



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
CLERK & JURY COMMISSIONER

(650) 363-1631
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September 27, 2013

To All Interested Persons,

The Court is making changes to its Local Court Rules. These new changes will become effective on the date indicated in the proposal. The court invites you to review and provide your comment on these proposals as afforded pursuant to the State of California Rules of Court, Rules 10.613 and 10.815.

You may send your comments to:

smscomment@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 2:30 PM, Tuesday, November 12, 2013.

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

INVITATION FOR PUBLIC REVIEW AND COMMENT
[Proposed Effective Date of January 1, 2014]

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 are hereby distributed for public comment and notice. The affected items are:

Proposed Revisions to Local Court Rules

(Click on proposal number for link to page)

Fall 13-01 DIVISION III – FAMILY LAW DIVISION

Rule 5.13 – Family Court Services

**Fall 13-02 DIVISION II – COURT MANAGEMENT
CHAPTER 1. FORM AND SERVICE OF PAPERS**

Rule 2.1.5 Electronic Filing In Civil Cases (E-Filing) [New]

Submitting Comments

- Comments must be submitted addressed to *Proposed Rules* via email at smscomment@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 2:30 p.m. on Tuesday, November 12, 2013.**

Proposal Number 2013 Fall-01

Title	DIVISION 5 – FAMILY LAW DEPARTMENT, FAMILY COURT SERVICES
Summary	Modifications to reflect current practices and procedures and to clarify terms.
Proposed Changes	<p>Rule 5.13 Family Court Services</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.</p> <p>B. Location of Family Court Services</p> <p>1. 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.</p> <p>2. Setting an appointment with Family Court Services: If a Request for Order concerns custody or visitation and FCS mediation also called “child custody recommending counseling” appears necessary, the moving party, or their attorney, must contact FCS <u>the first court day</u> after the moving papers are filed and served to schedule an 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 appointment 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).</p> <p>3. Parent Orientation Workshop: All parties filing a Request for Order related to custody and visitation of minor children are required to complete a parent orientation workshop prior to their FCS appointment. Parties can meet this requirement by:</p> <ul style="list-style-type: none">a) Viewing the Orientation and Parent Handbook online at www.sanmateocourt.org/fcs. Parties are required to bring their certificate of completion to their 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 <u>http://www.sanmateocourt.org/court_divisions/family_court_services/signup.php</u> <p>4. Failure to Appear at Family Court Services Appointment: Family Court Services will impose a fine of \$100 on a party who receives reasonable notice of the appointment at FCS and fails to appear without good cause or who cancels within <i>two court business days</i> of the appointment. The Court may order additional sanctions.</p> <p>5. Submitting Information Sheet to Family Court Services: At or before the appointment with FCS, each party must submit a completed Information Sheet. Blank Information Sheets may be obtained at www.sanmateocourt.org/forms_and_filing. If a day of court referral to FCS is</p>

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Family Court Services**

~~going to be requested, the parties are expected to have completed the day of court Family Court Services 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 the completed form must be faxed to or received by 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, the parties, or their attorneys, may provide FCS with filed-endorsed moving papers, responsive papers, and/or declarations signed under penalty of perjury which have not yet been scanned by the clerk's office may be provided to FCS at the time of the appointment by the parties or their attorney. 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 request and review further documents submitted by either party if the counselor, at the counselor's sole discretion, determines them relevant.~~

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 may be conducted by telephone. The parties or counsel for the parties shall advise FCS of the need for telephonic appearance and provide appropriate telephone numbers. It is the responsibility of the party not appearing in person to place the telephone call to FCS at the time of the appointment (i.e., FCS does not call the parties).

7. Initial Meeting: The assignment of child custody recommending counselors 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 appointment, unless requested by the court or FCS counselor. The parties' attorneys do not participate in the session. If the recommending counselor wants to interview the child(ren), or other relevant persons, the counselor will arrange for such interviews after the initial meeting.

8. Subsequent Appointments: Unless a review appointment is requested by the Court or the recommending counselor, parties may not set an appointment with Family Court Services sooner than twelve (12) months after their last session. In general, it is the policy of Family Court Services to assign the parties the same counselor in order to provide for continuity of services.

9. Complaints and Requests to Change Counselors (pursuant to Family Code 3163):

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

b) Comments about the FCS 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, but in no event later than 10 calendar days after the report.

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

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) 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) 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: 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 even though there is no current restraining order. Protected parties or parties who allege domestic violence may have a support person in the 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 session confidential. The support person is for emotional support and is not present to speak or offer comments during the session, nor to offer advice to the parent. If the support person is disruptive to the session, the counselor will exclude the support person.

11. Involvement of a Child in the Process: As part of the recommendation process, minors are occasionally interviewed by FCS. Parents should not bring children to appointments unless specifically requested by the recommending counselor or Court. In general, children are interviewed by the counselor 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. Beyond minor interviews with FCS, a child's participation in Family Court is governed by Family Code §3042 and related California Rules of Court, see Rule 5.250 of the California 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.

12. Family Court Services Recommendation: If the parties were unable during the mediation to reach an agreement, the child custody recommending counselor will submit a written recommendation about the parenting plan and the reasons for the recommendation 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 Code § 68097.2.

13. ~~Sealing~~ Reports and Filing Recommendations Reports submitted by FCS or other mental health professionals shall be *maintained in the confidential portion of*~~sealed in~~ the civil file.

14. Confidentiality of Reports: Family Court Services Report 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 report labeled "Recommendations" or "Agreements" the report should never be attached to any pleadings made part of the Court file. Minors should not have access to the report.

Anyone receiving the child custody recommending counselor's report shall not give copies of, or parts of the report to anyone who is not *authorized by statute or the court, 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 Services proceedings shall be held in private and shall be confidential. All communications, verbal or written, from the parties to the child custody recommending counselor made in the proceeding are official information, and FCS staff will 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 case information, FCS staff 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:

1. Court appointed evaluators shall abide by the requirements of Rules 5.220 through 5.230 of the California Rules of Court.
2. No peremptory challenge to a Court appointed evaluator is allowed.
3. Evaluators may petition to withdraw from a case by submitting a request in writing to the court and mailing copies to the counsel for the parties. The request shall include the reason for the request and a status report on any action taken by the evaluator appointed to the case.
4. Grievance Procedure: Complaints regarding the evaluator's performance shall be submitted to the Court for review. All submitted written complaints will receive a response from the Court.
5. Notwithstanding Rule 5.235 of the California Rules of Court, the evaluator may initiate an ex parte communication with the court to define the scope, process and methods of the evaluation when authorized by the order appointing the evaluator.
6. All child custody and visitation evaluations shall be ordered by the court and evaluators will be appointed under Evidence Code Section 730. The court may elect not to consider evaluations which have not been approved and ordered by the court.
7. A copy of the appointment of the evaluator under Evidence Code Section 730 will be made available to the court assigned evaluator. A court ordered evaluation may be limited in scope to the issues identified by the court.
8. Information from Children: The court relies on the judgment of its experts in making decision about when, how often, and under what circumstances children are interviewed. The expert shall be able to justify the strategy used in any particular case. Except in extraordinary circumstances, including the potential for danger to the child, children shall be informed that the information provided by the child will not be confidential.
9. Any evaluation based on interviews with only one parent shall not include a recommendation regarding custody.
10. Payment of the Evaluation: The court will order payment of the evaluation at the time of the appointment.
11. Any court ordered child custody evaluation shall be submitted to the court and counselor for the parties not less than ten (10) days before the hearing or trial.

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12. A list of names of local child custody evaluators in can be obtained by contacting Family Court Services at 650 363-4561.

(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) (Amended, effective January 1, 2013) (Amended, effective July 1, 2013) *(Amended, effective January 1, 2014)*

Proposal Number 2013-Fall 02	
Title	LOCAL RULE DIVISION II – RULE 2.1.5 ELECTRONIC FILING IN CIVIL CASES (E-FILING) [NEW]
Summary	A Local Rule to establish the process for permitting electronic filing of documents with the Court in any class actions, coordinated actions, or actions that are deemed complex under rule 3.403 pursuant to CRC 2.253.
Discussion	<p>This Rule will allow for electronic filing of documents by parties in complex cases and court order situations when the Court’s electronic filing project is implemented. This rule is made pursuant to CRCs 2.250 to 2.259 as amended effective July 1, 2013 and C.C.P. 1010.6.</p> <p>While C.C.P. 1010.6 (d) establishes a pilot project for the Superior Court in Orange County, any court has the option to institute its own program with the adoption of local court rules pursuant to C.C.P. 1010.6(b) and CRC, Rule 2.253.</p> <p>Recently amended CRC, Rule 2.253 (effective July 1, 2013) allows a court to permit or require electronic filing of documents in specifically defined civil case types by way of local rules. This proposal will allow electronic filing of documents in very limited number of cases and in a controlled manner by court order under Rule 2.253(c). Parties will be required to e-file documents if the case is a class action, consolidated action, or a group of actions, a coordinated action, or an action that is complex pursuant to CRC, Rule 3.403 by order of the judge presiding over one of the types of actions listed.</p> <p>If a judge orders e-filing of documents in a case, that judge can also define in its order if all or only certain types of documents are to be filed electronically.</p> <p>The Court will be required to establish procedures for this program in conformity with the requirements stated in CRC 2.250 et seq.</p> <p>This rule is being proposed so that a local rule will be in place that will permit our Court to proceed with the program when the Court’s e-filing system becomes operational.</p> <p>Authorities: C.C.P. 1010.6 and Rules 2.250 et seq. of the California Rules of Court</p>

Proposed Changes

(insert text of new rule
or changes here with
track changes)

Rule 2.1.5 Electronic Filing of Documents

Local Rule 2.1.5 *Permissive Electronic Filing of Documents – Civil Complex*

A. The Court permits parties to electronically file documents in any civil class action, civil coordinated action, civil action that is provisionally complex under Rule 3.400(c) of the California Rules of Court, or civil action that is deemed complex pursuant to CRC Rule 3.403. The Court does not presently permit electronic filing in other types of cases.

B. This Rule is subject to all of the conditions set forth in Code of Civil Procedure Section 1010.6(b) and any requirements set forth in CRC Rules 2.250 *et seq.* (Trial Court Rules, Division 3, Chapter 2).

C. No direct electronic transmission to the Court of any document for filing is allowed. Electronic filing of documents must be done through one of this Court's authorized Electronic Filing Service Providers. The Court's electronic filing procedures and requirements, including identification of its Electronic Filing Service Providers (EFSP), are available on this Court's website at www.sanmateocourt.org and available in print at the Clerk's Office. An EFSP may require payment of a convenience fee and/or transaction fee and/or impose other reasonable requirements as conditions for processing the electronic filing of a document.

D. For purposes of electronic filing of documents, pursuant to CRC Rule 2.250(b)(10), the "close of business" is 4:00 p.m. Pursuant to CRC Rule 2.259(c), a document that is received electronically by the Court after the close of business is deemed to have been received on the next court day. This provision concerns only the effective date of filing; and any document that is electronically filed must be processed and satisfy all other legal filing requirements to be filed as an official court record.

(Adopted, effective January 1, 2014) **(NEW)**