



SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO
Hall of Justice and Records
400 County Center
Redwood City, California 94063-0965

JOHN C. FITTON
COURT EXECUTIVE OFFICER
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September 30, 2009

To All Interested Persons,

The Court is proposing to make changes to its Local Court Rules. These new changes will become effective on January 1, 2010 when adopted. The court invites you to review and provide your comment on these proposals as required by the State of California Rules of Court, Rules 10.613.

To navigate through the document, go to the next page "Table of Proposed Local Rules" and click on the link to the proposal you want to view. The link will take you to that page.

You may send your comments to:

smcccomment@sanmateocourt.org

with a subject line stating "Comments on Proposed Rule changes. Please state the proposal number, the section and paragraph number on which you are commenting and your comment.

Comments must be received in our office no later than 4 PM, Friday, November 13, 2009.

Sincerely,
John C. Fitton, Court Executive Officer

A handwritten signature in black ink that reads "Timothy J. Gee".

By: Timothy Gee
Court Rules Committee Staff

TABLE OF PROPOSED LOCAL RULE CHANGES SET SPRING 2009

W09-01 Procedures for Complaints on the Court’s ADR Program 3

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**W09-03 Division V – Family Law – Revisions to Rules to Reference
Local Court Forms and Removal of Actual Forms from the Body of the Rules.....5**

Proposal Number W09-01

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Division II, Current Rule 2.3(i)(6) is renumbered 2.3(i)(7)

Division II, ADD New Rule 2.3(i)(6)

Summary: ADR Local Rules of Court are amended to comply with the California Rule of Court §3.868 requiring each local court to adopt procedures for handling complaints regarding our ADR program.

Rule 2.3(i)(6)

If mediation session participants have a concern about the mediation process or the conduct of a mediator affiliated with the court's program, the court encourages them to speak directly with the mediator first. In accordance with California Rules of Court §3.865 et seq., parties may also address written complaints, referencing the specific Rule of Court allegedly violated, to the Court's Civil ADR Program Coordinator. (For complete complaint procedure guidelines, see court web site: www.sanmateocourt.org/adr/civil/ (specific site will be inserted here).)

(Adopted, effective January 1, 2010)

Proposal Number W09-02

Title	LOCAL RULE 2.7.2
Summary	Amend Rule 2.7.2 to revise the format to be used when submitting proposed instructions. This amendment is necessary to update the format in which proposed jury instructions are submitted to meet the type of hardware used by the court to read electronically recorded data/text.
Proposed Changes	<p><u>Rule 2.7.2 Duty Of Counsel with Respect to Jury Instructions</u></p> <p>Before delivery of proposed jury instructions to the trial judge and opposing counsel, counsel shall fill in all blanks, make all strikeouts, insertions and modifications therein which are appropriate to the case. Submission of a form, which requires additions or modifications to constitute a complete and intelligible instruction, shall not be deemed a request for such instruction.</p> <p>In addition to a hard copy of the proposed jury instructions, counsel shall provide the modified instructions on a <u>on a CD or USB flash drive, also commonly referred to as a thumb drive</u>computer diskette, and a clean copy of the instructions to be given to the jury.</p> <p>(Adopted, effective January 1, 2000) (Amended, effective January 1, 2006)</p>

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Proposal Number W09-03	
Title	LOCAL RULES – FAMILY LAW - DIVISION 5
Summary	Division 5 is amended to remove the forms at the end of the Division, attached as Appendices, and references to the forms are made in the text of the Rules. Each form is now given a form number and will no longer be a part of the Rules. Remaining appendices are renumbered. The forms are located on the Court’s website and are easily accessible to the public. Furthermore, by making the forms a part of the rules makes it more difficult for the Court to update them when necessary hence resulting in having outdated forms in the Rules.
Proposed Changes	SEE BELOW

**DIVISION V
FAMILY LAW DEPARTMENT AND FAMILY COURT SERVICES**

Rules 5.1 to 5.4 Unchanged

Rule 5.5 Ex Parte Orders

(Adopted effective January 1, 2000) (Renumbered as Rule 5.6 and Amended, effective January 1, 2004)

Rule 5.5 Alternative Dispute Resolution

PARAGRAPHS “A”, “C” AND “D” UNCHANGED.

B. Requirements for filing and service of the Notice of ADR Options In Family Law Actions: Each party to a family law action shall be informed of the alternatives to litigation to resolve their disputed issues. Notice shall be in the form of an information sheet entitled “Notice of ADR Options” (hereinafter “Notice”) (~~see Appendix 6~~[see Local Court form FL-02](#)). All parties and counsel shall file and have the Notice served on the other party with any Petition or Response under the Family Law Act or Uniform Parentage Act, Order to Show Cause, Response to Order to Show Cause, Notice of Motion, Response to Notice of Motion, or other family law pleading which will result in a court hearing or trial, unless a Notice has previously been filed within the past 180 days. A Proof of Service shall be filed with the Court.

(1) Exceptions: This rule shall not apply to domestic violence cases filed under Family Code 6200 et seq, nor to Title IV-D child support actions involving the Department of Child Support pursuant to Family Code §§17400 and 17406 and/or those actions filed by the local child support agency pursuant to Family Code §4900 et seq. This rule shall not apply to Motions to Withdraw or to matters pending before a private judge The Notice shall not be served on an employee pension benefit plan.

(Adopted, effective January 1, 2000) (Renumbered (*formerly Rule 5.4(c)*)) and Amended, effective January 1, 2004) (Amended, effective July 1, 2004) ([Amended, effective January 1, 2010](#))

RULE 5.6 UNCHANGED

Rule 5.7 Declarations of Disclosure, Income and Expense Declarations and Tax Returns

(Adopted, effective January 1, 2000)(Renumbered as Rule 5.11 and Amended, effective January 1, 2004)

Rule 5.7 Order to Show Cause and Notice of Motion Rules

A. Moving and Responsive Papers

Paragraphs 1 to 3 and 5 unchanged.

4. Family Court Services Information Sheet--Mediation and Evaluation form: When filing an Order to Show Cause or Notice of Motion regarding custody or visitation, whether disputed or not, the moving party must also complete a Family Court Services Information Sheet--Mediation & Evaluation Form. (~~Appendix "3"~~.see [Local Court form FCS-04](#)) This is not to be filed with the court, rather submitted to Family Court Services at the time of the scheduled mediation appointment.

PARAGRAPHS "B" THROUGH "T" ARE UNCHANGED.

(Adopted, effective January 1, 2000)(Amended and renumbered (*formerly Rule 5.6*), effective January 1, 2004) (Amended, effective January 1, 2005) (Amended, effective January 1, 2007) ([Amended, effective January 1, 2010](#))

5.8 Short Cause Trials

(Adopted, effective January 1, 2000)(Repealed and incorporated into New Rule 5.8, effective January 1, 2004)

Rule 5.8 Trial Setting, Status Conference, and Mandatory Settlement Conference Rules

PARAGRAPHS "A" AND "B" ARE UNCHANGED.

C. Status Conference:

1. Date set upon filing: Except as set forth in paragraph 2 below, every case for dissolution of marriage, nullity, or legal separation filed after the effective date of this rule will be assigned a Status Conference with the assigned judicial department on a date and time to be provided by the court upon filing of a Response. The Conference will be set in the assigned department approximately 120 days from the filing of the Response unless both counsel or self represented parties request that the Status Conference be held earlier, a judgment has been entered, or a dismissal has been filed. The court will serve a copy of the Notice of Assignment and Status Conference on the parties when the Conference is set.

2. If the parties to a case for dissolution of marriage, nullity, or legal separation elect to resolve their matter using the collaborative law process (also referred to as collaborative practice) or mediation, then they may defer the setting of a Status Conference provided they file a Stipulation

and Order to Defer Setting of Status Conference ([see Local Court form FL-13](#)). Thereafter, if upon termination of the collaborative law process or mediation, either party wishes to set a Status Conference, s/he shall do so by filing a Request to Set Status Conference ([see Local Court form FL-14](#)).

3. On request of either party or on the Court's own motion, the court may set any other matter for a Status Conference.

4. Required Statement: At least 15 days prior to the initial Status Conference the parties shall file with the court and serve on all other parties a completed Status Conference Statement ([see Local Court form FL-03](#)~~see Appendix 4~~) a copy of which is available at the clerk's office or through the court's website: www.sanmateocourt.org. The parties may elect to file a jointly prepared Status Conference Statement.

Paragraphs C. 5. to C.10. are unchanged

D. Mandatory Settlement Conferences

Paragraphs 1 and 2 are unchanged.

3. Mandatory Settlement Conference (**MSC**) Statement: Both parties shall prepare a Mandatory Settlement Conference Statement and, if support or fees are at issue, a current income and expense declaration, and shall serve a copy of each on opposing counsel and the assigned judge in such a manner as to assure they are received no later than 12 noon 5 court days prior to the MSC. (If that falls on a Monday, which is a court holiday, then the preceding Friday is viewed as the appropriate date.) Both parties shall state with specificity their good faith proposal for the disposition of each contested issue. Counsel should adhere to the format set forth in [the "Mandatory Settlement Conference Statement Format"](#) (see Appendix ~~A1~~). A settlement brief may be attached. Copies of the following documents shall be brought to the MSC if an unresolved issue requires their production (these documents are not to be attached to the Mandatory Settlement Conference Statement):

- a. All real and personal property appraisals and pension plan evaluations. If no written demand to cross-examine the appraiser is made within ten (10) days after the Mandatory Settlement Conference, or five (5) court days prior to trial, whichever occurs first, the appraisal shall be deemed to have been stipulated as admissible in evidence without a foundation and without the appearance of the appraiser.
- b. If a party proposes an immediate award of the full community interest of a pension plan, then that party must obtain an actuarial or other appropriate and relevant valuation of the plan. The valuation should be requested sufficiently in advance so that the written evaluation is available at the conference.
- c. Bank, credit union, savings account balances and statements of balances of other liquid accounts, as of the date of separation and relevant dates thereafter.
- d. Promissory notes, deeds, and other documents of title or major debt, bills from creditors, and negotiated bank checks.
- e. An itemization of all furniture, furnishings, appliances, utensils, and all other personal property with the party's best estimate of value of each item, unless the parties previously have agreed to some division of these items, or unless an appraisal of these items is included.
- f. A statement from the carrier of the cash value of a whole life insurance policy.
- g. Copies of the relevant blue book pages for all vehicles whose value is at issue.

Sections 4 through 6 are unchanged.

E. Short Cause Trials

Paragraphs 1 to 5 and 7 are unchanged.

6. Mandatory Short Cause Statements ([see Local Court form FL-12](#)): Counsel shall prepare a short cause trial statement and, if financial matters are at issue, an income and expense declaration. Completion and filing of a Mandatory Settlement Conference statement shall satisfy the requirements of this section. The originals of these documents and income and expense declaration shall be filed with the family law clerk's office and copies served on the opposing party not later than 5 calendar days before the Mandatory Settlement Conference or trial date whichever comes first. ~~Except as noted herein, every short cause trial statement shall be in the form of Appendix 4.~~ Failure to timely serve and file the trial statement shall subject the offending counsel to sanctions.

7. Memorandum of Points and Authorities: When a case involves complex or novel points of law or the California Rules of Court require it, the parties shall file legal points and authorities along with their short cause trial statement.

F. Long Cause Trials

1. A long cause trial is defined as any trial estimated to require more than 3 hours of court time.

2. Trial Setting: A trial date will not be set except by the assigned department after the Mandatory Settlement Conference has occurred and a determination made that no further settlement conferences will settle the case. The trial date will be set a reasonable time after the last settlement conference.

3. Continuances: Trials may only be continued by the supervising judge or assigned trial judge. Normally continuances are only granted in extraordinary circumstances (which do not include a change of counsel).

4. Trial Preparation: The rules governing trial preparation are set forth in [the Long Cause Trial Rules Checklist](#) ([see Appendix "52"](#)).

5. Trial Briefs: Trial briefs are required. If a case involves complex or novel points of law or otherwise required by California Rules of Court, the trial brief shall include legal points and authorities. The format of the trial brief is left to each attorney's discretion. Trial briefs shall be exchanged as set forth in Appendix "5".

(Adopted, effective January 1, 2004) (Amended, effective January 1, 2005)
(Amended, effective July 1, 2005) (Amended, effective January 1, 2007)
(Amended, effective January 1, 2008) (Amended, effective January 1, 2009)
[\(Amended, effective January 1, 2010\)](#)

RULES 5.9 TO 5.16 ARE UNCHANGED.

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NOTE: CHANGES TO APPENDICIES

The forms are removed from the Local Forms and references are made to them in the text of the rules so that the contents of the forms and information documents can be changed at will without having to amend the Local Court Rules, which would have to be the case if they were imbedded in the Rules).

1. Appendix 1 "Status Conference Statement" is removed from the Division and reference to form number is made in the rule's text.
2. Appendix 2 "Mandatory Settlement Conference Statement Format" is renumbered as Appendix 1.
3. Appendix 3 "Mediation and Evaluation Service Information Sheet" is removed from the Division and reference to form number is made in the rule's text.
4. Appendix 4 "Husband's and Wife's Short Cause Trial Statement" is removed from the Division and reference to form number is made in the rule's text.
5. Appendix 5 "Long Cause Trial Rules Checklist" is revised and is renumbered Appendix 2.
6. Appendix 5, Attachments A thru D are removed from the Appendix and references to the form numbers are made in the Appendix.

APPENDIX ~~2~~1

MANDATORY SETTLEMENT CONFERENCE STATEMENT FORMAT

- I. Background: The Mandatory Settlement Conference Statement shall include the following:
- A. A brief statement of facts: If the parties are married, include the date of marriage, date of separation, whether marital status has been terminated, the age and employment status of each party. If the parties have minor children, specify and the name and age of each minor child and where they reside.
 - B. History of the Proceedings: Summarize prior court proceedings and any temporary orders or stipulations that are in effect;
 - C. Discovery: Provide the date that the Preliminary Declarations of Disclosure were exchanged; the date that the Final Declaration of Disclosure was provided or whether there was a stipulation to waive; and detail any discovery that remains outstanding.
- II. Issues for Trial:
- The Mandatory Settlement Conference Statement should include a discussion of the issue(s) remaining for trial. When applicable, a concise statement for each issue known to be in dispute containing all material facts and relevant law should be provided in the order listed below. If not applicable, counsel shall so designate or use "N/A."
- A. Separate Property: List of each item of separate property, and include the following information: i) the date it was acquired; ii) the basis upon which it is claimed as separate rather than community property; iii) the current market value; iv) the nature, extent and terms of payment of any encumbrance against the property; and, v) the manner in which title thereto is presently vested.
 - B. Community Property: List of each item of community property, and include the following information: i) the date it was acquired; ii) the basis upon which it is claimed as community property; iii) the current market value; iv) the nature, extent and terms of payment of any encumbrance against the property; and, v) the manner in which title thereto is presently vested.
 - C. Funds Held by Others: To the extent that either separate property or community property consists of funds held by others, such as insurance policies, pensions, profit sharing, or other trust or retirement funds the statement shall fully identify the policy or fund, and include the following information: i) policy, serial or account number; ii) the present values and basis for calculations; iii) all terms or conditions imposed upon withdrawal of such funds. If any loans exist against any of these funds, the details regarding those loans should be set forth.
 - D. Tracing: If a segregation of community property and separate property interests in a single asset is to be an issue in the case, the statement shall set forth in detail, the dates, values and dollar amounts, the transactions relevant to the tracing issues as well as the basis for computation or proration.
 - E. Current Obligations: Separately list all debts and obligations of the spouses that are liabilities of the community and, so far as known, debts and obligations that are alleged to be the separate liabilities of the respective spouses. Specify: i) the identity of the creditor; ii) the

purpose for which the debt was incurred; iii) the date on which the debt was incurred; iv) the balance currently due; v) terms of payment; and, vi) the security, if any, held by creditor.

- F. Reimbursement: A summary of each party's claims for reimbursement or other charges (e.g. claims under In re Marriage of Epstein, In re Marriage of Watts, or In re Marriage of Jeffries) listing each claimed item by dates, payment amount, and payee.
- G. Current Income and Expenses: Specify and set forth current income and expenses by completing and filing or attaching a financial declaration in the form prescribed by Rule 1285.50 of the California Rules of Court. A previously filed income and expense declaration will not satisfy this rule, unless there has been no change from the most recently filed statement, in which case it shall be attached. Include any relevant attachments as set forth in Rule 5.11.
- H. Proposal for Property Division: Set forth a proposed equal division of community property of the parties. In columnar or accounting form, listing the following: i) fair market value of each asset; ii) Secured obligation(s) against each asset, if any; iii) Net value of each asset; iv) Proposed distribution to husband; v) Proposed distribution to wife; vi) Balance due on each unsecured obligation, vii) Proposed distribution of each unsecured obligation; and viii) Proposed method of equalizing the division of community property.
- I. Conditions about Custody, Visitation and Support: Specify each party's contention as to child custody and visitation and as to the amount and duration of child and spousal support.
- J. Attorney's Fees: If there is a request for attorney's fees, include: i) the compensation agreement with the client; ii) a summary of all fees and costs incurred to date, including the number of hours spent by the attorney, paralegal, and other personnel; iii) the amount already paid; iv) the source of funds for payments; v) counsel's estimate of additional fees and costs to be incurred through trial; and vi) the amount sought to be paid by the adverse party.

APPENDIX 52
LONG CAUSE TRIAL RULES CHECKLIST

A. SEVEN COURT DAYS OR MORE BEFORE TRIAL

1. Personally meet and confer with opposing counsel.
2. Exchange trial briefs
3. Where support or fees are at issue, exchange Income & Expense Declarations with required attachments.
4. Exchange list of exhibits ([see Local Court form FL-CV-09A](#)) and copies of exhibits.
5. Exchange list designating non-party witnesses (including name, address and telephone number) ([see Local Court form FL-CV-11](#)) and the subject matter each will testify to.

B. FOUR COURT DAYS BEFORE TRIAL

1. Confer with opposing counsel telephonically to discuss objections to the exhibits and in limine motions.
2. If objections to exhibits unresolved, or motion in limine to be filed, schedule appointment for pre-trial conference.
3. File with the court and serve in limine motions ([see Local Court form FL-10](#))
4. Arrange with clerk to pre-mark exhibits and file original exhibits.
5. File trial brief, Income & Expense Declaration and court's copy of the exhibits in trial department.

C. THREE COURT DAYS BEFORE TRIAL

1. File with clerk of trial department and opposing counsel a written list of objections to the exhibits ([see Local Court form FL-09](#)).

D. TWO COURT DAYS BEFORE TRIAL

1. If there are unresolved objections to exhibits or if motions in limine were filed, confer personally with the court through the clerk.

E. DAY OF TRIAL

1. All objections to exhibits and motions in limine will be heard and a ruling will be issued.
2. Each counsel must pay the mandated statutory court reporter fee for each half day of trial.
3. At the conclusion of each day of trial, the court and counsel shall review the next days' witnesses, examination time and other calendaring issues.

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