



## Superior Court of California County of San Mateo

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To All Interested Persons,

The following are changes to this Court's Local Court Rules that will become effective on January 1, 2011. These changes have been approved by the Court and have complied with the approval process as set forth in the California Rules of Court, Rule 10. 613. The changes are in **bold** and *italics* for easy identification. For comparison purposes, please refer to the current rules that are still posted on our website. Some of the key changes are found in Rules 2.7.7, 4.81.4, 5.6 B2, and 5.13.

A newly revised version of the complete set of the Local Rules with these changes will be posted on the Court's website on December 30, 2011. Any questions can be sent to the Court's webmaster at: [smccomment@sanmateocourt.org](mailto:smccomment@sanmateocourt.org).

### Rule 2.7.7 is added

Rule 2.7.7 Juror Questionnaires for all case types, with the exception of death penalty cases [NEW]

#### A. Printing of juror questionnaires.

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.

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.

#### B. Printing and Distribution of Completed Juror Questionnaires.

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.

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.

(Adopted, effective January 1, 2012)

Rule 4.76 A. (3) was amended so the correct form name and number is referenced [Order appointing Temporary Conservator (GC-141)]

Rule 4.77.1 is amended to correct the title of the form in sections 2 and 4 and to add the correct local court form in section 4.

Rule 4.77.1

2. All documents will become part of the public record, with the exception of the Guardianship Declaration (**PR-18**) and the Confidential Guardian Screening Form (JC-GC 212) (confidential except by court order – see California Rules of Court, Rule 7.1001).
  
4. The Guardianship Declaration (Local Form, **PR 18**) should include the following information to assist the Court Investigators and the Court:
  - a. Specific reasons why parents are not suitable
  - b. Complete legal name, any other names used for the minor
  - c. Development of the minor, whom minor has resided with since birth, and any special emotional, psychological, or physical needs; and ability of guardian to meet these needs.
  - d. Daycare arrangements, if any; name, address and telephone number of person or facility providing care
  - e. Schooling/education plan and any special needs
  - f. Housing arrangements, own room or sharing
  - g. Financial support and source
  - h. Name and telephone number of physician
  - i. Other relevant information (facts which should be revealed to the court but which the petitioner wishes to have remain confidential should be addressed to the Court Investigator and labeled, “For Confidential Use Only.”)

Rule 4.77.7 B, C and D are amended to correct the name of the head of the Probate Investigator unit; correct the County Department to Children and Family Services; and correct numbering of paragraph 4 to D.

Rule 4.77.9 A and B are amended to correct the name of the County Department to Children and Family Services.

Rule 4.81.4 is amended so that paragraph “A” is deleted; New Paragraph C is added to refer to a Standing Order appointing the Court Investigator to conduct conservatorship investigations and dispense with use of specific Judicial Council forms.

Rule 4.81.4 Special Requirements on Appointment or Termination of Conservator.

- A. Following the appointment of a conservator, a court investigation shall be conducted for the first annual and each subsequent bi-annual review set by the court. A court investigation shall also be conducted for each established conservatorship as otherwise ordered by the court pursuant to Probate Code section 1850(b).
  
- B. A court investigation of a petition to terminate conservatorships is not required unless so ordered by the court. A limited investigation may be ordered by the court pursuant to Probate code section 1826(p).

- C. By Standing Order of the Court the Court Investigator is appointed and directed to conduct court investigations for identified matters related to a conservatorship. The Standing Order dispenses with the use of the optional Judicial Counsel forms GC-330, GC-331 and GC 332.
- D. When an initial petition for conservatorship is filed, and at any future time when conservatorship documents are filed, the Clerk will retain a copy, and will deliver the copy to the Court Investigator. (Parties should submit an original and two copies of any document in order to receive back an “endorsed-filed” copy.)

(Adopted, effective July 1, 2004 [former Rule 4.81 (c)])(Amended, effective July 1, 2006)  
(Amended, effective July 1, 2011)(Amended, effective January 1, 2012)

Rule 4.81.5 is amended making the General Plan confidential; and changes the title of the forms to be submitted and eliminate other forms that need to be filed; and exempts the Public Guardian from this Local Rule.

Rule 4.81.5 Confidential General Plan.

*Upon appointment, Conservators shall be required to file a Confidential General Plan (Local Court Form PR-22) in addition to the mandatory Level of Care Determination form (GC-355)*

*The General Plan shall be filed within 90 days of appointment. The plan shall address in detail 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. The conservator may attach a more detailed pleading as appropriate under the circumstances.*

*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-355 within 60 days of their appointment.*

(Adopted, effective July 1, 2004 [formerly Rule 4.81(g)]) (Amended, effective July 1, 2009) (Amended, effective January 1, 2012)

Rule 5.6 B.2. is amended to change the procedures for filing Ex Parte papers.  
5.6 B 4 is added regarding payment of filing fee prior to hearing.

**Rule 5.6**

**B. Ex Parte Applications.** The court requires strict compliance with the provisions of Code of Civil Procedure §1008, and the California Rules of Court, Rules 3.1200-3.1207. California Judicial Council Forms must be used where applicable. The party seeking any ex parte order has an absolute duty to inform the court that a requested order will change the status quo.

1. **Represented Parties.** Applications for ex parte orders in family law matters shall be presented to the judge assigned to the case for all purposes through the family law clerk’s office at the Hall of Justice and Records in Redwood City.

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. *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.*

3. **Ex Parte Applications.** Ex Parte Applications, where there is no pending Family Law case and a party is represented by counsel, shall be submitted to the Family Law Clerk's office and will be assigned a department by the Family Law Supervising Judge, for review and determination.

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. [Changes indicated in bold and italicized]*

Rule 5.13 A is amended revising the procedures for mediation.

Rule 5.13 Family Court Services

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.***

Rule 5.13 B 2, B 8 and B 9 are amended changing the form titles and persons to contact when filing the moving papers.

Rule 5.13 B 5, and B 15 are amended changing the forms to be filed and changing reference from meeting to session.

Rule 5.13 B 6 is amended to clarify responsibilities regarding telephone conferences.

Rule 5.13 B 7 is amended changing the person conducting the meeting and now allowing parents to bring children to the meeting.

Rule 5.13 B 10 is amended changing the name of the sessions held

Rule 5.13 B 11 is amended regarding participation of children in the process.

Rule 5.13 B 12 revises the procedures on handling of the Recommendation by Family Court Services.

Rule 5.13 B 13 is deleted

Rule 5.13 B 14 renumbered to B 13.

B. Mediation at Family Court Services

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 FCS after 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:

a) Viewing the Orientation and Parent Handbook online at [www.sanmateocourt.org/fcs](http://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/](http://www.sanmateocourt.org/fcs/signup/)

4. Failure to Appear at Mediation: Family Court Services 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***: 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](http://www.sanmateocourt.org/forms_and_filing). 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***, 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 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 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 ***appointment***, 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), or other parties, 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 *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 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](http://www.sanmateocourt.org/forms_and_filing) or by contacting the Family Court Services office at (650) 363-4561.

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, 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*, or to offer 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* 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 mediation, a 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.*

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 always be 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 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.