

**INVITATION FOR PUBLIC REVIEW AND COMMENT
PROPOSED REVISIONS TO LOCAL COURT RULES AND LOCAL COURT FEES**

[Proposed Effective Date of January 1, 2012]

Pursuant to California Government Code § 70631 and California Rules of Court, Rule 10.613 (g) and 10.815(b), the following proposed amendments to the Local Rules and new local court fees are hereby distributed for public comment. The affected items are:

Proposed Revisions and Addition to Local Court Rules

- [Fall 11 – 01](#) **DIVISION IV – PROBATE DEPARTMENT**
 RULE 4.76 Temporary Conservatorships
- [Fall 11 – 02](#) **DIVISION IV - PROBATE DEPARTMENT**
 RULE 4.81.5 General Plan
- [Fall 11 – 03](#) **DIVISION V – FAMILY LAW DEPARTMENT AND FAMILY COURT SERVICES**
 RULE 5.13 Family Court Services
- [Fall 11 – 04](#) **DIVISION V – FAMILY LAW DEPARTMENT AND FAMILY COURT SERVICES**
 RULE 5.6 B.2. Self-Represented Parties
- [Fall 11 - 05](#) **DIVISION II – JURY RULES**
 RULE 2.7.7 Juror Questionnaires for all case types except for Death Penalty cases

Proposed New Local Court Fees

- [New Fee 11 - A](#) **Records Division - Off site Records Retrieval Fee of \$10**
- [New Fee 11 – B](#) **Records Division - Multiple Files Retrieval Fee [Non-parties] of \$1 per file (exceeding the initial 10 files requested on the same day by the same non-party)**

The proposed amendments were reviewed and approved by the San Mateo Superior Court's Judges.

Submitting Comments - Comments must be submitted addressed to ***Proposed Rules and Fees*** via email at ***smsccomment@sanmateocourt.org***. Please state the proposal number, the section and paragraph number on which you are commenting and your comment. Comments must be received no later than 4:00 p.m. on **November 14, 2011**.

View San Mateo Superior Court Local Rules and Local Court Fees at <http://www.sanmateocourt.org>

**PROPOSED NEW AND AMENDMENTS TO LOCAL COURT RULES
AND PROPOSED LOCAL COURT FEES – FALL 2011**

Proposal Number Fall 11 - 01	
Title	DIVISION IV – PROBATE Amendment to Local Rule 4.76 “Temporary Conservatorships”
Proposed Change(s)	<p>Rule 4.76 Temporary Conservatorships</p> <p>A. In exigent circumstances, petitions may be presented ex parte between 2:00 - 3:30 p.m. (M, T, W, Th, F). On those days that the Probate Presiding Judge is not available, the petitioner shall present his/her petition to the court’s Presiding Judge or the judge designated to hear ex parte matters. A separate petition for the appointment of a regular conservator must first be on file and a hearing date assigned before a petition for temporary conservator will be considered. Forms necessary for temporary appointment of conservator are as follows:</p> <ol style="list-style-type: none"> (1) Petition for Appointment of Temporary Conservator (GC-110); (2) Ex Parte Application for Good Cause Exception to Notice of Hearing on Petition for Appointment of Temporary Conservator (Judicial Council form GC-112) and Order on Ex Parte application (Judicial Council form GC-115); (3) Ex Parte Order Appointing Temporary Conservator (GC-140 141); (4) Proof of service regarding 5-day personal service of ex parte petition to proposed conservatee (if matter contested); and (5) Letters of Temporary Conservatorship (GC-150) and Temporary Bond Certificate (for estates). <p>Sections B-F unchanged</p> <p>(Adopted, effective July 1, 1996) (Amended, effective July 1, 2004)(Amended, effective July 1, 2006) (Amended, effective January 1, 2007) (Amended, effective January 1, 2009) (Amended, effective July 1, 2009) (Amended, effective January 1, 2012)</p>

Proposal Number Fall 11 - 02	
Title	DIVISION IV – PROBATE Amendment to Rule 4.81.5 “General Plan”
Proposed Change(s)	<p>Rule 4.81.5 Confidential General Plan. Upon appointment, Conservators shall be required to file a Confidential Level of Care/General Plan (Local Court Form PR-22) in addition to the mandatory Level of Care Determination form (GC-355)</p> <p>The General Plan shall be filed with the Court within 90 days of appointment. Probate Code §2352.5 requiring the filing of a Level of Care Determination within sixty (60) days of appointment is satisfied by filing the Level of care/General Plan document (Local Court Form PR-22).The plan shall address in detail the any issues identified by the court at the appointment hearing. It shall include matters that have been resolved as well as those that are outstanding and what steps currently are being taken to reach a resolution. A local form “Confidential Level of Care/General Plan” (Local Court form PR-22) shall be submitted and The conservator may attachsubmit a more detailed pleading as appropriate under the circumstances.</p> <p>NOTE : The Public Guardian is exempted from this Rule and shall meet and report annually to the Court on its policy and practice.” “Current practice for the Public Guardian is to file a modified version of Local Form PR-22 identified as PR-22PG together with the mandatory Judicial Council Form GC-355 within 60 days of their appointment.”</p> <p>(Adopted, effective July 1, 2004 [formerly Rule 4.81(g)]) (Amended, effective July 1, 2009) (Amended, effective January 1, 2012)</p>

Proposal Number FALL 11- 03

Title	<p>DIVISION V, FAMILY LAW</p> <p>Amendment to Rule 5.13 – Family Court Services</p>
Proposal	<p><u>Rule 5.13 Family Court Services</u></p> <p>A. Mediation Required: Whenever custody or visitation are in dispute, the parties are required by Family Code §3170 to participate in court ordered mandatory mediation with either Family Court Services or a private mediator retained by the parties. Family Court Services (FCS) provides mediation also called “child custody recommending counseling” without charge to help parties resolve disagreements about the care of their child(ren). The child custody recommending counselor will meet with both parties in mediation to help them make a parenting plan. If the parties are unable to reach an agreement, the child custody recommending counselor will give a written recommendation about the parenting plan to the court. either with a counselor at Family Court Services (FCS) or a private mediator retained by the parties. Upon a showing of good cause, investigations pursuant to Family Code §3110 will be ordered. Investigation is a separate function from that of mediation and may not be ordered unless an attempt is first made to settle a case through mediation.</p> <p>B. Mediation at Family Court Services</p> <ol style="list-style-type: none"> 1. Location of Family Court Services: Family Court Services is located on the 6th floor of the Hall of Justice and Records, 400 County Center, Redwood City, California. Phone number: 650 363-4561; Fax 650 363-4966. FCS maintains limited hours in the Northern District Branch for day of court mediation and appointments. 2. Initiating Family Court Services mediation: If an Order to Show Cause or Notice of Motion requests a court order concerning custody or visitation and FCS mediation or child custody recommending counseling appears necessary, the moving party, or their attorney, must contact all FCS after when the moving papers are filed and served to schedule a mediation appointment. If the responding party determines that a custody or visitation dispute exists, which is not set forth in the moving papers, the responding party is responsible for scheduling the earliest possible FCS mediation date and promptly notify the moving party of the time and date for the meeting. (Providing the requested relief is available pursuant to Family Code section 213). 3. Parent Orientation Workshop: All parties filing an OSC or motion related to custody and visitation of minor children are required to complete a parent orientation workshop prior to mediation. Parties can meet this requirement by: <ol style="list-style-type: none"> a) Viewing the Parent Orientation and Parent Handbook online at www.sanmateocourt.org/fcs. Parties are required to bring their certificate of completion to their mediation appointment.

b) Parties may attend the Family Court Services Parent Orientation in person at the Court by calling FCS at 650 363-4561 or register on-line at www.sanmateocourt.org/fcs/signup/

4. Failure to Appear at Mediation: ~~Family Court Services~~~~The Court~~ will impose a fine of \$100 on a party who receives reasonable notice of the mediation ~~appointment~~ at FCS and fails to appear without good cause or who cancels within 48 hours of the appointment. ~~The Court may order additional sanctions.~~

5. Submitting ~~Information Sheet to Family Court Services~~~~Mediation Data Sheet and Declarations~~: At or before the ~~appointment with FCS~~~~mediation session~~, each party must submit a completed ~~Family Court Services Mediation Information Sheet~~. Blank ~~Information Sheets~~~~mediation data sheets~~ may be obtained ~~online at www.sanmateocourt.org/forms_and_filing~~~~from Family Court Services~~. If day of court mediation is going to be requested, the parties are expected to have completed the day of court Family Court Services Mediation Information Sheet prior to having their matters called in court. ~~Similarly, if a party is appearing by telephone, an Information Sheet may be obtained online and faxed or mailed to FCS prior to the appointment.~~ The parties should indicate to the courtroom clerk that they plan to request a referral to Family Court Services.

Prior to their ~~appointment~~~~mediation conference~~, the parties, or their attorneys, may provide FCS with filed-endorsed moving papers, responsive papers, and/or declarations signed under penalty of perjury. Absent a court order to the contrary, FCS will not accept these documents unless they have been served on the opposing party or their attorney. FCS may review further documents submitted by either party if the counselor, at the counselor's sole discretion, determines them ~~at the documents are relevant to the mediation process.~~

6. Telephone Conferences: If a personal meeting with a counselor at FCS is not feasible, such as when one party resides outside of the nine Bay Area counties, a ~~session~~~~conference~~ may be conducted by telephone. The parties or counsel for the parties shall advise ~~the FCS office~~ of the need for a telephonic ~~appearance~~~~mediation~~ and provide appropriate telephone numbers. ~~It is the responsibility of the party not appearing in person to place the telephone call to FCS~~ ~~The party residing at a distance shall be responsible for calling FCS~~ at the time of the appointment (i.e., FCS does not call the parties).

7. Initial Meeting: The assignment of mediators is an administrative function of Family Court Services. Cases are equitably distributed amongst staff on a rotational basis according to availability, except by specific order of the court. Other than a statutorily authorized support person, only parents shall attend the ~~initial~~~~appointment~~~~mediation conference~~, unless requested by the court or FCS counselor. The parties' attorneys do not participate in FCS mediation. If the counselor wants to interview the child(ren), ~~new spouses~~ or other parties, the counselor will arrange for such interviews after the initial meeting. ~~Parents should not bring children to mediation appointments unless specifically requested by the mediator or Court.~~

8.

Subsequent ~~Mediation~~-Appointments: Unless a review ~~mediation appointment~~ is requested by the Court or the ~~counselor mediator~~, parties may not set an appointment with Family Court Services ~~sooner than twelve~~ ~~within six~~ months after of ~~their last session mediation unless authorized by the Court~~. In general, it is the policy of Family Court Services to assign the parties the same ~~counselor mediator~~ in order to provide for continuity of services. ~~and to prevent minor children from needing to be interviewed again.~~

9. Complaints and Requests to Change Counselors (~~p~~Pursuant to Family ~~Code~~: 3163):

~~A~~-a) All requests for a change of counselor and/or formal complaints shall be in writing. ~~The Client Comment Policy and A-Complaint Form~~ is available online at ~~www.sanmateocourt.org/forms_and_filingxxx~~, or by contacting the Family Court Services office at (650) 363-4561.

~~B~~-b) Comments about the mediation process, complaints, and/or requests to change counselors shall be directed to the Manager of Family Court Services and should be made at the earliest possible time after the ~~appointment mediation session~~, but in no event later than 10 calendar days after the report.

~~C~~-c) A peremptory challenge of a counselor is not allowed.

~~D~~-d) No change of counselor requests will be granted unless there is substantial showing that the counselor is biased or prejudiced against one of the parties or is unable to render a fair and impartial recommendation.

~~E~~-e) A courtesy copy of the Complaint Form shall be provided to the other parent by Family Court Services. The other parent may submit a written response.

~~F~~-f) The Manager shall review the request and shall advise the parties of the decision in writing. The Manager's decision is final.

10. ~~Meeting separately~~ ~~Separate Mediation~~: If there is a restraining order, the parties will be seen separately ~~during the same session~~. A party who alleges under penalty of perjury that they have been a victim of domestic violence may request ~~to meet~~ separately ~~mediation~~ even though there is no current restraining order. Protected parties or parties who allege domestic violence may have a support person in the ~~mediation~~ session. The support person must be at least 18 years of age and cannot be the attorney of record for either party. The support person must sign a FCS form agreeing to keep the ~~mediation session~~ confidential. The support person is ~~present~~ for emotional support and ~~is not present to~~ ~~cannot~~ speak or offer comments ~~during the session, nor to the mediator or~~ advice to the parent. If the support person is disruptive to the mediation, the counselor will exclude the support person.

11. Involvement of a Child in the Process: ~~As part of the mediation process, minors are occasionally interviewed. Parents should not bring children to appointments unless specifically requested by the counselor or Court.~~ In

general, children are interviewed by the ~~counselor~~mediator without the parents present. Family Court Services does not provide the type of parent-child interaction/attachment assessment that is included in a private child custody evaluation. ~~Family Court Services does not provide the type of parent-child interaction/attachment assessment that is included in a private child custody evaluation.~~ Child's participation in Family Court is governed by Family Code 3042 and related Rules of Court. As such, a counselor will inform the court if they have information indicating that a child in a pending matter wishes to address the court. ~~However, a child seen with one parent shall also be seen with the other parent unless there is a court order stating otherwise, or, in an unusual case, the evaluator determines that such observation is unnecessary or not in the best interests of the child. The mediator has the discretion to determine the number of interviews and amount of time spent with each parent-child combination and whether siblings should be interviewed separately or jointly.~~

~~G-12. Family Court Services Recommendations by Mediator or Evaluator:~~ If the parties ~~were~~are unable during the mediation to reach an agreement~~resolve issues of custody or visitation, by mediation,~~ the child custody recommending counselor ~~FCS counselor~~ will submit a written recommendation about the parenting plan and the reasons for the recommendations to the parties, their attorneys and the court. The court will consider the recommendation at the time of the hearing and will make a final determination about custody and visitation. A party has the right to cross-examine the counselor during the hearing. A subpoena is required to ensure attendance of the counselor, and fees shall be submitted in advance to Family Court Services in accordance with Government Section 68097.2.

~~If both parents did not participate in the evaluation, or there is a court order in this regard, the mediator or evaluator shall not make recommendations regarding custody and/or visitation. Any recommendations made without both parents' participation or court order shall be given little (or no) weight by the court and FCS.~~

~~11. Extended Family Court Services Mediation, Investigation: If the court orders FCS to perform an extended mediation evaluation, the parties shall bear the cost of such services at the prevailing hourly rate. The court will require one or both parties to pay an initial nonrefundable deposit set by the court. The parties shall provide a copy of this order to FCS when they report to intake. Failure to complete the intake process will delay completion of the investigation. An extended mediation evaluation is more limited in scope than a private custody evaluation (i.e., FCS does not conduct psychological testing or attachment assessments between parents and young children).~~

~~14.13. Sealing reports and Filing Recommendations.~~ Reports submitted by FCS or other mental health professionals shall always be sealed in the civil file.

14. Confidentiality of Reports: ~~Family Court Services~~A mediator's ReportsMemo to the Court shall be confidential and unavailable to any person except the court, the parties, their attorneys and any person to whom the court

expressly grants access by written order made with prior notice to all parties. Except for the section of the ~~reportMemo-1~~ labeled “Recommendations” or “Agreements” the ~~reportmemo~~ should never be attached to any pleadings made part of the Court file. Minors should not have access to ~~reportsthe Memo to the Court.~~

Anyone receiving the ~~mediator’s-child custody recommending counselor’s~~ report shall not give copies of, or parts of the ~~reportMemo~~ to anyone who is not assisting in the preparation of the case. These reports usually contain sensitive information and shall not be used to cause unnecessary embarrassment or harm to the parties but shall be handled in a responsible, confidential manner for purposes limited to the litigation. The court reserves the right to impose appropriate sanctions upon any person who violates this rule.

Family court mediation proceedings shall be held in private and shall be confidential. All communications, verbal or written, from the parties to the mediator made in the proceeding are official information, and mediators must protect the confidentiality of the parties and the child and must not release information about the case to any individual except as authorized by the court or statute.

If any person subpoenas or otherwise attempts to obtain confidential mediation information, the mediator will be deemed to have asserted the privilege for official information, and said information will not be provided without an order of the court.

C. Court Ordered Private Child Custody Evaluations: (section unchanged)

(Adopted, effective January 1, 2000)(Renumbered (formerly 5.11)and Amended, effective January 1, 2004) (Amended, effective January 1, 2005) (Amended, effective July 1, 2010) (Amended, effective January 1, 2011) (Amended, effective January 1, 2012).

Proposal Number Fall 11 - 04	
Title	Amendment to Local Rule 5.6, B. 2. – Self-Represented Parties
Proposed Change(s)	<p><u>Proposed Amendment to Local Rule 5.6, Section B. [Family Law]</u></p> <p><u>Section A unchanged.</u></p> <p><u>B. 1. Unchanged</u></p> <p>2. Self-Represented Parties. Self-Represented parties seeking an ex parte order must present their papers to the Family Law Facilitator’s office for review prior to submission to the assigned department. The Family Law Facilitator will submit the documents for signature after review. After review of the Ex Parte papers by the Family Law Facilitator’s office, the self-represented party will be directed to the Family Law Clerk’s Office to file their Ex Parte papers and for assignment by the Family Law Supervising Judge to a department for review and determination.</p> <p>Paragraph 3 is unchanged</p> <p>4. Filing Fees. All parties are required to pay all applicable filing fees associated with filing Ex Parte Applications as required by law, unless the party has obtained a Fee Waiver Order. The filing fee must be paid prior to the party going to the appropriate Department for review and determination of their Application.</p> <p>Sections C through N unchanged.</p> <p>(Adopted, effective January 1, 2000) (Renumbered (<i>formerly 5.5</i>) and Amended, effective January 1, 2004) (Amended, effective January 1, 2008) (Amended section E, effective July 1, 2008) (<i>Amended section B, effective January 1, 2012</i>)</p>

	Proposal Number Fall 11 - 05
Title	DIVISION II, COURT MANAGEMENT – SUPERIOR COURT CHAPTER 4. JURY RULES New Rule 2.7.7 regarding copying and processing juror questionnaires.
Proposal	<p>Addition of a new Rule</p> <p>Rule 2.7.7 Juror Questionnaires for all case types, with the exception of death penalty cases (NEW)</p> <p>A. Printing of juror questionnaires.</p> <p>1. If juror questionnaires are proposed by any party, the requesting party must provide a copy of the proposed questionnaire to all parties and they must meet and confer to agree on a questionnaire that will be distributed to prospective jurors. The juror questionnaire must be presented to the trial judge on the day of trial at the very latest. The trial judge has discretion to determine whether a juror questionnaire will be allowed.</p> <p>2. The proposed questionnaire shall be presented to the trial judge for review and approval prior to it being used. Once the trial judge has approved the questionnaire, it is the responsibility of the requesting party to bear the cost of creating and copying the blank questionnaire and present the copies to the courtroom staff of the trial department prior to the juror selection process. Counsel shall be responsible to provide sufficient number of copies of the blank questionnaire for the entire juror selection process.</p> <p>B. Printing and Distribution of Completed Juror Questionnaires.</p> <p>1. As juror questionnaires are completed by prospective jurors, the court staff will collect the questionnaires, process them and deliver them to the requesting party for copying. It is the responsibility of the requesting party to print copies of the completed questionnaires for all parties in the case and the court and to distribute the copies to the parties and the court within the timeframe as specified by the trial judge. All originals must be returned to the courtroom clerk of the trial department hearing the trial immediately after they have been copied.</p> <p>2. The parties in the case may agree to share in the cost of printing the questionnaires at which time they are to notify the court of their agreement.</p> <p style="text-align: center;">(Adopted, effective January 1, 2012)</p>

Proposed Local Court Fee 11 - A	
Title	Local Fee – Records Division Off site Records Retrieval Fee of \$10
Proposal	A fee of \$10 will be charged per file request that requires retrieval and return of the file from an off-site location. This fee is authorized by Government Code section 70631 and California Rules of Court, Rule 10.815 (b)(13).

Proposed Local Court Fee 11 - B	
Title	Local Fee – Records Division Multiple Files Retrieval Fee [Non-parties] of \$1 per file (exceeding the initial 10 files requested on the same day by the same non-party)
Proposal	<p>A fee will be charged of \$1 for each file over the initial 10 files requested by the same non-party requestor on the same day.</p> <p>The \$1 per file fee applies to requests for files that are located on-site at a courthouse and would not apply to files stored at the Court’s offsite facility. This will be assessed only when the requests by non-parties exceed the initial 10 files requested on a single day by the same person. This fee is authorized by Government Code section 70631.</p>