



SUPERIOR COURT OF CALIFORNIA COUNTY OF KERN

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Tamarah Harber-Pickens

Superior Court of California
County of Kern
1415 Truxtun Avenue
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March 6, 2023

The proposed amendments to the Superior Court of California, County of Kern Local Rules of Court, for July 1, 2023, have been posted for comment at www.kern.courts.ca.gov. A hard copy of the proposed rules is available upon request.

1. Chapter I – General Rules
2. Chapter III – Civil Rules
3. Chapter V – Criminal Rules
4. Chapter VI– Family Law Rules
5. Chapter VIII – Probate Matters

You may submit comments by e-mail to WMAdmin@kern.courts.ca.gov or mail to the following address:

Tamarah Harber-Pickens, Court Executive Officer
Superior Court of California, County of Kern
1415 Truxtun Avenue
Bakersfield, CA 93301

All comments must be received no later than 5:00 p.m. on Friday, April 21, 2023.

Sincerely,

Tamarah Harber-Pickens
Court Executive Officer
Superior Court of California, County of Kern

CHAPTER I. GENERAL RULES – PROPOSED CHANGES

Rule 1.2.1 Complaints Concerning Judicial Officers and Subordinate Judicial Officers (Effective 7/1/23)

- (a) A complaint concerning a Judicial Officer or Subordinate Judicial Officer must be in writing unless a disability prevents submission in writing, in which case the designated court employee receiving the complaint will cause it to be reduced to writing.*
- (b) Electronic filing is not available for complaints concerning Judicial Officers or Subordinate Judicial Officers.*
- (c) Each complaint must be mailed to the Court, to the attention of the Presiding Judge - Department 1, 1415 Truxtun Avenue, Bakersfield, CA 93301.*
- (d) Each complaint must provide a return address to which a response may be mailed.*

Rule 1.7.6 Transfer of Actions *Upon the Request of a Party* (Effective 7/1/08; renum. 1/1/13; rev. 7/1/23)

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 1.7.4 above.

CHAPTER III. CIVIL RULES - PROPOSED CHANGES

Rule 3.3 Case Assignments and Reassignments (Effective 7/1/23)

- (a) Notice of Assignment and Service of Notice. New cases are assigned to a specific judicial officer for all purposes. The litigant will receive a Notice of Case Assignment when the case is filed. A copy of this notice must be served on the parties with the case initiating documents. Assignments of civil cases are for all purposes, within the meaning of Code of Civil Procedure §170.6(a)(2). Assignments of civil cases as a result of a disqualification, recusal, or unavailability of another judicial officer will be assignments for all purposes, within the meaning of Code of Civil Procedure §170.6(a)(2).*

- (b) **Reassignment.** *Nothing in these rules shall prevent the court from reassigning a case to a different judge, in which case the court shall notify the parties of the assignment.*
- (c) **Reassignment Due to Change of Judicial Officer in a Department.** *All civil case reassignments initiated by the court, as a result of the change of a judicial officer in a department, are posted online and also on the courthouse electronic monitors or in the courthouse lobbies, and will be noticed through the court's case management system, at least 30 days in advance of the reassignment. The court will mail case-specific notice to all self-represented litigants.*

Current rules 3.3, 3.3.1, and 3.3.2 will be renumbered.

CHAPTER V. CRIMINAL RULES - PROPOSED CHANGES

Rule 5.1.2 Misdemeanor Counter Arraignments (Effective 7/1/23)

In misdemeanor cases, subject to the exceptions noted below, attorneys may use the counter arraignment process. To participate in a counter arraignment, the attorney must be authorized by the defendant to enter a plea of "Not Guilty," and to waive time for trial.

- (a) *The counter arraignment process cannot be used when:*
- 1. A defendant has failed to appear;*
 - 2. A warrant is outstanding;*
 - 3. A violation of Penal Code section 166(a)(4) has been charged;*
 - 4. A violation of Penal Code section 192(c) has been charged;*
 - 5. A misdemeanor offense involving domestic violence, as defined by Family Code section 6211, has been charged;*
 - 6. A violation of Vehicle Code sections 23152 and/or 23153 has been charged and a prior conviction of either offense has been alleged; or*
 - 7. A court case number has not been issued.*
- (b) **Representations of Counsel**
By utilizing the counter arraignment process, the attorney represents and agrees as follows:
- 1. That the client has expressly authorized the attorney to appear on the client's behalf pursuant to Penal Code section 977(a);*
 - 2. That the counter arraignment constitutes a general appearance by the attorney, that the attorney is the attorney of record, and that he/she represents the defendant;*

3. *That the client has expressly waived a formal arraignment and advisement of constitutional and statutory rights, including defendant's right to confront witnesses, defendant's right to subpoena witnesses on his behalf, defendant's right to remain silent, and defendant's right to be present in the courtroom at the time of arraignment;*
4. *That the client has specifically authorized the attorney to act as the client's agent for the purpose of receiving notice from the court of the pretrial date;*
5. *That the client and attorney have agreed that notice of the date to the attorney shall be deemed full, complete, and valid notice to the client;*
6. *That the attorney's use of the counter arraignment process constitutes a representation to the Court that the attorney has specifically advised the client that failure of the client to appear timely on the court date set for pretrial may constitute the crime of failure to appear, and a bench warrant may be ordered.*

(c) Counter Arraignment Process

There are three options for counter arraignments: (1) attorney appearance on the defendant's scheduled court appearance date; (2) submission of the Misdemeanor Counter Arraignment Appearance Form by electronic mail, U.S. mail, or facsimile to the appropriate Clerk's Office; or (3) personal appearance at the Clerk's Office at the location where the case is initially scheduled to be heard.

1. Counter Arraignment by Attorney Appearance

An attorney appearance on the defendant's scheduled court appearance date, if approved by a judicial officer, will allow a pretrial date to be set by the deputy clerk pursuant to Penal Code Section 977(a), without having the matter called and addressed on the record.

2. Counter Arraignment by Electronic Mail, U.S. Mail, or Facsimile

At the court's discretion, attorneys who represent misdemeanor defendants who are not in custody, may arraign their clients by electronic mail, U.S. Mail, or facsimile. This counter arraignment option can be utilized no later than five (5) court days before the defendant's in-court appearance date.

3. Counter Arraignment by In-Person Appearance at the Clerk's Office

At the court's discretion, attorneys who represent misdemeanor defendants who are not in custody, may arraign their clients through in-person appearances at the Clerk's Office at the location where the case is initially scheduled to be heard. This counter arraignment option can be utilized no later than five (5) court days before the defendant's in-court appearance date.

(d) Requirements for All Counter Arraignment Requests

- 1. The Misdemeanor Counter Arraignment Appearance Form must be completed in full by the attorney and delivered to the court. The form can be submitted only by attorneys. The form is available at the court and on the court's website at www.kern.courts.ca.gov by selecting Forms & Filing and Local Forms. Forms submitted in person or by U.S. Mail must be submitted in duplicate and must be accompanied by a self-addressed, stamped envelope.*
- 2. The attorney must fully complete the information on the Misdemeanor Counter Arraignment Appearance Form. If any information is omitted, the form will be rejected and returned to the attorney.*
- 3. In-person appearances at the appropriate Clerk's Office will be conducted between 8:00 a.m. and 2:00 p.m. daily (excluding holidays and weekends) no later than five (5) court days prior to the scheduled in-court arraignment date.*
- 4. Forms submitted by electronic mail, U.S. Mail, or facsimile to the appropriate Clerk's Office must be received between 8:00 a.m. and 2:00 p.m. daily (excluding holidays and weekends) no later than five (5) court days prior to the scheduled in-court arraignment date.*
- 5. Forms received after 2:00 p.m. on any court day, or received on any non-court day, will be deemed to have been received on the next court day.*
- 6. A date for pretrial will be set as directed by the Court, with the waiver of time required to participate in the counter arraignment process taken into account. In any case in which the District Attorney's Office has filed an objection to setting an initial appearance past 21 days, the date for pretrial will be set accordingly.*
- 7. The attorney for the defendant must confirm the pretrial date set by the Court by accessing the court's website at*

www.kern.courts.ca.gov by selecting Case Information, selecting Criminal Case Search, and then using the menu for Criminal Case Information and Calendar Schedule.

8. Any bail bond or cash bail posted, cite and release, or own recognizance release must remain in force from the date of the counter or facsimile arraignment to the next appearance date in the matter. The attorney agrees that any bail bond or cash bail posted, cite and release, or own recognizance release issues are reserved for the next hearing date.
9. For counter arraignments submitted by electronic mail, U.S. Mail, or facsimile, or by in-person appearance at the appropriate Clerk's Office, notice of the arraignment will be sent to the submitting attorney by 5:00 p.m. on the court day following the date the Misdemeanor Counter Arraignment Appearance Form is signed by the judicial officer. If the counter arraignment request is rejected, the defendant and his or her attorney are required to appear in court on the originally scheduled in-court arraignment date.

(e) Failure to Comply

Failure to comply with any of the provisions of this rule may result in the rejection of the counter arraignment request.

CHAPTER VI. FAMILY LAW RULES - PROPOSED CHANGES

Rule 6.1 Case Assignments and Reassignments (Effective 7/1/23)

- (a) Notice of Assignment and Service of Notice.* New cases are assigned to a specific judicial officer for all purposes. The litigant will receive a Notice of Case Assignment when the case is filed. A copy of this notice must be served on the parties with the case initiating documents. Assignments of family law cases are for all purposes, within the meaning of Code of Civil Procedure §170.6(a)(2). Assignments of family law cases as a result of a disqualification, recusal, or unavailability of another judicial officer will be assignments for all purposes, within the meaning of Code of Civil Procedure §170.6(a)(2).
- (b) Reassignment.* Nothing in these rules shall prevent the court from reassigning a case to a different judge, in which case the court shall notify the parties of the assignment.
- (c) Reassignment Due to Change of Judicial Officer in a Department.* All family law case reassignments initiated by the court, as a result of the

change of a judicial officer in a department, are posted online and also on the courthouse electronic monitors or in the courthouse lobbies, and will be noticed through the court's case management system, at least 30 days in advance of the reassignment. The court will mail case-specific notice to all self-represented litigants.

Current rules 6.1, 6.1.1, 6.1.2 and 6.1.3 will be renumbered.

Rule 6.22 Family Law Case Management Plan for Complex Matters (Effective 7/1/23)

- (a) Designation of Case Subject to Family Law Case Management Rules.*** *For any case in which counsel or the parties have a reasonable basis to foresee that the Court will need to oversee and direct discovery, make orders concerning financial matters, and/or order the appointment of experts, either party may serve on the other party and file with the Court a Family Law Case Management Notice ("FLCM Notice") requesting that the case be subject to Local Rule 6.22 ("FLCM Rules"). The Court may also, on its own motion, make an order that the case before it shall be subject to the FLCM Rules.*
- (b) FLCM Notice.*** *The FLCM Notice shall (i) notify the Court and the opposing party of the requesting party's request to subject the case to the FLCM Rules, (ii) notify the opposing party of his or her right to serve and file an objection to the application of the FLCM Rules within 20 days of the FLCM Notice's being served, and (iii) state the basis for the requesting party's request that the case be subject to the FLCM Rules. Nothing in the FLCM Rules relieves either party of his or her fiduciary duties or his or her duty to comply with the California Code of Civil Procedure or other mandatory disclosures under the California Family Code.*
- (c) Timing of FLCM Notice.*** *Either party shall have the right to serve and file the FLCM Notice within 60 days of filing a petition or a post-judgment modification in a family law action or 60 days after a response to a petition or a post-judgment modification has been filed. Notwithstanding the foregoing, with the permission of the Court, the FLCM Notice may be filed at any time. A Court may, in its discretion, also order the parties to comply with the FLCM Rules.*
- (d) Family Law Case Management Conference.*** *Upon filing of the FLCM Notice, the clerk shall set an initial status conference in 60*

days. At the initial status conference, the Court shall meet with counsel to determine the status of and make any rulings on any objections and/or set a Family Law Case Management Conference (herein “FLCMC”).

- (e) **Objections to FLCM Notice.** If a party objects to the application of the FLCM Rules, that party must serve on the other party and file with the Court a written objection within 20 days of the service of the FLCM Notice. The objection shall state any applicable factual or legal basis for the objection. If an objection has been served and filed, the party seeking application of the FLCM Rules may file a response prior to the initial status conference explaining that party’s basis for ordering the parties to comply with the FLCM Rules.
- (f) **Electronic Service.** When the parties consent to, or the Court orders the application of, the FLCM Rules, all parties will be subject to electronic service of all pleadings and documents. Each party shall notify the other party in writing as soon as possible of all electronic addresses to be included in electronic service and shall update any proofs of service accordingly.
- (g) **Initial Disclosures.** Each party subject to the FLCM Rules has an affirmative duty to provide to the other party with all relevant documentation as early as possible. In addition to statutory disclosure under the California Family Code, a party must, without awaiting a discovery request, provide to the other parties the following verified information:
 - 1. **Document Requests.** The Court handling the FLCM case will attach a document request to its standard scheduling order. The parties will be expected to comply fully with these document requests pursuant to the deadlines set forth in the FLCM Rules. It is understood that the parties may ask the Court to append or modify the document requests according to the specific issues or facts of each case. The Court will adopt a standard template document request that will be presumptively non-objectionable.
 - 2. **Documents.** Produce a copy of all documents and tangible things necessary to determine the character, cash flow, value of any assets, business or businesses, or any other relevant

financial information. If any documents cannot be obtained after reasonable efforts by the producing party, a description by category and location and with information sufficient to support a subpoena, shall be provided by the producing party identifying where the relevant documents can be found.

3. Categorization. *The disclosing party shall ensure that all documents shall be categorized and put into an electronic file repository that is accessible by the parties and, if applicable, any experts retained or appointed who will need to review this information.*

4. Electronically Stored Information. *The disclosing party shall produce all documents as they are kept in the normal course of business including the production of documents in their native file format. Upon stipulation of the parties, documents produced can be placed into a shared electronic document repository.*

5. Stipulations. *Unless designated otherwise, a party producing documents agrees to foundation and waives any hearsay objections to any documents produced. For all other documents, the parties shall meet and confer prior to a case management conference as to whether, for trial purposes, foundation and hearsay for documents placed into the electronic repository can be waived to avoid the time and expense of authenticating documents that are not reasonably in dispute for purposes of trial or hearing. If the parties cannot agree on the admissibility of documents, the basis for each objection shall be set forth in the status report.*

(h) Timing of Initial Disclosures. *Unless an objection has been filed, all initial disclosures must be made within 60 days after service of the FLCM Notice, unless a different time is set by stipulation or order of Court.*

- (i) **Verified Initial Disclosure Document.** *The initial disclosure to the opposing party shall be verified.*

- (j) **Duty to Meet and Confer.** *The parties shall meet and confer after service of the FLCM Notice to discuss any issues related to compliance with the FLCM Rules. If an objection has been filed, the parties shall meet and confer as soon as possible after the Court orders that the parties be subject to the FLCM Rules. These issues may include, but are not limited to, (i) specific documents needed by either party, (ii) problems with obtaining ESI, (iii) third party privacy concerns and/or whether any protective orders are necessary, (iv) support issues, and (v) attorney's fees.*

- (k) **FLCMC Status Report.** *A status report shall be made to the Court no later than 10 days prior to the FLCMC. The status report shall state (i) what documents have been requested, (ii) what documents have not been produced, (iii) each party's position with regards to the respective requests for relief and any problems in obtaining discovery covered by the FLCM Rules to obtain that relief, (iv) any other expected issues that have arisen or are expected to occur, (v) whether any experts should be appointed under section 730 of the California Evidence Code, (vi) expected motions that a party anticipates filing, and (vii) a proposed solution to any problems with obtaining compliance with these rules. If attorney's fees are being requested, and if not already served, updated Income and Expense Declarations shall be served concurrently with the status report.*

- (l) **FLCMC.** *It is the expectation of the Court that before the FLCMC, both parties have been working in good faith to meet disclosure deadlines and be ready for the Court to make temporary rulings at the FLCMC. At the FLCMC, the Court should have enough information (i) to determine compliance with initial disclosures under the FLCM rules, (ii) to make any appropriate orders to ensure each party's compliance with his or her duties to disclose documentation and information to the other party, including sanctions, (iii) to make orders regarding temporary spousal support and child support, and (iv) to make orders appointing any experts. The Court has the discretion to set a further FLCMC with deadlines for compliance.*

*(m) **Attorney's Fees.** So that the Court can comply with its duty to make an award of attorney's fees early in the proceeding, the parties shall have provided sufficient information to the Court sufficient for the Court to make orders concerning attorney's fees.*

*(n) **Sanctions.** Separate and apart from any other remedy provided to the Court, the Court shall have the discretion to sanction a party for its failure to comply with the FLCM Rules. Failure to follow this local rule may result in sanctions including, but not limited to, monetary sanctions under section 177.5 of the California Code of Civil Procedure, vacating existing hearing dates, or evidence exclusion orders as may be determined by the Court.*

Rule 6.23 Use of Live Scan (Effective 7/1/23)

- a. Where an adoption, child custody, or Freedom from Parental Rights case requires an investigation by statute, and the required investigation includes criminal history, that criminal history information will generally be obtained from the California Law Enforcement Telecommunications System (CLETS).*
- b. Should a party believe that the criminal history is incorrectly reported, or is unclear, they shall have the option of obtaining another criminal history check by completing the California Department of Justice's Form BCIA 8016 and having fingerprints taken at a Public Applicant Live Scan Site, as certified by the State Department of Justice for an FBI Level of Service. Fees charged by Public Applicant Live Scan Site providers vary and are the responsibility of the proposed adoptive parent or parent. The results of the criminal history check shall be sent directly to the Kern County Superior Court and will be used by the court investigator for the completion of the required reports for the Court.*

CHAPTER VIII. PROBATE MATTERS - PROPOSED CHANGES

Rule 8.10.4 Confidential Information from the California Law Enforcement Telecommunications System (Effective 1/1/20; rev. 7/1/23)

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- (b) Should a proposed guardian believe that their criminal history is incorrectly reported, or is unclear, they shall have the option of*

submitting to another criminal history check by completing the California Department of Justice's Form BCIA 8016 and having fingerprints taken at a Public Applicant Live Scan Site, as certified by the State Department of Justice for an FBI Level of Service. Fees charged by Public Applicant Live Scan Site providers vary and are the responsibility of the proposed guardian. The results of the criminal history check shall be sent directly to the Kern County Superior Court and will be used by the court investigator for the completion of the required reports for the Court. (Effective 7/1/23)

Rule 8.11.1 Appointment of Conservator and Investigation (Effective 7/1/03; rev. and renum. 7/1/18; rev. 1/1/22; **rev. 7/1/23**)

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(c) Should a proposed conservator believe that their criminal history is incorrectly reported, or is unclear, they shall have the option of obtaining another criminal history check by completing the California Department of Justice's Form BCIA 8016 and having fingerprints taken at a Public Applicant Live Scan Site, as certified by the State Department of Justice for an FBI Level of Service. Fees charged by Public Applicant Live Scan Site providers vary and are the responsibility of the proposed conservator. The results of the criminal history check shall be sent directly to the Kern County Superior Court and will be used by the court investigator for the completion of the required reports for the Court. (Effective 7/1/23)