Judge to exercise a written proxy, general or specific as stated in the proxy, and vote on his or her behalf.

f. Hours of Judicial Business

(1) The Court will be open for judicial business from 8:00 a.m. until 5:00 p.m. on all court days.
(2) All clerk's offices: The hours of operation are posted in each Courthouse and on the Court's website. The clerk's office hours may be amended per Government Code section 68106. *(01/01/13)*.

g. Scheduling of Trials and Hearings

(1) A list of the times and days of the Court's various calendars, for both civil and criminal matters, and including the hearing of ex parte matters can be accessed at (209) 725-4100 or at www.merced.courts.ca.gov. The parties

are required to check for the availability of a calendar before requesting that any matter be set; special settings will occur only in the most extraordinary circumstances.

h. Direct Calendar System

The Court maintains a direct calendar system with cases generally assigned to one courtroom for all purposes including trial. The Presiding Judge, Assistant Presiding Judge or designee may assign and re-assign cases to other courtrooms. *(01/01/13)*

RULE 1.2: COURT SECURITY

Security in the courtrooms shall be maintained by the Sheriff of the County of Merced, unless otherwise ordered by the Presiding Judge. Procedures for the security of the Court are set forth in the Security Contract and Court Security Plan approved by the Court Executive and Court Security Committee in consultation with the Sheriff. *(7/1/04, 1/1/12)*

RULE 1.3: COURT ATTIRE

No person shall appear in Court without a shirt, or barefoot, or wearing a tank top. Bailiffs of the Court are to remove any person violating this rule. This rule does not limit any judge from prescribing appropriate attire in the courtroom. *(7/1/04,1/1/12)*

RULE 1.4 SEXUAL HARASSMENT

It is the policy of the Court to ensure that all persons are free from sexual harassment as that term is defined by law. Any person who perceives he/she is the victim of sexual harassment in the courthouse or any person who witnesses sexual harassment of another person should immediately notify the Court Executive Officer who may conduct an investigation. *(7/1/04, 1/1/12)*

RULE 1.5: CUSTODY OF COURT FILES AND SIGNED ORDERS

No exhibit or evidence on file with the clerk in any civil or criminal case shall be taken from the clerk's office or courtroom.

Orders signed by a Judge must be filed immediately in the clerk's office. An unfiled, signed order shall not be taken from the courthouse. (*7/1/04)*

RULE 1.6: DEFINITIONS

a. Clerk

The word "Clerk" means the clerk of the Court or any deputy clerk.

b. Judicial Officer

The words "Judicial Officer" mean any duly appointed or elected Judge of the Court, any duly appointed commissioner, any Judge or retired Judge assigned by the Chairperson of the Judicial Council to serve as a Judge of the Court, and any attorney appointed by the Presiding Judge to serve as a temporary Judge, while so serving. *(7/1/04)*

RULE 1.6: [SUPERSEDED BY LOCAL RULE 16 n *(1/1/10)]*

RULE 1.7: PHOTOGRAPHING, RECORDING, BROADCASTING AND OTHER ELECTRONIC DEVICES

The use of photographic, video or audio recording or transmission equipment in the courtroom is prohibited without advanced permission by the Judge. This includes the use of laptops and/or electronic devices by counsel or any other member of the public. The use of laptops or other electronic devices will be regulated by each individual Judicial Officer. Violators are subject to contempt of Court (California Rules of Court, Rule 1.150) and/or confiscation of the device(s).

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

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

The use of cell phone cameras, personal digital cameras or similar portable devices will not be permitted to photograph or copy court documents in the Clerk's offices. This rule is not intended to restrict individual and attorney services from using photocopiers or scanners to copy court documents in the Clerk's offices (by appointment only). *(1/1/12; 01/01/13)*

RULE 1.8: EX PARTE MATTERS IN CIVIL ACTIONS

Ex parte applications and orders in civil cases are governed by California Rules of Court, Rules 3.1200-3.1207. (Ex parte requests for orders in Family Court cases are governed by California Rules of Court, Rule 5.151-5.170 and Local Rule 410.) The Court requests that the party seeking an ex parte order submit the application and all

supporting papers and fees to the clerk for filing no later than 2:00 p.m. on the Court day preceding the hearing. Ex parte applications are noticed for hearing at 1:15 p.m. for each court day in the Civil Law and Motion courtroom or as designated by the Court. *(01/01/13, 07/01/13)*

RULE 2: FILING PROCEDURES

a. Time of Filing Papers

All papers necessary to hearing in default cases (including default dissolutions), return of service on orders to show cause (except wherein the Court has by order shortened the time of service), probate matters, adoptions, compromise claims of minors, including proof of notice, posting affidavits of publication, agreements in dissolution actions, etc., shall be filed on the third court day preceding the date set for hearing. *(01/01/13)*

b. Completion of File in Default and Uncontested Matters

No hearing will be set in a default or uncontested matter until all requisite pleadings and documents have been filed and the Clerk has entered the default, unless it is a matter requiring Court entry of default, in which case the return of service must be filed before the request for hearing.

c. Filing of Orders

All written orders shall be filed in the office of the Clerk immediately after they are signed.

d. Waiver of Fees and Court Procedure

All parties should refer to California Rules of Court, Rules 3.50-3.58.

e. Courtesy Copies

(1) Except as to cases designated as "complex," one courtesy copy of all papers filed in relation to any motion to be heard on the Law and Motion calendar must be provided on the same day the papers are filed, including opposition and reply papers. The clerk shall endorse such courtesy copies as filed, and shall forward them to the Law and Motion department. If the motion attacks a pleading already on file, a courtesy copy of that pleading must also be provided.

f. Fax Filing and Service

Parties may file pleadings by fax through Official Payments Corp. (800-322-4945) pursuant to California Rules of Court, Rules 2.300-2.360.

(1) All fax filings shall be accompanied by the Judicial Council Facsimile Transmission Cover Sheet (MC-005) as the first page transferred, followed by any special handling instructions. Neither the cover sheet nor handling instructions will be filed in the case. The Court is not required to keep a copy of the cover sheet. Refer to the Rules of Court for further information on fax filing.
(2) If a party wants copies of any filed documents, the party must make its request on the facsimile cover sheet. The Court charges $.50 per page plus postage ($1.00 if the document is less than six pages, $3.00 if the document exceeds six pages).
(3) Service may be activated by contacting Official Payments Corp. at 1-800-487-4567. By activating this service, you will have access to all participating Courts in the State of California. *(7/1/04, 1/1/12, 01/01/13)*

RULE 3: CIVIL LAW AND MOTION GENERALLY

a. Waiver of Right to Appear

Any party may waive their right to appear at any Law and Motion hearing by providing the Court and all counsel with written notice of their intent not to appear and to waive oral argument. If the party has filed documents in support or in opposition to a law and motion matter, the Court will consider the non-appearing party's position based upon the documents filed. A written notice of intent not to appear shall be deemed a waiver of oral argument. One party's notice of intent not to appear shall not impair any other party's right to appear and argue their respective position, provided the party gives timely notice of intent to appear when required by rule 3.2. *(01/01/13)*

b. Failure to Comply with Rules

Failure to file a Memorandum of Points and Authorities by the filing deadline or to comply with Rule 3.1113, California Rules of Court, is a waiver of the memorandum; and in the case of the moving party, the failure to timely file may be considered an admission that the motion is without merit.

c. Tagging Attachments and Exhibits

All attachments and exhibits shall comply with California Rules of Court, Rules 3.1110 and Rule 3.1113.

d. Evidence at Hearings

As stated in California Rules of Court, Rule 3.1306, oral testimony is not allowed at a law and motion hearing except by order of the Court for good cause shown. If counsel seeks permission to introduce oral testimony, the statement required by Rule 3.1306 must include an explanation as to why the evidence cannot be presented by declaration or affidavit. *(7/1/04, 01/01/13)*

e. Telephone Appearances

Except when personal appearance is required, appearance by telephone is permitted and encouraged under the circumstances and procedures listed in California Rules of Court, Rule 3.670. The Court participates in telephonic appearances services provided by CourtCall. Further information for parties desiring to appear by telephone is available on the Court's website at www.merced.courts.ca.gov. *(01/01/13)*

f. Destruction of Exhibits in Civil Matters

All exhibits, dispositions or administrative records retained by the Court in any civil matter shall be disposed of in accordance with the California Code of Civil Procedure sections 1952-1952.3. *(01/01/13)*

RULE 3.1: SUMMARY JUDGMENT AND SUMMARY ADJUDICATION

Pursuant to Rule 3.20, California Rules of Court, all local Court rules relating to Summary Judgment motions are preempted by Rules 3.1350-3.1354 of the California Rules of Court. *(7/1/04)*

RULE 3.2: TENTATIVE RULINGS

Tentative rulings in civil law and motion matters are posted pursuant to California Rules of Court, Rule 3.1308 and require notice of intent to appear. Tentative rulings are not required, but any Judicial Officer who does issue tentative rulings will use the procedure set forth in rule 3.1308(a)(1). Tentative rulings will be made available by telephone at 209-725-4240 and by posting on the Court's website at www.merced.courts.ca.gov no later than 4:00 p.m. on the Court day preceding the scheduled hearing.

If the Court has not directed argument in the tentative ruling, oral argument is permitted only if a party intending to appear notifies all other parties by telephone or in person by 4:00 p.m. on the Court day before the hearing of the party's intention to appear. A party also must notify the Court by telephone of the party's intention to appear by calling 209-725-4240 by 4:00 p.m. on the Court day before the hearing. The tentative ruling will become the ruling of the Court if the Court has not directed oral argument by its tentative ruling and notice of intent to appear has not been given. *(01/01/13)*

RULE 3.3: ATTORNEY'S FEES UPON DEFAULT JUDGMENT

Upon entry of default judgment, the following attorney's fees shall be awarded under normal conditions, or included in the judgment by the clerk in actions on promissory notes, contracts and foreclosures;

20% or $400.00 whichever is greater on the first $5,000.00 of principal
10% on the next $20,000.00 of principal
5% on the next $25,000.00 of principal
2% on the next $50,000.00 of principal
1% on all principal amounts in excess of $100,000.00

"Principal" as used herein means the principal obligation owing under the promissory note and/or the contract exclusive of any interest or penalties.

In any default proceedings involving a foreclosure of a mortgage or trust deed, the attorney's fees shall be computed as set forth herein above and increased by 10%.

In any unlawful detainer action involving residential premises, whereupon judgment is obtained following entry of default, the clerk may enter attorney's fees of $400.00.

In all contested cases, the trial Court shall establish attorney's fees based upon the length of the trial, the difficulty of the issues, the experience of the attorney and any other factors which the Court deems relevant to establish a reasonable attorney fees. *(1/1/12)*

RULE 4: CASE MANAGEMENT

a. General

(1) In accordance with and as required by, California Rules of Court, rule 3.720, the Court has adopted the following procedures to evaluate each case and assign each case to a case-management plan. The Court will use the factors listed in California Rules of Court, rule 3.715, in evaluating cases and selecting a case-management plan. Additional information is provided on the Court's website at www.merced.courts.ca.gov

(2) All parties or their counsel of record must file and serve a Case Management Statement using the mandatory Case Management Statement Form (CM-110). Such statement must be filed no later than 15 calendar days before the date set for the case management conference or review as specified in California Rules of Court, rule 3.725.

(3) All applicable items must be completed on Form CM-110. Any answer for which there is not sufficient space on the forms shall be completed on an attached sheet. In lieu of each party filing a separate Case Management Statement, any two or

more parties may file a joint statement. Unless the Court orders another time period, all parties must meet and confer in person or by telephone no later than 30 calendar days before the date set for the management conference to consider each of the subjects listed in California Rules of Court, rules 3.724 and 3.727.

(4) This Rule applies to all "general civil cases" as specified in California Rules of Court, rule 3.712.

b. Case Management Conference and Order

(1) Upon the filing of any complaint or other initial pleading in any case included with this Rule 4, the clerk will provide the filing party with a "Notice of Inclusion in Delay Reduction Program/Notice of Case Management Conference." Said Notice must be served along with the complaint or other initial pleading. A copy of the Notice will be placed in the Court file.

(a) The case management conference will be held no later than 150 days after the filing of the initial pleading before a Court official designated by the Presiding Judge. Unless notified by the Court that no appearance is necessary**,** all parties or their attorneys must be present at the conference or appear by telephonic conference call, and must be prepared to discuss all elements of the case inquired into on the Case Management Form and the subjects listed in California Rule of Court, rule 3.727.

(b) At the Case Management Conference, the Court will enter a Case Management Order setting a schedule for subsequent proceedings, and otherwise providing for management of the case as specified in California Rules of Court, rule 3.728.

(c) A trial date may be assigned at either the first or the second Case Management Conference. The date will be in the twelfth (12th) month following the date the complaint was filed. A date for a mandatory settlement conference will also be set in the eleventh (11th) month following the date the complaint was filed. *(01/01/13)*

c. Assignment to One Judge for All Purposes

To promote the efficient administration of justice, the Court maintains a direct calendar system with cases generally assigned to one courtroom for all purposes including trial. The Presiding Judge, Assistant Presiding Judge or designee may assign and re-assign cases to other courtrooms. *(01/01/13)*

d. CourtCall

Appearances by telephone are permitted and encouraged under the circumstances and procedures listed in California Rules of Court, rule 3.670. The telephone number to which calls can be made will be posted on the Court's website and in the Notice of

Inclusion in Delay Reduction Program/Notice of Case Management Conference. *(7/1/04, 01/01/13)*

RULE 5: USE OF INTERPRETERS IN CIVIL CASES

Interpreters will not be provided for civil and small claims matters, unless otherwise ordered by the court. When a party desires an interpreter, it shall be the responsibility of that party to give notice to the court and all other parties of record. That party shall make arrangements for the presence and the payment of the interpreter. *(07/01/13)*

RULE 6: SETTLEMENT CONFERENCES

a. Requirement of Settlement Conferences

A settlement conference is required in all civil trial matters. The time, date and place of the mandatory settlement conference will be set at the Case Management Conference and included in the Case Management Conference Order. At the request of any party or on the Court's own motion, the Court may set a settlement conference in addition to the mandatory conference.

b. Persons Attending

Trial counsel, parties, and persons with full authority to settle the case must personally attend the conference, unless excused by the Court for good cause shown. If any consent to settle is required for any reason, the party with that authority must be personally present at the conference. The Court may impose sanctions in the event of an unexcused absence of principal or insurer.

Experience has demonstrated the importance and necessity of the presence of all persons whose consent will be required for binding settlement agreement. Therefore, only extraordinary circumstances will excuse the non-appearance at the conference of the principals and authorized representative of the insurer.

c. Each Party to Be Prepared

At the conference each plaintiff or party seeking affirmative relief or recovery shall be prepared to make his or her minimum request, and each defendant shall be prepared to make his or her highest offer.

In each case counsel who attends the conference shall be thoroughly familiar with the case and shall be prepared to discuss it.

d. Settlement Statement

It is mandatory that all parties or counsel shall, at least five (5) Court days prior to the scheduled hearing, file with the Clerk of the Superior Court and serve on each party, a mandatory settlement conference statement containing the following:

(1) The names of all parties, including interveners and their representatives;
(2) A detailed discussion of all facts and law pertinent to the issues of liability and damages involved in the case;
(3) A good faith settlement demand and an itemization of economic and non-economic damages by each plaintiff;
(4) A good faith offer of settlement by each defendant.

e. Participation in Good Faith

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

f. Failure to Appear

If at the time of the scheduled settlement conference, plaintiff or those parties seeking affirmative relief fail to appear, the Court may order the trial date vacated and/or impose monetary sanctions. Written notice thereof will be mailed to all parties or their counsel of record as ordered by the Court. If the defendant or other responsible party fails to appear at the settlement conference and good cause is not shown, the Court may impose sanctions by way of costs, actual expenses, and counsel fees and order the case to proceed to trial on the date assigned.

g. Failure of Settlement Conference

In the event settlement negotiations are not successful, counsel should expect and be prepared to proceed to trial on the date scheduled. Every effort will be made by the Court to ensure that the case goes to trial on the date scheduled.

h. Notice of Settlement or Dismissal

If a case is settled or otherwise disposed of, the plaintiff must immediately file written notice of the settlement or other disposition with the Court and serve the notice on any arbitrator or other Court-connected ADR neutral involved in the case. If a hearing, conference or trial is imminent oral notice must be given to all of the above. The Court will impose sanctions for failure to provide it with timely notice of settlement.

A request for dismissal must be filed by Plaintiff within forty-five (45) days after the date of settlement unless the settlement agreement conditions dismissal on the

satisfactory completion of terms that are not to be performed within forty-five (45) days of the settlement. If the settlement contains such terms, then the settlement must specify the date by which the dismissal is to be filed.

If plaintiff does not file a request for dismissal within forty-five (45) days after settlement or forty-five (45) days after the date set for dismissal, the Court will either: 1) dismiss the case; or 2) require Plaintiff or Plaintiff's counsel to appear and show cause why sanctions should not be ordered for failure to file the required request for dismissal. *(7/1/04)*

RULE 7: NOTICE OF STAY

Any party who requests a stay must immediately file a notice of the stay and attach a copy of the order or document showing that the proceedings are stayed. If the person who requests the stay has not appeared or is not subject to the jurisdiction of the Court, the plaintiff must immediately file a notice of the stay and attach a copy of the order or other document showing the proceedings are stayed. This section applies to cases stayed for the following reasons:

(a) Order of a Federal Court or higher State Court;
(b) Contractual arbitration under section 1281.4 of the Code of Civil Procedure;
(c) Arbitration of attorney fees and costs under section 6201 of the Business and Professions Code; or
(d) Automatic stay caused by a filing in another Court. *(7/1/04)*

RULE 8: PRE-TRIAL CONFERENCES

a. Pre-Trial Settings

Pre-trial conferences will not be set unless a party, at the Case Management Conference, files a declaration setting forth facts indicating that a pre-trial conference is justified and the Court assigned Judicial Officer so finds and orders.

b. Pre-Trial Conference Procedure

(1) The parties shall confer before the date assigned for a pretrial conference to reach agreement upon as many matters as possible and shall prepare jointly, or each shall prepare, and submit before the conference, a written statement of the matters agreed upon.
(2) The parties shall be prepared to respond to any inquiry by the Court assigned judicial officer as to the possibility of a settlement of the case. *(7/1/04, 01/01/13)*

RULE 8.1: PREPARATION OF ORDER AFTER HEARING

Unless the Court orders otherwise or prepares the order after hearing on its own, the prevailing parties shall prepare a written order following any hearing on the Law and Motion calendar.

If the prevailing party does not prepare an order after hearing within ten (10) days of the hearing and does not communicate the reason for the delay to the other party, then the other party may prepare the order and process it. *(7/1/04)*

RULE 9: JURY TRIALS (Civil)

a. Deposit, Forfeiture & Return of Jury Fees

The deposit of advance jury fees, and of daily fees and mileage, shall be made as required by California Code of Civil Procedure section 631. The clerk shall not accept a deposit sought to be made fewer than twenty-five (25) days before the date set for trial (five [5] days in unlawful detainer cases). If a balance of monies remains after trial or disposition, that amount shall be returned to the depositing party. If the monies on deposit are not sufficient to cover the daily costs of trial jurors, the Court shall notify the depositing party that there is a balance due and owing, and the party shall deposit that amount forthwith with the Court.

b. Failure to Post

Failure to deposit advance or daily fees as required will be deemed a waiver of trial by jury. The Court, in its discretion, may proceed to trial without a jury, dismiss an empanelled jury, or upon such terms as may be just, proceed with a jury.

c. Payment for Food, Lodging and Other

Expenses in a civil action in which a jury has been sworn, the expenses for food, lodging and other reasonable necessities which are incurred shall be borne by the depositing parties. Before any such expenses are incurred, the Court Clerk at the trial shall require the depositing parties to advance such sums of money as the Court deems reasonably necessary in order to pay for the anticipated expenses, but in no event less than $125.00 per panel meal. Any surplus amount of money remaining after said expenses have been paid in full shall be returned to the payer. If a depositing party fails, upon the request of the Court, to advance such necessary expense money, the Court, will forthwith consider whether to dismiss the jury and proceed as if no jury had been selected and sworn.

d. No Jury Trials Scheduled for Certain Holiday Weeks

No jury trials will be scheduled for the week in which the Thanksgiving or Christmas holiday falls.

e. In Limine Motions

(1) The following motions in limine are deemed granted. Written motions should not be submitted on these issues:

(a) Motion excluding evidence of collateral source;
(b) Motion excluding evidence of, or mention of, insurance coverage;
(c) Motion excluding offers to settle and/or settlement discussions.

(2) All other motions in limine shall be filed and served on opposing counsel no later than 4:00 p.m., six (6) Court days prior to the trial call date. Written opposition to in limine motions, if any, shall be filed and served on opposing counsel no later than 4:00 p.m., three (3) Court days prior to the initial trial call date. Failure to submit written opposition to In Limine motions will not preclude oral opposition to the motions at the time of trial.

(3) Motions in limine shall be prepared in the form prescribed as follows: The title of each in limine motion shall identify the moving party and describe the nature of the motion, and shall be numbered sequentially, indicating the total number of in limine motions submitted by the moving party. Example: "Plaintiff JANE DOE'S Motion In Limine to Exclude the Testimony of Joe Expert [No. 1 of 6]." Written opposition to in limine motions, if any, shall identify both the party filing the opposition, and the specific motion which is being opposed by name of moving party and motion number. Example: "Defendant RICHARD ROE'S Opposition to Plaintiff JANE DOE'S Motion In Limine No. 1." *(7/1/04, 01/01/13)*

RULE 10: JURY INSTRUCTIONS (Civil)

a. Use of Pre-Approved Instructions

To the extent possible parties must use instructions promulgated or sponsored by the California Judicial Council.

b. Service of Jury Instructions

At the commencement of trial in all civil jury matters, counsel shall serve upon all other parties participating in the trial and deliver to the trial judge a written request captioned in the action and entitled "Instructions Requested by (name of party)," to which shall be attached an edited copy of all instructions requested, with one instruction per page and a five-inch margin at the top of the page which may, however, include typical CACI headings, which will not be read to the jury. The parties may submit additional typewritten or printed instructions which shall contain the authorities relied upon, shall be sequentially numbered and shall follow standard CACI format. The parties should be

prepared to provide to all jurors and alternates a copy of all written instructions, if so required by the trial judge. *(7/1/04)*

RULE 11-12: [RESERVED]

RULE 13: TOXIC, HAZARDOUS MATERIALS; AND FIREARMS (Applies to All Civil and Criminal Cases)

A. Prior to bringing any toxic, hazardous or potentially hazardous materials into the courtroom, counsel shall provide to the Court a written statement containing information as hereinafter set forth:

(1) A list of the technical and street names of the said materials.
(2) The types and sizes of the containers to be utilized for the materials.
(3) The name of the person who will transport the materials into the courtroom.
(4) Where the materials will be stored and the conditions, under which the materials will be stored, viewed or handled.
(5) The name of the person who will remove the materials.
(6) An explanation as to why the material is hazardous or potentially hazardous and the remedies to be followed in the event of a spill, leak or other accident.
(7) An explanation as to why the introduction of the materials into evidence must be accomplished by their physical presence in the courtroom, rather than proof of their existence by any other method.

B. Toxic, hazardous or potentially hazardous materials shall include, but not be limited to, all chemicals, pesticides, and explosives, other than ammunition. A comprehensive list of these materials is contained in the California Code of Regulations, Title 8, Section 339(3), entitled The Hazardous Substance List. Any further information concerning the list of materials provided in the aforementioned California Code of Regulations or additional information concerning other hazardous materials may be obtained by contacting the Merced County Department of Environmental Health.

C. All Evidence of this nature will remain the responsibility of the person bringing such into a courtroom. When such evidence is introduced, the Court Clerk will take possession and the responsibility for it and store them pending "final determination of the action." Penal Code Section 1417.1 defines "final determination" as follows:

(1) When no notice of appeal is filed, thirty (30) days after the last day of filing that notice.
(2) When a notice of appeal is filed, thirty (30) days after the date the Court Clerk receives the remittitur affirming the judgment.

(3) When an order for a rehearing, a new trial, or other proceeding is granted and the ordered proceedings have not been commenced within one (1) year thereafter, one (1) year after the date of that order.
(4) In cases where the death penalty is imposed, thirty (30) days after the date of execution of sentence.

D. Such exhibits must be retained by the submitting party/agency/Court until notice of final determination of the action, as defined above, or the submitting party/agency/Court has verified the fact.

E. This rule does not, nor does it intend to, interfere with or be contrary to any exiting statute or case law that governs the introduction of or the viewing of evidence.

F. This rule is made for the protection of the public and all persons involved in the processes of the justice system of Merced County. *(7/1/04)*

No firearm shall be marked as an exhibit, introduced into evidence or otherwise handled in the courtroom, unless it has been checked by the bailiff for safety and a gunlock has been attached to the trigger.

RULE 14: DOMESTIC VIOLENCE PROTOCOL

This rule is adopted in conformity with Penal Code 136.2 and California Rule of Court 5.450.

A. DEFINITIONS

For purposes of this rule:

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

Prevention Act in the Family Code or Section 213.5 of the Welfare & Institutions Code.

B. PURPOSE

This protocol is intended to set forth the procedures for communication between the Courts about the issuance of Criminal Court protective orders and civil restraining orders including those orders involving child custody and visitation, where the same restrained person and protected person are involved in both orders. It is important to permit appropriate visitation between a criminal defendant and his or her children pursuant to civil Court orders, but at the same time provide for the safety of the victim or witness by ensuring that a criminal Court protective order is not violated. Since there are large numbers of cases in the criminal Courts that have related matters in the Family, Juvenile, or Probate Courts, it is vital that there be a process for communication between the divisions of the Court dealing with the same parties and families, and a process for the modification of orders to insure consistency between various Court protective orders.

C. PROCEDURE IN THE CRIMINAL DOMESTIC VIOLENCE COURT

(1) Where the Restrained and Protected Persons have Children Together

When the Criminal Court issues Criminal Protective Orders protecting Victim(s), the Criminal Court shall inquire of the defendant (restrained person) whether there are any children of the relationship between the defendant and the victim (protected person), and whether there are any Court orders for custody/visitation of those children. If there are children, the Criminal Court shall consider whether peaceful contact should be allowed for purposes of visitation of the defendant with the children. The Criminal Court shall also inquire as to whether there are any other protective/restraining orders involving the defendant and the victim. Subject to available resources, including the Court's Domestic Violence Program, the Court shall examine available data bases for existing protective or restraining orders, before issuing permanent orders.

(2) When the Protected Persons Include Minor Children of the Restrained Person

When the Criminal Court issues No Contact and/or Stay Away Orders from the minor children of the defendant:

(a) The Criminal Court shall:
  (1) Promptly send a copy of its Order to the Family Court.

(2) Notify the defendant of his or her rights to seek a modification and of the necessity of returning to the Criminal Court to modify the Criminal Court protective order.

(3) When the Victim is Present in the Criminal Court

If the victim is present in Criminal Court when the Criminal Protective Order is issued, the Court shall provide the victim with a copy of the Criminal Protective Order. If the victim is not present in Court, the Court will provide a copy to the District Attorney. The District Attorney shall send a copy to the victim at his or her last known address.

(4) Modification of Criminal Protective Orders in Criminal Court

Because Criminal Protective Orders supersede Civil Protective Orders, to the extent they are inconsistent, it is important that the process of modification be easily available.

(a) The District Attorney's Office may, at any time, place the issue before the Court at the request of a victim or the Family, Juvenile or Probate Court.
(b) The Probation Department may place the issue before the Court at the request of a defendant, victim, or the Family, Juvenile or Probate Court.
(c) The defendant or his/her counsel may place the issue before the Court.
(d) Upon a proper request pursuant to this protocol, the Court shall place the matter on calendar on its own motion. The Court, in its discretion, may prepare a Standing Order for this purpose.
(e) Copies of any applicable CLETS civil restraining orders and custody and visitation orders shall be attached to the Application to Modify Criminal Protective Order. The Application shall have the case numbers of both the Criminal Court case and any Family, Juvenile, or Probate cases involving the defendant and the victim on it. Copies of the application shall be placed in the applicable Court files. The requesting person will be responsible for personal service five (5) days before the hearing on the defendant and all other appropriate parties and agencies, including the District Attorney's Office, the Probation Department (if the defendant's on formal probation), the Public Defender's Office, and the defendant or victim. A copy of the Application to Modify Criminal Protective Orders shall be served on the District Attorney and the Probation Department at least five (5) days in advance of the scheduled hearing date. The District Attorney shall send a copy of the Application to the victim at his or her last known address. The Sheriff's Office shall include service of these documents with their current process for civil restraining order service.

(5) Procedure After the Criminal Court Hearing on Modification

After the hearing on Modification of the Protective Order, the Criminal Court shall send to the applicable Family, Juvenile, or Probate Court for inclusion in its files, a copy of the Modified Protective Order or Order Denying Motion to Modify Criminal Protective Order (or Minute Order). The District Attorney shall send a copy of the new Criminal Protective Order, or the Order Denying the Motion to Modify Criminal Protective Order (Or Minute Order) to the victim at his or her last known address.

D. Procedure in Family, Juvenile and Probate Courts

(1) Criminal Record Information to be made Available to the Family Court

Subject to available resources, the Family, Juvenile, and Probate courts or their designee(s) shall review Court records for existing restraining/protective orders involving the same restrained and protected parties, before issuing permanent CLETS Civil Restraining Orders.

(2) Provisions For Safe Access to Children

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

E. Communication between the Courts and Related Agencies

(1) Subject to available resources, any Court issuing protective/restraining orders must make reasonable inquiries to determine the existence of other protective/restraining orders involving children of the protected and restrained parties.
(2) Any division of the Superior Court may provide copies of Criminal Protective Orders, CLETS Civil Restraining Orders, Court Minutes, and applicable custody and visitation orders to other divisions of the Court.

F. Request to modify a Criminal Restraining Order

(1) The Family Law Commissioner may recommend a modification by utilizing the Request for Hearing Form. The Commissioner may direct an attorney or party to complete the Request for Hearing Form and attach a copy of a Minute Order reflecting the Commissioner's recommendation to the Criminal Court.

(2) A Defendant, protected person, deputy district attorney, criminal defense attorney, probation officer, attorney for the defendant, or attorney for the protected person may request a modification of a restraining order by utilizing the form "Request for Hearing on Protective Order Modification." The form is available at the Merced Superior Court. *(1/1/09)*

RULE 15: WITHDRAWAL OF STIPULATION TO COMMISSIONER

Any withdrawals of a stipulation to a Commissioner must be made five (5) days prior to a hearing or trial if the Commissioner is known at least ten (10) days before such hearing or trial. (Also refer to Rule 16) *(7/1/04)*

RULE 16: CRIMINAL RULES

a. Direct Calendaring of Criminal Cases

The Court maintains a direct calendar system with cases generally assigned to one courtroom for all purposes. Assignment to a Judge for all purposes means assignment for all proceedings in the matter from arraignment on the complaint through trial and sentencing. The Presiding Judge, Assistant Presiding Judge or designee may assign and re-assign cases to other courtrooms. *(01/01/13)*

b. Writ of Habeas Corpus

The Clerk shall not file any petition for writ of habeas corpus that is not accompanied by a complete copy including any exhibits, attachments or other materials sent with the original. All the papers shall be returned to the petitioner with the admonition to comply with this rule if the petition is resubmitted.

c. Request For Search and Arrest Warrants

During normal Court hours any officer requesting a search or arrest warrant will be directed to the Executive Assistants via the Jury Office. The Executive Assistants will locate an available Judge to review and approve the request(s).

d. Discovery

All parties shall comply with Penal Code Sections 1054-1054.9.

e. Stipulated Discovery Order

All parties shall comply with the Stipulated Order re Discovery in Felony Cases unless an exception is requested at formal arraignment.

f. Minute Orders (Cases Where Minute Orders Prepared by the Clerk Immediately After Case is Concluded and Delivered in Court)

(1) Immediately upon the conclusion of every felony case scheduled for an arraignment, bail review hearing, pre-preliminary hearing or preliminary hearing, or trial, the Courtroom Clerk shall cause a copy of the minute order or probation order to be hand-delivered to the deputy public defender or defense attorney and the deputy district attorney who are present and appearing as attorney of record.
(2) Prior to delivering copies of the minute order as set forth above, the Judge and Clerk shall make sure the information on the minute order is correct.
(3) The deputy district attorney, deputy public defender or defense attorney shall, before leaving the courtroom, determine if the following information in the order is correct:

(a) Date and time of next Court appearance; if any.
(b) Purpose of next Court appearance.
(c) Own Recognizance Release status.
(d) Custody and bail amount.
(e) The terms of probation, if applicable.

(4) If an attorney determines that any of the information in #3 is not correct, the attorney shall immediately advise the Judge and clerk.
(5) If the Judge agrees that any of the information in #3 is not correct, the Judge and clerk shall immediately correct the minute order.
(6) This procedure shall also apply to any misdemeanor offense which involves violence or a threat of violence where attorneys of record are present.

g. Jury Instructions

Counsel shall file, on the first day of trial, a list of CAL CRIM (latest edition) instructions requested. If any proposed additional instructions are requested they shall be submitted in writing with authorities placed at the top of the writing. Proposed pattern jury instructions which have been modified by a party, shall clearly indicate any proposed change.

h. Felony Bail Schedule

The Judges shall adopt a Felony Bail Schedule for use by the Court and Merced County law enforcement agencies and can be accessed at www.merced.courts.ca.gov.

i. Notice of Motion

The notice of motion designating a motion pursuant to Penal Code Section 1538.5 shall specifically describe and list the evidence which is the subject of the motion to suppress; and shall specifically state the theory or theories which shall be relied upon and urged for the suppression of evidence; and cite the specific authority or authorities which will be offered in support of the theory or theories upon which suppression of the evidence is urged.

j. Filing of Motions

(1) Unless otherwise ordered by the Court, motions in felony cases shall be filed in writing no later than five (5) Court days before the hearing, with proof of service on all parties.
(2) Unless otherwise ordered by the Court, motions in misdemeanor cases shall be filed in writing no later than ten (10) Court days before the hearing.
(3) Motions shall contain a notice of motion, the motion itself, a declaration or affidavit in support thereof and a memorandum of points and authorities.
(4) Responsive pleadings and points and authorities in opposition to either category of motion shall be filed no later than two (2) Court days prior to the hearing with proof of service on all parties.
(5) Each paragraph of any declaration shall be numbered sequentially. The original and all copies of exhibits and attachments shall be tabbed and shall be referred into the pleadings or papers by tab identification.

k. Defendant's Clothing

The attorney representing a defendant in the custody of the Sheriff in a criminal matter shall make timely and appropriate arrangements to ensure that the defendant is suitably dressed for trial before the case is assigned to a trial department.

l. Motions Made for Release on Own Recognizance or Bail Modification

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

    (a) A prior motion has been made,
    (b) When and to what Judge it was made,
    (c) What the nature of the motion was,
    (d) What order or decision was made thereon, and
    (e) What materially changed circumstances are claimed to be shown.

(2) Any order made on subsequent applications failing to comply with these requirements may be vacated or set aside on ex parte application or on the Court's own motion at any time.

m. Sound Recordings to be Offered as Evidence at Trial

(1) Any party intending to offer a sound recording in evidence at a trial shall prepare a transcript of the sound recording at least two (2) weeks before trial and serve such transcript and a copy of the recording on all other parties. Any party disputing the accuracy of the transcript shall prepare his own transcripts of the sound recording identifying the disputed portions and serve that transcript on all other parties no later than three (3) days before trial. When disputed, the parties shall meet and confer in a good faith effort to resolve their differences.
(2) In the event that the differing versions cannot be resolved by the parties, they shall alert the Presiding Judge at the trial readiness conference to reserve an appropriate amount of time in the assigned trial Court to settle the dispute before requesting a jury panel.
(3) Nothing herein is intended to contravene the applicable rules of discovery or valid claims of confidentiality provided by law. If a party is entitled to maintain the confidentiality of a sound recording and chooses to do so until trial, a proposed settled transcript shall be lodged with the Court when the sound recording is marked for identification. The opposing party shall be allowed a reasonable opportunity to listen to the sound recording, prepare a proposed transcript and lodge objections before the sound recording is received as evidence.
(4) Each transcript shall be certified by the person preparing it. In the event the sound recording is in a language other than English, the certification shall also include a certification by the person translating the sound recording.
(5) The propounding party shall prepare a sufficient number of copies of the transcript for distribution as ordered by the Court.
(6) Any party intending to electronically present an exhibit at trial shall procure their own technical assistance for such a presentation. If the Court's technical assistance is to be requested, each party making such a request must comport with the Court's procedures, including but not limited to submitting the request on the Court's form at least two (2) Court days prior to the scheduled presentation date. Both the procedure and form are attached hereto in Appendix G. *(Amended 1/1/10)*

n. Requests to Conduct Media Coverage

Requests for media coverage (photographing, recording or broadcasting of Court proceedings by the media using television, radio, photographic or recording equipment) in the courthouse or courtroom shall comply with the provisions of California Rules of

Court, Rule 1.150. The Court will rule on the request at the hearing. The Court staff procedure for media requests is located on the Court's website. *(1/1/10)*

o. Dangerous, Large or Bulky Exhibits

(1) Permission from the Judge assigned to the hearing or trial must be obtained before a party may bring dangerous, hazardous, 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:

(a) Inherently dangerous, such as:

(1) Firearms;
(2) Any type of explosive powder;
(3) Explosive chemicals, toluene, ethane;
(4) Explosive devices, such as grenades or pipe bombs;
(5) Flammable liquids such as gasoline, kerosene, lighter fluid, paint thinner, ethyl-ether;
(6) Canisters containing tear gas, mace;
(7) Rags which have been soaked with flammable liquids;
(8) Liquid drugs such as phencyclidine (PCP), methamphetamine, corrosive liquids, pyrrolidine, morpholine, or piperidine;
(9) Samples of any bodily fluids, liquid or dried; or
(10) Controlled or toxic substances;
(11) Corrosive or radioactive substance.

(b) Large and cumbersome, such as a ladder, sewer pipe, or automobile chassis.

(2) 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. (Refer to Rule 13 for required written statement).
(3) Evidence received in any case shall be limited to those items required in the case and shall be retained by the Court for the minimum time required by law, unless good cause is shown to retain the evidence for a longer period of time.
(4) No exhibits shall be accepted by the Clerk or exhibits custodian unless:

(a) All containers of controlled substances are securely sealed and protected against breakage to safeguard Court personnel, so that the contents cannot be spilled and odors cannot be emitted;

(b) All containers of liquid substances, including bodily fluids, are securely sealed and protected against breakage to safeguard Court personnel, so personnel are not exposed to the contents and odors;
(c) All objects containing bodily fluids or dangerous, controlled or toxic substances (e.g., bloody shirt, gasoline soaked rag, etc.) are placed in containers that are securely sealed and protected against breakage so that odors cannot be emitted and Court personnel are safeguarded;
(d) 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;
(e) All sharp objects, such as hypodermic needles, knives, and glass, are placed in containers that are securely sealed and protected against breakage, which will safeguard personnel;
(f) All containers with liquid substances are clearly marked and identified as to type and amount;
(g) All containers of controlled substances are clearly marked, identified, weighed, and sealed;
(h) All cash is specifically identified, whether individually or packaged, as to the total amount and number of each denomination.

(5) 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.
(6) 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, 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 exhibits be returned to the law enforcement agency involved. The order shall require that a full and complete photographic record of the exhibit or the portion returned be substituted for the exhibit. The party who offered the exhibit shall provide the photographic record. The party or agency to whom the exhibit is returned shall be responsible for maintaining and preserving the exhibit until there is a final disposition of the action or proceeding. All exhibit tags and other identifying markings or information concerning each exhibit shall remain in place and shall not be disturbed. Each exhibit shall be maintained intact and in the same condition as during trial. In the event further proceedings of any Court having jurisdiction of the matter require the presence of the exhibit, the party or agency to whom it was returned shall promptly deliver the exhibit to the appropriate Court, with notice to all parties.

p. Pass request

(1) The Court has approved a form for use in the courtroom whenever an inmate requests a pass from the jail. The form is available in the courtroom.
(2) If the pass is requested for medical reasons, the inmate should complete a release of information form which is also available at the local jail facilities. *(7/1/04; 1/1/09)*

q. Destruction of Exhibits- Criminal Matters Penal Code sections 1417.1-1471.9

(1) No order shall be made for the destruction of an exhibit prior to the final determination of the action or proceeding. The date when a criminal action or proceeding becomes final is as follows:

(a) When no notice of appeal is filed, thirty (30) days after the last day for filing notice of appeal.
(b) When a notice of appeal is filed, thirty (30) days after the date the clerk of the Court receives the remittitur affirming the judgment.
(c) When an order for a rehearing, a new trial, or other proceeding is granted and the ordered proceedings have not been commenced within one (1) year thereafter, one (1) year after the date of that order.
(d) In cases where the death penalty is imposed, thirty (30) days after the date of execution of sentence.

(2) Upon the final determination of the action or proceeding the custodian of exhibits shall notice the parties of proposed exhibit destruction, and all exhibits shall be disposed of as follows:

(a) Pursuant to Penal Code section 1417.7, not less than fifteen (15) days before any proposed disposition of an exhibit pursuant to Section 1417.3, 1417.5, or 1417.6, the Court shall notify the district attorney (or other prosecuting attorney), the attorney of record for each party, and each party who is not represented by counsel of the proposed disposition.
(b) If no party requests exhibits be returned, the Clerk of the Court shall return all exhibits both prosecution and defense to the office of the District Attorney for disposition, with the exception of any exhibits as described by Section 11474 of the Health and Safety Code
(c) All exhibits described by section 11474 of the Health and Safety Code shall be returned to the Office of the Sheriff of Merced County to be destroyed by order of the Court. *(1/1/12)*

r. Over the Counter Arraignment-Case Calendar Request-Misdemeanor Cases

An over the counter arraignment is allowed to attorney's representing a defendant on misdemeanor cases only. Authorization must be received in the Clerk's office no later than two (2) court days prior to the scheduled calendar date. The defendant will be informed that a $75.00 fee will be imposed if the defendant fails to appear in court.

RULE 17: COURT EXECUTIVE OFFICER

The duties of the Court Executive Officer shall include, but are not necessarily limited to, those set forth in California Rules of Court rule 10.610 and such other duties as may be assigned by the Presiding Judge. The Court Executive Officer shall be responsible for the selection, retention and direction of all non-judicial personnel of the Court. The Court Executive Officer shall be an exempt employee whose selection shall be recommended by a majority of the Executive Committee and approved by a majority vote of all Merced Superior Court Judges, who may be terminated by a majority vote of all Merced Superior Court Judges. The Court Executive Officer shall serve as a non-voting member of the Executive Committee and shall serve as secretary. The secretary is responsible for conducting all elections and counting all votes. *(7/1/04, 01/01/13)*

RULE 18: COURT COMMISSIONERS

The Superior Court Commissioners shall perform the duties and shall have the powers prescribed by Code of Civil Procedure section 259 and the duties and powers of a juvenile Court referee as specified in Welfare & Institutions Code section 248. The Superior Court Commissioners shall be exempt employees who shall serve at the pleasure of the judges of the Merced Superior Court. They shall be selected by the Executive Committee and may be terminated by a majority of all Merced Superior Court Judges. *(7/1/04, 01/01/13)*

RULE 19: NOTICE TO APPEAR PURSUANT TO VC Section 40500

Pursuant to California Vehicle Code Section 40902, the Court hereby provides that a defendant may elect to have a trial by declaration upon any alleged infraction involving a violation of the California Vehicle Code or any local ordinance adopted pursuant to said code. Testimony and other relevant evidence may be introduced in the form of a notice to appear issued pursuant to Vehicle Code Section 40500, a business record or receipt, a sworn declaration of the arresting officer, or a written statement or letter signed by the defendant. A request for a trial de novo pursuant to Vehicle Code Section 40902(d) must be filed no later than twenty (20) days from the date of mailing of the Court's original decision. *(7/1/04)*

RULE 20: [RESERVED]

RULE 21: APPELLATE DIVISION

a. Sessions

Regular sessions of the Appellate Division shall be held on the fourth Monday of each month at 1:15 p.m., unless that day falls on a holiday in which event the session shall be held on the third Monday of that month at 1:15 p.m. Special sessions shall be held at the call of the Presiding Judge of the Appellate Division.

b. Calendaring

Unless otherwise ordered, all appeals in which the last reply brief was filed (or the time for filing the brief expired forty-five (45) or more days before the date of a regular Appellate Division session) will be placed on the calendar for that session by the Appellate Division Clerk.

c. Briefs

Immediately upon the filing of the record on appeal in the Appellate Division, the Clerk of the Appellate Division will promptly mail a notice to each appellate counsel or unrepresented party giving the dates of the briefing schedule. Briefs shall be prepared, served and filed as provided by Rules 8.882(e), 8.883, 8.927(c) and 8.928 of the California Rules of Court. Counsel shall also deposit with the Clerk three (3) legible copies for the assistance of the appellate panel.

Noncomplying briefs will be governed by Rules 8.883(d) and 8.928(d) of the California Rules of Court.

d. Motions

All motions shall comply with Rule 8.808 of the California Rules of Court. Although a party may request a hearing on a motion, a hearing will be held only if the Court determines that one is needed.

e. Oral Argument

Unless otherwise ordered, counsel for each party shall be allowed ten (10) minutes for oral argument, with the understanding that the Court may apportion or expand the time allowed for oral argument, if they choose to do so. The appellate or the moving party shall have the right to open and close.

f. Trial Court File Instead of Clerk's Transcript

This Court elects to use the original trial Court file as the record of the written documents from the trial Court proceedings on all appellate matters in civil, misdemeanor and infraction cases pursuant to Rules 8.833(a), 8.863(a) and 8.914(a) of the California Rules of Court. This rule will govern unless the trial Court orders otherwise after notice to the parties. *(7/1/04, 1/1/12, 01/01/13)*

RULES 22-199: [RESERVED]

RULE 200: PROBATE RULES – PREFACE

It is not the Court's intent in adopting these rules to cover every anticipated question or concern, or to be a research tool, but rather to provide a few additional guidelines, which are considered important for local practice. The Probate Department of the Merced Superior Court encourages the use of the Probate Code, California Rules of Court, Judicial Council forms, and the publications of the Continuing Education of the Bar as valuable guidelines and references with respect to local practice.

Unless stated otherwise, all references in this Rule are to the California Probate Code.

a. Time and Place of Hearing

All uncontested probate hearings and contested matters, which are not expected to exceed twenty (20) minutes in length, shall be set at 8:15 a.m. on Tuesday – Thursday. All hearings which are likely to exceed twenty (20) minutes in length should be set at 10:00 a.m., on a Tuesday.

b. Applicable Rules

Except as otherwise provided in these rules, all provisions in the local general and civil law and motion rules apply to probate proceedings.

c. Appearances

(1) There is no Probate Commissioner or Examiner in Merced County.
(2) Appearances are required on all petitions for appointment of conservators, and/or guardians and confirmation of sale of real or personal property and on any petition to which objections are filed.
(3) If the moving party does not appear on any calendared matters, cases involving issues which are incomplete or questionable may be continued one to two weeks or may be dropped from calendar, depending on the circumstances.
(4) See Rule 4d for telephone appearances.

d. Forms Approved by the Judicial Council

All probate forms printed and approved by the Judicial Council are mandatory in Merced County. Failure to use such forms may result in the Clerk's refusal to file a submitted document.

e. Orders

Except in the case of confirmation of sales, contested matters and orders requiring information from a governmental agency, the moving party shall submit the proposed order at least three (3) Court days prior to the hearing date. Orders shall have the scheduled hearing date, time, and department noted on the face sheet below the title of the document.

f. Appointment of Representative(s)

(1) Where a petition seeks the appointment as personal representative of a person or persons other than the petitioner, a written consent to serve as personal representative must be filed for each such proposed personal representative.
(2) Each personal representative must execute and file an Acknowledgement of Receipt of Judicial Council Form "Duties and Liabilities of Personal Representative" (Form DE – 147) before the Court issues letters.

g. Notices

(1) In a petition for probate of a will, all persons and organizations named in the will or codicils shall be listed.
(2) If a named devisee predeceased the decedent, that information must be provided in the notice. In cases where the devisee dies after the decedent, the date of death must be stated and notice must be mailed in care of his or her personal representative if one has been appointed, or alternatively, to another appropriate representative.
(3) A declaration specifying good faith efforts to identify and locate heirs or beneficiaries is required where the petitioner cannot determine the name or address of an heir or beneficiary to whom notice is required.
(4) If there are no known heirs of the decedent and no heirs of a predeceased spouse, a declaration to that effect shall be filed setting forth the basis for the declaration and the efforts made to locate all such heirs.
(5) The trustee of a living trust who is a beneficiary of a will shall be listed as a devisee and noticed.
(6) The Clerk does not handle the preparation, mailing or publication of notices. Notices must be prepared and submitted at the time of filing the applicable petition, and the moving party is responsible for all required mailings and newspaper publications.

h. Defective Notice

If the publication is correct but the mailing is defective, the hearing normally will be continued to allow enough time for the mailing of the required amended notice, and republication is not required. If the mailing is correct but the publication is defective, the matter must be taken off calendar and a new notice must be given by publication and mailing.

i. Bond

(1) Pursuant to section 10453, if a bond is otherwise required, if full authority under the Independent Administration of Estates Act (IAEA) is sought, and if the personal representative at the time of the initial petition for probate intends to sell real property through a notice of proposed action (without Court confirmation), the latter fact shall be stated in the petition to enable the Court to determine whether the initial qualifying bond should be fixed to include anticipated proceeds from the sale of real property.
(2) Every person appointed as personal representative shall give a bond approved by the Court before letters are issued unless otherwise waived in the will or in writing. If two (2) or more persons are appointed the Court may require a separate bond from each or a joint and several bond. If a joint bond is furnished, the liability on the bond is joint and several.
(3) If written waivers are attached to the petition, bond will be waived by the Court pursuant to section 8481 of the Probate Code, provided all heirs or beneficiaries are competent to act. If any such person is incompetent (e.g. minors) an appropriate representative is required to waive bond on behalf of such person. This section does not apply if the will requires a bond.
(4) A personal representative who is a non-resident of California and who is nominated to serve without bond still may be required to post such bond as the Court may require, where good cause of such a requirement is shown.
(5) If the will names two or more persons to serve as executors but not all serve and the will does not expressly waive bond if fewer than all serve, the Court shall require each executor to give a bond unless the Court waives this requirement under Probate Code section 8481(a)(2).
(6) It is the duty of the fiduciary or fiduciary's attorney, upon becoming aware a bond is insufficient to immediately apply for an order increasing the bond. Such application accompanied by a proposed order, may be made ex parte. See CEB publications for forms.

j. Creditor's Claims

(1) Creditors shall file their claims with the Clerk's office and mail a copy to the personal representative. The disposition of all such claims must be reported to the Court on the Judicial Council "Allowance or Rejection of Creditor's

Claim" form, prior to any distribution. This requirement also applies to fiduciaries acting under the IAEA.

(2) If the personal representative is acting under the IAEA, the Court will not review the personal representative's allowance or rejection of a creditor's claim unless good cause is shown, except as to claims of the personal representative or the attorney. All claims of the personal representative or the attorney must be submitted to the Court for approval. *(7/1/04)*

RULE 201: ACCESS TO JUVENILE COURT RECORDS

Juvenile Court records may not be obtained or inspected by either civil or criminal subpoena. If a person/agency is not entitled to access under Welfare and Institutions Code sections 827-830.1, a person/agency must petition the Court for authorization using Petition for Disclosure of Juvenile Court Records (JV-570 and then he/she must obtain a Court order from the Presiding Judge of the Juvenile Court, or another Judicial Officer designated by the Presiding Judge. An intentional violation of Welfare and Institutions Code section 827 is punishable by a fine of up to $500.00.

A. Definition of Juvenile Court Records

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

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

Records relating to juvenile contacts or investigations which are maintained by a law enforcement agency, probation department or Department of Child Support Services (DCSS) are confidential even if juvenile Court proceedings have not been instituted.

1) Access Without a Court Order

Pursuant to Welfare and Institutions Code sections 827-830.1, specified persons/agencies are entitled to access to juvenile records without a Court order, excluding portions of the record which are otherwise confidential, and portions of

the record which include the names and information of other children. In order to obtain access or copies of the records, the person/agency entitled to access must file a Declaration in Support of Access which is available and maintained in the Superior Court Clerk's Office, Juvenile Division. The following persons/agencies are entitled to access to juvenile records without a Court order:

(a) Subject child,
(b) Attorneys for the parties, and hearing officers, probation officers and law enforcement officers who are actively participating in criminal or juvenile proceedings involving the child,
(c) Court personnel,
(d) Attorney authorized to prosecute adult criminal or juvenile matters under California law (district attorney, city attorney, city prosecutor),
(e) Superintendent or designee of the school district where the child is enrolled or attending school (see also Welfare & Institutions Code section 828.3),
(f) Member of Child Protective Agencies per Penal Code section 11165.9 (police, sheriff, county probation, Department of Children and Family Services),
(g) State Department of Social Services for the purposes delineated in Welfare and Institutions Code section 827,
(h) Members of children's multi-disciplinary teams (see also Welfare & Institution Code, sections 830, 830.1), and
(i) Persons/agencies providing treatment or supervision of the child,
(j) A state or local child support agency for the purpose of establishing paternity and establishing and enforcing child support orders.

2) Access to Delinquency Records where Petition Sustained on Offense Listed in Welfare and Institutions Code section 676(a).

Pursuant to Welfare and Institutions Code section 676(d), when a petition has been sustained for an offense, the following information contained in the Court file shall be available for public inspection: (a) the charging petition, (b) the minutes of the proceedings, and (c) the orders of adjudication and disposition of the Court.

(a) The name of a minor found to have committed one of the serious violent offenses listed in Welfare and Institutions Code section 676(a) shall not be confidential, unless the Court orders it to be confidential based on good cause.

3) Petitions to Prohibit Disclosure of Delinquency Records

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

4) Welfare and Institutions Code section 827 & 828 Petitions

Petitions for Disclosure of Juvenile Court Records and Petitions to Obtain Report of Law Enforcement Agency/Juvenile (Judicial Council Form JV-570 and JV-575, respectively) shall be filed at the Juvenile Court. *(1/1/09)*

RULE 202: CASA PROGRAM

Court Appointed Special Advocates (CASA) of Merced County volunteers are appointed on behalf of children and only in dependency proceedings. CASA serve at the pleasure of the Court having jurisdiction over the proceeding in which the CASA has been appointed. In general, a CASA's functions are as follows:

(a) Support the child throughout the Court proceedings.
(b) Explain the Court proceedings to the child.
(c) Establish a relationship with the child to better understand the child's needs and desires.
(d) Review available records regarding the child's family history, school behavior, medical or mental health history, et cetera.
(e) Identify and explore potential resources that will facilitate family preservation, early family reunification, or alternative permanency planning.
(f) Explain the CASA volunteer's role, duties and responsibilities to all parties associated with a case.
(g) Communicate the child's needs to the Court through written reports to the Court and make recommendations to the Court on what placement, permanent plan, and services are best for the child.
(h) Consider whether appropriate services, including reasonable efforts, are being provided or offered to the child and the child's family.
(i) Ensure that the Court-approved plans for the child are being implemented.
(j) Attend Court hearings.
(k) Investigate the interests of the child in judicial or administrative proceedings outside of Juvenile Court.

In any action pursuant to Welfare and Institutions Code Sections 300 et seq, the Court may, in an appropriate case and in addition to any counsel appointed for a child, appoint a CASA to represent the best interests of the child who is the subject of the proceedings. If the Court determines that a child would not benefit from the appointment

of counsel pursuant to Welfare and Institutions Code Section 317 and California Rules of Court 5.660, the Court must appoint a CASA for the child to serve as a guardian ad litem, as required by Welfare and Institutions Code Section 326.5. The CASA has the same duties and responsibilities as a guardian ad litem and must meet the requirements set forth in California Rules of Court 5.660, subdivision (e). *(1/1/12)*

RULE 203: COURT APPOINTED SPECIAL ADVOCATES

A CASA is an officer of the Court and is bound by all Court rules. Each CASA shall be sworn in by a Superior Court Judge before beginning his or her duties.

a. Specific Duties

(a) The Court shall, in its initial order of appointment, and thereafter in subsequent orders as appropriate, specifically delineate the CASA's duties in each case. Typically, a CASA is expected to conduct an independent investigation of the circumstances surrounding the case; to interview and observe the child and other appropriate individuals (that is, the parties involved in the case as well as other persons having significant information about the child); and to review appropriate reports and records, including relevant records pertaining to the child from any agency, hospital, school, organization, division or department of the state, physician and surgeon, nurse, or other health care provider, psychologist, psychiatrist, law enforcement agency, or mental health clinic. The extent of a CASA's investigative authority is the same as any other officer of the Court appointed to investigate the proceedings on behalf of the Court. A CASA is required to report the results of his or her investigation to the Court and, if ordered to do so, provide the Court with any other information the Court specifically requests.

(b) If no specific duties are outlined by Court order, the CASA shall discharge his or her obligation to the child and Court in accordance with the general duties set forth above.

(c) A CASA volunteer shall serve under the guidance and supervision of the Merced County CASA program staff and is expected to comply with operational policies and procedures approved by the program's Board of Directors, Sections 100 through 109 of the Welfare and Institutions Code, Rule 5.655 of the California Rules of Court, and any and all Judicial Council guidelines, Local Rules of Court , and the provisions of any agreement entered into by the Merced County CASA program with the Juvenile Court.

b. Appeal and Grievance Procedures

(a) A CASA volunteer serves at the pleasure of the Court, the appointment is a privilege and not a right. The Judicial Officer presiding over the juvenile dependency Court or his or her designee has the sole authority and power to

appoint and/or remove a CASA to or from a case. There is no appeal process from the Court's decision.

(b) The Merced County CASA Program has established an internal process for the submission and investigation of grievances which process shall be followed.

c. Case Referral and Appointment

(a) A child's dependency case may be referred by the Court to the CASA program for appointment at any point in the proceeding.

(b) Upon acceptance of the case by the program and acceptance by an available CASA volunteer, an Order for Appointment shall be submitted to the Court by the CASA program staff, requesting appointment of the identified volunteer. The Court may appoint a CASA volunteer at any time following the jurisdictional hearing and, in extraordinary cases, the Court may appoint a CASA volunteer prior to the establishment of jurisdiction. In cases where the appointment is made prior to the establishment of jurisdiction, the Court order shall specify that the duties of the child's advocate are limited to supporting the child and advocating for needed services prior to establishment of jurisdiction and shall admonish the child's advocate not to investigate jurisdictional issues.

(c) Where the referral is not made by the Court at an appearance hearing, the CASA staff will notice parties of the CASA program appointment and the name of the specific CASA volunteer assigned to the case.

d. Criteria for Referral to CASA Program

(a) Severe physical/sexual abuse cases where the child is not released to a parent or relative, and the child is seriously traumatized.

(b) Specific needs cases (e.g., educational, developmental, medical health needs) that involve conflicting opinions as to assessment and/or treatment for the child, or where treatment plans or resources will be difficult to arrange.

(c) Cases of repeated abuse that involve a number of issues or a number of interested parties.

(d) Children ten (10) years and under who have experienced multiple placements and whose parents have consistently failed to show progress toward or interest in fulfilling treatment plans or goals for family reunification.

(e) Children age newborn to five (5) years old in foster care, where a CASA volunteer might expedite the case toward family reunification or adoption, if reunification is not appropriate.

(f) Short term CASA intervention/involvement is required in case resolution or clarification of issues or by gathering or researching information, e.g., contacting out-of-state relatives or investigating medical concerns to assists the Court in reaching a decision.

(g) Children age newborn to eighteen (18) years who experienced three or more separate placements during any consecutive twelve month period or who have been detained at a residential care institution (excluding group homes) for thirty (30) days or more and who have been diagnosed as having or have a history of any of the following:

(1) Conduct disorder with aggressive tendencies or antisocial behavior.
(2) Attention Deficit Hyperactive Disorder treated by psychotic drugs.
(3) Self-destructive or suicidal behavior.
(4) Use of psychotropic drugs.
(5) Developmental disability.
(6) Fire setting.
(7) Manifestation of psychotic symptoms such as delusion, hallucination, or disconnected or incoherent thinking.
(8) Somatizing or psychosomatic problems such as sleeping or eating disorder.
(9) Chronic depression.

(10) Severe sexual acting-out behavior
(11) Substance abuse

(h) Any dependent child whose particular circumstances warrant or otherwise support the appointment of a CASA.

e. Release of Information to CASA

A CASA shall have the same legal right to records relating to the child the CASA is appointed to represent as any Merced County Department of Human Services' social worker assigned to manage the child's case with regard to records held by any agency, school, organization, division or department of the state, physician, surgeon, nurse, or other health care provider, psychologist, psychiatrist, mental health provider or law enforcement agency. The CASA shall present his or her identification to any such record holder in support of his or her request for access to specific records. No consent from the parent or guardian is necessary for the CASA to have access to any records relating to the child.

f. Report of Child Abuse

A CASA is a mandated child abuse reporter with respect to the case to which he or she is appointed. As such, a CASA is required to report any reasonable suspicion that the child is a victim of child abuse or serious neglect as described by Penal Code Section 273.

g. Communication

There shall be ongoing, regular communication concerning the child's best interests, current status, and significant case developments maintained among the CASA, the social worker, the child's attorney, attorneys for parents, relatives (to the extent permitted by law), foster parents (to the extent permitted by law), and any therapist for the child (to the extent permitted by law).

h. Right to Timely Notice and Right to Appear, Calendar Priority for Advocates

(a) The CASA shall be properly and timely noticed for all proceedings held in cases to which the CASA has been appointed.
(b) The CASA has the right to be personally present at all hearings and to be heard at all Court hearings. A CASA shall not be subject to exclusion by virtue of the fact that he or she may be called to testify at some point in the proceedings. A CASA shall not be deemed to be a "party" as described in Title 3 of Part 2 of the Code of Civil Procedure. However, the Court, in its discretion, shall have the authority to grant the CASA amicus curiae status, which includes the right to appear with counsel.
(c) The CASA shall have the right to participate in any chambers conferences which are held in the proceedings to which the CASA has been appointed. If the child is allowed to testify in chambers or to otherwise participate in any chambers conference, the CASA shall have the right to accompany the child.
(d) In light of the fact that CASAs are rendering a voluntary service to the children and the Court, matters on which they appear should be granted priority on the Court's calendar, whenever possible.

i. Access to Records

(a) All information concerning children and families in the Juvenile Court process is confidential. A CASA shall not give case information to anyone other than the Court, parties, their attorneys, and CASA staff. Any request for access to these records must be made to the Judicial Officer presiding over the Juvenile Dependency Court through a Petition for Disclosure of Juvenile Court Records pursuant to Welfare and Institutions Code Section 827 (Form JV-570).
(b) The child's case file shall be maintained in the Merced County CASA office by a custodian of records. No one shall have access to that file except upon approval of the Executive Director of Merced County CASA.
(c) A CASA volunteer's personnel file is confidential. No one shall have access to the file or any of its contents except the volunteer, the Merced County CASA's executive director (or his or her designee), and the Judicial Officer presiding over the Juvenile Dependency Court. Parties to a proceeding may access the personnel records of a CASA volunteer appointed in that proceeding through use of the Court's subpoena power. All subpoenas are to

be served on the CASA program's executive director at the Merced County CASA program's office. *(1/1/12)*

RULE 204: FILING AND DISTRIBUTION OF CASA COURT REPORTS

(a) In any case in which a CASA has been appointed by the Court and is now serving on that case, the CASA must file and serve written reports to the Court and on the parties and/or their counsel at least ten (10) calendar days before each of the following hearings: those dispositional hearings that have been continued pursuant to Welfare and Institutions Code Section 358, subdivision (a) six-month review; twelve-month review (permanency hearing); eighteen-month review (permanency review hearing); selection and implementation hearing (366.26 hearing); and post-permanency planning reviews.
The CASA may also submit reports for any special hearings noticed to CASA of Merced County and if submitted, those written CASA reports must be filed and served on the parties and/or their counsel at least five (5) calendar days before the hearing.

If the CASA is appointed before jurisdiction is established under Welfare and Institutions Code section 300, the CASA may submit a written report to the Court for consideration by the Court at the jurisdictional hearing; and such report must be filed and served on the parties and/or their counsel at least two (2) Court days before the jurisdictional hearing.

(b) Only parties and their counsel are entitled to receive copies of CASA reports prepared in connection with pending hearings. De facto parents are entitled to receive copies of CASA reports only if there is a Court order directing distribution of the report to the de facto parents. Relatives, foster parents, and service providers are not entitled to receive copies of CASA reports in the absence of a specific Court order.

(c) CASA Court reports shall be copied and distributed by CASA of Merced County staff. *(1/1/11)*

RULES 205-299: RESERVED

RULE 300: PETITION FOR APPROVAL OF MINOR'S COMPROMISE

a. Contents of Petition

A petition for Court approval of a compromise or covenant not to sue under the Probate Code or CCP 372 must be verified by Petitioner and contain a full disclosure of all relevant information bearing upon the reasonableness of the compromise, including:

(1) Name, birthdate, age and sex of minor;
(2) An account of the facts and circumstances which gave rise to the claim or injury;
(3) A description of the nature and extent of the injury and whether it is permanent or temporary;
(4) All doctors reports containing a diagnosis, prognosis and present condition of the claimant;
(5) Where payment for medical treatment is sought all medical expenses, insurance payments and net amounts owed to each provider;
(6) The amount of attorney fees, their basis and an itemization of costs;
(7) The gross and net amount of the proposed settlement;
(8) How the proceeds of the settlement will be distributed;
(9) Amounts paid to other claimants;
(10) Whether or not the petitioner is a plaintiff in the same action as the minor or a claimant against the recovery, and if so whether the pendency or disposition of petitioner's claim has affected the minor's compromise;
(11) If settlement money is to be deposited in an account subject to withdrawal only upon order of the Court, the name and address of the depository;
(12) Whether notice pursuant to Welfare and Institutions Code Section 14124.73 has been given;
(13) If an order for payment to special needs trust is requested, a statement of the method by which all statutory liens will be satisfied under Probate Code 3604.

b. Attorney Disclosure

If the petitioner has been represented or assisted by an attorney the petition must disclose the name, state bar number, law firm and business address of the attorney. It must also disclose whether the attorney became involved at the instance of any party against whom the claim is asserted, or an insurance carrier employed by any other party. If any fees or other compensation has been paid the petition must disclose who paid those fees or other compensation; if no fees have been paid, then whether the attorney expects any fees and if so the amount and who will pay them. The terms of the agreement between the petitioner and the attorney must also be set forth in the petition.

c. Personal Appearance

The person compromising the claim and the minor must attend the hearing unless the Court, for good cause, dispenses with the requirement of personal appearance.

d. Attendance of Witnesses

The Court may require witnesses, including the treating physician, to attend the hearing.

e. Withdrawal of Funds

A petition for withdrawal of funds from the account may be considered ex parte or set for hearing at the discretion of the Court. Parents are advised that monies in blocked accounts are not available for payment of services ordinarily provided by parents. *(7/1/04)*

RULE 400: FAMILY LAW - GENERAL POLICY STATEMENT

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

RULE 401: MATTERS ASSIGNED TO THE FAMILY LAW DIVISON

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

(A) Matters arising from the California Family Code, including cases where the Local Child Support Agency appears on behalf of the County of Merced or any party.
(B) Matters arising from the Uniform Divorce Recognition Act, Family Code §§2090-2093.
(C) Matters arising from the Uniform Child Custody Jurisdiction Act, Family Code §§3400-3425.
(D) Matters arising from the Uniform Parentage Act, Family Code §§7600-7643.
(E) Matters arising from the Domestic Violence Prevention Act, Family Code §§6200-6305.
(F) Matters arising from the UEIFSA provision of the Family Code and , request for orders or trials in actions brought by the local child support agency under the provisions of Family Code Sections 17000 et. seq.
(G) Matters arising from Family Code §§4900-4903, Support of Adult Child(ren) or Parents.
(H) Post-dissolution judgment actions, involving omitted or reserved property issues.
(I) Non-marital property right actions consolidated for trial with Family Code, except those cases in which a jury trial has been demanded.
(J) Mediation proceedings in Guardianship actions. *(7/1/04, 01/01/13)*

RULE 402: REQUEST FOR ORDER CALENDAR

a. Calendar Management Short and Long Cause Matters

(1) Short Cause matters are those matters requiring no more than fifteen (15) minutes of the Court's time. Counsel shall be prepared to present their case based upon pleadings, declarations, and offers of proof. Counsel shall be prepared to explain why any live testimony is necessary. Short Cause Matters shall be set for hearing on Tuesdays, Thursdays or Fridays at 8:15 a.m. or on Tuesdays or Fridays at 1:30 p.m..

(2) Long Cause Matters are those matters requiring more than fifteen (15) minutes of the Court's time. The long cause calendar shall be heard on Mondays at either 8:15 a.m. or 1:30 p.m. Counsel shall meet and confer prior to the call of the case and determine if the anticipated hearing time exceeds fifteen (15) minutes. If both concur, they shall appear in Court and obtain a long cause date. If the time estimate of either party is exceeded, the Court may in its discretion, rule without further hearing defer the matter to the end of the calendar if time permits, continue the matter to the next available date or order the matter off calendar.

(3) All case management conferences shall be heard in chambers as set by the Court.

(4) These dates and times are subject to change. Refer to the Court's website. *(7/1/04, 01/01/13)*

RULE 403: REQUEST TO READ FILE

A party that desires that the Court read a particular pleading shall make such request prior to or at the commencement of the hearing. Absent such a request the Court will not review the file prior to the hearing. This is requested as a courtesy and the Court will review the file as necessary to make a proper decision, regardless of compliance. *(7/1/04)*

RULE 404: NOTIFICATION OF OTHER PROCEEDINGS

Any moving or responsive papers involving children or domestic violence shall contain a statement notifying the Court of any action pending or jurisdiction being exercised by any other Court involving the same parties and/or children. 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. *(7/1/04)*

RULE 405: TIME LIMITATIONS OF FILING MOVING PAPERS

Absent any provision in the law or an order shortening time, any declarations, or points and authorities by the moving party, including any required notice to the local child support agency, shall be served pursuant to law and filed no less than twenty-one (21) Court days prior to the date of hearing. Unless good cause is shown, failure to comply with this rule may result in the refusal by the Court to consider any papers not timely filed, or the imposition of monetary sanctions on counsel, or both. *(7/1/04)*

RULE 406: CONTINUANCES

If a motion for continuance is to be made the matter must be placed on calendar no less than five (5) Court days prior to the scheduled event along with payment of the filing fee. *(7/1/04)*

RULE 407: LACK OF APPEARANCE OR TARDINESS

(A) Failure of the moving party or attorney to be present at the calendar call, or to have informed the Court staff of his/her presence in another department, may result in the matter being removed from the calendar and, if the responding party has appeared, attorney's fees and costs may be awarded to the appearing party.
(B) In the event the responding party or attorney fails to appear, the Court may continue the matter and award attorney's fees, or enter an order on the pleadings and the declaration or testimony of the moving party.
(C) If, for any reason, the attorney or client is unable to be present at the time of the calendar call, the Court and opposing party shall be notified as soon as possible in person or by phone of the reasons for, and the extent of, such delay. *(7/1/04)*

RULE 407.1: TELEPHONE APPEARANCES

Except in contempt and work search matters where appearances are mandatory or unless otherwise ordered by the Court, arrangements can be made through the Family Law clerk's office for an appearance by CourtCall. Arrangements to appear by CourtCall must be made at least three (3) days prior to the date of appearance. CourtCall requires a fee be paid to CourtCall unless a fee waiver is on file. Hearings on 8:15 a.m. or 1:30 p.m. calendars will be moved to 10:00 a.m. or 3:00 p.m. respectively if there is a CourtCall request. *(7/1/04, 01/01/13)*

RULE 408: PRE-HEARING SETTLEMENT EFFORTS

(A) When the attorneys have informed the Court staff that they are conducting settlement, neither the attorneys nor the parties need be present at the calendar call and the matter will remain on calendar until heard, or otherwise disposed.
(B) Copies of documents, intended to be offered as part of a case in chief, shall be provided to opposing parties at least two (2) days prior to the Court hearing or as

soon as information is available. A party may not wait until the time of the hearing to "surprise" the opposing party with proffered documentary evidence, except to impeach the veracity of a party or witness. If evidence is offered at a hearing without notice, it may constitute cause for a continuance and sanctions.

(C) If a case is settled after calendar call but before the hearing, one of the attorneys shall inform the Judge or Court staff of that fact, whereupon the stipulation will be taken ahead of all contested matters. No party shall represent that a case is settled when there is "only one" issue remaining to be determined by the Court. *(7/1/04)*

RULE 409: RULES GOVERNING CUSTODY AND VISITATION ISSUES

a. General

(1) When a Request for Order is filed, the Clerk typically will assign all hearing dates Court. Monday at 3:00 p.m. Orientation generally lasts one hour. The Clerk will assign a date to meet with the Child Custody Recommending Counselor ("CCRC"). . CCRC appointments are scheduled on regular Court days. *Note: If the Request for Order is submitted requesting temporary orders which are granted, the Clerk will schedule two (2) dates –CRCC and Further Hearing.*

(2) Parties are required to view an orientation video either on-line on the courts website at www.mercedcourts.ca.gov or in person at the Family Law Lobby prior to CCRC appointment. The video is available in English and Spanish.

(3) Failure to appear at the scheduled CCRC appointment may result in a monetary sanction being ordered against the party failing to appear. Parties may request to appear at the CCRC appointment telephonically by completing the Merced Superior Court local form, Request for Telephonic Meeting with Child Custody Recommending Counselor, a copy of which is reproduced in Appendix A. attached hereto. Parties must submit the form for review and approval to the Clerk's office at least two (2) working Court days prior to the scheduled appointment with the CCRC.

(4) At the Further Hearing, custody, visitation and all other issues contained in the original Request for Order will be addressed.

(5) Counsel shall not participate in the meeting with the CCRC. However, counsel shall have the right to be present, and review any agreement prior to being signed by his or her client.

(6) If the parties reach an agreement at the meeting with the CCRC regarding custody and visitation, that agreement will be adopted by the Court.

(7) If the parties do not reach an agreement at, the meeting with the CCRC the CCRC, will make a recommendation to the Court which they feel is in the best interests of the child(ren). The recommendation will also contain a separate rationale, which will be contained in a confidential envelope. This recommendation will be available one (1) to two (2) days after the meeting with the CCRC and can be picked up at the Clerk's office for review. In

addition, if parties seek and/or the Court orders extended services, assessment or evaluation, parties will be directed to obtain services of a private evaluator of which costs will be borne in full by the parties as ordered. On a limited basis, extended services may be ordered to be performed by the Family Court Services (FCS) Director. All costs are due and payable to the Court prior to services being rendered. Parties are ordered to go directly to the Family Law Clerk's Office to complete required confidential forms.

(a) The parties are ordered to make themselves and any children available for all appointments as scheduled for the extended services, evaluation or assessment, and shall promptly provide the evaluator with any documentation or information as requested. The evaluator may make an ex parte request to the Court for drug testing if an issue arises regarding alleged drug use. The parties are to comply with such order as directed by the evaluator, and be responsible to make payments directly to the lab as ordered. The standard order in this regard is that the parent requesting the testing shall pay the initial cost, with the cost reimbursed by the other party if the test is positive.

b. Standard Orders

The following standard orders shall apply to all partial and full evaluation services unless otherwise specifically ordered by the Court. These orders are in addition to the specific orders contained in the Order Appointing Child Custody Evaluator (form FL-327), which shall be provided to each parent following the hearing. For more information on evaluation services review the "Child Custody Evaluation Information Sheet" (form FL-329), discuss the service with the CCRC, or consult with your family law attorney

(a). After the hearing, the Court will direct the parties regarding which parent or if both parents are responsible for choosing the private custody evaluator. If one party is responsible to select an evaluator (typically when one parent is requesting the change in the custody order) then that parent is responsible for notifying the FCS Director on the FCS line (209) 725-4141 of the name and contact information for the evaluator so that the Appointment Form may be completed. That parent is to also provide the other parent and his/her attorney (if represented) with the name and contact information for the selected evaluator by certified mail and retain proof of service in his/her records. If both parties are to agree upon the Evaluator then each parent is to leave the name and contact information for the Evaluator on the FCS line. If the Evaluator is to be selected by agreement of the parties and the parties are unable to agree upon an Evaluator then they are directed to file the appropriate documents to return to Court for assistance with making this selection. Copies of the Appointment Form will then be mailed to the parties at their last

listed address with the Court. Each parent is reminded that it is his/her responsibility to ensure that the Court has his/her current address on file. If a parent needs to update his/her address then he/she is directed to the Family Law Clerks' office to update this information. Copies of the Appointment Form will also be provided to the parties' attorneys (if so represented) and to the Evaluator.

(b). After the Evaluator has been appointed, the parties are ordered to contact the appointed Evaluator to make the necessary arrangements for the services to commence. The parties are ordered to make arrangements to pay their share of the service. Unless otherwise specified by the Court, each party is responsible for half of the cost(s) of the evaluation service. The cost for the service is determined by the private Evaluator.

(c). Both parties are ordered to attend all scheduled appointments to conduct the partial-scope or full custody evaluation services and to make the child(ren) available for any appointment with the Evaluator. The parties are further ordered to provide any documentation requested by the Evaluator and sign any releases of information requested by the Evaluator. Office procedures regarding scheduling of appointments, cancellations, and no shows for appointments and the cost for any late cancellations or no shows is determined by the individual Evaluators in accordance with his/her private practice policies and procedures.

(d). Once the evaluation is completed, the parties will be mailed a copy of the recommended custody order, the evaluation report and objection paperwork. Copies will be mailed to the parties' last address on file with the Court (see section (5)(a)). Parties and their attorneys are responsible to ensure that there are no unwarranted disclosures of the report. Such unwarranted disclosures occur when it is "done either recklessly or maliciously and is not in the best interest of the child." For further information regarding dissemination of the report, unwarranted disclosures, and potential consequences for violations please refer to form FL-328, "Notice Regarding Confidentiality of Child Custody Evaluation Report." Each party will have twenty (20) days from the date the Family Law Court Clerks' office mails out the recommended order to file an objection with the Court (this is based on five days for mailing plus fifteen days to file and serve the objection). If no objections are filed within the above time allowances, the Court shall adopt the recommendation. If either party files an objection, the Family Law Court Clerks' office shall set the matter for hearing on the objection and notify the parties of the time and date of the Court hearing by mail at their last address on file with the Court.

c. Filing Rationale and Recommendation/Objections/Further Hearing

(1) There will generally be no follow up hearing set if extended services, assessment, evaluation, or minor's counsel is ordered.
(2) The evaluator (Merced Court FCS Director or privately retained) or minor's counsel will be directed to prepare a report and recommendation and file it with the Court. This report will be submitted in two (2) parts. The first part will be the evaluator/minor's counsel rationale which will be maintained in a confidential envelope. The second will be the evaluator/minor's counsel's recommendation. Each party will have twenty (20) days from the certification of mailing of the recommendation to file an objection to same. The parties shall use the Merced Superior Court local form, "Objection to Recommended Order" set forth in Appendix B to set forth any objections they have to the recommendation. If no objection is timely filed by either party, the Court will adopt the recommendation as an Order of the Court.
(3) If an objection is filed, the matter will be set on the Court's calendar. The parties and/or their attorney of record will be notified of same by notice sent to them via United States mail to the last address on file with the Court.

d. Minor's Counsel

(1) The appointment of counsel to represent children in Family Law cases is authorized by Family Code Section 3150.
(2) After appointment, Minor's counsel shall be notified to prepare orders which shall include the statement that Minor's counsel may directly contact the parties, represented or not.
(3) No meetings with the CCRC shall be held after the appointment of Minor's counsel except on motion and approval of the Court. After custody and visitation is decided upon a report by Minor's counsel, no further requests for orders involving custody and/or visitation shall be held without approval of Minor's counsel. Any party, upon ten (10) days' notice, may seek Court approval to have the matter heard without Minor's counsel approval. The purpose of this rule is to encourage the parties to reach an agreement with Minor's counsel's assistance and without the need for a Court hearing.
(4) Unless otherwise ordered by the Court, on approval of the Presiding Judge, all appointments of Minor's counsel under Family Code section 3150 will be subject to the parties making arrangements for fees directly with the appointed counsel.

e. Disqualification of Child Custody Recommending Counselor, Child Custody Evaluator or Minor's Counsel/Conflict of Interest

(1) There is no peremptory challenge to a CCRC, Child Custody Evaluator or Minor's counsel.

(2) A CCRC, Evaluator or Minor's counsel can be disqualified for good cause. Any party wishing to challenge a CCRC, Evaluator or Minor's counsel for cause shall complete the Merced County local form set forth in Appendix C as soon as they first become aware of the conflict of interest or other cause which is the basis of the challenge. Same shall be submitted to the Court for review and approval. Upon approval of any challenge, the Court will appoint an alternate CCRC, Evaluator or Minor's counsel for the matter.

(3) All FCS staff shall disclose any known, actual or potential conflicts of interest at the first meeting with the parties. These conflicts shall be resolved by the Court through the procedure indicated in Rule 409e.2 herein above or the CCRC, Evaluator or Minor's counsel shall recuse him or herself before /Evaluation begins or before /Evaluation continues in the case where the conflict arises during the course of the /Evaluation.

f. Motion by the Child Custody Recommending Counselor

Upon meeting with the parties, the CCRC has the authority to make an ex parte request to the Court seeking:

(1) Temporary Orders for the protection of the child or children involved;
(2) A more extensive evaluation/investigation be ordered; or
(3) Release of records from Child Protective Services, law enforcement agencies, medical providers for the child or any and all other reports, records, or other tangible documents previously made relating to the issues of custody and visitation. Any Order made upon the CCRC's request shall be immediately served on the parties or their attorney by the Clerk's office. Any party objecting to same may file an ex parte motion with the Court seeking review and modification of any such Order made.

g. Child Advocate Motion

When the Child Advocate Program of Merced County has been appointed to supervise visits in a case, they shall have the authority to make an ex parte request to the Court seeking the termination of visits for a parent and/or the appointment of Minor's counsel for the child or children involved if they feel such a request is necessary for the protection of the child or children involved. Any Order made by the Court upon such a request will be immediately served by the Clerk on the parties and/or their attorneys notifying them of the action taken by the Court. Any party objecting to same may file an ex parte motion with the Court seeking review and modification of any such Order made. *(7/1/04)*

h. Complaints Regarding Child Custody Recommending Counselors, or Private Evaluators per Family Code section 3163/Rule 5.210(d)(1)(C)(i)

Any complaint regarding a FCS, CCRC, FCS Evaluator or Probate Evaluator as appointed by the Court or FCS shall be provided in writing to the Court Executive Officer. The Court Executive Officer shall then forward the complaint to the FCS Director. The FCS Director will review and investigate the complaint. If the complaint is against the FCS Director, either in his or her role as director, CCRC or the FCS Director has a conflict of interest, the complaint will be handled by the Court Executive Officer.

Upon completion of the investigation, the FCS Director shall forward a written response to the Court Executive Officer. The FCS Director may set a meeting with the Court Executive Officer, Family Law Commissioner, FCS CCRC, or Probate Evaluator to discuss the complaint, any concerns, findings, or responses as deemed appropriate. Upon completion of the investigation, the FCS Director shall then provide the Court Executive Officer with their finding of the investigation and review of the complaint. The Court Executive Officer shall then respond in writing to the complaining party of the decision and reasoning.

If the complainant is dissatisfied with the decision, he or she may appeal in writing to the Family Court Commissioner who, after review of the complaint and decision will issue the appropriate order in response to the complaint (Family Code section 3163). A copy of the complaint and response shall be forwarded to the Presiding Judge, Family Law Commissioner, FCS Director, CCRC, or Private Evaluator. A copy of the letter shall be placed in the confidential envelope of the case file if appropriate. *(01/01/13)*

RULE 410: EX PARTE ORDERS

(A) Ex parte requests for orders shall be presented to the Court in accordance with California Rules of Court 5.165.
(B) No ex parte hearing will be set unless the appropriate filing fee is paid at the time the request is submitted to the Court.
(C) No ex parte hearing will be set unless the Merced local form titled "Declaration in Support of Ex Parte Application for Orders" (Appendix "D") has been filed with the Clerk's Office.
(D) All ex parte requests must be filed with the Family Law Clerks Office the day prior to the hearing, no later than 10:00 a.m.
(E) Ordinarily, an ex parte order will not be issued unless one of the following conditions exists:

(1) Notice was given to the adverse party by at least noon two days preceding the hearing so that adverse party has an opportunity to oppose the application by

counter declarations filed with the Clerk as soon as possible or to appear at the time of the hearing; or

(2) Reasonable good faith efforts were made to notify the party; or
(3) It clearly appears in the declaration that giving notice would frustrate the purpose of the proposed orders; or
(4) The applicant would suffer immediate and irreparable injury before the adverse party could be heard in opposition; or
(5) It appears by declaration that no significant burden or inconvenience will result to the adverse party.

(F) An ex parte order will be issued only if the application is accompanied by a specific declaration adequate to support its issuance. Conclusions, feelings, wishes, or fears will not be adequate to support an ex parte order.
(G) The moving party's papers will be presented to the Judicial Officer for signature at the time of the ex parte hearing. If, as a result of the ex parte hearing, a further hearing is needed, the moving party shall pay another filing fee at the time the Request for Order is signed by the Judge at the ex parte hearing is filed.
(H) If a party to a dissolution or paternity action is seeking ex parte orders as a result of domestic violence and there is currently a dissolution or paternity action in this county, said request shall be filed by means of a Request for Domestic Violence Restraining Order and shall use the existing case number. This does not apply to Emergency Protective Orders (EPO) that are generated by law enforcement.
(I) An application for an order seeking confirmation of sole custody for a party shall specify the duration and other circumstances justifying continued sole custody.
(J) There is an absolute duty to disclose the fact that a requested ex parte order will result in a change of status quo. Failure to disclose or misrepresentation of the facts may result in an award of sanctions. *(7/1/04, 01/01/13, 07/01/13)*

RULE 411: ORDER EXCLUDING FROM HOME OR STAY AWAY

(A) An application for an ex parte restraining order excluding either party from the family dwelling or the dwelling of the other, or a stay away order, causing the same result must be supported by a declaration showing:

(1) A right to possession of the home;
(2) The danger of immediate and serious harm specifying in detail the time and place of any past act or acts of alleged misconduct as required by Family Code §6321;
(3) The availability of alternate housing for each party;
(4) Whether the residence involved is currently occupied by one or both parties; and
(5) If not occupied by one or both parties, contain a declaration as to when one or both parties left the residence and the reasons therefore.

(B) If violence has taken place or seems likely, the Court encourages a spouse alleging such violence to leave the home until after a Court hearing may be held. The Court will not penalize a spouse for doing so. *(7/1/04)*

RULE 412: ORDER CHANGING CUSTODY OF MINOR

(A) An application for ex parte order to immediately change the custody of any minor child(ren) must be supported by a declaration showing by clear, specific allegations that the health and welfare of the child(ren) requires immediate change of custody. The declaration shall also set forth, in brief, the circumstances in which the child would be placed pending the hearing.

(B) The declaration shall also contain a statement of which party currently has actual physical custody of the child(ren) in question, how such physical custody was obtained and for how long the party has had such physical custody. *(7/1/04)*

RULE 413: EXCLUSIVE USE OF VEHICLES

An ex parte order granting exclusive use of a vehicle will not be granted unless the declaration demonstrates that the opposing party has suitable transportation available or requires no such transportation. *(7/1/04)*

RULE 414: MODIFIED ORDERS OR SET ASIDE OF EX PARTE ORDERS

If a responding party requests an ex parte order be set aside prior to the date set for hearing, notice shall be given to the moving party as provided in Local Rule 410. The Court may order an earlier hearing date or modify the orders on a proper showing in lieu of setting aside the orders. *(7/1/04)*

RULE 415: INCOME AND EXPENSE DECLARATION

(A) No case in which monetary relief of any kind is requested, including any request for child support, spousal support or attorney's fees and costs, shall be heard unless a current Income and Expense Declaration (Judicial Council Form FL-150) has been completed and filed by the moving and responding parties along with their moving and responding papers. The Income and Expense Declaration filed shall be served on the opposing party with the moving or responding papers.

(B) For purposes of this provision "current" means executed within forty-five (45) days of the date the matter is to be heard.

(C) When the filed declaration requires no modification to correctly state the party's income and expense from the time a prior declaration was filed with the Court and served on the other party, the party making this claim shall so state this in their moving or responding papers. If a party claims there has been no change since the last filing, they will attach to their moving or responding papers their last three pay stubs or other supporting financial information supporting their claim.

(D) In the event that the moving party fails to comply with this rule, the matter may be dropped from calendar and the Court may impose sanctions. The Court may also impose sanctions if delay results from the failure of either party to comply with this rule.

(E) The Income and Expense Declaration shall be considered as received in evidence at the hearing subject to amendment and/or cross-examination at the time of hearing.

(F) All blanks on the Income and Expense Declaration must be answered. Notations such as "unknown", "estimate", "not applicable" or "none" should be used to avoid leaving any item blank. If current facts are temporary, both the actual current facts and the estimated prospective facts may be shown if properly identified.

(G) Every Income and Expense Declaration shall have attached to it supporting documentation to verify income claimed.

(1) If a party claims wage income, he or she shall attach his or her last three pay stubs showing both current and year to date total income paid to the individual. If the party claims that part of his/her wages are from overtime they shall so indicate in an attachment to the declaration and further indicate the amount of regular pay received by them and the frequency and amount of overtime paid.

(2) If a party claims income from sources other than wages they shall attach schedules establishing the other income earned in the year preceding the preparation of the declaration (i.e. business income and expense, commission income, bonus income, rental income and expense, interest income, etc.). Business expense schedules shall identify clearly any depreciation or other non-cash expenses deductible from income.

(3) If a party is unemployed they shall attach a factual declaration stating when they were last employed, where they were last employed, gross and net income derived there from, reasons for termination and efforts to seek employment since their last job.

(4) If a party is receiving Social Security income, Disability income, Unemployment compensation, Workman's compensation or other funds from any other entitlement program they shall so indicate in the declaration and attach to the Income and Expense Declaration a copy of their most recent statement indicating the amount and expected duration of the entitlement income. *(7/1/04)*

RULE 416: GUIDELINES FOR SETTING CHILD AND SPOUSAL SUPPORT IN MERCED COUNTY

The following guideline for determining child and temporary spousal support and related issues have been adopted by the Merced Superior Court. It is not the Court's intent that the guidelines duplicate California statutes or rules of court, or cover every

anticipated question or concern, or be a research tool. Their purpose is to acquaint interested parties with the Court's approach to various problems in this area of the law.

To the extent any approach suggested in these guidelines would be contrary to law in a given case, the Court obviously will follow the law. Moreover, the Court will continue to exercise its independent discretion in all cases, and will depart from any approach discussed herein that would cause an unnecessary hardship on any litigant.
Family Law practice has been standardized to a large degree by the requirement that Judicial Council forms be used where applicable. Failure to use such forms when appropriate may result in the refusal of the Clerk to file a submitted document.

a. Determination of Net Disposable Income

Net disposable income shall be computed as required by Family Code section 4059.

b. Minimum Wage Presumption

The Court shall presume that a party has an ability to earn at minimum, a full-time minimum wage. Any party claiming an ability less than this presumption shall have the burden of proof to establish the lesser ability.

c. Overtime or Second Job Income

If a party has a full-time job (at least 40 hours per week) and in addition is earning supplemental income either through overtime with regular employment or through a second job, the Court may exercise its discretion to discount the amount of gross income earned pursuant to the overtime or second job or order a percentage of the overtime earned to be paid as additional support. This is done to encourage the additional employment which benefits the supported child or children. Generally, if the Court discounts overtime or second job earnings, it will use 50% of the average overtime or second job earnings in the prior year to determine support. The factors the Court may consider in exercising its discretion shall include:

i. Whether the overtime or second job worked is excessive;
ii. Whether the overtime worked is voluntary or an integral part of the party's regular employment;
iii. The difficulty and nature of the employment;
iv. The history of overtime or second job income;
v. A reduction in overtime or quitting the second job in order to spend more time with the children.

d. Hardship and other Deductions

A party may claim a hardship deduction pursuant to Family Code Section 4070 and 4071 to reduce the amount of income used to calculate support. Hardship deductions

include, but are not limited to the minimum basic living expenses incurred by a party for children living in the party's home for whom the party is legally obligated to support. In calculating such a hardship, the Court shall consider any and all support money received by the party claiming the hardship for the child living in their home and the time that child actually spends in the party's home.

The party claiming a hardship or other deduction shall have the burden of proving by a preponderance of the evidence, the legitimacy of the obligation, actual payments made and any other element of entitlement to the deduction.

e. Self-Employed Parties

The Court shall not presume that the amount or character of taxable income reported by a self-employed party for income tax purposes is an accurate reflection of gross income for purposes of computation of support, but shall consider any factors which show the actual cash flow available for personal living expenses.

f. Employment Benefits

The Court shall consider the fair rental or reasonable value of perquisite benefits (i.e. providing the employee with housing, vehicle, utilities, gas, insurance, cellular phone, etc.) paid for by an employer on behalf of the employee/party in determining gross income for purposes of calculating child or spousal support.

g. Income of Party Unknown

When a party's income is not known, a reasonable estimate of net income shall be used, based upon past employment, ability to earn, minimum wage or other such factors. For example, if a party, whose employment status is unknown, is healthy and able to work, an estimated gross income based upon minimum wage may be proper if that party has no earning history or no special skills, training or education.

h. Bonus Income

When a party is entitled to bonuses or similar such income, the amount of which is contingent or undetermined, the Court may award support based in part upon a percentage of such payments. Generally the Court will order that the percentage of bonus income be paid when the income is received. The percentage will generally be determined by reference to the bonus report calculated by one of the programs approved by the California Judicial Council for use by the Court in calculating child support.

i. Employment Related Travel Expenses

If a party is required to travel in excess of fifty (50) miles daily to go to and from work, they will be entitled to a deduction from income for purposes of calculating support to the extent that travel is not reimbursed by the employer. The deduction shall

be determined by multiplying the number of miles exceeding fifty (50) that the party must travel each day to and from work. The reimbursement rates used shall be the IRS mileage rate. This amount shall be reduced by any dollar amount paid to the employee by their employer to defray this cost.

j. Computation of Child Support

(1) The Court shall follow the Statewide child support formula set forth in Family Code Section 4050 et. seq.. The Court uses the California Guideline Child Support Calculator.
(2) The Court may order the custodial parent to release the dependency exemption for one or more of the parties' minor children to the non-custodial parent. Generally, this will be done only when the release results in an increase in the combined net disposable incomes of the parties and benefits the child or children involved. When a release is ordered, the Court shall adjust the amount of child support to reflect the tax benefit to the payer and detriment to the payee, and to assure that the payee suffers no decrease in their net disposable income after the payment of the adjusted support. The order for the release of an exemption shall be conditioned upon the payer's full compliance with child support ordered during the tax year for which the dependency exemption is released.
(3) A parent who has been ordered to pay child support shall not reduce the amount of support by reason of a claimed credit or offset owed by the payee to the payer, or a claimed violation of a visitation or other Order, without the express written consent of the other parent or Order of the Court.

k. Health Care Insurance & Uninsured Health Care Expenses

(1) If health insurance coverage is available through the employer of either parent at no or reasonable cost, the Court may order one or both parties to carry the minor child or children on same. If health insurance coverage is unavailable at no or reasonable cost through the employer of either parent, the Court may order either or both parents to obtain and pay for health insurance for their child or children.
(2) The Court will generally order both parties to pay equally any and all uninsured medical, dental, prescription, orthodontic, vision, counseling or other health care costs incurred on behalf of the parties' child or children. The Court has discretion, however, to apportion responsibility for such costs other than equally if to apportion such costs equally would be inequitable.

l. Travel Expense Incurred in Relation to Visitation

(1) The responsibility for actually transporting the child or children for visitation will generally be assigned to the parent receiving custody of the child or

children. This will usually result in the parties equally sharing responsibility for the cost of transportation associated with visitation or custodial time share.

(2) If there is an out of pocket cost incurred in transporting the child or children for visits, such as air fare, the Court will generally order both parties to pay one-half of the cost of same. The Court may in its discretion, if it feels an equal division of the cost is inequitable, apportion responsibility for any such costs based upon the net spendable incomes of the parties after the payment of support.

m. Calculating Child Time-Share

The Court will base time-share on the actual visitation that is exercised, rather than the order, where the parties have followed a different schedule than the Court order. In accordance with statutory guidelines, the Court can also consider variation from the actual percentage of time where one of the parties is bearing a disproportionate share of the expenses related to the children. (01/01/13)

The Court will use one of the computer programs approved by the Judicial Council of the State of California for purposes of calculating temporary Spousal support. When determining permanent support payable, the Court will apply the factors set forth in Family Code section 4320. *(7/1/04)*

n. Standard Orders

Unless otherwise ordered by the Court, all support orders will be subject to the standard orders contained in Appendix F (attached). *(01/01/13)*

RULE 417: CONTEMPT PROCEEDINGS

(A) If a person cited for contempt appears without an attorney, one continuance normally will be granted to permit the citee to retain counsel.

(B) If the citee is found to be indigent, counsel shall be appointed.

(C) The citee will be ordered to be present at the time and date set for the continued hearing, thus avoiding further service. *(7/1/04)*

RULE 418: COURT SECURITY: SEARCHES OF PERSONS AND PROPERTY

In order to maintain adequate physical security for Court personnel, litigants and the public, the following procedures shall apply to all Court facilities:

(A) All persons entering the courthouse or courtroom shall be subject to cursory search, including searches of purses, parcels and other carried items at any time deemed warranted by Court Security Personnel or as directed by a Judge of the Court. "Cursory search" includes the use of "pat down" searches, electronic

metal detection and visual inspection of the contents of any purse, parcel or carried item.

(B) All persons entering a courtroom shall be subject to detailed search, including searches of purses, parcels, or other carried items at any time authorized by the Judge of the subject courtroom. "Detailed search" shall include all of the means in the previous paragraph, plus such additional measures as may be deemed warranted by the authorizing Judge.

(C) Conducting searches pursuant to this Rule, Court Security Personnel shall acknowledge the right of a person to decline a search of their person or property, on condition that they immediately leave the courthouse. Such right to leave without being searched shall not apply to searches incident to arrest or otherwise being taken into custody, or any other circumstances authorized by law which permits searches without warrant. A person who refuses to submit to search and also refuses to leave the courthouse may be subject to arrest for violation of Penal Code sections 148 and 166(a)(5).

(D) Conducting searches as authorized by this Rule, Court Security Personnel, to the extent reasonably practicable, shall conduct the searches with discretion and out of the general view of the public and other Court participants, including jurors. In exercising their discretion, Court Security Personnel may take into account such factors as the intrusiveness of the search, potential disruption of Court proceedings, officer safety and the security needs of the Court.

(E) Notwithstanding any of the foregoing provisions, upon good cause shown, a Judge of the Court may order any method of search of persons or property deemed necessary on a case by case basis to secure the safety of the courthouse, Court personnel, litigants and the public. *(7/1/04)*

RULE 419: FIREARMS

Except as otherwise ordered or authorized by the Court, no person, including correctional officers, governmental employees, deputy sheriffs, members of the California Highway Patrol, or other law enforcement representatives, other than a Sheriff or person specifically charged with the security of the court building, or as otherwise authorized by the Judge, shall keep on his or her person firearms or other weapons while in the Court building and shall not bring any weapon into the Courtroom when the appearance is in a civil, family law or probate matter. *(7/1/04)*

RULE 420: [RESERVED]

RULE 500: PROCEDURES FOR HANDLING COMPLAINTS ABOUT COURT-PROGRAM MEDIATORS

a. Application

The rules in this chapter establish the Court's procedures for receiving, investigating, and resolving complaints about mediators in the Court's Mediation

Program for general civil cases, as required by rule 3.868 of the California Rules of Court. Nothing in these rules should be interpreted in a manner inconsistent with rule 3.868 of the California Rules of Court or as limiting the Court's inherent or other authority, in its sole and absolute discretion, to determine who may be included on or removed from its list of mediators or who may be recommended, selected, appointed, or compensated as a mediator by the Court. These rules also do not limit the Court's authority to follow other procedures or take other actions to ensure the quality of mediators who serve in the Court's mediation program in contexts other than when addressing a complaint. The failure to follow a requirement or procedure in these rules will not invalidate any action taken by the Court in addressing a complaint.

b. Definitions

As used in this chapter:

1. "The rules of conduct" means the Rules of Conduct for Mediators in Court-Connected Mediation Programs for Civil Cases set out in rules 3.850-3.860 of the California Rules of Court.
2. "Court –Program Mediator" means a mediator who:

    (a) Has agreed to be included on the Court's list or panel of mediators for general civil cases and is notified by the Court or the parties that he or she has been selected to mediate a case within the Court's mediation program; or
    (b) Has agreed to mediate a general civil case in the Court's mediation program after being notified by the Court or the parties that he or she was recommended, selected, or appointed by the Court or will be compensated by the Court to mediate that case.

3. "Inquiry" means an unwritten communication presented to the Court's complaint coordinator indicating that a mediator may have violated a provision of the rules of conduct.
4. "Complaint" means a written communication presented to the Court's complaint coordinator indicating that a mediator may have violated a provision of the rules of conduct.
5. "Complainant" means the person who makes or presents a complaint.
6. "Complaint Coordinator" means the person designated by the Presiding Judge to receive complaints and inquiries about the conduct of mediators.
7. "Complaint proceeding" means all of the proceedings that take place as part of presenting, receiving, reviewing, responding to, investigating, and acting on any specific inquiry or complaint.
8. "Mediation communication" means any statement that is made or any writing that is prepared for the purpose of, in the course of, or pursuant to a mediation or a mediation consultation, as defined in Evidence Code section 1115, and

includes any communications, negotiations, and settlement discussions between participants in the course of a mediation or a mediation consultation.

c. Confidentiality

(a) Preserving the confidentiality of mediation communications. All complaint proceedings will be conducted in a manner that preserves the confidentiality of mediation communications, including but not limited to the confidentiality of any communications between the mediator and individual mediation participants or subgroups of mediation participants.

(b) Confidentiality of complaint proceedings. All complaint proceedings will occur in private and will be kept confidential. No information or records concerning the receipt, investigation, or resolution of an inquiry or a complaint will be open to the public or disclosed outside the course of the complaint proceeding except as provided in rule 3.871(d) of the California Rules of Court or as otherwise required by law.

d. Submission of Inquiries and Complaints to the Complaint Coordinator

All inquiries and complaints should be submitted or referred to the complaint coordinator.

e. Addressing Inquiries

If the complaint coordinator receives an inquiry, the coordinator must inform the person making the inquiry that the complaint procedure provides for investigation of written complaints only and that the person should submit a written complaint if he or she wants the Court to conduct an investigation or take action. If the person does not submit a complaint, the complaint coordinator may prepare a written summary of the inquiry.

f. Acknowledgement and Preliminary Review of Complaints

(a) Acknowledgment of complaints.
When the complaint coordinator receives a complaint, the coordinator will send the complainant a written acknowledgment of this receipt.

(b) Preliminary review of complaints

(1) The complaint coordinator will review each complaint to determine whether it warrants investigation or can be promptly, informally, and amicably resolved or closed. The coordinator may:

(a) Informally contact the complainant to obtain clarification or additional information or to provide information that may address the complainant's concern.
(b) Communicate informally with the mediator to obtain the mediator's perspectives.

(2) If it appears to the complaint coordinator that the mediator may have violated a provision of the rules of conduct, the complaint coordinator must inform the mediator about the complaint and give the mediator an opportunity to provide an informal response.
(3) The complaint coordinator may close a complaint without initiating an investigation if:

(A) The complaint is withdrawn by the complainant;
(B) No violation of the rules of conduct appears to have occurred or the complaint is without sufficient merit to warrant an investigation;
(C) The conduct alleged would constitute a very minor violation of the rules of conduct, the coordinator has discussed the complaint with the mediator, and the mediator has provided an acceptable explanation or response; or
(D) The complainant, the mediator, and the complaint coordinator have agreed on a resolution to the complaint.

g. Appointing an Investigator or a Complaint Committee

The Presiding Judge will appoint an investigator who has experience as a mediator and is familiar with the rules of conduct, or a complaint committee that includes at least one such individual, to investigate and make recommendations concerning any complaint that is not resolved or closed by the complaint coordinator as a result of the preliminary review.

h. Investigations

(a) Application.
The procedures in this rule apply only if a complaint is not resolved or closed through the preliminary review or if the complaint coordinator initiates an investigation under (c).
(b) Referral of a complaint for investigation.
If a complaint is not closed as a result of the preliminary review, the complaint coordinator will refer it to the investigator or complaint committee for investigation. The complaint coordinator will provide the investigator or complaint committee with a summary of the preliminary review that includes:

(1) A copy of the complaint;
(2) A copy or summary of any response from the mediator;
(3) A list of any violations of the rules of conduct that it appears may have occurred; and
(4) Copies of any previous complaints about the mediator and any written summaries of inquiries that are relevant to the current complaint.

(c) Initiation by the complaint coordinator.
The complaint coordinator may initiate an investigation based on information received from any source, including an inquiry, indicating that a mediator may have violated a provision of the rules of conduct. To initiate the investigation, the complaint coordinator must refer the information received to an investigator or complaint committee with a list of the violations of the rules of conduct that is appears may have occurred.

(d) Mediator's notice and opportunity to respond.

(1) The investigator or complaint committee must provide the mediator with a copy of the materials provided to the investigator or complaint committee by the complaint coordinator under (b) or (c).
(2) The mediator will be given an opportunity to respond to the complaint and the list of apparent violations.

(e) Preparing report and recommendation.
The investigator or complaint committee will conduct the investigation that the investigator or complaint committee considers appropriate. Thereafter, the investigator or complaint committee will prepare a written report that summarizes the investigation and states the investigator's or complaint committee's recommendation concerning the final decision on the complaint. The investigation or complaint committee may recommend one or more actions that are permissible under rule 3.870 of the California Rules of Court.
(f) Informing mediator of recommendation.
The investigator or complaint committee may inform the mediator of its recommendation and inquire whether the mediator accepts that recommendation. If the mediator accepts the recommendation, the investigators or complaint committee's report must indicate this.
(g) The investigator or complaint committee must submit its report and recommendation to the complaint coordinator. The complaint coordinator must promptly forward a copy of the report and recommendation to the Presiding Judge or to his or her designee.
(h) Final decision on a complaint that was investigated.

(i) Responsibility for final decision.
The Presiding Judge is responsible for making the final decision about the action to be taken on any complaint that was investigated under rule 500 or for designating another Judicial Officer or a committee that includes a Judicial Officer to perform this function.

(j) Acting on recommendation.

(1) Within thirty days (30) after the investigator's or complaint committee's recommendation is forwarded to the Presiding Judge or the Presiding Judge's designee, the Presiding Judge or designee may submit to the complaint coordinator a decision:

A. Affirmatively adopting the investigator's or complaint committee's recommendation as the final decision on the complaint; or
B. Directing a different action that is permissible under rule 3.870 of the California Rules of Court.

(2) If the Presiding Judge or his or her designee does not submit a decision within thirty days (30) after the complaint committee's recommendation is forwarded, as provided in (1), the investigator's or complaint committee's recommendation will become the final decision on the complaint.

(k) Notification of final action.
The complaint coordinator must promptly notify the complainant and the mediator in writing of the final action taken by the Court on the complaint.

(l) Authorized disclosures.
After the decision on a complaint, the Presiding Judge, or a person whom the Presiding Judge designates to do so, may authorize the public disclosure of information or records concerning the complaint proceeding that do not reveal any mediation communications. The disclosures that may be authorized under this subdivision include the name of a mediator against whom action has been taken, the action taken, and the general basis on which the action was taken. In determining whether to authorize the disclosure of information or records under this subdivision, the Presiding Judge or designee should consider the purposes of the confidentiality of complaint proceedings stated in rule 3.871 of the California Rules of Court.

(m) Interim suspension pending a final decision on a complaint.
If the preliminary review or the investigation indicates that a mediator may pose a threat of harm to mediation participants or to the integrity of the Court's mediation program, the Presiding Judge or the other judicial officer or committee designated by the Presiding Judge to make the final decision about the action to be taken on any complaint may suspend the

mediator from the Court's panel or list pending final decision on the complaint. The complaint coordinator may make a recommendation to the Presiding Judge or the designee regarding such a suspension. *(1/1/10, (01/01/13)).*

Merced Superior Court

LIST OF RULES AND EFFECTIVE DATES

Rule	Effective Date
Rule 1	1/1/10, 1/1/12 (revised 01/01/13)
Rule 1.2	7/1/04 (revised 1/1/12)
Rule 1.3	7/1/04 (revised 1/1/12)
Rule 1.4	7/1/04 (revised 1/1/12)
Rule 1.5	7/1/04
Rule 1.6	1/1/09 (repealed 1/1/10)
Rule 1.7	1/1/12 (revised 01/01/13)
Rule 1.8	7/1/04 (revised 01/01/13)
Rule 2	7/1/04 (revised 01/01/13)
Rule 3	7/1/04 (revised 01/01/13)
Rule 3.1	7/1/04
Rule 3.2	7/1/04 (revised 01/01/13)
Rule 3.3	1/1/12
Rule 4	7/1/04 (revised 01/01/13)
Rule 5	7/1/04 (revised 07/01/13)
Rule 6	7/1/04
Rule 7	7/1/04
Rule 8	7/1/04 (revised 01/01/13)
Rule 8.1	7/1/04
Rule 9	7/1/04
Rule 10	7/1/04
Rule 13	7/1/04
Rule 14	1/1/09
Rule 15	7/1/04
Rule 16	7/1/04, 1/1/12 (revised 01/01/13)
Rule 17	7/1/04 (revised 01/01/13)
Rule 18	7/1/04 (revised 01/01/13)
Rule 19	7/1/04
Rule 21	7/1/04 (revised 1/1/13)
Rule 21(c)	1/1/06
Rule 200	7/1/04
Rule 201	1/1/09
Rule 202	1/1/12
Rule 203	1/1/12
Rule 300	7/1/04
Rule 401	7/1/04 (revised 01/01/13)
Rule 402	7/1/04 (revised 01/01/13)
Rule 403	7/1/04
Rule 404	7/1/04

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Rule 406	7/1/04
Rule 407	7/1/04
Rule 407.1	7/1/04 (revised 01/01/13)
Rule 408	7/1/04
Rule 409	7/1/04 (revised 01/01/13)
Rule 410	7/1/04 (revised 01/01/13)
Rule 411	7/1/04
Rule 412	7/1/04
Rule 413	7/1/04
Rule 414	7/1/04
Rule 415	7/1/04
Rule 416	7/1/04 (revised 01/01/13)
Rule 417	7/1/04
Rule 418	7/1/04
Rule 419	7/1/04
Rule 420	7/1/04
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Merced Superior Court

Appendix A –Request for Telephonic CCRC

SUPERIOR COURT OF CALIFORNIA, COUNTY OF MERCED
FAMILY COURT SERVICES

Attorney or Party without Attorney **Name:** **Street Address:** **Mailing Address:** **City and Zip Code:** **Telephone No:** **Fax No:** **Attorney for: (*Name*)**	***FOR COURT USE ONLY***
SUPERIOR COURT OF CALIFORNIA, **COUNTY OF MERCED** STREET ADDRESS: **2260 N Street** MAILING ADDRESS: **627 W. 21ST Street** CITY AND ZIP CODE: **Merced, CA 95340** Branch Name/Location: **Family Law Division, CCRC-FCS Offices**	
REQUEST FOR TELEPHONIC **CHILD CUSTODY RECOMMENDING COUNSELING (CCRC)**	**Case Number: F**

I, _____, request the Court's approval to conduct the CCRC scheduled for _____by a telephonic appearance. I understand that if granted, I will be contacted and given notice of the possible six (6) hour time period in which the CCRC will be held. The telephone number provided below is the number where I can be reached throughout that time period. I am requesting to participate by telephone for the following reasons:_____
_____
_____

I, _____, submit that this is a true and correct telephone number of where I can be reached for the purpose of Court contact and CCRC:_____
Telephone number including area code

Date: _____ _____
Signature of Party

The request for Telephonic Mediation is hereby: ☐ **GRANTED** ☐ **DENIED**

Date: _____ _____
Judge of the Superior Court

Provided a copy to party or Attorney/Message to Party: _____ by _____
(Date) (Court Clerk's Initials)

Request for Telephonic CCRC Rev 100212

Appendix B – Objection to Recommended Order
(1 of 2 Pages)

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, state bar number, and address)* :	*FOR COURT USE ONLY*
TELEPHONE NO.: FAX NO. *(Optional)*: ATTORNEY FOR *(Name)*:	
NAME OF COURT: Merced Superior STREET ADDRESS: 2260 "N" Street MAILING ADDRESS: 627 West 21st Street CITY AND ZIP CODE: Merced, California 95340 BRANCH NAME: Family Law	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	
PETITIONER'S ☐ **RESPONDENT'S** ☐ **OBJECTIONS TO** ☐ **FAMILY COURT SERVICES EVALUATION** ☐ **FAMILY COURT SERVICES ASSESSMENT** ☐ **MINOR'S COUNSEL'S RECOMMENDATION**	CASE NUMBER:

THE ABOVE PARTY OBJECTS TO THE FOLLOWING PROVISIONS OF THE RECOMMENDED ORDER:

FACTS SUPPORTING OBJECTIONS:

MER-0006
Rev. 04/02/2007 **PETITIONER'S/RESPONDENT'S OBJECTIONS TO FCS EVALUATION/ASSESSMENT/COUNSEL'S RECOMMENDATION**

Appendix B – Objection to Recommended Order

(2 of 2 Pages)

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	CASE NUMBER:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME) ▶ (SIGNATURE OF DECLARANT)

☐ Petitioner/Plaintiff: ☐ Respondent/Defendant ☐ Attorney
☐ Other *(specify)* :

MER-0006
Rev. 04/02/2007

PETITIONER'S/RESPONDENT'S OBJECTIONS TO FCS EVALUATION/ASSESSMENT/ COUNSEL'S RECOMMENDATION

Page two

Merced Superior Court

Appendix C – Ex Parte Request-Disqualification
(1 of 2 Page)

Attorney or Party without Attorney **Name:** **Street Address:** **Mailing Address:** **City and Zip Code:** **Telephone No:** **Fax No:** **Attorney for: (*Name*)**	***FOR COURT USE ONLY***
SUPERIOR COURT OF CALIFORNIA, **COUNTY OF MERCED** STREET ADDRESS: **2260 N Street** MAILING ADDRESS: **627 W. 21ST Street** CITY AND ZIP CODE: **Merced, CA 95340** Branch Name: **Family Law Division**	
PETITIONER: RESPONDENT: CLAIMANT:	
EX PARTE REQUEST AND ORDER **RE: DISQUALIFICATION OF CCRC OR EVALUATOR**	**Case Number: F**

1.) I am the ☐ Petitioner ☐ Respondent ☐ Other: _____ in the action herein.

2.) I move to disqualify _____ to act as Child Custody Recommending Counselor (CCRC) or Evaluator in the matter herein for the following reasons:

a.) Conflict of Interest. Please state all facts which support this claim. You may attach additional pages as needed.

b.) Other. Please state all facts which support this claim. You may attach additional pages as needed.

Date: _____ _____
PETITIONER/RESPONDENT/OTHER

EX-PARTE REQUEST AND ORDER RE: DISQUALIFICATION OF CCRC OR EVALUATOR

Ex Parte Request and Order Re Disqualification CCRC or Evaluator 102112 1 of 2

Appendix C – Ex Parte Request-Disqualification
(2 of 2 Pages)

ORDER

The Court hereby:

Denies the Order requested: ☐
Grants the Order requested: ☐

It is so ordered.

Dated: _____ _____
JUDGE/COMMISSIONER OF THE SUPERIOR COURT

PROOF OF SERVICE BY MAIL

On _____ I served the above Ex-Parte Request and Order Re: Disqualification or CCRC or Evaluator by depositing a copy thereof, enclosed in a sealed envelope with postage prepaid, in the United States mail, to the following parties and/or their attorney of record at the following addresses:

At the time of service, I was at least 18 years of age and not a party to the action.
My address is:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and this declaration is executed on _____ in _____ , California.

_____ _____
Printed Name Signature

EX-PARTE REQUEST AND ORDER RE: DISQUALIFICATION OF CCRC OR EVALUATOR

Ex Parte Request and Order Re Disqualification CCRC or Evaluator 102112 2 of 2

Merced Superior Court

Appendix D– Declaration in Support of Ex Parte Application (1 of 1 Page)

Attorney or Party Without Attorney (**Name, Address, SB #**)	*Reserved for Clerk's File Stamp*
_____ Petitioner, vs. _____ Respondent.	
Declaration in Support of Ex Parte Application for Orders	Case No. _____

Hearing Date: _____ Time: _____ Dept: _____

I, the: ☐ Petitioner ☐ Respondent ☐ Other Parent ☐ Other: _____, declare the following:

1. **I would like the Judicial Officer to order:**

   ☐ Emergency Custody Order

   ☐ Domestic Violence Restraining Order

   ☐ Order Shortening Time

   ☐ Other: _____

2. Reason Ex Parte relief is necessary:

   _____

   _____

3. Name of opposing party (or attorney):

   _____

4. Was notice of the Ex Parte Request given to the other party? ☐ YES ☐ NO

5. ☐ **NOTICE WAS GIVEN:** The opposing parties were notified of the relief requested and that an Ex-Parte Hearing would be heard by the Court on (date) _____ at 8:45 a.m. as indicated below:

Merced Superior Court

Appendix D– Declaration in Support of Ex Parte Application
(Page 2 of 2)

a. Notice was given to : ☐ Attorney for: ☐ Plaintiff/Petitioner ☐ Defendant/Respondent

☐ Other Parent ☐ Other _____

b. Notification occurred on (date):_____ at (time) _____.
Note: notice must be given AT LEAST the day before the hearing by 10:00 a.m.

c. Manner of notification ***as per CRC 5.165(a)*** : ☐ By Phone ☐ In Writing

☐ By Voicemail Message

6. **NOTICE NOT GIVEN:** Notice of this request was not given to the other party because:
   a. ☐ This is a request for a Domestic Violence Restraining Order.

   b. ☐ Notice of this request would frustrate the purpose of the order sought for the following reason:
   _____.

   c. ☐ Applicant would suffer immediate and irreparable harm before this matter could be heard. (explain in detail)
   _____.

   d. ☐ A reasonable and good faith effort to notify the opposing party was made but notification was unsuccessful. (Describe in detail attempts made)
   _____.

Notice: After providing notice, each party is to be served with the documents at the first reasonable opportunity.

I declare under penalty of perjury under the laws of the State of California that the above information is true and correct.
Dated: _____

_____ By: _____
Printed Name Signature

Appendix E – Determining the Visitation Percentage
(1 of 2 Pages)

DETERMINING THE VISITATION PERCENTAGE

Page 4 of the Income and Expense Declaration (Item #2) will ask you for the percentage of custody/visitation you have with your child/ren. To calculate that figure, use a calendar to determine the number of days each month that you had the child/ren with you. Enter that amount in the last column on the applicable line for each month.

MONTH	DAYS IN THE MONTH	DAYS IN THE MONTH THAT YOU HAD THE CHILD/REN
January	31	
February	28 - 29	
March	31	
April	30	
May	31	
June	30	
July	31	
August	31	
September	30	
October	31	
November	30	
December	31	
TOTALS	365 - 366	

Divide the total number of days in the year that you had the child/ren (last column) by 365 for a regular year and 366 for a leap year to obtain the visitation percentage.

_____ divided by 365 or 366 = _____%

If you are calculating the visitation percentage based on a period that is less than a the full year, divide the total number of days that you had the child/ren in that period by the total number of days for the period being used.

_____ divided by _____ = _____%

NOTE: SHOULD THERE BE A DISCREPANCY BETWEEN THE PERCENTAGE OF VISITATION CLAIMED BY EACH PARENT, PLEASE BE PREPARED TO SHOW DOCUMENTATION TO PROVE THE PERCENTAGE OF VISITATION YOU ARE CLAIMING.

THE BACK OF THIS FORM HAS A SCHEDULE OF SOME OF THE MOST COMMON VISITATION ARRANGEMENTS. IF YOUR VISITATION ARRANGEMENT MATCHES ONE OF THOSE LISTED ON THE SCHEDULE, THE VISITATION PERCENTAGE WILL ALREADY BE CALCULATED FOR YOU IN THE LAST COLUMN.

Date:_____ _____ _____

Print Your Name Sign Your Name

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Appendix E – Determining the Visitation Percentage
(2 of 2 Pages)

SCHEDULE OF MOST COMMON VISITATION ARRANGEMENTS

VISITATION ARRANGEMENT	EQUIVALENT DAYS OF VISITATION IN THE YEAR	VISITATION PERCENTAGE
1 weekend per month	26	7.1
1 long weekend per month	38	10.4
2 weekends per month	49	13.4
1 night per week	52	14.2
Alternate weekends	55	15.1
Alternate weekends + 1/2 month in the summer	67	18.4
Alternate weekends + alternate holidays + 1/2 month in the summer	73	20.0
2 long weekends per month	75	20.1
Alternate weekends + alternate holidays + 1 month in the summer	85	22.2
1 weekend per month + 1 night per week	90	24.7
Alternate weekends + alternate holidays + 1/2 month in the summer	94	25.8
2 days per week	104	28.5
Alternate weekends + 1 evening per week + alternate holidays plus 1 month in the summer	111	30.4
All no-school time	112	30.7
Alternate weekends + 1 evening per week + 1/2 no-school time	125	34.2
Alternate weekends + 1 night per week + alternate holidays + 1 month in the summer	137	37.5
Alternate weekends + 1 night per week + 1/2 no-school time	151	41.4
Alternate weekends + 1 evening per week + all summer	153	41.9
3 days per week	156	42.7
Alternate weekends + 1 night per week + all summer	179	49.0
Alternate 3 days/4days	182	50.0

DEFINITIONS:
Weekend (2 days) = 5-7 PM Friday to 5-7 PM Sunday (or to 5-7 on major holiday Mondays)
Long weekend (3 days) = After school Friday to beginning of next school day.
One evening per week (1/2 day) = After school to after dinner.
One night per week (1 day) = After school and overnight.
Holidays (12 days per year) = New Year's, President's, Memorial, Mother's or Father's Day, Independence, Labor, Veteran's, Thanksgiving (2), Christmas and birthdays of child and non-custodial parent.
Summer (84 days per year) = Twelve weeks from 2nd week in June through next to last week in August.
No-school time = Time child is not in school.

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Appendix F – Standard Orders Attachment
(1 of 2 Pages)

STANDARD ORDERS ATTACHMENT

(TO ORDER RE: CHILD SUPPORT)

THE FOLLOWING IS MADE A PART OF THE COURT'S ORDER:

1. Merced County Department of Child Support Services (DCSS) shall open a case on behalf of the custodial party and parties shall cooperate with DCSS in compliance with this order.

2. All payments shall be made to: **CA State Disbursement Unit**
PO Box 989067
West Sacramento, CA 95798-9067

3. Child support payments are payable by *Order/Notice to Withhold Income for Child Support* (form FL-195). **An *Order/Notice to Withhold Income for Child Support* (form FL-195) will issue.**

4. The non-custodial parent/Obligor must (a) provide and maintain health insurance coverage for the children as obligated by law; (b) within 20 days of the DCSS request, complete and return a *Health Insurance Form*. Each party is responsible for one-half (1/2) of all medically necessary uninsured medical costs. **A *Health Insurance Coverage Assignment* (form FL-470) will issue.**

5. No provision of this judgment/order may operate to limit any right to collect the principal (total amount of unpaid support) or to charge and collect interest and penalties as allowed by law. Interest will accrue on the entire principal balance owing and not on each installment as it becomes due. All payments ordered are subject to modification.

6. All parties must notify DCSS within 10 days in writing of any change in residence, income, or employment.

7. The non-custodial parent/Obligor is responsible for paying all child support and reimbursement payment obligations as of the effective date of the order and shall be responsible for making voluntary payments during any period of time when payments are not being made by an *Order/Notice to Withhold Income for Child Support*.

8. Child Support Suspending Events

a. The obligation of the person ordered to pay support shall be suspended for any period exceeding 30 consecutive days in which the person ordered to pay support is incarcerated or involuntarily institutionalized, or has received a grant of SSI/SSP benefits (hereinafter "**suspending events**") unless the Obligor has the means to pay support during the suspending events. The court reserves jurisdiction to set the arrears balance on a case where retroactive benefits were received and/or a lump sum benefit was received from the Social Security Administration.

b. The suspension of the support obligation shall only apply for the period during the suspending events after which the obligation shall on the first day of the second month following termination of the suspending events resume in the amount otherwise specified in the child support order.

c. Upon termination of the suspending events, unless the parties and the local child support agency agree by written stipulation as to the adjusted arrears balance, any party may petition the court for an adjustment of the arrears pursuant to the suspension of the support obligation authorized herein. The moving party must show proof of the dates of the suspending events, as well as proof that during that time, the moving party did not have the means to pay the support. The moving party shall serve copies of the petition to the support Obligee and the local child support agency, who may file an objection to the petition with the court. A party's arrears shall not be adjusted until the court has approved the petition.

d. Obligor may petition the court for an extension of the period of suspension, and upon a showing of good cause, the court may extend the suspension period. Good cause shall include, but not be limited to, a showing by the Obligor of all good faith efforts to seek and maintain gainful employment.

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Appendix F – Standard Orders Attachment
(2 of 2 Pages)

e. For purposes of this section, "incarcerated or involuntarily institutionalized" includes, but is not limited to, involuntary confinement to a state prison, county jail, juvenile facility operated by the Division of Juvenile Facilities in the Department of Corrections and Rehabilitation, a mental health facility, or a court-ordered live-in drug or alcohol treatment program that lasts for at least 30 days consecutively and which prevents Obligor from earning income other than that which is paid to the program as a term of that program.

This provision shall also apply to the voluntary enrollment by the Obligor into a live-in drug or alcohol treatment program that lasts for at least 30 days consecutively and which prevents Obligor from earning income other than that which is paid to the program as a term of that program. This last event shall only apply if Obligor successfully completes the treatment program.

f. The obligation to pay current child support by an Obligor shall be suspended upon the Obligor's reunification with the family for a period exceeding thirty (30) consecutive days, and shall automatically reinstate upon the separation of the Obligor from the family commencing the first day of the first month following separation.

g. For purposes of this section, "suspend" means that the child support order is modified and set to zero dollars ($0) for the period delineated above.

9. In any case, where the court has ordered as part of the child support order an add-on for childcare, the custodial parent shall notify the non-custodial parent and DCSS in writing within 10 days of any change in the childcare expense. The court reserves jurisdiction to retroactively modify support for a period of 60 days after such notification is provided. In the event such notification was not provided to the non-custodial parent and DCSS, the court reserves jurisdiction to retroactively modify the order to reflect the child care change.

10. In any order based in whole or in part upon the stipulation of an Obligee to a waiver of any past due child support and/or interest owed to said Obligee, the court, unless expressly stated to the contrary in said stipulation and order, reserves jurisdiction to vacate, set aside or otherwise retroactively modify said waiver in whole or in part, and reinstate the arrears waived, based upon a showing of good cause by any party to the action

a. There shall be a rebuttable presumption of good cause where the court finds that the Obligor has willfully failed to comply with any order of the court within the action, including the obligation to pay current or past due support, or in any other case where the basis for the stipulation on the part of the Obligee was stated in the stipulation and thereafter willfully violated by the Obligor.

11. Unless specifically ordered by the court on the record to the contrary, whenever the parties have stipulated to a waiver by either party or both parties of the Standard Order requiring employer-base health care insurance for the minor child (ren), in whole or in part based upon alternative health insurance being provided, then the obligation to provide employer-based health insurance shall automatically reinstate forthwith upon the termination of the alternative coverage.

12. When an arrears balance accrues after current child support has been ordered or when a payment amount was not established, the following will apply:

a. A payment will be established based on the interest accruing each month. The payment shall be in increments of $25.00 based on the interest owing. (i.e. if interest is owing in the amount of $33.00 each month, then the payment would be $50.00 per month; if interest is owing in the amount of $116.00 per month, then the payment would be $125.00 per month, etc)

NOTICE: Any party required to pay child support must pay interest on overdue amounts at the "legal" rate, which is currently 10 percent.

Revised 4-1-2011

Appendix G – Electronic Exhibits
(1 of 3 Pages)

Uniform Instructions for Presentation of Electronic Exhibits

The Merced Superior Court will not provide technical assistance for the prosecution, defense in criminal matters, or counsel in civil matters with the presentation, playback, review or submission of electronic exhibits and/or electronic evidence at any hearing, court trial, or jury trial. Electronic exhibits include, but are not limited to VHS videotapes, DVD's, power point presentations, audio tapes and digital images.

Electronic exhibits presented in court shall conform to the following standards:

1. Electronic exhibits presented as evidence shall contain only the content that is to be viewed and heard by the judicial officer and the jury.

2. In an effort to protect both the prosecution and defense in criminal cases and counsel in civil cases, the court will not provide an IT staff member to playback and/or review electronic exhibits.

3. Static digital images, such as photographs and power point style presentations must be submitted in both electronic and printed format. Other types of media must be submitted in a format compatible with those authorized by the court. A list of compatible formats is maintained on the court website and listed below.

4. Any equipment required to view and/or listen to electronic exhibits including laptops, projectors, DVD/CD players is the responsibility of the party who presents the evidence.

5. Some audio-video presentation equipment may be available through the court upon request, provided the court receives the Audio-Video Request Form two (2) court days prior to the scheduled court date and time. The form (sample below) and a list of available audio-video equipment are on the court website www.merced.courts.ca.gov.

Appendix G – Electronic Exhibits
(2 of 3 Pages)

Cassette Tapes

1. standard audio cassette tape

CD-ROM/CD-R/CD-RW

1. music CD
2. video CD format
3. MP3 audio tracks and JPEG image files of format conforming to ISO 9660 Level 1/Level 2, or its extended format, Joliet
4. KODAK Picture CD format

DVD-ROM/DVD+RW/DVD+R/DVD-RW/DVD-R*

1. MP3 audio tracks and JPEG image files of format conforming to ISO 9660 Level 1/Level 2, or its extended format, Joliet
2. S8 cm DVD+RW, DVD-RW, and DVD-R recorded with a DVD Video camera

* Following formats are not acceptable:

a. Formats not listed above.
b. PHOTO CD format
c. Data part of CD-Extras
d. DVD Audios
e. HD layer on Super Audio CD's
f. DVD-RAM's
g. DVD VIDEO's with a different region code
h. A disc recorded in a color system other than NTSC
i. A non-standard shaped disc (e.g. card, heart)

Documents

1. PDF-A
2. Microsoft Office compatible format

Images

1. JPEG
2. GIF
3. PNG
4. TIFF

Appendix G – Electronic Exhibits
(3 of 3 Pages)

FOR COURT IT PURPOSES ONLY. NOT TO BE PLACED IN COURT FILE

COURT AUDIO-VIDEO EQUIPMENT REQUEST FORM

Superior Court of California

Scheduling Information

Date:		Time:		Location:	

Contact Information

Name	
Organization	
Work Phone	
Cell Phone	
E-Mail Address	

Requested Equipment

☐	**Audio-Video Cart** (DVD/VCR Player with LCD TV)
☐	**CD/Cassette Player** (portable)
☐	**DVD Player**

Comments

Signature

I understand that that this document must be complete and submitted at least 2 court days in advance. Changes to scheduling information or requested equipment requires the submission of an amended form at least 2 court days prior to the scheduled date.

Name (printed) _____

Signature _____

Date _____