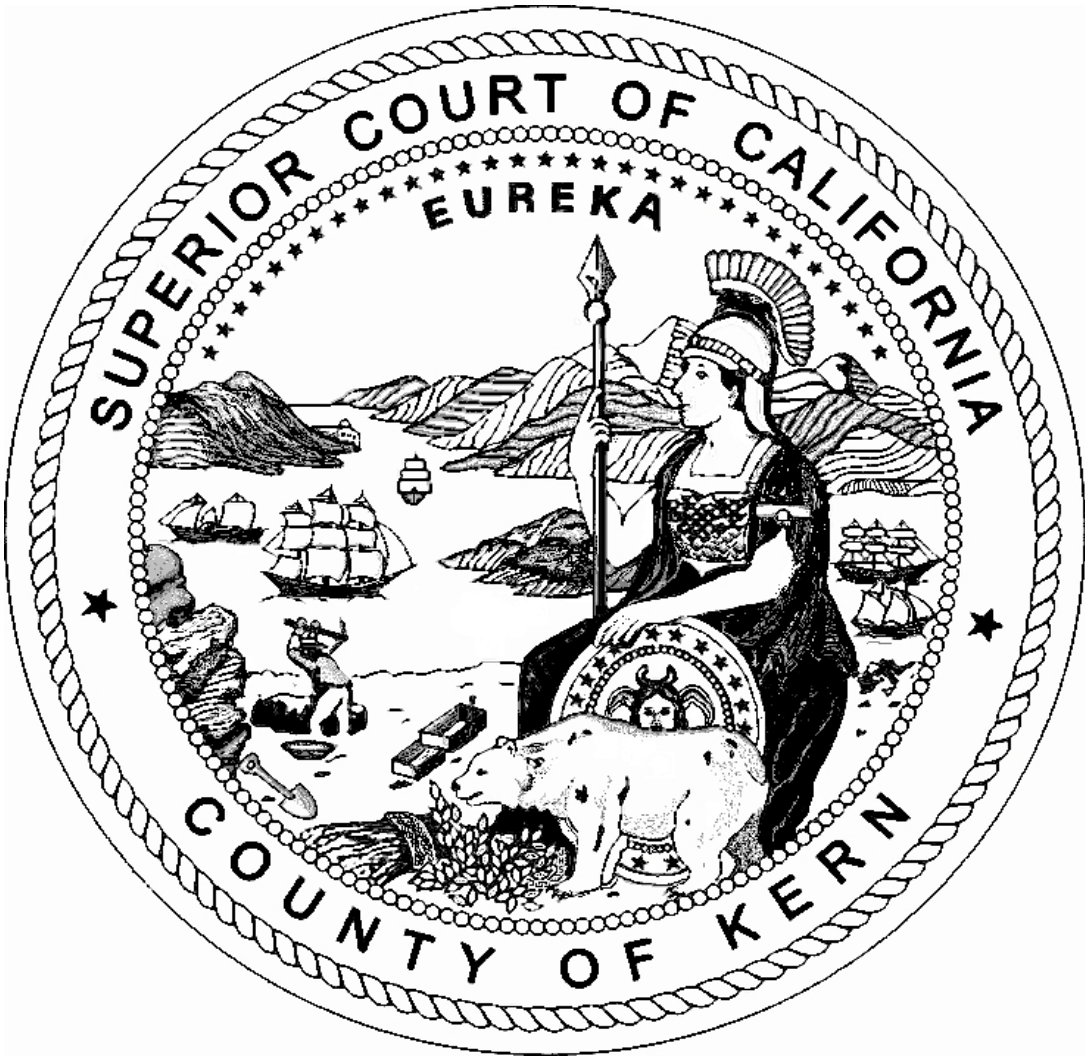

LOCAL RULES OF COURT

SUPERIOR COURT OF CALIFORNIA, COUNTY OF KERN

January 1, 2011

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF KERN

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	Requirements of Penal Code Section 136.2(j)(1) and (2) (Eff. 1/1/06)	

Chapter I. General Rules

Rule 1.1 **Effective Date of Rules** (Effective 1/1/10)

In accordance with the California Rules of Court, the Superior Court, County of Kern, has significantly revised the content and the numbering of the Local Rules of Court which has changed the effective date of all rules to January 1, 10. (Effective 1/1/10)

Rule 1.2 **Duties of Presiding Judge** (Effective 7/1/03)

Rule 1.2.1 Administrative Duties (Effective 7/1/03)

Give general direction and supervision to the Court Executive Officer and prescribe the general policy within which the Clerk's Office shall function. It shall be the responsibility of the Court Executive Officer to plan, organize, staff and direct the detailed operations of the non-judicial activities of the Court. (Effective 7/1/03)

Rule 1.2.2 Master Calendar - Presiding Department (Effective 7/1/03)

The Presiding Judge shall call the Master Trial Calendar in the Presiding Judge's Department daily at the time fixed. Attorneys are required to be ready for trial and present unless excused by the Presiding Judge. (Effective 7/1/03)

(a) Jury and non-jury cases set for trial shall proceed to trial on the date set, subject to availability of trial departments and divisions. (Effective 7/1/03)

(b) Cases for which no trial department or division is available on the day set will be placed on the trailing calendar to proceed to trial on the next available date in order of precedence on the trailing calendar and will take precedence over cases of the same class set for subsequent dates, except as otherwise ordered by the Presiding Judge. (Effective 7/1/03)

(c) Any case remaining on the trailing calendar for ten court days without being assigned to a department or division for trial shall be reset to a date certain, and will be given precedence on such date, unless otherwise ordered by the Presiding Judge. (Effective 7/1/03)

(d) Any department unable to proceed with a trial of a case assigned shall promptly notify the Presiding Judge's Department. (Effective 7/1/03)

(e) No motions to continue a trial will be considered once the case is assigned to a trial department or division unless the grounds for the continuance were unknown, and reasonably could not have been known when approved for

trial. The motion will be heard at the earliest possible convenience by the Presiding Judge only and, if denied, will be reassigned to a trial department or division if available. (Effective 7/1/03)

Rule 1.3 **Calendars** (Effective 7/1/03; rev. 1/1/10)

Addenda, which are subject to change, are posted on the court's website at www.kern.courts.ca.gov or are available free at all Kern County Superior Court locations. (Effective 7/1/03; rev. 1/1/10)

Rule 1.4 **Jurors** (Effective 7/1/03)

Rule 1.4.1 Selection of Jurors (Effective 7/1/03) (rev. 1/1/10)
Prospective jurors who reside in the Kern River Branch venue (see Appendix A.XI) and/or more than 75 miles from Bakersfield shall not be summoned to serve as jurors in the Metropolitan Divisions of Superior Court except as directed by the judge conducting voir dire or by the Presiding Judge. Prospective jurors who reside outside the boundaries of the East Division of the Superior Court shall not be summoned to serve as jurors in those respective branches except as directed by the Judge conducting voir dire or by the Presiding Judge. A request for countywide venire is to be made in writing no less than 20 days prior to the first date the matter is set for trial. Failure to make such a request shall be deemed a waiver of any right to countywide venire. (Effective 7/1/03) (rev. 1/1/10)

Rule 1.4.2 Jury Instructions/Verdict Forms (Effective 7/1/03; rev. 1/1/06)

(a) In both civil and criminal cases, the parties shall submit copies of requested jury instructions on the day the jury is sworn unless otherwise ordered by the trial judge. (Effective 7/1/03)

(b) The Court shall maintain printed copies of CACI Jury Instructions. A schedule that lists the designated instructions by number will be available to practitioners. (Effective 7/1/03; rev. 1/1/06)

(c) Proposed pattern jury instructions that have been modified by a party shall specify in parenthesis, or other appropriate manner, the respect in which the instructions have been modified. (Effective 7/1/03)

(d) The party requesting a CACI or CALJIC Instruction, which contains one or more blanks, shall type in the blank space all the words required to adapt the form for use in the pending case. (Effective 7/1/03; rev. 1/1/06)

(e) Each party shall submit proposed verdicts in completed form suitable for use by the jury in the pending case. This requires a separate form for each verdict with the caption of the case typed on paper that has nothing on it to identify the form with any party. (Effective 7/1/03)

Rule 1.5 **Subordinate Judicial Officers. Submitted Causes** (Effective 7/1/04)

No cause submitted to a subordinate judicial officer shall remain undecided and pending for longer than 90 days. (Effective 7/1/04)

Rule 1.6 **Court Reporter Availability** (Adopted 1/1/06)

Pursuant to the requirements of Government Code Section 68086(a)(6)(A) and California Rules of Court Rule 2.956(b)(1), court reporter availability for each Kern County court location is posted in that local court. In addition, court reporter availability for all Kern County Superior Court locations is posted on the court's website. (Effective 1/1/06)

Rule 1.8 **SUPERIOR COURT, COUNTY OF KERN, Departments, Divisions of the Court and Venue.** (Effective 7/l/08, Rev. 1/1/2011)

Rule 1.8.1 Apportionment**.** The Presiding Judge per California Rule of Court 10.603 (b) (1) (B) shall apportion the business of the Court. Nothing in this Rule shall abridge the authority of the Presiding Judge to assign cases in any Division or Branch as deemed necessary. The Presiding Judge may order a transfer at any time without motion or hearing in his or her discretion for reasons stated in the order to transfer. (Effective 7/l/08)

Rule 1.8.2 Operations. The Court consists of all the Departments, Divisions, Branches and Sections wherever they are located and whatever their function. These include all facilities located in the Metropolitan Division, East Division, North Division and South Division. The hours of operation are published on the Superior Court website, other legal publications, and are posted at each location. (Effective 7/l/08)

Rule 1.8.3 Supervising Judge. The Presiding Judge may appoint a Supervising Judge at each Court Division, Section or other specialized Department as needed. The Supervising Judge at each Division or Section is responsible for the administrative and calendar operations of the Departments located there and for assignment of proceedings in those cases that are filed there. (Effective 7/l/08)

Rule 1.8.4 Venue by Zip Code. Except as otherwise set forth in the following section or elsewhere in the Rules, venue for all cases will be according to zip codes per Attachments A which may be found on the Court's website (http://www.kern.courts.ca.gov/) (Effective 7/l/08)

Rule 1.8.5 Metropolitan Division Venues. The following matters must be filed in the Metropolitan Division:

(a) Venue for Appeals. Appeals for all misdemeanor, civil and traffic cases shall be filed in the Division of original jurisdiction in accordance with the zip

codes as set forth in Appendix A. Appeals will be heard in the Metropolitan Division. (Effective 7/l/08)

(b) Venue for Unlimited Civil Cases. Venue for unlimited civil cases per Code of Civil Procedure section 88 (see also, Code of Civil Procedure section 85) is the Metropolitan Division. (Effective 7/l/08)

(c) Venue for CEQA Cases. Venue for CEQA (California Environmental Quality Act) cases is the Metropolitan Division. Original petitions will be filed at the Civil Department. (Effective 7/l/08)

(d) Venue for Criminal Cases.

1. Generally unless otherwise set forth in these rules, the People must file misdemeanor criminal cases in the Division in which the crime is alleged to have occurred in accordance with the zip codes as set forth in Appendix A except that cases arising in the City of Bakersfield must be filed in the Metropolitan Division, Misdemeanor Department. (Effective 7/l/08)

2. Generally unless otherwise set forth in these rules, the People must file felony criminal complaints in the division in which the crime is alleged to have occurred in accordance with the zip codes as set forth in Appendix A. (Effective 7/l/08; Rev. 1/01/11)

3. The People may file felony criminal complaints charging violations of Penal Code Section 187 in the Metropolitan Division, Felony Department. (Effective 1/01/1)

4. Generally, unless otherwise set forth in these rules, the People must file felony criminal informations in the Metropolitan Division, Felony Department. (Effective 1/01/11)

5. The following felony criminal informations must be filed in the Division in which the crime is alleged to have occurred in accordance with the zip codes as set forth in Appendix A. (Effective 1/01/11)

PC 243	Felony battery
PC 245	Assault with deadly weapon/force likely
PC 273.5	Spousal assault
PC 290	Failure to register as sex offender
PC 422	Threats
PC 460 (a) & (b)	Burglary, 1st & 2nd degree
PC 470	Forgery
PC 476	NSF check, passing forgery
PC 487	Grand theft
PC 496	Receiving stolen property
PC 666	Petty theft w/prior
PC 12020/12021	Possession of weapons/ammo/ex-felon in poss.

PC 4501	Battery by prison inmate
PC 4502	Possession of weapon by inmate
PC 4532(a) & (b)	Escape
PC 4574	Bringing weapons into prison
PC 4600	Damaging jail/prison
VC 10851 (a) or (b)	Auto theft
VC 20001	Hit & run with injury
VC 23153	DUI with injury
VC 23550	Felony DUIs

All Prison Cases not having the potential of indeterminate sentence (Eff. 7/l/08)

(e) Venue for Child Support Cases. The Department of Child Support Services must file child support cases in the Metropolitan Division, Family Department, except for cases from zip codes served by the Ridgecrest Branch, East Division, as set forth in Appendix A. (Effective 7/l/08)

(f) Venue for Adoption, Petition to Declare Minor Free from Parental Custody and Control, and Termination of Parental Rights. The aforementioned cases shall be filed in the Metropolitan Division. Family Law Department. (Effective 1/01/11)

(g) Venue for Family Law Cases: except as otherwise provided in paragraph (g)(2) and (g)(5) (Effective 7/l/08) (rev. 1/1/10)

(1) Generally, unless otherwise set forth in these rules, the initial petition in family law cases shall be filed in the Division as determined by the "Venue by Zip Code" table in Appendix A according to the Petitioner or Petitioner's attorney's zip codes.

(2) Family law cases that would be filed in the Taft in accordance with the "Venue by Zip Code" table as set forth in Appendix A. shall be filed in the Metropolitan Division, Family Law Department.

(3) Family law cases that would be filed in the Lake Isabella Branch in accordance with the "Venue by Zip Code" table as set forth in Appendix A shall be filed in the Ridgecrest Branch.

(4) Any Request for Order under the Domestic Violence Prevention Act ("DVPA action") shall be exempt from the family law venue rules. Subsequent family law filings by the same parties shall not be exempt from the family law venue rules. Such filings will be noted in Class Act as "related" for consideration of future consolidation. If a party filing a DVPA action already has a family law case with the same parties in a Division different from where the DVPA action is being filed, the Division accepting the DVPA action will use the existing case number, review for Temporary Restraining Orders, and set the

DVPA action for hearing in the Division where the current family law case is filed.

(5) Any Petition to Establish Parental Relationship that would, in accordance with "Venue by Zip Code," be filed in the North and South Divisions-Delano, Shafter, Taft, and Lamont Branches, shall be filed in the Metropolitan Division, Family Law Department. Filings that would be filed in the East Divisions-Ridgecrest and Mojave, shall be filed in accordance with the "Venue by Zip Code" table as set forth in Appendix A. Out-of-County filings shall file in accordance with the "Venue by Zip Code" table as set forth in Appendix A based on the zip code of the minor child listed within the Petition. (Effective 1/01/11)

(h) Venue for Juvenile Delinquency Cases. Venue for all delinquency and truancy cases initiated by petition will be in the Metropolitan Division, Juvenile Justice Center. (Effective 7/l/08)

(i) Venue for Juvenile Dependency Cases. Venue for all dependency cases is the Metropolitan Division, Juvenile Justice Center. All adoption cases arising from a dependency case must be filed in the Metropolitan Division, Juvenile Justice Center. (Effective 7/l/08)

(j) Venue for Juvenile Traffic/Minor Offense Cases. Venue for infractions against juveniles (under 18 years of age) will be in the Division in which the violation is alleged to have occurred in accordance with the zip codes as set forth in Appendix A except that cases arising in the City of Bakersfield must be filed in the Metropolitan Division, Traffic Department. (Effective 7/l/08)

(k) Venue for Juvenile Misdemeanor Citations. Venue for misdemeanor citations against juveniles (under 18years of age) will be in the Metropolitan Division, Juvenile Justice Center, except for VC 12500 (a) which will be in the Division in which the violation is alleged to have occurred in accordance with the zip codes as set forth in Appendix A. Note, the Kern County Probation Department is the filing agency for the aforementioned misdemeanor violations. (Effective 7/l/08)

(l) Mental Health.

(1) Venue for all matters under the Lanterman-Petris-Short Act will be in the Metropolitan Division, Juvenile Justice Center. (Eff. 7/l/08)

(2) The people shall file all petitions under Welfare and Institutions

(3) Code 6500 in the Metropolitan Division, Juvenile Justice Center. (Effective 7/l/08)

(4) Venue for all Reise hearings will be in the Metropolitan Division, Juvenile Justice Center. (Effective 7/l/08)

(m) Venue for Probate and Guardianship Cases. Venue for Probate and Guardianship cases, except for those in 1.8.5.k, shall be in the Metropolitan Division. (Effective 7/l/08)

(n) Venue for Adult Traffic/Minor Offense Cases. Venue for traffic and minor offenses charged against adults will be in accordance with the zip codes as set forth in Appendix A except that cases arising in the City of Bakersfield must be filed in the Metropolitan Division, Traffic Department. (Effective 7/l/08)

Rule 1.8.6 Transfer of Actions (Eff 7/1/08)

Any action or proceeding may, for good cause shown on motion of a party, and after a hearing, be transferred to a different division. Motions and hearings on such transfer must be heard in the court where the action or proceeding is pending. In ruling on such a motion the judge presiding may, in his or her discretion, deny transfer of a case that has been filed in a court not authorized by Rule 1.8.4 above. (Effective 7/l/08)

Rule 1.8.7 Conformed Copies (Effective 7/1/09) (rev. 1/1/10)

Not withstanding any other provision of law or rule, the court will conform only one copy of each original submitted for filing. If conformed copies are to be returned by mail or messenger, a stamped, self-addressed envelope or messenger slip must be included. (Effective 7/1/09) (rev. 1/1/10)

Rule 1.9 Photocopying Documents by Non-Court Personnel (Effective 7/1/09)

a. Any and all persons, designated as non-court personnel, requesting public access to any operational department of the Kern County Superior Court for purposes of photocopying only public documents within case files must be registered and identified accordingly as a Professional Photocopier pursuant to Business and Professions Code §22450.
b. A Professional Photocopier requiring public access will contact the Receptionist of the Kern County Superior Court to initiate the request. The respective department(s) will arrange place, time and case file availability with the requestor. Under no circumstances will any confidential material be accessed for photocopying or viewing.
c. Upon accessing the Kern County Superior Court for photocopying purposes, the Professional Photocopier must present the identification card issued by the County Clerk pursuant to Business and Professions Code §22457 and in exchange will be issued a temporary “Visitor” badge. The “Visitor” badge must be worn throughout the duration of the visit in the department and promptly returned upon departure at which time the Court will return the identification card issued by the County Clerk.

d. The Professional Photocopier shall be responsible at all times for maintaining the integrity of the files and information accessed. All case files accessed for copying must be returned to the department in the same condition as received.
e. The Professional Photocopier is the responsible for all necessary equipment/resources for photocopying requested case files.
f. Failure to follow any of the outlined rules will result in limited or denied access and may include relevant action(s) as outlined in statutory law. (Effective 7/1/09)

Chapter II. Small Claims Rules

Rule 2.1 **Small Claims Filings** (Adopted 1/1/08)

Small claims complaints are filed at the Small Claims Counter. Filings are accepted Monday through Friday, from 8:00 a.m. to 5:00 p.m. The clerk of the Court will provide the "Information for Plaintiff" form with instructions for completion. The Clerk of the Court will file stamp the complaint, ascertain the venue and jurisdiction and determine that the plaintiff is not an assignee of the claim. Small Claims cases will be set for trial pursuant to existing statutes. (Adopted 1/1/08)

Rule 2.2 **Service of Process** (Effective 7/1/03)

The plaintiff may exercise the option of service which includes service by certified mail or personal service. Service by certified mail is performed by the Clerk of the Court. Service of process can also be provided by registered process servers or any person over the age of 18 who is not a party to the action (Code of Civil Procedure Part II, Title V, Jurisdiction and Service of Process). For personal service, it is the responsibility of the plaintiff to provide proof of service. The plaintiff shall not personally serve the Claim and Order. (Effective 7/1/03)

Rule 2.3 **Failure to Serve Process** (Effective 7/1/03)

Cases in which there is no proof of service filed with the Clerk of the Court at least three (3) calendar days prior to the scheduled court date shall be removed from the court calendar by the Clerk of the Court and dismissed without prejudice. (Effective 7/1/03)

Rule 2.4 **Postponements** (Effective 7/1/03)

After service, parties may request a single postponement of no longer than fifteen (15) days through a written request and payment of the fee to the Clerk of the Court at least five (5) court days prior to the scheduled trial. The Clerk of the Court will reset the matter and notice the parties. (Effective 7/1/03)

Rule 2.5 **Extensions** (Effective 7/1/03)

If a plaintiff's claim has not been served, one extension of not greater than thirty (30) days for in-county claims and sixty (60) days for out-of-county claims may be granted by the Clerk of the Court upon the filing of a declaration to show cause. A declaration to show cause shall be filed with the Clerk of the Court three (3) court days prior to the scheduled court date. Additional extensions shall only be granted by the Court in exceptional circumstances. (Effective 7/1/03)

Rule 2.6 **Trial Proceedings** (Effective 7/1/03)

Rule 2.6.1 Deleted (Effective 1/1/08)

Rule 2.6.2 Exhibits (Effective 7/1/03)

Documentary evidence to be presented in Court should include a copy for the judge and a copy for each party. (Effective 7/1/03)

Rule 2.6.3 Plaintiff Failure to Appear (Effective 7/1/03)

Plaintiff's failure to appear will result in dismissal of the action. Subsequent failure to appear may result in a dismissal with prejudice. (Effective 7/1/03)

Rule 2.7 Post Trial Proceedings (Effective 7/1/03)

Rule 2.7.1 Judgments (Effective 7/1/03)

Notice of Entry of Judgment and Information after Judgment forms shall be mailed to all parties by the Clerk of the Court. (Effective 7/1/03)

Rule 2.7.2 Setting Aside Default Judgments (Effective 7/1/03)

If a defendant fails to appear for trial and a default judgment is entered, a motion may be made to set aside the judgment. Appropriate legal forms for such motion must be prepared and presented to the court, with fees paid, within thirty (30) days from the date the default judgment is entered. (Effective 7/1/03)

Rule 2.7.3 Enforcement of Judgments (Effective 7/1/03)

The methods available for the enforcement of judgment may include: (Eff 7/1/03)

(a) Order for Examination of Judgment Debtor. (Effective 7/1/03)

(b) Write of Execution. (Effective 7/1/03)

(c) Abstract of Judgment. (Effective 7/1/03)

(d) Reporting unsatisfied judgment pursuant to California Vehicle Code Division 7, Chapter 2. (Effective 7/1/03)

Rule 2.8 Small Claims Legal Advisor (Adopted 1/1/08)

The services of a Small Claims Legal Advisor is available for persons seeking legal advice. Please call (661) 868-2532 for the hours the Advisor is available. (Adopted 1/1/08)

Chapter III. Civil Rules and Civil Case Management

It is the policy of the Superior Court of California, County of Kern, to manage all civil cases from the date of filing through final disposition. All parties are subject to this policy and are expected to proceed diligently and expeditiously in preparing civil cases for trial. (Effective 7/1/03)

"Civil cases" as used in these Rules shall not include domestic relations/family law matters, juvenile court matters, probate matters, special petitions, actions brought for equitable relief only entitled to preferential setting for trial without the use of juries, asset forfeiture cases (Health and Safety Code Sections 11470 et seq.), and criminal matters. All other cases will be included and classified at filing as general civil. (Effective 7/1/03)

Nothing in these rules shall prevent a court, in an individual case, from issuing an exception order based on a specific finding that the interests of justice require a modification of the routine processes as prescribed by these rules. (Effective 7/1/03)

In civil matters filed in the Regional Courts, the court shall determine the appropriate location for the trial at the case management conference. The judge, using information concerning the parties' residences, the attorneys' residences, the likely witness' locations, estimated trial days, and other relevant factors, will determine the need to retain the case at the Regional Division for trial or to transfer the matter to the Metropolitan Court Civil Division. (Effective 7/1/03)

If the matter is to be tried at the Metropolitan Division, the judicial officer shall set a trial setting conference no later than three (3) weeks following the case management conference. The Metropolitan Court Civil Division shall subsequently assign a judge for all purposes upon receipt of the filing, and notify all parties of the time and Department for the Trial Setting Conference. (Effective 7/1/03)

A transfer to the Metropolitan Court Civil Division under this policy shall not affect the time standards for disposition of civil cases in this county. (Effective 7/1/03)

Rule 3.1 **Application of Rules - Case Types** (Effective 7/1/03)

These rules apply to limited and unlimited jurisdiction general civil cases filed in the Kern County Superior Court. (Effective 7/1/03)

Rule 3.2 **Facsimile Filing of Civil Actions** (Effective 7/1/03; rev. 1/1/06; rev. 1/1/11)

The Superior Court of California, County of Kern, have elected to allow the filing of civil documents by facsimile transmission. California Rules of Court 2.300

through 2.306 apply to facsimile filing of civil documents by attorneys or parties without attorney. (Effective 7/1/03; rev. 1/1/11)

(a) The court's facsimile machine shall be available 24 hours a day, although filings received after 5:00 p.m. or on Court Holidays shall be deemed filed on the next court day. (Effective 7/1/03; rev. 1/1/11)

(b) If any of the Rules are not followed, including those provisions of the applicable rules not printed here, the court will not accept the filing of the document. The proper transmission of a document by a facsimile machine is the responsibility of the filing attorney or party, not the court. The filing agency must pay all applicable fees at the time of filing. (Effective 7/1/03; rev. 1/1/11)

(c) Confirmation of the filing of the document shall be given by the standard confirmation of facsimile machines. The court will not fax a copy of the cover sheet back to the filing attorney or party. (Effective 7/1/03; rev. 1/1/11)

Rule 3.3 Telephonic Court Appearances (Effective 7/1/03; rev. 7/1/09)

Within the Superior Court of California, County of Kern, the Superior Court Division and Departments within said Division listed in Addendum 2 allow telephonic court appearances through CourtCall. Telephonic court appearances are permitted for non-testimonial hearings and conferences in general civil cases and in unlawful detainer and probate proceedings. A party may appear by telephone at the following hearings, conferences and proceedings: (1) case management conferences, provided the party has made a good faith effort to meet and confer and has timely served and filed a case management statement before the conference date; (2) trial setting conferences; (3) hearings on law and motion, except motions in limine; (4) hearings on discovery motions; (5) status conferences, including conferences to review the status of an arbitration or mediation; (6) hearings to review the dismissal of an action. CourtCall may be arranged by contacting CourtCall, LLC at 6383 Arizona Circle, Los Angeles, California 90045, toll free telephone number (888) 88-COURT or (310) 342-0888, fax number (310) 743-1850 or (888) 88FAXIN. Court Call arrangements must be confirmed no later than 3:00 p.m. the day before the scheduled hearing. Counsel should refer to California Rules of Court 3.670, as amended 1/1/08. (Effective 7/1/03; rev. 7/1/09)

Rule 3.4 Pretrial Hearings and Other Motions - Civil (Effective 7/1/03)

All Law and Motion matters will be heard pursuant to the courtroom schedule (Addendum 1A through 1K). Addendums, which are subject to change, are posted on the court website or available for free at all Kern County Court locations. Hearing dates for Law and Motion matters in Metro Division are not

required to be pre-cleared. However, hearing dates for ex parte matters must be pre-cleared with the Fast Track clerks. In the Regional Divisions, a Civil Law and Motion date can be obtained at the court Civil Division office/counter or by calling the Civil Division as follows: (Effective 7/1/03)

Superior Court - East Division (Ridgecrest)	(760) 384-5900
Superior Court - East Division (Mojave)	(661) 824-7100
Superior Court - East Division (Kern River)	(760) 549-2000
Superior Court - North Division (Delano)	(661) 720-5800
Superior Court - North Division (Shafter)	(661) 746-7500
Superior Court - South Division (Lamont)	(661) 868-5800
Superior Court - South Division (Taft)	(661) 763-8531

Rule 3.4.1 Motions for New Trial or Motions to Set Aside and Vacate (Effective 7/1/03)

Motions for a new trial or motions to set aside and vacate a judgment shall be heard by the trial judge. When the trial judge is unavailable, the motion shall be noticed in a Department and before a judge designated by the Presiding Judge pursuant to Code of Civil Procedure Section 663. A motion for a new trial shall be noticed by the Clerk of the Court in accordance with Code of Civil Procedure Section 661. (Effective 7/1/03)

Rule 3.4.2 Order to Appear for Judgment Debtor Examination (Effective 7/1/09)

There shall be no continuances granted if Judgment Creditor is unable to serve the Judgment Debtor. If not able to serve, must re-file new Order to Appear along with the appropriate filing fee. (Effective 7/1/09)

Rule 3.5 **Ex Parte Applications and Orders** (Effective 7/1/03)

All ex parte applications which require notice will be noticed in the Civil Division or Direct Calendar Court for a ruling. All ex parte matters must be precleared. Copies of all papers to be presented at the hearing shall be filed with the court no later than 12:00 noon the day before the scheduled hearing time. These documents may be "faxed." (Effective 7/1/03)

(a) The Presiding or Direct Calendar Judge shall be available for the signing of ex parte orders or shall designate a judge or judges who will be available for such signing. (Effective 7/1/03)

(b) Attorneys shall not seek to have ex parte orders signed by judges other than those assigned by the Presiding Judge. (Effective 7/1/03)

(c) Requests for ex parte orders shall be based solely on the moving papers without oral argument or comment by counsel, but the judge may, in his or her own discretion, exempt matters from this provision. (Effective 7/1/03)

(d) Notice shall be in accordance with California Rule of Court 3.1203(a)(b), and all paperwork shall be submitted no later than 12:00 noon the day before the scheduled hearing. (Effective 7/1/03)

Rule 3.6 **Juror Fees and Expenses** and Reporter Fees (Effective 7/1/03; rev. 1/1/10)

Jury fees and mileage shall be governed by the Code of Civil Procedure, Section 215. Unless otherwise ordered by the Presiding Judge, the Clerk's Office will not accept client's personal checks for daily jury fees. These fees should be paid by the attorney's firm's check. Daily fees shall be paid in full to the Clerk's office by the attorney's firm's check on a daily basis before 9:00 am. (Effective 7/1/03) (rev. 1/1/10)

Rule 3.7 **Actions on Promissory Notes and Contracts Providing for the Payment of Attorney's Fees** (Effective 7/1/03)

(a) The following attorney's fees shall be awarded under normal conditions in actions on promissory notes and contracts providing for the payment of attorney's fees and foreclosures: (Effective 7/1/03)

Default action on note or contract, exclusive of costs: (Effective 7/1/03)

20% of the first $5,000 with minimum fee of $150.00;
15% of the next $10,000;
10% of the next $35,000;
5% of the amount over $50,000. (Effective 7/1/03)

In an action upon contract providing for an attorney's fee, the clerk shall include in the judgment an attorney's fee in accordance with this schedule (not to exceed the amount prayed for). (Effective 7/1/03)

(b) Additional Fees (Effective 7/1/03)

A petition for compensation for additional services rendered under Subsection (a) of this rule, or in a probate or other proceeding, shall include an itemized statement of the services rendered or to be rendered by the attorney and a reference in the caption and prayer to the request for additional fees. An appearance by the attorney or the parties is not normally required. In determining such fees, the court shall consider the experience of counsel, the time expended, the complexity of the issues, the amount involved and the results achieved. (Effective 7/1/03)

Rule 3.8 **Selection of Monitoring Judge and Setting of Case Management Conference** (Effective 7/1/03)

(a) At the time the complaint is filed, the clerk will select a monitoring judge at

random by drawing from the pool of judges assigned and shall set a case management conference for the case on said judge's calendar not more than 180 days thereafter, and issue notice thereof, which notice will be served on all defendants by plaintiff and on all cross-defendants not already parties to the action by cross-complainants. The term "monitoring judge" as used in these Rules shall include direct calendaring judges as well as judges who are assigned cases for "all purposes" by the Presiding Department. (Effective 7/1/03)

(b) The monitoring judge to whom the case is assigned shall be responsible to move the case along to an orderly disposition under these Rules. All motions provided for under these Rules shall be made to the monitoring judge. If the assigned judge is operating a direct calendar court, the assignment shall be deemed for "all purposes." (Effective 7/1/03)

Rule 3.9 **Discovery** (Effective 7/1/03)

During the period prior to the case management conference, the parties are, at a minimum, to engage in the basic discovery necessary to determine the presence or absence of all necessary parties in the action, to determine the issues which are in actual controversy and those without substantial controversy, and to properly evaluate the case for meaningful settlement negotiations. (Effective 7/1/03)

Rule 3.10 **Final Case Management Conference** (Effective 7/1/03; rev. 1/1/06)

(a) At least five (5) days prior to the final case management conference, or at least fifteen (15) days prior to the date the matter is set for trial in the absence of a final case management conference, each party shall serve on every other party and submit to the court the following: (Effective 7/1/03)

(1) Said party's proposed jury instructions. All parties are invited to use the Instruction Request form for the standard CACI instructions. If any standard instructions are not on the request form, or if any special instructions are going to be requested, they must be served with the request form. (Effective 7/1/03; rev. 1/1/06)

(2) All motions in limine in written form, together with any points and authorities in support thereof. (Effective 7/1/03)

(3) A list of all witnesses that said party intends to call in his or her case in chief. (Effective 7/1/03)

(4) A proposed generic statement of the case to be read to the jury at the beginning of the case. (Effective 7/1/03)

(5) A list of all photographs, documents, physical objects or other tangible

things that said party intends to have marked as an exhibit and introduced in evidence at the time of trial. (In matters where a final case management conference has been set, said items will actually be brought to the final case management conference for examination). (Effective 7/1/03)

(b) Prior to the final case management conference, or prior to the trial if no final case management conference is set, counsel will confer in an effort to resolve the jury instructions, issues raised in the motions in limine, the generic statement of the case, and the admissibility of the various photographs, documents, physical objects and other tangible things included in each party's exhibit list. In addition, counsel shall review the witness lists and make their best estimate of the time anticipated for the direct and cross-examination of each of the witnesses. Counsel will also attempt to work out stipulations concerning issues which are not contested. At the time of the final case management conference or at the time of trial, if no final case management conference is set, efforts will be made to resolve the remaining issues and, to the extent that they are unresolved by agreement, will be ruled upon by the court. Final Case Management orders shall be generated settling the jury instructions (subject to augmentation after the evidence is received), providing rulings on the motions in limine, providing for the admission of certain photographs, documents, physical objects or other tangible things, and settling the generic statement of the case. A master list of witnesses and the anticipated time involved for each witness will also be generated for use of court and counsel. Such other orders will be made as may be appropriate for the management of the anticipated trial. (Effective 7/1/03)

(c) All final case management documents shall be filed (pursuant to California Rules of Court 3.1110) under a cover sheet which lists the documents submitted. (Effective 7/1/03)

Rule 3.11 **Stayed Cases** (Effective 7/1/03)

When an action subject to these rules is stayed for one or more of the reasons set forth in subparagraph (d) of Rule 3.1385 of the California Rules of Court, the responsible party, in addition to filing the notice of stay and notice that the stay is vacated or no longer in effect, shall file with the court on a periodic basis no less frequently than every ninety (90) days, a status report advising the court, to the extent applicable, of the following: (Effective 7/1/03)

(a) Efforts being made to obtain relief from the stay so that the action in this court can proceed. (Effective 7/1/03)

(b) The progress being made in the federal or higher state court action in which the stay was issued to resolve the issues which would otherwise require litigation in this court. (Effective 7/1/03)

(c) The propriety of severing parties, causes of action and/or cross-actions which would be subject to the stay and proceeding with the balance of the litigation. (Effective 7/1/03)

Rule 3.12 Disallowance of Interruptions (Effective 7/1/03)

Once the case has been assigned to a trial court by the Presiding Department or called to trial by a Direct Calendar Department, it shall proceed without interruption to conclusion. No adjournment will be allowed to explore settlement, conduct discovery, marshal evidence or prepare for the presentation of any subsequent portion of the trial, except in unusual circumstances without fault of the moving party where good cause is shown in the sound discretion of the trial judge. It is also anticipated that each party will have his or her witnesses available to present his or her case without interruption or delay. An unexcused inability of a party to proceed because of a failure to schedule adequate witnesses, or otherwise, may result in sanctions being imposed, including a determination by the trial judge that said party has rested. (Effective 7/1/03)

Rule 3.13 Differential Case Management (Effective 7/1/03)

Pursuant to California Rule of Court 209.1(c), all general civil cases are presumed to be Plan One (1) cases subject to disposition within twelve (12) months from date of filing of complaint. (Effective 7/1/03)

Rule 3.14 Collection Cases (Effective 7/1/03; rev. 1/1/07)

In the event that during the pendency of the action, whether the defendants have appeared or not, the parties agree to resolve that matter with a program of periodic payments, all monitoring and time requirements can be terminated, provided that the conditions in (a) through (d) below are met. If the periodic payment agreement satisfies these conditions, the case will be deemed "disposed of" and will no longer be monitored. (Effective 7/1/03; rev. 1/1/07)

(a) The parties file with the court a written stipulation and agreement setting forth in detail the terms of the periodic payments which, if made, will fully satisfy the obligations which generated the litigation. (Effective 7/1/03)

(b) That the stipulation and agreement further provide that on full performance of the agreement by the defendants, plaintiff will request a dismissal of the entire action with prejudice; and in the absence of such a request, the court may dismiss the action on its own motion, without notice to the parties, after forty-five (45) days has expired from the due date of the last payment unless plaintiff, within that time, requests entry of judgment as provided in Subparagraph (c). (Effective 7/1/03)

(c) That the stipulation and agreement further provide that in the event defendant fails to make any of the payments required, plaintiff may, by

written declaration, notify the court of defendant's default and the amount then due under the agreement and request that the court enter judgment accordingly, together with costs of suit. (Effective 7/1/03)

(d) That the stipulation and agreement be unconditional so that a judicial determination will not be required and the court's only remaining function in the case would be to enter a dismissal as provided in Subparagraph (b) or a judgment as provided in Subparagraph (c). (Effective 7/1/03)

(e) That the parties shall file with the court a request for dismissal without prejudice reserving to the court jurisdiction to set aside such dismissal to enter judgment as provided in (c) hereof. (Effective 7/1/03)

Rule 3.14.1 Application of Rules 3.14.2 and 3.14.3 (Adopted 1/1/08)

Rules 3.14.2 and 3.14.3 apply only to those cases designated on the civil case cover sheet as Rule 3.740 collections. (Adopted 1/1/08)

Rule 3.14.2 Time for Filing (Adopted 1/1/08)

(a) All named defendants must be served and a proof of service must be filed or an order for publication of the summons must be obtained as to each named defendant within one hundred eighty (180) days of the date of filing of the complaint. (Adopted 1/1/08)

(b) At the time the complaint in a Rule 3.740 collection action is filed, the clerk shall issue an order to show cause re dismissal to the plaintiff designating a date of hearing on the order to show cause not less than one hundred eighty (180) days nor more than two hundred (200) days after filing. If not less than ten (10) days prior to the order to show cause the plaintiff files a proof of service or an order for publication of the summons as to each named defendant or answer or other responsive pleading filed by each named defendant, a request for entry of default, a default judgment, a request for dismissal of the entire action, a stipulated judgment or stipulation for entry of judgment, or a notice of settlement, the order to show cause will be continued by the clerk to a date no less than three hundred forty (340) days and nor more than three hundred sixty (360) days after the date of filing of the complaint. The order to show cause shall be vacated if the plaintiff obtains a default judgment at least ten (10) court days before the order to show cause hearing. (Adopted 1/1/08)

Rule 3.14.3 Case Management Conferences (Adopted 1/1/08)

(a) Upon the filing of an answer or other responsive pleading by any named defendant in a collections case, the clerk shall set a case management conference not less than ninety (90) days following the

date of filing of the first answer or responsive pleading. The clerk shall give notice to all parties appearing in the action of the date, time and department of the case management conference. (Adopted 1/1/08)

(b) The plaintiff shall serve written notice of the case management conference on any parties appearing in the action after service of notice of the case management conference by the clerk. (Adopted 1/1/08)

(c) All parties who have appeared in the action shall file with the court and serve on all parties a case management statement no less than fifteen (15) days prior to the date of the case management conference. Failure to timely file and serve a case management statement constitutes a waiver of any objection to action taken by the court at the case management conference, including setting the case for trial, ordering the case to judicial arbitration, or setting a mandatory settlement conference. (Adopted 1/1/08)

(d) If, based on its review of the written submissions of the parties and such other information as is available, the court determines that appearances at the conference are not necessary, the court may issue a case management order and notify the parties that no appearance is required. (Adopted 1/1/08)

(e) At the case management conference, counsel for each party and each self-represented party must appear personally or by telephone as provided in California Rules of Court Rule 3.670 and Rule 3.3 of these rules; must be familiar with the case; and must be prepared to discuss and commit to the party's position on the issues listed in Rules 3.724 and 3.727 of the California Rules of Court. (Adopted 1/1/08)

Rule 3.15 Uninsured Motorist Cases (Effective 7/1/03)

(a) At the time of filing a complaint for personal injury or wrongful death or at any time thereafter, plaintiff may file a declaration with the court establishing the items set forth in (1) through (4) below. On receipt of such a declaration, the court may classify the case as "uninsured motorist". (Effective 7/1/03)

(1) All the named defendants are believed to be uninsured and the action is filed to protect the running of the statute of limitations in the event that insurance is later discovered or plaintiff, after filing the action, has learned that all the defendants are uninsured. (Effective 7/1/03)

(2) Plaintiff is proceeding to arbitration with his or her insurer under the uninsured motorist provision of his or her insurance policy, and does not intend to proceed in the action against the uninsured defendants.

(Effective 7/1/03)

(3) In resolving the case with the defendants, it has been determined that defendants were underinsured within the meaning of plaintiff's policy which provides underinsured motorist's coverage. (Effective 7/1/03)

(4) Plaintiff's counsel has sought from plaintiff's insurer a concession of uninsured status of defendant to avoid the filing of the action or to dismiss it and plaintiff's insurer has refused. (Effective 7/1/03)

(b) Cases classified as uninsured motorist will be placed on a review calendar and plaintiff will file a certificate of progress every 90 days advising the court of the status of his claim against his insurer and the progress of the arbitration proceeding, if any. (Effective 7/1/03)

(c) In the event that plaintiff's claim against his insurer is not resolved within 180 days after being designated uninsured motorist, the court may require plaintiff's counsel to appear for a hearing to determine when the matter will be resolved and the action dismissed or reclassified as general civil litigation. (Effective 7/1/03)

(d) When plaintiff's claim is resolved against his insurer, plaintiff's counsel shall give notice to the insurer that the action is pending in this court and shall seek consent from the insurer to dismiss the action. The notice shall contain the complete title of the cause, case number and a statement to the effect that the case is governed by these Rules and that, effective as of that date of the notice, the case is reclassified as general civil litigation and a proof of service or certificate of progress is due sixty (60) days therefrom under California Rule of Court 3.110. In filing the original of such notice with the court with appropriate proof of service, plaintiff's attorney shall provide the court with the name, address and phone number of the appropriate representative of plaintiff's insurer. The filing of such a notice with the court does not preclude the need to file a formal substitution of attorneys unless plaintiff's attorney intends to remain of record. (Effective 7/1/03)

Rule 3.16 Alternative Dispute Resolution (Eff. 7/1/03; Amended 1/1/10 to add 3.16.6, Rev. 7/1/10)

Rule 3.16.1 Alternative Dispute Resolution Policy (Eff. 7/1/03; Rev. 7/1/10)

It is the policy of the Kern County Superior Court to encourage civil litigants to resolve controversy by means of Alternative Dispute Resolution (ADR). To that end, the parties in all civil litigation cases in which the parties agree or the court finds the amount in controversy as to each individual plaintiff is $50,000 or less, shall participate in ADR prior to the matter proceeding to trial under the procedures set forth in Rule 3.16 (Eff. 7/1/03; Rev. 7/1/10)

Rule 3.16.2. Order to Show Cause (OSC) Procedure (Eff. 7/1/03; Rev. 7/1/10)

At the time of the Case Management Conference (CMC), the court shall refer the matter to mediation or arbitration under the procedures set forth in Rule 3.16. The court may set the case for an OSC as to why mediation or arbitration has not occurred within ninety (90) days of the assignment date set by the clerk. (Eff. 7/1/03; Rev. 7/1/10)

Rule 3.16.3.1 Assignment to Mediation (Eff. 7/1/03; Rev. 7/1/10)

At the time of the CMC, the court shall assign to court-ordered mediation each case in which the amount in controversy as to each individual plaintiff is $50,000 or less, unless one of the following occurs:

(a) All plaintiffs elect arbitration in lieu of mediation in the CMC statement;

(b) All parties stipulate to private mediation on market resources prior to or at the time of the CMC;

(c) All parties stipulate to binding arbitration prior to or at the time of the CMC;

(d) The court determines that the matter is not suited for mediation; or

(e) A party demonstrates to the satisfaction of the court at the CMC that the matter is better suited for arbitration than mediation. (Eff. 7/1/03; Rev. 7/1/10)

Rule 3.16.3.2 Assignment of Mediator (Eff. 7/1/03; Rev. 7/1/10)

Cases assigned to court-ordered mediation will be assigned by the ADR administrator to a mediator from the Kern County Superior Court ADR Panel unless all parties have stipulated to a particular mediator from the Kern County Superior Court ADR Panel prior to the CMC, the selected mediator has agreed to serve as mediator in the matter, the selected mediator has agreed to have the mediation completed within the time set forth in Rule 3.16, and the court is

apprised of the selection of the mediator in the CMC statement or at the time of the CMC. (Eff. 7/1/03; Rev. 7/1/10)

Rule 3.16.3.3 Responsibility and Authority of the Mediator (Eff. 7/1/03; Rev. 7/1/10)

The mediator shall be responsible for and have the authority to:

(a) Contact all parties upon assignment as mediator;

(b) Notify all parties of the required completion date and propose available times and dates for mediation;

(c) Assign a date and place for mediation consistent with the required completion date;

(d) Conduct court-ordered mediation allowing for adjournment and reconvening the mediation at a reasonable time for good cause shown, so long as the mediation is completed within 90 days from the date of assignment; and

(e) Within ten (10) days of completion of the mediation or the 90th day from the date of assignment file a *Statement of Agreement or Non-agreement* (form ADR-100), advising the court whether the mediation ended in full agreement or non-agreement as to the entire case or as to particular parties in the case. (Eff. 7/1/03; Rev. 7/1/10)

Rule 3.16.4.1 Assignment/Election to Arbitration (Eff. 7/1/03; Rev. 7/1/10)

Cases assigned to court-ordered arbitration or for which arbitration has been elected by all plaintiffs or by stipulation of the parties, shall be assigned by the ADR administrator to an arbitrator from the Kern County Superior Court Arbitration Panel unless all parties have stipulated to a particular arbitrator from the Kern County Superior Court Arbitration Panel prior to the CMC, the selected arbitrator has agreed to serve as arbitrator in the matter, the selected arbitrator has agreed to have the arbitration completed within the time set forth in Rule 3.16, and the court is apprised of the selection of the arbitrator in the CMC statement or at the time of the CMC. (Eff. 7/1/03; Rev. 7/1/10)

Rule 3.16.4.2 Responsibility and Authority of the Arbitrator (Eff. 7/1/03; Rev. 7/1/10)

The arbitrator shall be responsible for and have the authority to:

(a) Contact all parties upon assignment as arbitrator;

(b) Notify all parties of the required completion date and propose available times and dates for arbitration;

(c) Assign a date and place for arbitration consistent with the required completion date;

(d) Conduct court-ordered arbitration allowing for adjournment and reconvening the arbitration at a reasonable time for good cause shown, so long as the arbitration is completed within 90 days from the date of assignment; and

(e) Within ten (10) days of completion of the arbitration or the 90th day from the date of assignment file an Arbitration Award with the court. (Eff. 7/1/03; Rev. 7/1/10)

Rule 3.16.5 Compensation of Mediators or Arbitrators (Eff. 7/1/03; Rev. 7/1/10)

Compensation of mediators or arbitrators under Rule 3.16 shall be provided by the court and shall be in the amount consistent with court policy; provided, however, that the mediator or arbitrator:

(a) Be available to provide at least three hours of service, not more than one hour of which can be allocated to preparation for mediation or arbitration;

(b) Provide all reasonable documentation required by the court; and

(c) Be willing and able to provide on market resources additional mediation or arbitration services at the request of the parties beyond the time set forth herein. (Eff. 7/1/03; Rev. 7/1/10)

Rule 3.16.6 Tolling of Time Limits (Eff. 7/1/03; Rev. 7/1/10)

Submission of a case to either mediation or arbitration under Rule 3.16 does not affect the time period specified in the Trial Court Delay Reduction Act (Government Code §68600 et seq.), except that upon written request of all parties filed with the court, the court may, in its sole discretion, order an exception of up to 90 days to the delay reduction time standards to permit mediation or arbitration of an action. (Eff. 1/1/10; Rev. 7/1/10)

Rule 3.16.7 Procedure for Handling Complaints about ADR Neutrals Listed on the Court's ADR Panels (Eff. 1/1/10; Rev. 7/1/10)

These rules establish the court's procedures for receiving, investigating, and resolving complaints about ADR neutrals listed on the court's ADR panels. In that the court provides a list of mediators available to litigants in general civil cases, these rules meet the requirements of Rule 3.868 of the California Rules of Court. Nothing in these rules should be interpreted in a manner inconsistent with 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 lists of neutrals. These rules also do not limit the court's

authority to follow other procedures or take other actions to ensure the quality of neutrals who serve in any court ADR 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. (Eff. 1/1/10; Rev. 7/1/10)

Rule 3.16.7.1 Confidentiality (Eff. 1/1/10; Rev. 7/1/10)

(a) Preserving the confidentiality of ADR communications

All complaint proceedings will be conducted in a manner that preserves the confidentiality of communications as required by law, including, but not limited to, the confidentiality of any communications between a mediator and all other participants in the mediation. (Eff. 1/1/10; Rev. 7/1/10)

(b) Confidentiality of complaint proceedings (Eff. 1/1/10; Rev. 7/1/10)

All complaint proceedings will occur in private and will be kept confidential. No information or records concerning the receipt, investigation, or resolution of 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. (Eff. 1/1/10; Rev. 7/1/10)

Rule 3.16.7.2 Submission of complaints to the Complaint Coordinator. Eff. 1/1/10; Rev. 7/1/10)

All complaints shall be in writing and should be submitted or referred to the ADR Coordinator. (Eff. 1/1/10; Rev. 7/1/10)

Rule 3.16.7.3 Acknowledgment and preliminary review of complaints (Eff. 1/1/10; Rev. 7/1/10)

(a) Acknowledgment of complaints (Eff. 1/1/10; Rev. 7/1/10)

When the ADR Coordinator receives a complaint, the coordinator will send the complainant a written acknowledgment of receipt. (Eff. 1/1/10; Rev. 7/1/10)

(b) Preliminary review of complaints (Eff. 1/1/10; Rev. 7/1/10)

(1) The ADR 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 neutral to obtain the neutral's perspectives.

(2) If it appears to the ADR Coordinator that the neutral may have violated a provision of the rules of conduct, or other applicable ethics requirements, the ADR Coordinator must inform the neutral about the complaint and give the neutral an opportunity to provide an informal response.

(3) The ADR 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 or other ethics requirements 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 or other ethics requirements, the coordinator has discussed the complaint with the neutral, and the neutral has provided an acceptable explanation or response; or

(D) The complainant, the neutral, and the ADR Coordinator have agreed on a resolution to the complaint.

(c) Notification of closure (Eff. 1/1/10; Rev. 7/1/10)

If the ADR Coordinator closes a complaint without initiating an investigation, the coordinator must send the complainant notice of this action. (Eff. 1/1/10; Rev. 7/1/10)

Rule 3.16.7.4 Appointing an investigator or complaint committee (Eff. 1/1/10; Rev. 7/1/10)

The presiding judge or, at the direction of the presiding judge, the court's ADR Committee, will appoint an investigator who has experience as a neutral and is familiar with the applicable rules of conduct or ethics requirements, 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 ADR Coordinator as a result of the preliminary review. (Eff. 1/1/10)

Rule 3.16.7.5 Investigations (Eff. 1/1/10; Rev. 7/1/10)

(a) Application

The procedures in this rule apply only if a complaint is not resolved or closed through the preliminary review or if the ADR 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 ADR Coordinator will refer it to the investigator or complaint committee for investigation. The ADR 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 neutral;

(3) A list of any violations of the rules of conduct or other applicable ethics requirements that may have occurred; and

(4) Copies of any previous complaints about the neutral relevant to the current complaint.

(c) Initiation by the ADR Coordinator

The ADR Coordinator may initiate an investigation based on information received from any source, including an inquiry, indicating that a neutral may have violated a provision of the rules of conduct or other ethics requirements. To initiate the investigation, the ADR Coordinator must refer the information received to an investigator or complaint committee with a list of the violations of the rules of conduct or ethics requirements which may have occurred.

(d) Neutral's notice and opportunity to respond

(1) The investigator or complaint committee must provide the neutral with a copy of the materials provided to the investigator or complaint committee by the ADR Coordinator under (b) or (c).

(2) The neutral 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 investigator or complaint committee may recommend one or more actions set forth in Rule 3.870 of the California Rules of Court.

(f) Informing neutral of recommendation

The investigator or complaint committee may inform the neutral of its recommendation and inquire whether the neutral accepts the recommendation. If the neutral accepts the recommendation, the investigator's or complaint committee's report must so indicate.

(g) Submitting report and recommendation

The investigator or complaint committee must submit its report and recommendation to the ADR Coordinator. The ADR Coordinator must promptly forward a copy of the report and recommendation to the presiding judge or, at the direction of the presiding judge, to the court ADR Committee. (Eff. 1/1/10)

Rule 3.16.7.6 Final decision on a complaint that was investigated (Eff. 1/1/10; Rev. 7/1/10)

(a) 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 3.16.6.5, or for designating the Chair of the ADR Committee or ADR Committee to perform this function.

(b) Acting on recommendation

(1) Within 30 days 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 ADR 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 California Rules of Court Rule 3.870.

(2) If the presiding judge or his or her designee does not submit a decision within 30 days after the investigator's or 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.

(c) Notification of final action

The ADR Coordinator must promptly notify the complainant and the neutral in writing of the final action taken by the court on the complaint.

(d) Authorized disclosures

After the decision on a complaint, the presiding judge, or his or her designee, may authorize the public disclosure of information or records concerning the complaint proceeding that do not reveal any confidential communications. The disclosures that may be authorized under this subdivision include the name of a neutral against whom action has been taken, the action taken, and the general basis on which that 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 California Rules of Court Rule 3.871. (Eff. 1/1/10; Rev. 7/1/10)

Rule 3.16.7.7 Interim suspension pending a final decision on a complaint (Eff. 1/1/10; Rev. 7/1/10)

If the preliminary review or the investigation indicates that a neutral may pose a threat of harm to ADR participants or to the integrity of the court's ADR programs, the presiding judge or his or her designee may suspend the neutral from the court's panels or lists pending final decision on the complaint. The ADR Coordinator may make a recommendation to the presiding judge or the designee regarding such a suspension. (Eff. 1/1/10; Rev. 7/1/10)

Rule 3.17 Unlawful Detainers (Effective 1/1/07)

Rules 3.17.1 through 3.17.16 apply to all unlawful detainer and forcible detainer actions filed after January 1, 2007. (Effective 1/1/07)

Rule 3.17.1 Filing the Complaint (Effective 1/1/07; rev 1/1/10)

(a) All complaints for unlawful detainer shall, if based upon a notice terminating the tenancy or right to possession, be accompanied by the original such notice attached as an exhibit to the complaint as required by Code of Civil Procedure Section 1166. (Effective 1/1/07)

(b) A complaint for unlawful detainer of residential property shall be accompanied by a copy of any written rental agreement or lease regarding the premises, including any amendments or addenda to such agreement, as required by Code of Civil Procedure Section 1166, unless the complaint alleges that the lease or rental agreement is oral, that neither the original nor a copy of the written rental agreement or lease is in the possession or

control of the plaintiff, or the action is based solely on subdivision (2) of Code of Civil Procedure 1161. (Effective 1/1/07)

(c) At the time the complaint in an unlawful detainer action is filed, the clerk shall issue an order to show cause re dismissal to the plaintiff designating a date of hearing on the order to show cause not more than ninety (90) days after filing. The order to show cause will be dropped from calendar upon filing of an answer or other responsive pleading, an amended complaint converting the action to an ordinary civil action, a request for entry of default, a request for dismissal, a stipulated judgment or stipulation for entry of judgment, or a notice of settlement. (Effective 1/1/07; rev 1/1/10)

(d) Unless otherwise ordered, the minimum undertaking required for an order for immediate possession of the premises pursuant to Code of Civil Procedure Section 1166a shall be ten (10) times the monthly rental or $2,500, whichever is greater. (Effective 1/1/07).

Rule 3.17.2 Proof of Service (Effective 1/1/07; rev. 1/1/10)

(a) A proof of service or application for service by posting and mailing pursuant to Code of Civil Procedure Section 415.45 must be filed within twenty (20) days of the date of filing of the complaint, unless an answer or other responsive pleading has been filed. (Effective 1/1/07)

(b) Deleted (Effective 1/1/10)

(c) No application for service by posting and mailing pursuant to Code of Civil Procedure Section 415.45 shall be granted unless the requirements of due diligence have been satisfied. The requirements of due diligence shall be deemed satisfied if the declaration of attempted service shows at least three (3) separate attempts to serve, on three (3) different dates, not more than two (2) of which may be on a holiday as defined in Code of Civil Procedure Section 10, with at least one (1) such attempt before noon and one (1) such attempt after noon. (Effective 1/1/07)

(d) In cases in which service of the summons and complaint is made by posting and mailing pursuant to Code of Civil Procedure Section 415.45, proof of service by posting and mailing shall be filed within ten (10) days of the date of issuance of the order permitting service pursuant to Code of Civil Procedure Section 415.45. (Effective 1/1/07)

Rule 3.17.3 Settlement (Effective 1/1/07)

(a) A settlement agreement may provide that, in the event of default, the non-defaulting party may seek additional relief from the court by filing an ex

parte application for such relief. Any settlement agreement providing for such ex parte relief shall contain one (1) of the following: (Effective 1/1/07):

(1) A proof of service showing that the ex parte application was served on the defaulting party. (Effective 1/1/07)

(2) A declaration stating either that notice of the filing of the ex parte application was given to the defaulting party, specifying how and when such notice was given. (Effective 1/1/07)

(3) A declaration demonstrating that such notice should be excused pursuant to Rule 3.1204(b)(2) or (3) of the California Rules of Court. (Effective 1/1/07)

(b) Unless notice is excused, the ex parte application or the declaration shall describe the relief requested, and the date and time of the hearing on the ex parte application. (Effective 1/1/07)

(c) A hearing on the ex parte application shall be held no sooner than forty-eight (48) hours after the filing of the application re notice to the allegedly defaulting party unless such notice was excused. If service of the notice is by mail, then the hearing shall be held no sooner than five (5) days after the date of mailing. (Effective 1/1/07)

(d) Objection, if any, to the ex parte application shall be by written declaration under penalty of perjury, filed and served on all interested parties at or prior to the time of the hearing, and shall state with specificity the grounds for such objection. (Effective 1/1/07)

(e) Applications for further relief in cases in which the settlement agreement does not provide for an ex parte application procedure for further relief shall be upon noticed motion. There shall be a rebuttable presumption that applications for orders shortening time for hearing of such motions seeking possession and other cases in which time is of the essence are meritorious. (Effective 1/1/07)

(f) Nothing in these rules shall preclude a party from seeking to enforce the terms of a settlement agreement in an unlawful detainer action by appropriate motion pursuant to Code of Civil Procedure Section 664.6 or other controlling authority. (Effective 1/1/07)

Rule 3.17.4 Stipulations for Entry of Judgment (Effective 1/1/07)

Any stipulation between parties that provides terms and conditions for settlement of an unlawful detainer action must include by entry of judgment (Effective 1/1/07):

(a) A statement, pursuant to Rule 3.1385 of the California Rules of Court, that plaintiff will file a request for dismissal of the entire action either within forty-five (45) days of the date of the filing of the stipulation or upon some other specified date no more than ninety (90) days following the date of filing of the stipulation. (Effective 1/1/07)

(b) A place for the court to set a date for an order to show cause re dismissal at which the parties may appear if the terms and conditions are not met and upon which the court may dismiss the case if the parties fail to appear and the plaintiff has not filed a request for dismissal as provided in Rule 3.17.4(a). (Eff. 1/1/07)

(c) If the stipulation is presented for court approval prior to the date of trial, and the parties do not intend to appear at trial, an order vacating the trial date. (Effective 1/1/07)

(d) A clear and concise statement of the ex parte application, opposition and order process by which remedies are available to either party in the event of a default in any of the terms and conditions of the stipulation. The clerk shall not enter judgment upon the mere declaration of either party. (Effective 1/1/07)

Rule 3.17.5 Setting Case for Trial (Effective 1/1/07)

(a) Within twenty-five (25) days of the date of filing of the complaint, the plaintiff shall file a request to set for trial unless a request for entry of default or request for dismissal has been filed. (Effective 1/1/07)

(b) The case will be set for trial not more than twenty (20) days after the date of filing of the memorandum to set the case for trial. The court shall give notice of trial in accordance with Code of Civil Procedure Section 594. (Effective 1/1/07)

(c) If a jury is demanded, the clerk shall, in addition to the trial date, set the case for a case management conference with ten (10) days of the date of filing of the request to set for trial. (Effective 1/1/07)

Rule 3.17.6 Request/Counter Request to Set for Trial (Effective 1/1/07)

(a) A request or counter request to set for trial shall be completed on the Judicial Council for Request/Counter Request to Set Case for Trial - Unlawful Detainer form UD-150. The filing of a request or counter request to set the case for trial shall be deemed a representation by such party that the case is at issue and will be ready for trial on the date first assigned for trial. (Effective 1/1/07)

(b) Any other party to the action may file a counter-request to set the case for trial. Failure of any party to file a counter-request to set the case for trial shall be deemed agreement by the party failing to file with all the matters

represented in the request to set the case for trial. (Effective 1/1/07)

(c) The case will be set for trial within twenty (20) days of the date of filing of the request to set case for trial. (Effective 1/1/07)

Rule 3.17.7 Case Management (Effective 1/1/07)

All parties, or counsel if represented, shall appear at the case management conference. Parties or counsel appearing at the case management conference shall be fully prepared to discuss all aspects related to trial of the case, including the estimated time of trial and matters which may be stipulated to prior to trial. (Effective 1/107)

Rule 3.17.8 Default (Effective 1/1/07)

(a) Request for entry of default shall be made within forty-five (45) days of the date of filing of the action unless an answer or other response has been filed, or the action is dismissed or finally disposed of in its entirety. (Effective 1/1/07)

(b) Plaintiff shall, within six (6) months of entry by the clerk of a default judgment for possession of the premises only, set the case for a default hearing for judgment for money damages, or shall submit a declaration pursuant to Code of Civil Procedure Section 585(b) and (d). Failure of the plaintiff to cause a request for judgment for such damages to be entered within six (6) months of the date of entry of a judgment for possession only shall result in an order to appear to show cause why sanctions for such failure shall not be imposed. Monetary or other appropriate sanctions may be imposed at the order to appear for failure to comply with this rule. (Effective 1/1/07)

Rule 3.17.9 Conversion of Cases to Ordinary Civil Action (Effective 1/1/07)

In the event possession becomes no longer an issue at any time prior to trial, or, in the event of an uncontested proceeding, prior to entry of judgment of possession, it shall be the duty of plaintiff to immediately notify the court. If, at any time prior to entry of judgment for possession, it appears that no defendant is in possession, or that possession is otherwise not an issue, then the trial date shall be immediately vacated, and the case shall be converted by the court to an ordinary civil action. Plaintiff shall thereafter have thirty (30) days within which to file an amended complaint, and the case shall be set for an order to show cause re dismissal to be heard forty-five (45) days following conversion of the action to an ordinary civil action. (Effective 1/1/07)

Rule 3.17.10 Deleted (Effective 1/1/10)

Rule 3.17.11 Trial (Effective 1/1/07)

(a) Trial will take place on the date scheduled unless continued by order upon properly noticed motion showing good cause for such continuance. (Effective 1/1/07)

(b) Motions for continuance of the trial made on the date of trial are disfavored, and will be granted only upon a clear showing of good cause. (Eff. 1/1/07)

(c) The prevailing party after trial shall prepare the judgment. (Effective 1/1/07)

(d) All unlawful detainer trials, including jury trials, shall be electronically recorded unless a party requests that the trial be stenographically recorded. Any request for stenographic recording shall be made in writing not less than five (5) days prior to the date the case is first set for trial. The party requesting stenographic recording shall post court reporter fees equal to one-half day's fees at the time the request is made. (Effective 1/1/07)

Rule 3.17.12 Jury Trials in Unlawful Detainer Actions (Effective 1/1/07)

(a) Jury fees and court reporter's fees, if a court reporter is desired, shall be posted by the party requesting a jury not later than five (5) days prior to the date first assigned for trial. (Effective 1/1/07)

(b) If the estimated time for trial exceeds one (1) calendar day, for each subsequent day of trial, the jury fees and court reporter's fees, if a reporter is desired, shall be posted by the party requesting the jury trial, by the close of business the day before the next scheduled trial date. (Effective 1/1/07)

(c) All requested and relevant jury instructions shall be submitted to the court no later than 9:00 A.M. on the date first assigned for trial. (Effective 1/1/07)

(d) Any and all motions, including motions in limine, shall be submitted in writing to the court no later than 9:00 A.M. on the date first assigned for trial. (Effective 1/1/07)

(e) Case management conference will be set at the time jury is demanded. (Effective 1/1/07)

(f) Failure to comply with any of the above will result in a waiver of jury and the trial will proceed immediately by court. (Effective 1/1/07)

Rule 3.17.13 Attorney's Fees (Effective 1/1/07)

(a) In actions for unlawful detainer for possession of residential property, whether multi-family or single family, if the prevailing party is entitled to an award of attorney's fees the attorney's fees awarded by the court shall not,

except upon good cause shown, exceed the following amounts (Effective 1/1/07):

(1) In cases in which judgment is entered by default as a result of the failure of any defendant to respond to the complaint, the sum of $300. (Effective 1/1/07)

(2) In cases in which at least one (1) defendant has filed an answer or responsive pleading, but which are uncontested at trial, the sum of $400. (Effective 1/1/07)

(3) In cases contested at trial, the sum of $500. (Effective 1/1/07)

(b) Where a party in a residential unlawful detainer action wishes to seek attorney fees in excess of the fees set forth in Rule 3.17.13(a), such fees may be awarded only upon application and declaration setting forth good cause therefor in cases in which no answer or response has been filed by any defendant, or upon regularly noticed motion in cases in which an answer or response has been filed by at least one (1) defendant. (Effective 1/1/07)

(c) In actions for unlawful detainer for possession of non-residential property, the prevailing party may recover, if entitled to recovery of attorney's fees, such amount as may be awarded upon ex parte application and declaration in cases in which no defendant appeared, or upon properly noticed motion for an award of attorney's fees in actions in which at least one (1) defendant has appeared. (Effective 1/1/07)

Rule 3.17.14 Order to Show Cause Re Dismissal (Effective 1/1/07)

(a) An order to show cause re dismissal will be taken off calendar if a trial date has been set, a request to set case for trial has been filed, the case is dismissed, or if there has been a settlement or other final disposition of the entire matter. (Effective 1/1/07)

(b) All parties who have made a general appearance in the case shall attend the hearing on the order to show cause, either in person or by telephonic appearance. (Effective 1/1/07)

Rule 3.17.15 Motion to Set Aside Default and Vacate Default Judgment and/or for Stay of Execution of Judgment (Effective 1/1/07)

(a) Ex parte applications for orders shortening time for hearing on a motion to vacate a default judgment and/or set aside a default, or for a stay of execution of a writ of possession shall comply with California Rules of Court Rule 3.1200. (Effective 1/1/07)

(b) Except for good cause shown, only one (1) request for stay of execution will be granted per case, and stays of execution will be limited to seven (7) days from the date originally scheduled for the lock-out to occur. (Effective 1/1/07)

(c) Except for good cause shown, no stay of execution will be granted in cases settled or disposed of by agreement of the parties or by stipulation of the parties, unless the parties have agreed otherwise in writing or on the record in open court. (Effective 1/1/07)

(d) Except for good cause shown, motions to vacate a default judgment and/or to set aside a default shall not be granted ex parte. (Effective 1/1/07)

Rule 3.17.16 Failure to Comply with Rules (Effective 1/1/07)

Any failure to comply with these rules shall result in the issuance of an order to show cause why sanctions, including monetary sanctions, issue sanctions, evidence sanctions or terminating sanctions, should not be imposed. (Effective 1/1/07)

Rule 3.17.17 Eminent Domain Deposits (Eff. 7/1/10)

All deposits of probable compensation in eminent domain proceedings pursuant to Code of Civil Procedure §§1255.010, et seq., shall be deposited with the State Treasury pursuant to Code of Civil Procedure §1255.070, unless the motion or ex parte application therefor specifically requests that the funds be deposited with the County of Kern. All deposits of probable compensation deposited with the County shall be deposited into an interest bearing account. (Eff. 7/1/10)

Chapter IV. Traffic Rules

Rule 4.1 **Traffic Court Rules** (Effective 7/1/03)

The Traffic Division is responsible for all infractions, traffic and non-traffic, including: Moving violations, parking violation appeals, Business and Professions Code violations, Weights and Measures citations, Alarm System citations, Heath Department citations, Animal Control Department citations, Municipal Code violations, County Ordinance citations, Park and Recreation citations, and Fish and Game citations. (Effective 7/1/03)

Rule 4.2 **Infraction Alternate Procedures** (Effective 7/1/03)

Any person who has received a written notice to appear for an infraction may, prior to the appearance date, declare an intention to plead not guilty before a clerk of the court or in writing. Upon the posting of bail, the clerk shall set an arraignment and trial on the same date, no earlier than four (4) weeks or later than five (5) weeks from the date of receipt of the declaration. (Effective 7/1/03)

Rule 4.3 **General Matters** (Effective 7/1/03)

All traffic matters filed for Law and Motion hearings shall comply with California Rules of Court Rule 4.111 and all applicable laws and Local Rules of Court. The hearings for motions are to be heard ten (10) days from the filing date. If a motion is to be abandoned, notice shall be given to the court as soon as reasonably possible. (Effective 7/1/03)

Rule 4.4 **Appeals - Traffic** (Effective 7/1/03)

Notice of a traffic appeal must be filed with the Clerk of the Court in the Traffic Division within the prescribed statutory time limits. (Effective 7/1/03)

Chapter V. Criminal Rules

Rule 5.1 Misdemeanors (Effective 7/1/03)

Rule 5.1.1 Filings of Actions (Effective 7/1/03)

All misdemeanor cases filed in the Superior Court of California, County of Kern, will be presented at the Criminal Division/Counter of the appropriate Court division, excluding cases in which the sole misdemeanor charge is a violation of Section 12500(a) of the Vehicle Code. Filings are accepted Monday through Friday from 8:00 a.m. to 5:00 p.m. (Effective 7/1/03)

Rule 5.1.2 Motions (Effective 7/1/03; rev. 1/1/06)

All criminal matters filed for Law and Motion hearings shall comply with all applicable laws and Rules of Court. If a motion is to be abandoned, notice shall be given to the court as soon as reasonably possible. Business hours for the filing of any paper and court calendars concerning misdemeanor proceedings are set forth in Addendum 1D. Addendums, which are subject to change, are posted on the court website or available for free at all Kern County Court locations. (Effective 7/1/03; rev. 1/1/06)

Rule 5.1.3 Miscellaneous Proceedings (Effective 7/1/03; stricken 1/1/06)

Rule 5.1.4 Appeal From Electronically Recorded Misdemeanor Proceedings (Eff. 7/1/03)

Section 8.789 of the California Rules of Court is adopted and governs all misdemeanor appeals where the proceedings were electronically recorded. (Effective 7/1/03)

Rule 5.2 Felonies (Effective 7/1/03)

Rule 5.2.1 Case Management (Effective 7/1/03)

Rule 5.2.1.1 Arraignment (Effective 7/1/03)

At the initial arraignment, each case will be assigned pre-preliminary hearing and preliminary hearing dates. Probation revocation and exclusion hearings may be set concurrently with the pre-preliminary hearing and preliminary hearing. At arraignment following an order holding the defendant to answer, each case will be assigned motion, readiness and trial dates. Arraignments are held as provided in Addendum 1C. Addendums, which are subject to change, are posted on the court website or available for free at all Kern County Court locations. (Effective 7/1/03; rev. 7/1/04)

Rule 5.2.1.2 Pre-Preliminary Hearing/Readiness Conference (Effective 7/1/03)

At the pre-preliminary, and later at the readiness conference, the court will attempt to resolve the cases pending against the defendant. Any proposed dispositions after the pre-preliminary hearing conference and before the start of the preliminary hearing are to be approved by the judge who presided at the pre-preliminary hearing conference, in the exercise of their discretion based upon the circumstances then presented to the court. Any proposed dispositions after the readiness conference and before commencement of the evidentiary portion of the trial of the matter are to be approved by the judge who presided at the readiness conference, in the exercise of their discretion based upon the circumstances then presented to the court. (Effective 7/1/03)

Rule 5.2.1.3 Motions - Generally (Effective 7/1/03)

Motions are either evidentiary (requiring the presentation of evidence other than declarations or a transcript) or non-evidentiary and are heard pursuant to Addendum 1C. Addendums, which are subject to change, are posted on the court website or available for free at all Kern County Court locations. Except as otherwise provided by law or order shortening or lengthening time, motions must be filed and served no later than ten (10) days before the hearing on the motion. (Effective 7/1/03)

Rule 5.2.1.4 Particular Motions (Effective 7/1/03)

Rule 5.2.1.4.1 Motions to Sever/Consolidate (Effective 7/1/03)

Motions to sever counts based exclusively upon the claim that separate classes of crimes are improperly joined must be set on the criminal calendar. All other motions to sever, including those based upon Aranda, must be made in the trial court. Motions to consolidate or to sever cases previously consolidated for trial must reflect in their title the number of each case for which consolidation or severance is sought, the applicable motion, trial, and readiness dates, and must also include a proposed amended information. The case number for a consolidated case is the lowest case number of the affected cases. (Effective 7/1/03)

Rule 5.2.1.4.2 Section 995 (Effective 7/1/03)

Motions pursuant to Penal Code Section 995 must refer by page and line to that portion of the transcript upon which the parties rely. (Effective 7/1/03)

Rule 5.2.1.4.3 Motions to Modify (Effective 7/1/03)

Except for cases processed pursuant to Penal Code section 1210.10 (Proposition 36) and cases where sentence was imposed after trial, motions to modify sentences must be heard on the criminal calendar. Motions to modify cases

processed pursuant to Penal Code Section 1210.10 must be heard as provided in Addendum 1C. Addendums, which are subject to change, are posted on the court website or available for free at all Kern County Court locations. (Effective 7/1/03)

Rule 5.2.1.4.4 Orders Shortening Time (Effective 7/1/03)

Applications for orders shortening time must be presented to the Clerk's Office and must include a proposed order providing in substance that service must be made upon opposing counsel no later than _____ a.m./p.m. on _____, 201_. (Effective 7/1/03)

Rule 5.2.2 Calendars (Effective 7/1/03; rev. 1/1/06)

Business hours for the filing of any paper and court calendars concerning felony proceedings are set forth in Addendum 1C. Addendums, which are subject to change, are posted on the court website or available for free at all Kern County Court locations. (Effective 7/1/03; rev. 1/1/06)

Rule 5.3 Rules Applicable to All Criminal Cases (Effective 7/1/03)

Rule 5.3.1 Appointment of Investigators/Ancillary Services (Effective 7/1/03)

Requests for the appointment of investigators or other ancillary services must be submitted to the Clerk's Office. In capital cases, such requests must be determined by the Presiding Judge. All other requests must be determined by the judge assigned to the criminal calendar, except that such requests made during trial must be made to the trial judge. Requests for funds must be accompanied by counsel's declaration indicating all charges and enhancements then pending, the amount sought, the reasons for that amount, the number and type of applications previously made, and the amount of funding previously ordered. Copies of papers previously submitted which resulted in an order denying funds must be attached to the declaration. (Effective 7/1/03)

Rule 5.3.2 Evidence Code Section 1017 (Effective 7/1/03)

Appointments made pursuant to Evidence Code Section 1017 may be made upon ex parte application. The party obtaining an appointment must serve a copy of the order upon the District Attorney's Office within two (2) court days of the order's date. Proof of service must be filed with the court. (Effective 7/1/03)

Rule 5.3.3 Release of Evidence/Discovery (Effective 7/1/03)

Upon a written stipulation and for good cause shown, orders may be obtained permitting the release of physical evidence for the purposes of testing, the release

of property (other than weapons and contraband) to its lawful owner, and uncontested discovery. (Effective 7/1/03)

Rule 5.3.4 1203.4 Penal Code Motions and Associated Motions (Effective 7/1/03)

(a) A motion for dismissal of a case pursuant to Penal Code Sections 1203.4 or 1203.4(a) shall be filed with the court with proof of service on the District Attorney's office. The court will refer the matter to the Probation Department for review and recommendation prior to the hearing on the motion. The moving party shall be required to pay any fees charged by the Probation Department for such review. If the District Attorney's office does not wish to oppose the motion, it may file a notice of non-opposition, and then need not appear at the hearing. (Effective 7/1/03)

(b) A motion for the early termination of probation shall be a separate noticed motion filed with the Court. (Effective 7/1/03)

Chapter VI. Family Law Rules

Rule 6.1 **Propria Persona Filings - Pleading Prepared by Third Parties** (Effective 7/1/03)

Parties who retain the services of third parties (e.g.: Typing services or paralegals) to prepare their pleadings must submit a declaration to the court with the following information: (Effective 7/1/03)

(a) Name, including Doing Business As (DBA) and Legal Document Assistant (LDA) number, address and telephone number of person preparing the pleadings; and (Effective 7/1/03)

(b) Amount of compensation paid to third party for the preparation of the pleadings. (Effective 7/1/03)

Rule 6.1.1 Forms of Documents Presented for Filing (Effective 1/1/10)

(a) All pleadings shall comply with Rules 2.100-2.119 and 3.1110 of the California Rules of Court. All documents and/or pleadings submitted in which a matter is set for hearing must specify the department number, hearing date, and time underneath the title of the document and/or pleading.

(b) Except those received via facsimile filing, All documents containing attachments, schedules, or exhibits shall be indexed and tabbed at the bottom. Where there is a single attachment or exhibit, the index requirement is inapplicable. All documents received via facsimile filing shall contain a titled cover sheet between attachments, schedules, and/or exhibits.

(c) The Court shall endorse and or conform up to three (3) copies of all submitted documents for filing. (Effective 1/1/10)

Rule 6.1.2 Obtaining a Hearing Date (Effective 1/1/10)

Hearing dates are obtained at the time of the submission of motions filed including but not limited to Orders to Show Cause and/or Notice of Motions. Hearing dates are assigned by the Court. (Effective 1/1/10)

Rule 6.2 **Result of Failure to Comply with Rules** (Effective 7/1/03)

Failure of a party or parties to comply with these rules may result in one or more of the following on the request by the other party or on the court's own motion: (Effective 7/1/03)

(a) Removal of the matter from the calendar; (Effective 7/1/03)

(b) A continuance; (Effective 7/1/03)

(c) An award of attorney's fees and costs against the non-complying party, the party's attorney, or both, without the necessity of filing an Income and Expense Declaration, or any noticed motion; (Effective 7/1/03)

(d) An order based solely upon the pleadings properly before the court; (Effective 7/1/03)

(e) Such other orders as the court deems appropriate. (Effective 7/1/03)

Rule 6.3 Continuances and Attorney Late Line Call-In Protocol (Effective 7/1/03; rev. 1/1/07)

Rule 6.3.1 Orders to Show Cause and Motions (Eff. 7/1/03; Rev. 7/1/10)

(a) Notice of a request for continuance must be given to the other party at the earliest opportunity. If a written notice is not presented to the adverse party at least three (3) court days prior to the date set for the hearing and a continuance is granted, an award of attorney fees may be ordered to the nonmoving party. (Eff. 7/1/03)

(b) Continuance of Orders to Show Cause and motions by stipulation may be presented in written form to the Clerk's Office prior to the hearing date or may be requested orally of the court at the time set for the proceeding, provided counsel for all parties are present. (Eff. 7/1/03)

(c) Stipulations for Continuances may be presented on the date of the hearing so long as all counsel or self-represented litigants have signed. In such cases, not all parties or counsel need to be present and no filing fees will be required for stipulations so presented and submitted on the date of hearing. (Eff. 7/1/03; Rev. 7/1/10)

Rule 6.3.2 Trial (Effective 7/1/03)

Any request for a continuance of a trial date shall be submitted in written form signed by the attorney, the party, or both. In the event of a stipulation to continue the trial date, both counsel must sign the stipulation. The proposed stipulation must be accompanied with a detailed explanation of the reason for the continuance. The stipulation must be submitted to the Family Law Department not less than five (5) days before the trial date. The new date must be approved by the Court before the Stipulation is submitted. (Effective 7/1/03)

Rule 6.3.3 Calendar Conflicts (Effective 7/1/03; rev. 1/1/06)

In the event of a calendar conflict preventing or delaying a hearing, the attorney with the conflict shall notify the Court and, to the extent possible, the opposing

counsel or unrepresented party, at the earliest opportunity. If notice is not given, the Court may award attorney's fees. (Effective 7/1/03; rev. 1/1/06)

Rule 6.3.4 Calendar Call (Effective 7/1/03)

If there is no appearance at the first calendar call, and no communication from counsel, or either party, the matter may be removed from the calendar or may be heard as an uncontested matter. When the case is called, counsel or a party appearing in propria persona must state his or her name, identify the party being represented and indicate the estimated time for hearing. The Court must be advised then whether there is a request for a continuance at the time the case is called. (Effective 7/1/03)

Rule 6.3.5 Attorney Late Line Call-In Protocol (Effective 1/1/07; rev. 7/1/09)

In an effort to notify the court of an unforeseen late court appearance the attorney or his representative must call the Attorney Call-In line at 661-868-2656 no later than 8:15 the morning of the scheduled appearance. The caller must provide the attorney's name, the client's name, the court room number, the estimated time of arrival, the reason for the late arrival, and when he or she notified the opposing party or attorney of the late arrival. (Effective 1/1/07; rev. 7/1/09))

Rule 6.4 Ex Parte Matters (Effective 7/1/03; rev. 7/1/09)

Ex Parte matters are noticed in the Family Law Division. (Effective 7/1/03)

(a) Ex Parte hearings must be set in matters requesting residence exclusion, change of custody, or a substantial change in current visitation orders. (Effective 7/1/03)

(b) Notice shall be given to all counsel and all opposing parties, if not represented by counsel, by 10:00 a.m. the court day before the scheduled hearing. All paperwork for the Ex Parte hearing shall be returned to the clerk by 12:00 noon the court day before the scheduled hearing. (Effective 7/1/03)

(c) This rule shall not apply to matters filed under the Domestic Violence Act. (Effective 7/1/09)

Rule 6.5 Return of Service (Effective 7/1/03)

(a) Orders to Show Cause and notices of motion shall be calendared when filed. Proof of service must be filed before the matter is called. If there is no proof of service filed, yet both parties appear and agree to proceed, the court, in its discretion, may hear the matter. (Effective 7/1/03)

(b) If a party receives Temporary Assistance for Needy Families (CalWORKS/TANF) or other public benefits and an Order to Show Cause or notice of motion is filed requesting child support, the party filing the OSC must serve a copy of their moving papers on the Department of Child Support Services (local child support enforcement agency). (Eff. 7/1/03)

Rule 6.6 **Interview of Children in Chambers** (Effective 7/1/03)

A request by a party for the court to interview a minor in the judge's chambers must be made by stipulation of both parties. The parties must also stipulate that there is to be no reporter present. (Effective 7/1/03)

Rule 6.7 **Income and Expense Declarations and Exhibits** (Effective 7/1/03)

(a) In all Orders to Show Cause and Notices of Motion matters and trials with issues of child support, spousal support, attorney fees and costs, or the assessment of sanctions other than contempt, the parties to the proceeding must file an Income and Expense Declaration with the court. (Effective 7/1/03; rev. 1/1/07)

(b) If available with reasonable diligence, the Income and Expense Declaration must have attached W-2 forms for the prior year, and the preceding 3-month's payroll stubs, or a statement explaining the reason for the failure to provide these documents. If a payroll stub does not include a year-to-date total for earnings, the parties must also attach a statement by the party's employer verifying year-to-date earnings. (Effective 7/1/03)

Rule 6.8 **Stipulations** (Effective 7/1/03) (rev. 1/1/10)

Written stipulations resolving all or part of issues to be litigated are encouraged and have priority. While a matter is trailing, the court should be kept informed of the status of settlement negotiations. (Effective 7/1/03)

(a) Written stipulations resolving all or part of issues to be litigated are encouraged and have priority. While a matter is trailing, the court should be kept informed of the status of settlement negotiations.

(b) Stipulated Judgments or Judgments containing a Marital Settlement Agreement must include signatures from all parties and their respective attorneys, if any. Parties and/or Counsel may waive signatures and submit the terms of a stipulated Judgment on the record pursuant to Code of Civil Procedure §664.6. (Effective 1/1/10)

(c) Parties requesting to vacate or otherwise terminate personal conduct or stay-away orders issued under the Domestic Violence Prevention Act cannot do so by Stipulation and must file a noticed motion and appear before the Court to request relief. (Effective 1/1/10)

Rule 6.9 Settlement Conferences (Effective 7/1/03)

Rule 6.9.1 Meet and Confer Requirement (Effective 7/1/03)

Before the filing of a Settlement Conference Statement, the parties must conduct an informational "meet and confer conference" ten (10) days prior to the settlement conference or must file a declaration setting out reasons why a meet and confer did not take place. All issues must be identified in detail, presented in written form (described as an "Issues Statement") and exchanged at the conference. At the conclusion of the conference, a "Conference Statement" addressing all issues must be prepared in letter or memorandum form which must address all issues. All parties and/or their attorneys must submit the conference statement. (Effective 7/1/03)

The Conference Statement must include: (Effective 7/1/03)

(a) Title and case number; (Effective 7/1/03)

(b) Date and place of conference and identification of all parties and attorneys present; and, (Effective 7/1/03)

(c) A list of resolved and unresolved issues. (Effective 7/1/03)

Rule 6.9.2 Mandatory Settlement Conference Requirements (Effective 7/1/03)

(a) The Settlement Conference Statement must be filed five (5) calendar days before the settlement conference date. (Effective 7/1/03)

(b) Current Income and Expense Declarations must be filed with the Settlement Conference Statement in all cases involving monetary issues. An updated Income and Expense Declaration will not be required if it is clearly stated there is no change from the last filed Income and Expense Declaration. (Effective 7/1/03)

(c) A request to continue settlement conferences is within the discretion of the court and requires a showing of good cause. (Effective 7/1/03)

Rule 6.10 Trial Setting (Effective 7/1/03; rev. 7/1/09)

(a) A case will be set for trial only after the filing of an At-Issue Memorandum and a settlement conference is held. (Effective 7/1/03; rev. 7/1/09)

(b) A case will only be set for trial when, in the discretion of the Judicial Officer conducting the settlement conference, the attempt to resolve the issues presented has reached an impasse and the matter is ready to proceed to trial

and each party has filed with the Court a completed Declaration regarding service of the Preliminary and Final Declarations Disclosure. (Effective 7/1/03; rev. 7/1/09)

Rule 6.11 Appointment of Expert Witnesses (Effective 7/1/03)

Requests for costs for appraisers, accountants and experts will not be considered in the absence of a specific showing by declaration of the need for expert assistance, and the projected cost of the examination requested. Projected costs must be established by the declaration of the expert, which must include a general breakdown of anticipated costs. (Effective 7/1/03)

Rule 6.12 Child Custody and Visitation (Effective 7/1/03)

(a) In all original and subsequent proceedings where child custody, visitation, or both, are issues, the parties must attach a completed Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) form. (Effective 7/1/03)

(b) Before a hearing involving a disputed issue of custody, visitation, or both, the parties must meet with a mediator at Family Court Services. (Effective 7/1/03)

(c) The mediation session is private and confidential. Only the parent or the parties involved in the action may be present in the mediation session. Children over eight (8) years of age must attend the mediation session and be interviewed by the mediator. (Effective 7/1/03)

(d) In the event mediation does not result in an agreement, the mediator shall make no recommendation to the court. The mediator may not be called as a witness. (Effective 7/1/03)

(e) The mediator may recommend to the court that counsel be appointed to represent a minor and may inform the court why the appointment of counsel is recommended. Where the parties have not reached an agreement upon completing mediation, the mediator may recommend that a full Family Court Services Unit investigation be conducted. (Effective 7/1/03)

Rule 6.13 Civil Investigations (Effective 7/1/03)

(a) When directed by the court, a Family Court Services investigator must conduct a standard custody investigation or a focused custody investigation and file a written confidential report and recommendation. (Effective 7/1/03)

(b) Questionnaires must be submitted to the investigator within ten (10) days of the court's order referring the matter for evaluation. (Effective 7/1/03)

Rule 6.14 Family Law Facilitator (Effective 7/1/03; rev. 1/1/07)

(a) The services of the Office of the Family Law Facilitator are available to all unrepresented parents and parties at times and dates as set by the Family Law Facilitator. (Effective 7/1/03; rev. 1/1/07)

(b) When performing duties under the Family Law Facilitator Act (Family Code Section 10000, et. seq.) and specifically Family Code Section 10004, the duties of the Facilitator may include any or all of the duties set out in Family Code Section 10005, as designated by the court and subject to adequate funding. (Effective 1/1/07)

(c) The Court may assign duties to the Facilitator outside the scope of the Family Law Facilitator Act if funding other than AB 1058 funding is available to expand the Facilitator's services. (Effective 1/1/07)

(d) Neither the Family Law Facilitator nor their staff may be called as a witness. (Effective 1/1/07)

Rule 6.15 Judicial Council Form 191 - Child Support Case Registry (Effective 1/1/07)

(a) Any submission of a Findings and Order After Hearing or Judgment containing an initial order or modification of child or family support must include a completed Judicial Council Form 191- Child Support Case Registry form with the order. (Effective 1/1/07)

(b) Any change to a party's information previously submitted through the Child Support Case Registry form must be resubmitted with the completion of an updated Child Support Case Registry form within ten (10) days of the change (Effective 1/1/07)

(c) Parties shall not be required to submit this Form 191 if the Department of Child Support Services is currently involved in the collection of support. (Effective 1/1/07)

Rule 6.16 Minors Counsel (Effective 1/1/10)

(a) Any and all attorneys accepting minors counsel appointments must lodge proof of their qualifications pursuant to California Rule of Court 5.242 with the Family Law Department and update them annually or as required by the Supervising Family Law Judge. (Effective 1/1/10)

(b) An attorney appointed as minors counsel may be relieved as attorney of record by a Judicial Officer following disposition of a matter in Court. If an attorney appointed as minors counsel wishes to withdraw from a proceeding as attorney of record for the minor and has not been relieved by a Judicial Officer, he/she must file a motion seeking such relief. (Effective 1/1/10)

Rule 6.17 Collaborative Law Cases (Eff. 7/1/10)

Rule 6.17.1 Contested Matters. It is the intent of the Collaborative Law Process that, no contested matters shall be filed with the Court in matters designated as Collaborative Law Cases. (Eff. 7/1/10)

(a) "Contested Matters" filing is defined as the filing of an at-issue memorandum or any pleading, motion, or order to show cause requesting that the court resolve an issue of fact or law. The filing of a Petition, or Response, a stipulated order, or a Request to Enter Default where the issues subject to disposition by the Court in a proceeding are the subject of a written agreement, shall not be considered a contested matter.

Rule 6.17.2 Designation. (Eff. 7/1/10)

(a) A case may be designated a "Collaborative Law Case" upon the filing of a signed a written Collaborative Law Agreement that provides for 1) a full exchange of information, 2) the withdrawal of the collaborative attorney (whether or not said attorney is of record) upon the termination of the collaborative law process, 3) the joint retention of any consultants needed to assist the parties in the Collaborative Law Process, unless otherwise authorized by the written agreement of the parties, and 4) the agreement by the parties to use their best efforts and make a good faith attempt to resolve family law disputes without resorting to adversary judicial intervention. (Eff. 7/1/10)

(b) The words "Collaborative Law Case" shall be placed below the case number in the case caption on all documents filed with the Court. (Eff. 7/1/10)

(c) Attorneys representing parties to a Collaborative Law Case may be, but are not required to be of record. (Eff. 7/1/10)

Rule 6.17.3 Terminations/Filing of Contested Matters. (Eff. 7/1/10)

(a) Either party may terminate the designation of a case as a Collaborative Law Case without cause by either providing a written notice of such termination to the other party and filing with the court the original notice of termination and a proof of service upon the other party. (Eff. 7/1/10)

(b) The filing of a contested matter by either party shall also terminate the designation for the case as a Collaborative Law Case, effective on the date of such filing. (Eff. 7/1/10)

(c) Upon termination of the Collaborative Law Case designation, any party's attorney's status as attorney of record shall terminate without further notice. (Eff. 7/1/10)

(d) The filing by an attorney of record of a motion to withdraw from a Collaborative Law Case does not terminate the designation of a Collaborative Law Case. (Eff. 7/1/10)

Chapter VII Juvenile Matters

Section One - Parties

Rule 7.1 Independent Investigation (Effective 7/1/03)

Rule 7.1.1 Access to Children in Dependency Proceedings (Effective 7/1/03)

(a) No party or attorney in a dependency proceeding shall interview the child about the events relating to the allegations in the petition(s) on file without permission of the child's attorney or court order. This rules does not apply to the assigned DHS social worker or other authorized DHS personnel, nor to an assigned CASA. (Effective 7/1/03)

(b) No party or attorney in a dependency proceeding shall cause the child to undergo a physical, medical or mental health examination or evaluation without court approval. This rule does not apply to the assigned DHS social worker or other authorized DHS personnel. (Effective 7/1/03)

Rule 7.1.2 Interviewing Children Who are Alleged Victims of Child Abuse (Eff. 7/1/03)

All attorneys representing parties in a dependency case in which child abuse has been alleged and other participants in the case, including a child advocate, shall attempt to minimize the number of interviews they take of the child relating to the events surrounding the alleged abuse. To this end, anyone wishing to learn facts about the alleged incident shall first review any interviews taken or reports made by the investigating officer(s). (Effective 7/1/03)

Rule 7.1.3 Presence of Child in Court (Effective 7/1/03)

(a) All children are entitled to attend court hearings. Every child ten (10) years or older shall be told of his or her right to attend court hearings and all children over the age of ten (10) shall be given notice by the investigating supervising social worker. All children over the age of ten (10) shall attend court hearings unless excused for one of the listed reasons: (Effective 7/1/03)

(1) The child's attorney waives the child's appearance. (Eff. 7/1/03)

(2) The child chooses not to attend. (Effective 7/1/03)

(3) The child is excused by the court. (Effective 7/1/03)

(4) The child is disabled, physically ill, or hospitalized. (Eff. 7/1/03)

(b) No child shall be brought to court solely for the child to confer with his or her attorney or to visit with a parent, relative or friend; nor for the purpose of

providing the social worker with the opportunity to make a mandated face-to-face contact with the child in order to satisfy DHS regulations or regulations of the Department of Social Services. (Effective 7/1/03)

Rule 7.2 Guardian Ad Litem (Effective 7/1/03)

Rule 7.2.1 Children (Effective 7/1/03)

Upon a filing of a petition, the court shall appoint counsel for the child as provided in Welfare and Institutions Code Section 317 and California Rules of Court 5.660. For the purposes of the Child Abuse Prevention and Treatment Act (Public Law 93-247), in all cases in which a dependency petition has been filed and counsel has been appointed for the child, the attorney for the child shall function as the guardian ad litem for the child in the dependency proceedings unless the court appoints another adult to serve as the child's guardian ad litem. If no counsel is appointed for the child, or if at any time the court determines a conflict exists between the role and responsibilities of the child's attorney and that of a guardian ad litem, or if the court determines it is best for the child to appoint a separate guardian ad litem, the court shall appoint another adult as the guardian ad litem for the child. The guardian ad litem for the child may be an attorney, a CASA, or a responsible adult who is not the child's parent or social worker. Appointed counsel and/or CASA must continue to represent the child at all subsequent proceedings unless properly relieved by the court. If a CASA is appointed as guardian ad litem, that person shall seek instructions from the court as to the proper reports to be filed pursuant to Rule 7.4.11. (Effective 7/1/03)

Rule 7.2.2 Adult Parties (Effective 7/1/03)

The court shall appoint any person whom the court deems qualified as a guardian ad litem to represent any incompetent parent or guardian whose child is before the Juvenile Court pursuant to a petition under Welfare and Institutions Code Section 300. No such appointment shall be made until the parent or guardian has notice of the proposed appointment and an opportunity to be heard on the issue. (Effective 7/1/03)

Rule 7.2.3 Notice To Guardian Ad Litem. Access To Records, Right To Appear (Effective 7/1/03)

In all proceedings, the guardian ad litem shall be given the same notice as any party, and have the same access to all records relating to the case as would any party, and have the right to appear at all hearings. (Effective 7/1/03)

Rule 7.3 Care Providers/De Facto Parents/Relatives (Effective 7/1/03)

A child's care provider shall be allowed to be present at the hearing and address the court. (Effective 7/1/03)

Rule 7.4 Court Appointed Special Advocate (CASA) (Effective 7/1/03)

CASA of Kern County volunteers are appointed on behalf of children and only in dependency proceedings. CASAs 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: (Effective 7/1/03)

(a) Support the child throughout the court proceedings. (Effective 7/1/03)

(b) Explain the court proceedings to the child. (Effective 7/1/03)

(c) Establish a relationship with the child to better understand the child's needs and desires. (Effective 7/1/03)

(d) Review available records regarding the child's family history, school behavior, medical or mental health history, et cetera. (Effective 7/1/03)

(e) Identify and explore potential resources that will facilitate family preservation, early family reunification, or alternative permanency planning. (Effective 7/1/03)

(f) Explain the CASA volunteer's role, duties, and responsibilities to all parties associated with a case. (Effective 7/1/03)

(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. (Effective 7/1/03)

(h) Consider whether appropriate services, including reasonable efforts, are being provided or offered to the child and the child's family. (Effective 7/1/03)

(i) Ensure that the court-approved plans for the child are being implemented. (Effective 7/1/03)

(j) Attend court hearings. (Effective 7/1/03)

(k) Investigate the interests of the child in judicial or administrative proceedings outside of Juvenile Court. (Effective 7/1/03)

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). (Effective 7/1/03)

Rule 7.4.1 Sworn Officer of the Court (Effective 7/1/03)

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. (Effective 7/1/03)

Rule 7.4.2 Specific Duties (Effective 7/1/03)

(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 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. (Effective 7/1/03)

(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. (Effective 7/1/03)

(c) A CASA volunteer shall serve under the guidance and supervision of the Kern 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 Kern County CASA program with the Juvenile Court. (Effective 7/1/03)

Rule 7.4.3 Appeal and Grievance Procedures (Effective 7/1/03)

(a) A CASA volunteer serves at the pleasure of the court; the appointment is a privilege and not a right. The Presiding Juvenile Court Judge 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. (Effective 7/1/03)

(b) The Kern County CASA Program has established an internal process for the submission and investigation of grievances which process shall be followed. (Effective 7/1/03)

Rule 7.4.4 Case Referral and Appointment (Effective 7/1/03)

(a) A child's dependency case may be referred by the court to the CASA program for appointment at any point in the proceeding. (Effective 7/1/03)

(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. (Effective 7/1/03)

(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. (Effective 7/1/03)

Rule 7.4.5 Criteria for Referral to CASA Program (Effective 7/1/03)

(a) Severe physical/sexual abuse cases where the child is not released to a parent or relative, and the child is seriously traumatized. (Effective 7/1/03)

(b) Special 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. (Effective 7/1/03)

(c) Cases of repeated abuse that involve a number of issues or a number of interested parties. (Effective 7/1/03)

(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. (Effective 7/1/03)

(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. (Effective 7/1/03)

(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 assist the court in reaching a decision. (Effective 7/1/03)

(g) Children age newborn to eighteen (18) years who have experienced three or more separate placements during any consecutive twelve month period or who have been detained at A. Miriam Jamison Center or some other 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: (Effective 7/1/03)

(1) Conduct disorder with aggressive tendencies or antisocial behavior. (Effective 7/1/03)

(2) Attention Deficit Hyperactive Disorder treated by psychotic drugs. (Effective 7/1/03)

(3) Self-destructive or suicidal behavior. (Effective 7/1/03)

(4) Use of psychotropic drugs. (Effective 7/1/03)

(5) Developmental disability. (Effective 7/1/03)

(6) Fire setting. (Effective 7/1/03)

(7) Manifestation of psychotic symptoms such as delusion, hallucination, or disconnected or incoherent thinking. (Eff. 7/1/03)

(8) Somatizing or psychosomatic problems such as sleeping or eating disorder. (Effective 7/1/03)

(9) Chronic depression. (Effective 7/1/03)

(10) Severe sexual acting-out behavior. (Effective 7/1/03)

(11) Substance abuse. (Effective 7/1/03)

(h) Any dependent child whose particular circumstances warrant or otherwise support the appointment of a CASA. (Effective 7/1/03)

Rule 7.4.6 Release of Information to a CASA (Effective 7/1/03)

A CASA shall have the same legal right to records relating to the child the CASA is appointed to represent as any Kern 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 as a court appointed special advocate 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. (Effective 7/1/03)

Rule 7.4.7 Report of Child Abuse (Effective 7/1/03)

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. (Effective 7/1/03)

Rule 7.4.8 Communication (Effective 7/1/03)

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). (Effective 7/1/03)

Rule 7.4.9 Right to Timely Notice and Right to Appear; Calendar Priority for Advocates (Effective 7/1/03)

(a) The CASA shall be properly and timely noticed for all proceedings held in cases to which the CASA has been appointed. (Effective 7/1/03)

(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. (Effective 7/1/03)

(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. (Effective 7/1/03)

(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. (Effective 7/1/03)

Rule 7.4.10 Access to Records (Effective 7/1/03)

(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 Presiding Juvenile Court Judge through a Petition for Disclosure of Juvenile Court Records pursuant to Welfare and Institutions Code Section 827 (Form JV-570). (Effective 7/1/03)

(b) The child's case file shall be maintained in the Kern County CASA office by a custodian of records. No one shall have access to that file except upon approval of the executive director of Kern County CASA. (Effective 7/1/03)

(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 Kern County CASA's executive director (or his or her designee), and the Presiding Judge of the Kern County Juvenile 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 Kern County CASA program's office. (Effective 7/1/03)

Rule 7.4.11 Filing and Distribution of CASA Court Reports (Effective 7/1/03)

(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. (Effective 7/1/03)

The CASA may also submit reports for any special hearings noticed to CASA of Kern 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. (Effective 7/1/03)

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; any such report must be filed and served on the parties and/or their counsel at least two (2) court days before the jurisdictional hearing. (Effective 7/1/03)

(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. (Effective 7/1/03)

(c) CASA court reports shall be copied and distributed by CASA of Kern County staff. (Effective 7/1/03)

Section Two - Proceedings

Rule 7.5 Pre-Hearing Discovery - Dependency Cases (California Rules of Court Rule 5.546) (Effective 7/1/03)

Rule 7.5.1 Pretrial Discovery in Proceedings under Welfare and Institutions Code Section 300 - Dependency Cases (Effective 7/1/03)

Pretrial discovery shall be reciprocal and shall be conducted on an informal basis. Except as protected by privilege, all relevant material shall be disclosed in a timely fashion to all parties to the litigation. (Effective 7/1/03)

Rule 7.5.2 Formal Discovery (Effective 7/1/03)

(a) Formal Discovery. Only after all informal means have been exhausted may a party petition the court for discovery. Any noticed motion shall state the relevancy and materiality of the information sought and the reasons why informal discovery was not adequate to secure that information. The motion shall be served on all parties at least five (5) judicial days before the hearing date. The date for the hearing shall be obtained from the Clerk of the Court, Juvenile Division. A copy shall be served on the court before whom the matter is scheduled to be heard. Any responsive papers shall be filed and served two (2) judicial days prior to the hearing. (Effective 7/1/03)

(b) Civil Discovery. In order to coordinate the logistics of discovery in dependency cases, there shall be no depositions, interrogatories, subpoenas of juvenile records or other similar types of civil discovery without approval of a judge of the Juvenile Court upon noticed motion as provided in Subsection (a). (Effective 7/1/03)

Rule 7.5.3 Presentation of Evidence (Welfare and Institutions Code Sections 280, 281; California Rules of Court Section 5.690 (Effective 7/1/03)

(a) Social Study Reports prepared by the Department of Human Services shall be made available to all counsel before the hearing in accordance with the following time limitations unless otherwise ordered by the court: (Effective 7/1/03)

(1) Jurisdictional and/or Dispositional Reports are due at least three (3) court days before the hearing or prior to any scheduled Meet and Confer or Mediation. (Effective 7/1/03)

(2) Review of Dependency Status and Status Review Reports are due at least ten (10) calendar days before the hearing. (Effective 7/1/03)

(3) All other reports shall be due a reasonable number of days before the hearing. (Effective 7/1/03)

(b) If the court does not find good cause for the failure to file a social study report in a timely fashion, the court may impose appropriate sanctions. (Effective 7/1/03)

(c) The names of any experts to be called by any party and copies of their reports, if not part of a Social Study Report prepared by DHS, shall be provided to all counsel at least ten (10) days before the hearing. (Effective 7/1/03)

Rule 7.6 Juvenile Court Dependency Mediation (Welfare and Institutions Code Section 350; Judicial Administration Standards Section 24.6) (Effective 7/1/03)

Rule 7.6.1 Process and Purpose of Juvenile Dependency Mediation (Effective 7/1/03)

Juvenile dependency mediation is a process in which a neutral person assists the parties in reaching an agreement resolving their dispute. The mediator is not a judge and has no authority to decide the case. The goal of juvenile dependency mediation is to find a negotiated resolution acceptable to all parties. Juvenile dependency mediation provides the parties an opportunity to re-frame their relationship from that of adversaries to cooperative partners. (Effective 7/1/03)

The mediator will meet with the parents or guardians, with the Department of Human Services' Social Worker and/or supervisor, and with counsel for all the parties including the child(ren) to discuss their issues and concerns. No agreement will be made without the input of the interested parties and their concurrence. Children may attend juvenile dependency mediation sessions with their attorney's consent. CASA representatives may attend sessions of the children they represent. Support persons may also be included in juvenile

dependency mediation provided child's counsel waives the child's right to confidentiality, the parents agree to the support person's participation and the support person is a relative, a non-relative extended family member, a counselor or member of the clergy. The mediator may meet with each party separately or may work with everyone together in the same room. (Effective 7/1/03)

Rule 7.6.2 Referral to Dependency Mediation (Effective 7/1/03)

A case may be referred to juvenile dependency mediation at several points during the juvenile court's dependency process: before jurisdictional hearing, at jurisdiction, at disposition, at any review hearing, or for exit orders. (Eff. 7/1/03)

Cases are referred to juvenile dependency mediation by a court order. Any party may request juvenile dependency mediation during the dependency process. The judge may also order juvenile dependency mediation. The parties involved in juvenile dependency mediation will determine the issues to be mediated through consultation with each other, the mediator, and the court. (Effective 7/1/03)

Rule 7.6.3 Confidentiality (Effective 7/1/03)

Juvenile dependency mediation is a confidential process. Each party, including any support person, will sign a confidentiality statement which explains that the information learned as a result of juvenile dependency mediation cannot be disclosed in the proceedings by any of the parties with the following exceptions: Reasonable suspicions of child abuse not previously reported, threats of harm to self or others, and the written report outlining the resolved and contested issues. All parties and CASA representatives are relieved of confidentiality restrictions while participating in juvenile dependency mediation. (Effective 7/1/03)

Rule 7.6.4 Reports to the Court (Effective 7/1/03)

When the parties are able to agree on certain issues, the juvenile dependency mediator will report to the court what areas of agreement have been reached and what issues remain in dispute. The juvenile dependency mediator will not discuss the case with any party outside the juvenile dependency mediation session or with the court at any time. (Effective 7/1/03)

A copy of the juvenile dependency mediator's report will be provided to each of the attorneys involved in the case, to County Counsel, to the Department of Human Services, and to the Clerk of the Juvenile Court for review prior to the hearing. In cases where the parties are in full agreement about jurisdictional and dispositional issues, the agreement may be presented to the court upon completion of mediation. The mediator will notify the court to determine if the case can proceed to an immediate hearing. (Effective 7/1/03)

Rule 7.6.5 Role of the Social Worker (Effective 7/1/03)

The Department of Human Services will have a social worker and/or supervisor present at juvenile dependency mediation who is knowledgeable concerning the particular case and who is empowered to make decisions concerning that case on behalf of the department, subject to consultation with their counsel. (Eff. 7/1/03)

Rule 7.6.6 Complaints (Effective 7/1/03)

The Local Policies and Procedures for Dependency Mediation in Kern County complaint forms are available from the Clerk of the Juvenile Court. (Eff.7/1/03)

Rule 7.6.7 Non Compliance (Effective 7/1/03)

Failure of any person, including attorneys, to comply with any court order described in this section, including attendance at a mediation conference and timely submission of social studies reports, may result in the imposition of sanctions pursuant to Code of Civil Procedure Section 177.5. (Effective 7/1/03)

A parent who has been given proper notice of a mediation conference and who willfully fails to appear for the mediation may be prohibited from presenting evidence at the contested hearing on the issues that were referred to mediation. (Effective 7/1/03)

Rule 7.6.8 Contempt/Breach of Confidentiality (Effective 7/1/03)

A breach of juvenile dependency mediation confidentiality may result in sanctions including contempt and/or the imposition of monetary sanctions. (Effective 7/1/03)

Rule 7.7 Meet and Confer Conferences (Effective 7/1/03)

(a) Meet and Confer conferences may be calendared by a judicial officer for the purpose of attempting to resolve or narrow the disputed issues. Counsel and all parties shall be ordered to appear at the date and the time set for the conference. Counsel should anticipate keeping their calendars clear of possible conflicts with scheduled meet and confer conferences. (Effective 7/1/03)

(b) At the appointed date and time, all counsel, social workers and CASA, if appointed to the case, shall meet and confer outside the courtroom. Counsel shall advise their clients of any proposed settlement. A Joint Pretrial Statement shall be submitted to the court immediately after the conclusion of the negotiations. (Effective 7/1/03)

Rule 7.7.1 Joint Pretrial Statement (Effective 7/1/03)

In every contested Welfare and Institutions Code Section 300 et seq. matter for which a meet and confer conference is calendared, counsel for the parties must sign and file a Joint Pretrial Statement no later than one (1) court day after the Meet and Confer. A copy must be provided to each party including CASA and the social worker. The statement must be signed by all counsel and be the product of a good-faith meet and confer conference. The statement shall be in pleading form. Failure to file a legible Joint Pretrial Statement will be considered a violation of these orders. The following must be included in the pretrial statement: (Effective 7/1/03)

(a) Names of the attorneys and who each represents. (Effective 7/1/03)

(b) Identification of the type of hearing by reference to the appropriate statute and subdivision, and the date, time and place of the setting. (Effective 7/1/03)

(c) Identification of any party requiring the assistance of an interpreter, language and dialect. (Effective 7/1/03)

(d) A stipulated Statement of Facts for which no evidence at trial will be necessary. (Effective 7/1/03)

(e) A list of the specific issues to be determined at the hearing. (Effective 7/1/03)

(f) A list of each witness each party intends to call in his or her case-in-chief, including an offer of proof as to each witnesses' anticipated testimony. (Effective 7/1/03)

(g) A list identifying all documentary and physical evidence each party intends to introduce at trial. After each exhibit, it is to be plainly indicated whether counsel stipulate to its admissibility without the need for discussion or testimony at trial. (Effective 7/1/03)

(h) A time estimate for the entire hearing, including rebuttal. (Effective 7/1/03)

Rule 7.7.2 Sanctions (Effective 7/1/03)

Failure of counsel or a party to attend the Meet and Confer and sign and file a timely Joint Pretrial Statement will result in sanctions against the offending party. Failure of one counsel or party to comply with this rule does not excuse any other counsel or party from compliance. (Effective 7/1/03)

Failure of the parties to appear at the Meet and Confer Conference may result in the parties or their counsel being precluded from presenting evidence at the contested hearing. Children need not be present at the Meet and Confer Conference unless they are specifically ordered to appear. (Effective 7/1/03)

Rule 7.7.3 Time for Filing Report (Effective 7/1/03)

When a Meet and Confer Conference is calendared, the Department of Human Services shall prepare a report for use by counsel and parties at the Meet and Confer Conference. The report shall be submitted to the parties no later than three (3) court days prior to the Meet and Confer Conference, or as directed by the court. (Effective 7/1/03)

The Meet and Confer conferences shall be scheduled on Wednesday afternoons in the County Counsel's Office, or as otherwise ordered by the court. The Meet and Confer conferences shall be scheduled each hour commencing at 1:00 p.m. (Effective 7/1/03)

Rule 7.7.4 No Hearing to Exceed Time Limit (Effective 7/1/03; rev. 1/1/07)

No contested hearing shall exceed a good faith time estimate as agreed to in the Joint Pretrial Statement without good cause. A failure to comply with Section 7.7.1 is not grounds for a continuance. (Effective 7/1/03; rev. 1/1/07)

Rule 7.8 Requests for Transcripts (Effective 7/1/03)

Any party requesting the court to pay for a reporter's transcript shall apply in writing to the judicial officer who heard the matter in question or to the Presiding Judge. Alternatively, a party may orally request at a court hearing that the court order a transcript be prepared. (Effective 7/1/03)

Section Three - Motions and Orders

Rule 7.9 Notice to CASA re: Continuance (Effective 7/1/03)

When a Motion for Continuance is made pursuant to written stipulation of the parties, the CASA volunteer need not sign the stipulation to obtain the continuance; however, the CASA office must be notified of any continuance dates including Meet and Confer and Mediation dates. (Effective 7/1/03)

Rule 7.10 Documents Presented for Filing (Effective 7/1/03)

For cases involving multiple minors, counsel/parties shall submit one additional copy of the document for each additional minor named on any document submitted to the court for filing. The Superior Court Clerk's Office will place the additional copies in each minor's file. (Effective 7/1/03)

Section Four - Competency Standards

Rule 7.11 Purpose and Authority (Effective 7/1/03)

These rules are established to comply with California Rules of Court 5.660. (Effective 7/1/03)

Rule 7.12 General Competency Requirements (Effective 7/1/03)

(a) All attorneys appearing in juvenile dependency proceedings must meet minimum standards of competence as set forth in these rules. These rules are applicable to attorneys employed by public agencies and attorneys appointed by the court to represent any party in a juvenile dependency proceeding. (Effective 7/1/03)

(b) Every party in a dependency proceeding who is represented by an attorney is entitled to competent counsel (Welfare and Institutions Code Section 317.5, California Rules of Court 5.660 [c]). "Competent counsel" means an attorney who is a member in good standing of the State Bar of California, who has participated in training in the law of juvenile dependency, and who demonstrates adequate forensic skills, knowledge and comprehension of the statutory scheme, the purposes and goals of dependency proceedings, the specific statutes, rules of court, and cases relevant to such proceedings, and procedures for filing petitions for extraordinary writs. (California Rules of Court 5.660 [c][1]) (Effective 7/1/03)

Rule 7.13 Attorney Screening and Standards of Representation (Effective 7/1/03)

Rule 7.13.1 Certification of Competency (Effective 7/1/03)

All Public Defenders, County Counsel and appointed attorneys who represent parties in Juvenile Court proceedings shall meet the minimum standards of training and/or experience set forth in these rules. Any appointed attorney, Public Defender or County Counsel appearing in a dependency matter for the first time shall complete and submit a Certification of Competency to the court within ten (10) days of his or her first appearance in a dependency matter. (Effective 7/1/03)

Rule 7.13.2 Attorneys Not Meeting Standards (Effective 7/1/03; rev. 1/1/07)

Upon submission of a Certification of Competency which demonstrates that the attorney has met the minimum standards for training and/or experience, the court may determine, based on conduct or performance of counsel before the court in a dependency case within the six month period prior to the submission of a certification to the court, that a particular attorney does not meet minimum competency standards. In such cases, the court shall proceed as set forth in Rule 7.15 hereinafter. (Effective 7/1/03; rev. 1/1/07)

Rule 7.14 Determining Appropriate Caseloads for Appointed Children's Counsel (Effective 7/1/03)

The attorney for the child must have a caseload that allows the attorney to perform the full range of duties required by Welfare and Institutions Code Section 317 (e), California Rules of Court 5.660, the rules of the California State Bar Standards of Professional Conduct, and these rules, and to otherwise adequately counsel and represent the child. To enhance the quality of representation afforded to children, attorneys appointed under Welfare and Institutions Code Section 317 (c) must not maintain a maximum full-time caseload that is greater than that which allows them to meet requirements set forth in relevant statutes, California Rules of Court, and these local rules of court, particularly those requirements that relate to experience and education and standards of representation. (Effective 7/1/03)

Rule 7.15 Minimum Standards of Education and Training (Effective 7/1/03)

Rule 7.15.1 Training and Educational Requirements (Effective 7/1/03)

Each attorney appointed to appear in a dependency matter before the Juvenile Court shall not seek certification of competency and shall not be certified by the court as competent until the attorney has completed the following minimum training and educational requirements. To obtain a Certification of Competency, counsel shall have: (Effective 7/1/03)

(a) Participated in at least eight (8) hours of training or education in Juvenile Dependency law, which training or education shall have included information on the applicable case law and statutes, the Rules of Court, Judicial Council forms, motions, trial techniques and skills, writs and appeals, child development, child abuse and neglect, substance abuse, domestic violence, family reunification and preservation and reasonable efforts; or (Effective 7/1/03)

(b) At least six (6) months experience in dependency proceedings in which the attorney has demonstrated competence in the attorney's representation of his or her clients in said proceedings. In determining whether the attorney has demonstrated competence, the court shall consider whether the attorney's

performance has substantially complied with the requirements of these rules. (Effective 7/1/03)

Rule 7.15.2 Renewal of Certification of Competency (Effective 7/1/03)

(a) In order to retain his or her certification to practice before the Juvenile Court, each attorney who has been previously certified by the court shall submit a new Certificate of Competency to the court every three (3) years after initial certification. The attorney shall attach the renewal Certification of Competency as evidence that he or she has completed at least eight (8) hours of continuing training or education directly related to dependency proceedings since the attorney was last certified. Evidence of completion of the required number of hours of training or education may include a copy of a certification of attendance issued by a California MCLE provider; a certificate of attendance issued by a professional organization which provides training and/or education for its members, whether or not it is a MCLE provider, a copy of the training or education program schedule, together with evidence of attendance of such program; or such other documentation as may reasonably be considered to demonstrate the attorney's attendance at such program. Attendance at a court sponsored or approved program will also fulfill this requirement. (Effective 7/1/03)

(c) The attorney's continuing training or education shall be in the areas set forth in Rule 743.1(a), or in other areas related to juvenile dependency practice including, but not limited to, special education, mental health, health care, immigration issues, the Rules of Evidence, adoption, practice and parentage issues, the Uniform Child Custody Jurisdiction Enforcement Act, the Parental Kidnapping Prevention Act, state and federal public assistance programs, the Indian Child Welfare Act, client interviewing and counseling techniques, case investigation and settlement negotiations, mediation, basic motion practice and Rules of Civil Procedure. (Effective 7/1/03)

Rule 7.16 Attorney-Client Obligations for Attorneys Representing Dependent Children (Effective 7/1/03; rev. 1/1/06)

Counsel for the child or the counsel's agents are expected to: (Effective 7/1/03)

(a) Have sufficient personal contact with the child to establish and maintain an adequate and professional attorney-client relationship. The child's attorney or attorney's agent must have personal contact with the child prior to the jurisdictional hearing and, thereafter, as often as competent representation requires. In no event shall such subsequent personal contact occur less than once every six (6) months after assumption of jurisdiction. The attorney or attorney's agent shall interview all children four (4) years or older in person. Whenever possible, the child shall be interviewed at the child's placement. (Effective 7/1/03)

(b) Explain fully, consistent with the child's ability to understand, the nature and consequences of the court proceedings. (Effective 7/1/03)

(c) Have sufficient contact with the child's care-giver, CASA, if any, and/or therapist, if any, to assess accurately the child's well-being and needs. (Effective 7/1/03)

(d) Monitor the child's development throughout the course of the proceedings and advocate for services that will provide a safe, healthy, and nurturing environment for the child. (Effective 7/1/03)

(e) Maintain a caseload that allows the attorney to perform the duties required by Welfare and Institution Code Section 317(e) and California Rules of Court 5.660, and to otherwise adequately counsel and represent the child; and (Effective 7/1/03; rev. 1/1/06)

(f) Immediately inform the court of any interest or right of the child which may need to be protected or pursued in other judicial or administrative forums and seek instructions from the court as to the appropriate procedure to follow. (Effective 7/1/03)

Rule 7.17 Procedures for Reviewing and Resolving Complaints and Requests for Appointment of New Counsel (Effective 7/1/03)

Rule 7.17.1 Notice of Complaint Procedures (Effective 7/1/03)

Each appointed attorney shall give written notice to his or her adult client of the procedure for lodging complaints with the court concerning the performance of an appointed attorney. The notice shall be given to the client within ten (10) days of the attorney's appointment to represent the client. Evidence that a copy of said notice was given or mailed to the client shall be provided to the court within ten (10) days of a request from the court. In the case of a minor client, the notice shall be mailed or given to the current caretaker of the child. If the minor is twelve (12) years of age or older, a copy of the notice shall also be sent to the minor. (Effective 7/1/03)

Rule 7.17.2 Written Complaint (Effective 7/1/03)

Any party to a juvenile court proceeding may lodge a written complaint with the court concerning the performance of his or her appointed attorney in a juvenile court proceeding. In the case of a complaint concerning the performance of an attorney appointed to represent a minor, the complaint may be lodged on the child's behalf by the social worker, a relative caretaker or a foster parent. (Effective 7/1/03)

Rule 7.17.3 Court Response to Complaint (Effective 7/1/03)

A copy of the complaint shall be provided to the attorney complained of within ten (10) days of receipt by the court. The court shall review the complaint to determine if the complaint presents reasonable cause to believe that the attorney may have failed to act competently or has violated local rules. The court may either schedule a hearing on the complaint, in which case the party and the attorney shall be notified of their right to be present, or the court may seek a written response from the attorney and rule on the complaint in writing. Any hearing or written ruling shall occur within thirty (30) days of the date the complaint is received by the court. (Effective 7/1/03)

Rule 7.17.4 Court Action Upon Complaint (Effective 7/1/03)

If, after a hearing on the issue or the court's review of the written materials provided, the court finds that the attorney acted contrary to the law, the rules of professional responsibility, or the rules of the court, the court may relieve the attorney and appoint other counsel to represent the party. (Effective 7/1/03)

Rule 7.17.5 Notification of Attorney and Complaining Party (Effective 7/1/03)

In the event of a hearing, the court may take the matter under submission, or the court may render an oral ruling at the conclusion of the hearing. Absent such an oral ruling, the court shall send its written ruling on the complaint to the attorney and the complaining party within twenty-four (24) hours of issuing the written ruling. If no hearing was held, the attorney shall have ten (10) days after the date of the written ruling to request a hearing before the court concerning the court's proposed action. If the attorney does not request a hearing within that period of time, the court's determination shall become final. (Effective 7/1/03)

Rule 7.17.6 Attorney Request for Hearing (Effective 7/1/03; rev. 1/1/07)

If the attorney requests a hearing pursuant to Rule 7.17.6, the attorney shall serve a copy of the request on the complaining party. The hearing shall be held as soon as practicable after the attorney's request therefor, but in no case shall it be held more than thirty (30) days after it has been requested except by stipulation of the parties. The complainant and the attorney shall each be given at least ten (10) days notice of the hearing. The hearing may be held in chambers. The hearing shall not be open to the public. (Effective 7/1/03; rev. 1/1/07)

Rule 7.17.7 Conduct of Hearing (Effective 7/1/03)

At the hearing, the complainant and the attorney shall have the right to present arguments with respect to the court's determination. Such arguments shall be based on the evidence before the court at the time the determination was made. No new evidence may be presented unless the party offering such evidence can show that it was not reasonably available to the party at the time that the court made its initial determination with respect to the complaint. Within ten (10) days after the hearing, the court shall issue a written determination upholding, reversing or amending the court's original determination. This decision shall be the final determination of the court with respect to the matter. A copy of the hearing decision shall be provided to both the complainant and the attorney, as well as the Indigent Defense Program administrator if the attorney has been appointed to the case as a member of the IDP, or to the Public Defender if the attorney is a Deputy Public Defender. (Effective 7/1/03)

Rule 7.17.8 Procedures for Informing the Court of the Interests of a Dependent Child (Effective 7/1/03)

(a) At any time during the pendency of a dependency proceeding, any interested person may notify ~~in~~ the court that the minor who is the subject of the proceeding may have an interest or right which needs to be protected or pursued in another judicial or administrative forum. If counsel for the minor becomes aware that the minor may have a right or interest which needs to be protected or pursued in another judicial or administrative forum, counsel for the minor shall notify the court of such right or interest as soon as it is reasonably possible for counsel to do so. (Effective 7/1/03)

(b) Notice to the court may be given by the filing of Judicial Council Form JV-180 or by the filing of a declaration. In either case, the person giving notice shall set forth the nature of the interest or right which needs to be protected or pursued, the name and address, if known, of the administrative agency or judicial forum in which the right or interest may be affected and the nature of the proceedings being contemplated or conducted there. (Effective 7/1/03)

(c) The court may set a hearing on the notice if the court deems it necessary in order to determine the nature of the child's right or interest or whether said interest should be protected or pursued. (Effective 7/1/03)

(d) The child's attorney shall inform the court in writing at least every six (6) months of the status of any non-dependency-related litigation or potential litigation involving a child. (Effective 7/1/03)

Rule 7.17.9 Oral Request for a New Attorney (Effective 7/1/03)

During any hearing in a dependency proceeding, a party may make an oral request for his or her attorney to be relieved and for new counsel to be appointed. When

such a request is made, the court shall suspend the hearing and conduct an in camera hearing. If the court determines there is good cause to relieve the attorney, the attorney shall be relieved and a new attorney appointed. The dependency proceeding shall then be continued to permit the new attorney to become familiar with the case. If the court determines there is not good cause to relieve the attorney, the dependency hearing shall resume with the attorney continuing to represent the party. (Effective 7/1/03)

Chapter VIII. Probate Matters

Rule 8.1 Settings, Assignments, and Continuances (Effective 7/1/03)

Rule 8.1.1 Order to Produce Will (Effective 7/1/03)

A petition for an order to produce a will, together with the proposed order, must be submitted to the Probate Department for processing. (Effective 7/1/03)

Rule 8.1.2 Deleted (Effective 1/1/10)

Rule 8.1.3 Continuances (Effective 7/1/03)

Rule 8.1.3.1 Matters Not Ready for Hearing (Effective 7/1/03; rev. 7/1/09 rev. 1/1/10)

On the call of the calendar, matters not ready for hearing normally will be dropped from calendar. A matter is considered not ready for hearing if notices, supplements, proofs of service, or other documentation curing all discrepancies other than strictly court determined matters are not filed prior to 9:00 a.m. at least two (2) court days before the hearing. (Effective 07/01/03; rev. 1/1/10)

Rule 8.1.3.2 Continuances by Stipulation of Counsel (Effective 7/1/03; rev. 1/1/10)

All Continuances stipulated by Counsel shall be approved by the Court and are subject to appropriate filing fees and/or conditions set forth by the Court. Counsel cannot stipulate to a continuance of less than seven (7) calendar days. (Effective 7/1/03; rev. 1/1/10)

Rule 8.1.4 Mandatory Settlement Policy (Effective 7/1/03)
A Mandatory Settlement Conference is required in any contested probate matter in which the estimated time of hearing is in excess of one (1) day. All Mandatory Settlement Conferences shall be conducted pursuant to California Rules of Court rule 3.1380. (Effective 7/1/03)

Rule 8.2 Orders (Effective 7/1/03)

Rule 8.2.1 Ex-Parte Hearings (Effective 7/1/03; rev. 1/1/10)

Ex Parte Hearings may be set in matters requesting or demonstrating:

1. Harm caused by the passage of time;
2. Harm that one or more persons entitled to notice might do to the proposed ward/conservatee, including abduction or harm to the proposed ward's/conservatee's estate if notice to those persons is given;
3. The death or incapacity of the proposed ward's custodial parent and the petitioner's status as the custodial parent's nominee;
4. Medical Emergency;

5. Financial Emergency;
6. Personal Knowledge of irreparable harm or immediate danger;
7. Any other instance as approved by a judicial officer.

a. Contents for Filing: The moving party shall file the Ex Parte Application, or Temporary Petition and all accompanying attachments as applicable, with proper case title captioned; the relief requested; a declaration in support of application; compliance declaration; a proposed order and the applicable fees.

b. Notice: Notice shall be given to all counsel, interested parties, and/or all opposing parties, if not represented by counsel, by 10:00 a.m. the court day before the scheduled hearing.
   1. Compliance: Compliance of the notice requirements shall be stated and filed on an Ex Parte Compliance Declaration.

c. Submission: All required paperwork for the Ex Parte hearing shall be returned to the court clerk by12:00 noon the court day before the scheduled hearing.

Rule 8.2.2 Material to be Included in Probate Orders (Effective 7/1/03)

(a) Orders shall contain the name of the judge presiding, the date of hearing and the department. All orders or decrees in probate matters must be complete in themselves, in that they shall set forth all matters actually passed on by the court, the relief granted, the names of persons and descriptions of property involved with the same particularity required of judgments in civil matters. Probate orders should be so drawn that their general effect may be determined without reference to the petition on which they are based. (Effective 7/1/03)

(b) While in orders setting accounts it is proper to use general language approving the account, the report and the acts reflected therein, it is not sufficient in any order to recite merely that the petition as presented is granted. (Effective 7/1/03)

Rule 8.2.3 All Orders for Continuing Payments Must Have a Maximum Time Limit (Effective 7/1/03; rev. 1/1/10)

The court will not make orders for continuing family allowance payments to run until the further order of the court, but all such orders shall provide that payments shall commence as of a certain date and continue for a period not to exceed a specified number of months. (Effective 7/1/03; rev. 1/1/10)

Rule 8.3 Appointment of Executors and Administrators (Effective 7/1/03)

Rule 8.3.1 Special Administration (Effective 7/1/03; rev. 1/1/06)

(a) A petition for Special Administration of an Estate will not be accepted for filing without concurrent presentation of a Petition for General

Administration of the Estate, except upon good cause shown. (Effective 7/1/03; rev. 1/1/06)

(b) A petition for special letters of administration ordinarily will not be granted without notice to the surviving spouse, the person nominated as executor, and any other person the court determines to be entitled to notice. (Adopted 1/1/06)

Rule 8.3.2 Allegations in Petitions Re Heirs or Beneficiaries (Effective 7/1/03)

(a) The nominated trustee of a trust should be listed as a devisee or legatee and the individual beneficiaries of the trust need not be listed or noticed unless the sole trustee is also the estate representative. (Effective 7/1/03)

(b) If an heir, devisee or legatee dies after the decedent, and a personal representative has been appointed for said person, the deceased heir, devisee or legatee should be listed in care of the name and address of the personal representative. If no personal representative has been appointed, the deceased heir, devisee or legatee should be listed as deceased, the fact that no personal representative has been appointed should be alleged, and the known heirs, devisees and legatees of said deceased person should be listed, or if none are known, the last known address of the deceased person should be listed (Effective 7/1/03)

Rule 8.3.3 Wills and Codicils as Exhibits to Petition (Effective 7/1/03; rev. 7/1/09)

When a Petition for Probate of Will or Codicil, or both, is filed, it shall have attached, where applicable, marked as an exhibit, a copy of the document(s) being offered for probate. If the will or codicil is handwritten, a typewritten copy of the document must also accompany the petition. The original will must be lodged with the court. Exemplified copies of any foreign will lodged elsewhere will be required as an exhibit to the petition. (Effective 07/01/03; rev. 07/01/09)

Rule 8.3.4 Proof of Wills by Affidavit or Declaration (Effective 7/1/03; rev. 1/1/10)

(a) When Court Appearance Required (Effective 7/1/03)

Written proof as to the admissibility of each testamentary document must be submitted or an appearance is required. (Effective 7/1/03)

(b) Multiple Testamentary Instruments (Effective 7/1/03)

Each proffered instrument shall be proved by a separate affidavit or declaration. (Effective 7/1/03)

(c) Deleted (Effective 1/1/10)

Rule 8.3.5 Declinations and Consents to Serve (Effective 7/1/03)

(a) It is insufficient to allege merely that the person named in the decedent's will as executor thereof declines to act as such. In addition, a written declination to act, signed by such person, must be filed with the court. (Effective 7/1/03)

(b) It is insufficient to allege merely that a non-California bank or trust company named as executor is not qualified to act as such in California since it has the right to qualify to do business in California. Instead, its declination to act should be alleged and an executed declination should be obtained and filed. (Effective 7/1/03)

(c) If a Petition for Letters to be issued to two or more executors is filed in which one or more of the named executors for whom letters are sought is not petitioner, a consent to act, signed by each non-petitioning executor for whom letters are sought, must be filed with the court. (Eff. 7/1/03)

Rule 8.3.6 Multiple Representatives (Effective 7/1/03)

When multiple representatives are appointed by an order which directs that letters (testamentary or administration) shall be issued to them, the clerk will not allow less than all to qualify and have letters issued separately. If qualification of less than all is desired, it must be so provided in the order of appointment. All qualified representatives must execute the same original letters. (Eff. 7/1/03)

Rule 8.4 Sales (Effective 7/1/03)

Rule 8.4.1 Published Notice for Sale of Real Estate (Effective 7/1/03)

If Notice of Sale is published, any sale must be in accordance with its terms. If a Petition for Confirmation of Sale is filed alleging the sale took place prior to the date stated in the published notice, the sale cannot be confirmed and new Notice of Sale must be published unless the court, in its discretion permits a supplement to the petition changing the sale date to a date after the date stated in the published notice, correcting the clerical error. The court requires that the specific date of sale be alleged in the return of sale and petition for its confirmation. (Effective 7/1/03)

Rule 8.4.2 Sale of Real Property When Buyer Assumes Encumbrance (Effective 7/1/03)

Except under extraordinary circumstances alleged in the report of sale, sales of real estate will not ordinarily be confirmed where the buyer assumes or takes subject to an existing encumbrance if the estate is subject to a continuing liability on the encumbrance. (Effective 7/1/03)

Rule 8.4.3 Appearance of Attorney for the Estate Required (Effective 7/1/03)

In Petitions for Confirmation of Sale of Real or Personal Property where bidding is authorized, the court will not proceed with the confirmation of the sale in the absence of the attorney of record except in those cases where the administrator, executor, guardian or conservator is in propria persona. (Effective 7/1/03)

Rule 8.4.4 Conditional Sales of Real Property (Effective 7/1/03)

The court will not approve a sale of real property which is conditioned upon the occurrence of a subsequent event (such as change in zoning or obtaining approval from an environmental control board) unless unusual and extraordinary circumstances exist and the necessity and advantage to the estate are shown to the court. (Effective 7/1/03)

Rule 8.5 Inventory, Accounts, Reports, and Petitions for Distribution (Eff. 7/1/03)

Rule 8.5.1 Fees Must Be Stated Even Though Account Waived (Effective 7/1/03)

In accounts or in Petitions for Distribution accompanied by a Waiver of Accounting, the report must state the amount of the administrator's or executor's commissions, and attorney's fees. It must also set forth the estate accounted for and the basis for the calculation. (Effective 7/1/03)

Rule 8.5.2 Description of Distributee (Effective 7/1/03)

(a) The names, ages, relationships and shares of all persons who are affected by the petition must appear in the Petition for Final Distribution. Adult persons may be designated as "adult" or "legal" and for minors, the birth date shall be stated. (Effective 7/1/03)

(b) If a trust is established in which property will be distributed to a beneficiary upon reaching a given age, the petition must allege the date of birth of the distributee. (Effective 7/1/03)

Rule 8.5.3 Notice to Prior Representative or Attorney (Effective 7/1/03)

If there has been a change of personal representative or fiduciary or a substitution of counsel, notice of hearing must be given to such prior representative, fiduciary or counsel of any probate petition in which fees or commissions are requested by the present personal representative, fiduciary or counsel unless: (Effective 7/1/03)

(a) A waiver of notice executed by the prior personal representative, fiduciary or counsel is on file; (Effective 7/1/03)

(b) An agreement on the allocation of fees and/or commissions is on file or included in the petition; or (Effective 7/1/03)

(c) The file and the petition demonstrate that the fees and/or commissions of the prior personal representative, fiduciary or counsel have been previously provided for and allowed by the court. (Effective 7/1/03)

Rule 8.5.4 Documents to be On File Before Order for Distribution of Minor's Bequest (Effective 7/1/03; rev. 7/1/09)

When distribution is to be made to a minor, the petition must allege whether distribution is to be made to the court appointed guardian or to other persons under Probate Code Section 3401 or under the Uniform Transfers to Minors Act. All appropriate certified copies of court orders and Letters of Appointment or the original written assurance under Probate Code Section 3401 must be filed with the Petition for Distribution. A Probate Code Section 3909(b) instrument will be required to complete the transfer. Effective 07/01/03; rev. 07/01/09)

Rule 8.5.5 Decrees of Distribution Establishing Testamentary Trusts (Effective 7/1/03)

Upon Petition for Distribution, the court must determine whether a valid trust has been created by a Will, determine the scope and terms of the trust, and order distribution of the trust property to the trustee. The terms of the trust shall be set forth in the petition and decree in such a manner as to give effect to the conditions existing at the time distribution is ordered. The pertinent provisions shall be set forth in the present tense and in the third person rather than quoting the Will verbatim. (Effective 7/1/03)

Rule 8.5.6 Receipts on Distribution (Effective 7/1/03)

Receipts for any property received by a distributee shall be signed by him or her personally. The court will not accept receipts signed by an attorney-in-fact, except where there is a power of attorney. (Effective 7/1/03)

Rule 8.6 Attorney Fees and Personal Representative Commissions in Decedent's Estate (Effective 7/1/03)

Rule 8.6.1 Amount of Fees to be Specific (Effective 7/1/03)

In all petitions requesting fees, both ordinary and extraordinary, a specific sum shall be requested, not merely "a reasonable amount". (Effective 7/1/03)

Rule 8.6.2 Basis for Statutory Fees Must Be Stated Even Though Account Waived (Effective 7/1/03)
In accounts or in Petitions for Distribution accompanied by a Waiver of Accounting, the report must state the amount of statutory fees payable and set forth the basis for the calculation. (Effective 7/1/03)

Rule 8.6.3 Format for Requesting Extraordinary Fees (Effective 7/1/03)

Application for compensation for extraordinary services will not be considered unless the caption and the prayer of the petition and the notice to affected parties contain a reference to such application for extraordinary fees. All requests for compensation for services for extraordinary fees must be itemized. (Eff.7/1/03)

Rule 8.6.4 **Additional Supporting Documents (Effective 7/1/09)**

The court may require production of additional documentation in support of an account by the personal representative in accordance with Probate Code 10901. (Effective 7/1/09)

Rule 8.7 Accounts and Reports/Guardianships and Conservatorships (Eff. 7/1/03)

Rule 8.7.1 **Personal Property Bond** (Effective 7/1/03; rev. 7/1/09)

Reports of conservators and guardians should reference the amount of the current bond and state whether additional bond is necessary to cover unblocked personal property plus one year's estimated income, and the existence of any facts that justify an additional bond. The report should also show any blocked bank accounts. The report must contain the current address and whereabouts of the conservatee and conservator and describe the conservatee's status and condition. (Effective 7/01/03; rev. 7/1/09)

(a) All proposed conservators are required to view a court approved video regarding their duties and to file a written acknowledgement that they have done so. (Effective 07/01/03; rev. 7/01/09)

Rule 8.7.2 **Additional supporting documents** (Effective 07/01/09)

The court may require production of additional documentation in support of an account by the personal representative in accordance with Probate Code 10901.

Rule 8.8 Guardianships (Effective 7/1/03)

Rule 8.8.1 Appointment of General Guardians (Effective 7/1/03)

Upon filing the petition for appointment of a general guardian, the petitioner shall submit to the Probate Department a proposed order prescribing the notice to be given as required by Probate Code Section 1511. At least fifteen (15) days notice by personal service must be given to the parents, if not petitioning; to the minor, if twelve (12) years or older; and to the persons having custody, if not the parents. Fifteen (15) days notice by mail must be given to all second degree relatives. If petitioner is not a second degree relative, the court may require additional notice

to all relatives within the degree to which the petitioner is related to the minor. (Effective 7/1/03)

Rule 8.8.2 **Duties of Guardian - Liability of Parents to Support Child; Educational Purposes. Probate Code Sections 2420, 2422** (Effective 7/1/03)

Parents are required by statute to support their children. The court will not permit guardianship funds to be used for the minor's maintenance, support or education where one or both parents are living, except upon a showing of the parent's financial inability or other circumstances which would justify departing from this rule in the best interests of the minor. (Effective 7/1/03)

Rule 8.9 Conservatorships (Effective 7/1/03)

Rule 8.9.1 Appointment of Conservator (Effective 7/1/03)

(a) A Petition for the Appointment of a Temporary Conservator will not be considered unless accompanied by a Petition for the Appointment of a General Conservator. (Effective 7/1/03)

(b) A Petition for the Appointment of a Conservator must be filed in quadruplicate, together with the Order Appointing Court Investigator and the Referral for Investigator's Report. (Effective 7/1/03)

(c) The clerk will issue the initial citation. If the citee has not been served with citation or such service is defective, a new citation must issue. If the matter is continued because the citation has not been served or service is defective, the court will order a new citation to issue and fix a new hearing date. (Effective 7/1/03)

Rule 8.9.2 Appointment of Attorneys for Conservatee (Effective 7/1/03)

Representation by an attorney appointed by the court in any of the above cases ceases upon an order of the court relieving said attorney as counsel. (Effective 7/1/03)

Rule 8.9.3 Notice of Change of Address (Effective 7/1/03)

Conservators, guardians and personal representatives shall inform the court of any change of their address, or the address of their wards or conservatees, within thirty (30) days. Failure to comply may result in suspension or removal. (Effective 7/1/03)

Rule 8.9.4 Assessments (Effective 7/1/03)

The court will order the payment of the total assessments levied for the probate investigator in any estate having sufficient funds to pay such assessments when

the conservatorship is terminated by court order and in all cases where the conservatorship is terminated by death. Each account current must include payment of the assessment levied in the accounting period. No final discharge will be granted until proof of payment is filed with the court. (Effective 7/1/03)

Rule 8.9.5 Resignation of Conservator (Effective 7/1/03)

(a) The conservator may resign at any time, but the resignation is not effective until the appointment of a successor conservator (termination does not require resignation). (Effective 7/1/03)

(b) A Petition for Resignation may not be combined with a Petition for Appointment of a Successor conservator. (Effective 7/1/03)

Rule 8.10 Law and Motion And Discovery Matters (Effective 7/1/03)

Rule 8.10.1 Applicability of Kern County Uniform Rules of Court Relating to Law and Motion and Discovery in Probate Proceedings (Effective 7/1/03)

Except where, for good cause, the court dispenses with or modifies notice: (Effective 7/1/03)

(a) Counsel shall comply with the pertinent sections of the Law and Motion and discovery rules of the Superior Court of California, County of Kern, as amended from time to time with respect to demurrers, motions to strike, judicial notice, motions for summary judgment and any other pretrial motions. Service and filing of all motions and responsive papers shall be in accord with said rules. (Effective 7/1/03)

(b) All preference motions under Section 36(a) of the Code of Civil Procedure must be heard and determined in the Presiding Department. When a motion for preference is granted, the attorneys shall be ordered to a Mandatory Settlement Conference, unless directed otherwise by the Presiding Department. (Effective 7/1/03)

Rule 8.11 Withdrawal of Attorneys of Record (Effective 7/1/03)

If an attorney wishes to withdraw from a proceeding as attorney of record for the estate representative or any other fiduciary he/she must file a motion seeking such relief. (Effective 7/1/03)

Rule 8.12 Forms of Documents Presented for Filing (Effective 1/1/06; Rev. 7/1/09; rev. 1/1/10)

(a) All pleadings shall comply with Rules 2.100-2.119 and 3.1110 of the California Rules of Court. All documents and/or pleadings submitted in

which a matter is set for hearing must specify the department number, hearing date, and time underneath the title of the document and/or pleading. (Effective 1/1/06)

(b) Except those received via facsimile filings, all documents containing attachments, schedules, or exhibits shall be indexed and tabbed at the bottom. Where there is a single attachment or exhibit, the index requirement is inapplicable. Each page shall have page numbers to facilitate review by the court. All documents received via facsimile filing shall contain a titled cover sheet between attachments, schedules, and/or exhibits. (Effective 01/01/06; rev. 1/1/10)

(c) Parties shall be required to provide an original and two (2) copies of all submitted documents for filing. (Effective 1/1/06; rev. 1/1/10)

Rule 8.13 Obtaining a Hearing Date (Effective 1/1/06; rev. 1/1/10)

Hearing dates are obtained at the time of the submission of a petition and a notice of hearing to the Clerk of the Court. Hearing dates are assigned by the Court. (Effective 01/01/06; rev. 1/1/10)

Rule 8.14 Consolidation with the Lowest Number (Effective 1/1/06)

Whenever it appears that two or more petitions with different numbers have been filed with reference to the same decedent, conservatee, or minor, the court will, on its own motion, consolidate all of the matters with the matter bearing the lowest number. (Effective 1/1/06)

Rule 8.15 Petition for Confirmation of Trust Assets Pursuant to Estate of Heggstad (Effective 1/1/06; rev. 7/1/09)

(a) Copies of all testamentary instruments shall be attached to the petition. (Effective 1/1/06)

(b) Copies of pertinent and current documents of title to the assets in question shall be attached to the petition. Petitioner shall redact confidential information such as social security and account numbers before attaching the documents to the petition. (Effective 01/01/06;rev 7/1/09)

(c) If the assets to be confirmed are not clearly declared as trust assets in the instrument, or if title was transferred to the trustee and later transferred from the trustee, all persons named in any testamentary instrument as heirs at law must be listed in the petition and given notice, in addition to the notice required by Probate Code Section 17203. (Eff. 1/1/06; rev. 7/1/09)

Rule 8.16 Trustee Compensation (Effective 1/1/06)

Compensation for the trustee will ordinarily be allowed as provided in the governing instrument, unless the court fixes a greater or lesser amount pursuant to Probate Code Section 15680(b). If the instrument is not specific, the court will establish reasonable compensation. A fee of 1% of the fair market value of the ending balance on hand will ordinarily constitute reasonable compensation, prorated if services have been rendered for less than a full year. If compensation higher than 1% of the ending market value is requested, the request must be supported by a detailed description of the services rendered, their necessity, benefit to the estate, expertise required, time expended, and hourly rate. (Effective 1/1/06)

Rule 8.17 Attorney Fees (Effective 1/1/06)

Compensation for attorney for the trust will ordinarily be allowed as provided in the governing instrument. If the instrument is not specific, the court will establish reasonable compensation, based on a detailed description of the services rendered, their necessity, benefit to the estate, expertise required, time expended, and hourly rate. (Effective 1/1/06)

Rule 8.18 Telephonic Court Appearances in Probate Division (Effective 7/1/09)

Within the Superior Court of California, County of Kern, the Probate Division and Departments within said Division shall allow telephonic court appearances through CourtCall. Telephonic court appearances are permitted for non-testimonial hearings and conferences in probate and trust cases, minor's compromises, and compliance hearings. A party may appear by telephone at the following hearings, conferences and proceedings: (1) case management conferences, provided the party has made a good faith effort to meet and confer and has timely served and filed a case management statement before the conference date; (2) trial setting conferences; (3) hearings on law and motion, except motions in limine; (4) hearings on discovery motions; (5) status conferences, including conferences to review the status of an arbitration or mediation; (6) hearings to review the dismissal of an action, (7) compliance hearings. CourtCall may be arranged by contacting CourtCall LLC at 6383 Arizona Circle, Los Angeles, California 90045, toll free telephone number (888) 88-court or (310) 342-0888, fax number (310)743-1850 or (888) FAXIN. Contact must be made at least three (3) days in advance of the appearance or with leave of Court on Ex Parte application and payment of a motion filing fee. Counsel should refer to California Rules of Court 3.670, as amended 01/01/08. (Effective 7/1/09)

Chapter IX. Court Communication Protocol for Domestic Violence and Child Custody Orders (Effective 1/1/06)

This rule provides for a protocol that is adopted in conformity with California Rules of Court, Rule 5.450 and Penal Code Section 136.2. For the purposes of this rule, the following definitions apply: (Effective 1/1/06)

(a) "Criminal court protective order" (hereafter CPO) means any court order issued under California Penal Code Section 136.2 arising from a complaint, an information, or an indictment in which the victim or witness and the defendant have a relationship as defined in California Penal Code Section 13700. (Effective 1/1/06)

(b) "Court" means all divisions of the Superior Court of the County of Kern. (Effective 1/1/06)

(c) "Civil court" means any court that issues custody and visitation orders, specifically including but not limited to Juvenile, Family Law, and Probate. (Effective 1/1/06)

(d) "Cases involving child custody and visitation" include Family Law (dissolutions, legal separations, nullities, Domestic Violence Prevention Act, parentage, petitions for custody and support, domestic partnership actions, child support matters where custody or visitation is an issue, and any other Family Law matters related to custody or visitation), Juvenile, and Probate guardianship proceedings. (Effective 1/1/06)

The purpose of this rule is to set forth a protocol to accomplish the following: (Effective 1/1/06)

(aa) For <u>the courts</u> to share information about the existence and terms of CPOs and other orders regarding child custody and visitation that involve the defendant and the victim or witness named in the CPO. (Effective 1/1/06)

(bb) For <u>courts hearing cases involving child custody and visitation</u> to take every action practicable to ensure that they are aware of the existence of any CPO involving the parties to the action currently before them. (Effective 1/1/06)

(cc) For <u>criminal courts</u> to take every action practicable to ensure that they are aware of the existence of any child custody or visitation court orders involving the defendant in the action currently before them. (Effective 1/1/06)

(dd) For <u>the courts</u> 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 protected person by ensuring that a CPO is not violated. (Effective 1/1/06)

Rule 9.1 Court Communication - Notification of Overlapping Cases (Effective 1/1/06)

The courts shall make reasonable efforts, subject to available resources, to determine the existence of any other cases involving a CPO or custody and/or visitation orders regarding a child or party who is involved in an action before the court. If the court becomes aware of the existence of any other case involving the same child or party before the court, subject to available resources, the court clerk in the case before the court shall inform the court in the other overlapping case of the existence of the case before the court. (Effective 1/1/06)

Rule 9.2 Requirements of Civil Courts Issuing Custody and Visitation Orders (Effective 1/1/06)

Rule 9.2.1 Inquiry By the Court (Effective 1/1/06)

Prior to issuing custody or visitation orders, the Civil Courts should inquire whether there are any CPOs in any court that involve the parties or the children of the parties. (Effective 1/1/06)

Rule 9.2.2 Data Base Review (Effective 1/1/06)

The Civil Courts, prior to issuing any order involving custody or visitation, shall make reasonable efforts , subject to available resources, through use of national, state, or local databases or by any other means legally available, to determine if a civil restraining order or CPO exists for any party to the action. If such orders exist, the court should make reasonable efforts, subject to available resources, to obtain those orders prior to making any custody and visitation orders in the case before the Kern County Court. (Effective 1/1/06)

Rule 9.2.3 Family Court Services (Effective 1/1/06)

Family Court Services shall make reasonable efforts, subject to available resources, to determine if a CPO exists involving any of the parties in cases where the Civil Court has ordered that a child custody or guardianship investigation be performed by Family Court Services. The result of such searches shall be conveyed to the Court in the Family Court Services' report. Although the Court may exclude criminal background checks from investigation orders, Family Court Services will report to the Court any CPO it discovers through the process of the investigation. (Effective 1/1/06)

Rule 9.2.4 Custody and Visitation Orders Issued Subject to a CPO (Effective 1/1/06)

If a Criminal Court that has issued a CPO authorizes the Civil Court to issue an order that permits contact between an restrained person subject to a CPO and a protected person, for the purpose of permitting custody and visitation between the restrained person and his or her children, such Civil Court order shall be specific. It shall contain language setting forth the specific schedule for the contact and the safe exchange of the children, including the time, day, place, and manner of the transfer of the child. Such an order shall not contain language that conflicts with a CPO that provides for no contact with, or limits access to, the other parent. (Effective 1/1/06)

Rule 9.2.5 Civil Courts Transmitting Temporary and Permanent Restraining Orders and Modifications (Effective 1/1/06)

Subject to available resources, when a Civil Court issues custody and visitation orders for a minor child of the parties, and the Civil Court is aware that one of the parties has a criminal case involving a CPO, the court's clerk shall inform the Criminal Court of the custody and visitation order issued. (Effective 1/1/06)

Rule 9.3 Requirements of Criminal Courts Issuing CPOs (Effective 1/1/06)

Rule 9.3.1 Inquiry by the Court (Effective 1/1/06)

When the Criminal Court intends to issue a CPO protecting the victim(s), the Criminal Court may inquire, for the purpose stated in this rule, whether there are any children of the relationship between the defendant and the protected person. (Effective 1/1/06)

Rule 9.3.2 Data Base Review (Effective 1/1/06)

If there are any minor children of the parties, the Criminal Court may make reasonable efforts, subject to available resources, to determine if a CPO exists for any party to the action, or whether there exists any custody and/or visitation orders for the children of the parties. A data base review to determine this information may be conducted through use of national, state, or local databases, or by any other means legally available. (Effective 1/1/06)

Rule 9.3.3 Custody and Visitation Orders Issued Subject to a CPO (Effective 1/1/06)

A Criminal Court that issues a CPO may permit appropriate contact between a criminal defendant subject to a CPO and the protected person in order to allow Civil Court-ordered visitation between a criminal defendant and his or her children. If the Criminal Court permits such contact between the restrained and protected persons, the order for contact shall be indicated on the Judicial Council form entitled Protective Order in Criminal Proceeding (CLETS) and shall comply with the requirements of Penal Code Section 136.2(j)(1) and (2). A CPO takes

precedence over any civil order that has been issued at any time. (Effective 1/1/06)

Rule 9.3.4 Criminal Courts Transmitting CPOs and Modifications (Effective 1/1/06)

When the Criminal Court issues or modifies a CPO in cases where there are minor children of the parties, the issuing court's clerk shall inform any other court that has issued orders for custody and visitation of the existence of the CPO or modification. (Effective 1/1/06)

Rule 9.4 Modification of Criminal Protective Orders (Effective 1/1/06)

Rule 9.4.1 Intended Use of This Rule (Effective 1/1/06)

This rule is intended to apply to situations in which a custody or visitation order has been issued in the Civil Court which creates a conflict with an existing CPO or where a party wishes to seek from a Civil Court an order for custody and/or visitation which would create a conflict with an existing CPO. (Effective 1/1/06)

Rule 9.4.2 Restrained Person's Procedure to Request Modification of the CPO (Effective 1/1/06)

If a person restrained by a CPO has obtained or intends to obtain an order from the Civil Court for custody of or visitation with a minor child of the parties, in conflict with the CPO, the restrained person must first seek a modification of the CPO from the Criminal Court. The Criminal and Civil Courts may consult regarding any modification. After the hearing, if any modifications of the CPO are made by the Criminal Court, the issuing Criminal Court's clerk shall inform any other court that has issued orders for custody and visitation or that has jurisdiction over custody and visitation of the children. (Effective 1/1/06)

Rule 9.5 Requirements of Penal Code Section 136.2(j)(1) and (2) (Effective 1/1/06)

A Civil Court order may coexist with a CPO subject to the following conditions: (Effective 1/1/06)

(a) Any order that permits contact between the restrained person and his or her children shall provide for the safe exchange of the children and shall not contain language either printed or handwritten that violates a "no contact order" issued by the Criminal Court. (Effective 1/1/06)

(b) Safety of all parties shall be the court's paramount concern. The Civil Court shall specify the time, date, place, and manner of transfer of the child as provided in Family Code Section 3100. (Effective 1/1/06)

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