



SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO
Hall of Justice and Records
400 County Center
Redwood City, California 94063-0965

JOHN C. FITTON
COURT EXECUTIVE OFFICER
CLERK & JURY COMMISSIONER

(650) 363-4516
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October 1, 2010

To All Interested Persons,

The Court is proposing to make changes to its Local Court Rules. These new changes will become effective on January 1, 2011 when adopted. The court invites you to review and provide your comment on these proposals as required by the State of California Rules of Court, Rules 10.613.

You may send your comments to:

smsccomment@sanmateocourt.org

with a subject line stating "Comments on Proposed Rule changes. Please state the proposal number, the section and paragraph number on which you are commenting and your comment.

Comments must be received in our office no later than 4 PM, Monday, November 15, 2010.

Sincerely,
John C. Fitton, Court Executive Officer

A handwritten signature in black ink that reads "Timothy J. Gee".

By: Timothy Gee
Court Rules Committee Staff

Proposal Number 10W-01

Title	DIVISION 5 – FAMILY LAW DEPARTMENT, FAMILY COURT SERVICES
Summary	All references to “counselor” changed to “mediators” to comply with current job classification. The amendments also clarify submission of mediator complaints and requests for change of mediator and adds timeframes to make them uniform. Also, various non substantive edits are made.
Discussion	Proposals suggested by Monica Rands-Preuss.
Proposed Changes	<p><u>Rule 5.13 Family Court Services</u></p> <p>A. Mediation Required: Whenever custody or visitation are in dispute, the parties are required by Family Code §3170 to participate in court ordered mandatory mediation either with a counselor-mediator at Family Court Services (FCS) or a private mediator retained by the parties. Upon a showing of good cause, investigations pursuant to Family Code §3110 will be ordered. Investigation is a separate function from that of mediation and may not be ordered unless an attempt is first made to settle a case through mediation.</p> <p>B. Mediation at Family Court Services</p> <ol style="list-style-type: none">1. Location of Family Court Services: Family Court Services is located on the 6th floor of the Hall of Justice and Records, 400 County Center, Redwood City, California. Phone number: 650 363-4561; Fax 650 363-4966. FCS maintains limited hours in the Northern District Branch for day of court mediation and appointments.2. Initiating Family Court Services mediation: If an OSC or motion requests a court order concerning custody or visitation and FCS mediation appears necessary, the moving party, or their attorney, must call FCS when the moving papers are filed to schedule a mediation appointment. If the responding party determines that a custody or visitation dispute exists, which is not set forth in the moving papers, the responding party is responsible for scheduling the earliest possible FCS mediation date and promptly notify the moving party of the time and date for the meeting. (Providing the requested relief is available pursuant to Family Code section 213).3. Parent Orientation Workshop: All parties filing an OSC or motion related to custody and visitation of minor children are required to complete a parent orientation workshop prior to mediation. Parties can meet this requirement by:<ol style="list-style-type: none">a) Viewing the orientation presentation and Pparent Handbook online at www.sanmateocourt.org/fcs. Parties are required to bring their certificate of completion to their mediation appointment.b) Parties may attend the Family Court Services Parent Orientation in person at the Court by calling FCS at 650 363-4561 or register on-line at www.sanmateocourt.org/fcs/signup/4. Failure to Appear at Mediation: The Court will impose a fine of \$100 on a party who receives reasonable notice of the mediation at FCS and fails to appear

without good cause or who cancels within 48 hours of the appointment.

5. Submitting Mediation Data Sheet and Declarations: At or before the mediation session, each party must submit a completed Family Court Services Mediation Information Sheet. Blank mediation data sheets may be obtained from Family Court Services. If day of court mediation is going to be requested, the parties are expected to have completed the day of court Family Court Services Mediation Information Sheet prior to having their matters called in court. The parties should indicate to the courtroom clerk that they plan to request a referral to Family Court Services.

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

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

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

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

9. Complaints and Requests to for Change of Counselor Mediators (Pursuant to F.C. 3163):
 - A. All requests for a change of mediator and/or formal complaints shall be in writing. A Complaint Form is available online at www.sanmateocourt.org/xxx. or by contacting the Family Court Services office at (650) 363-4561.
 - B. Comments about the mediation process, complaints, and/or requests to change mediators shall be directed to the Manager of Family Court Services and should be made at the earliest possible time after the mediation session, but in no event later than 10 calendar days

after the report.

C. A peremptory challenge of a ~~counselor~~mediator is not allowed.

~~A.~~

~~B. A party may request a change of counselor as follows:~~

~~1. Requesting a Client Comment Form or sending a written request to the Manager of Family Court Services outlining the reasons for the request.~~

~~C.~~

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

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

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

~~E.~~

3.F. The Manager shall review the request and shall advise the parties of the decision in writing. The other party will be copied on the communication. The Manager's decision is final.

10. Separate Mediation: If there is a restraining order, the parties will be seen separately. A party who alleges under penalty of perjury that they have been a victim of domestic violence may request separate mediation even though there is no current restraining order. Protected parties or parties who allege domestic violence may have a support person in the mediation session. The support person must be at least 18 years of age and cannot be the attorney of record for either party. The support person must sign a FCS form agreeing to keep the mediation confidential. The support person is present for emotional support and cannot speak or offer comments to the mediator or advice to the parent. If the support person is disruptive to the mediation, the ~~counselor~~mediator will exclude the support person.

11. Involvement of a Child in the Process: In general, children are interviewed by the mediator without the parents present. Family Court Services does not provide the type of parent-child interaction/attachment assessment that is included in a private child custody evaluation. However, a child seen with one parent shall also be seen with the other parent unless there is a court order stating otherwise, or, in an unusual case, the evaluator determines that such observation is unnecessary or not in the best interests of the child. The mediator has the discretion to determine the number of interviews and amount of time spent with each parent-child combination and whether siblings should be interviewed separately or jointly.

12. Recommendation by Mediator or Evaluator: If the parties are unable to resolve issues of custody or visitation by mediation, the FCS ~~counselor~~mediator will submit a written recommendation and the reasons for the recommendation to the parties, their attorneys and the court. The court will consider the recommendation at the time of the hearing. A party has the right to cross-examine the ~~counselor~~mediator during the hearing. A subpoena is required to ensure attendance of the ~~counselor~~mediator.

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

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

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

15. Confidentiality of Reports: A mediator's Memo to the Court shall be confidential and unavailable to any person except the court, the parties, their attorneys and any person to whom the court expressly grants access by written order made with prior notice to all parties. Except for the section of the Memo labeled "Recommendations" or "Agreements" the memo should never be attached to any pleadings made part of the Court file. Minors should not have access to the Memo to the Court.

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

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

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

C. Court Ordered Private Child Custody Evaluations:

1. Court appointed evaluators shall abide by the requirements of Rule 5220, et seq. Uniform Standards of Practice for the Court Ordered Child custody evaluation in the California Rules of Court.

2. No peremptory challenge to a Court appointed evaluator is allowed.

3. Evaluators may petition to withdraw from a case by submitting a request in writing to the court and mailing copies to the counsel for the parties. The request

shall include the reason for the request and a status report on any action taken by the evaluator appointed to the case.

4. Grievance Procedure: Complaints regarding the evaluator's performance shall be submitted to the Court for review. All submitted written complaints will receive a response from the Court.

5. The evaluator may initiate an ex parte communication with the court to define the scope, process and methods of the evaluation when authorized by the order appointing the evaluator.

6. All child custody and visitation evaluations shall be ordered by the court and evaluators will be appointed under Evidence Code Section 730. The court may elect not to consider evaluations which have not been approved and ordered by the court.

7. A copy of the appointment of the evaluator under Evidence Code Section 730 will be made available to the court assigned evaluator. A court ordered evaluation may be limited in scope to the issues identified by the court.

8. Information from Children: The court relies on the judgment of its experts in making decision about when, how often, and under what circumstances children are interviewed. The expert shall be able to justify the strategy used in any particular case. Except in extraordinary circumstances, including the potential for danger to the child, children shall be informed that the information provided by the child will not be confidential.

9. Any evaluation based on interviews with only one parent shall not include a recommendation regarding custody.

10. Payment of the Evaluation: The court will order payment of the evaluation at the time of the appointment.

11. Any court ordered child custody evaluation shall be submitted to the court and ~~counselor~~mediator for the parties not less than ten (10) days before the hearing or trial.

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

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

Proposal Number 10-W 02

Title	DIVISION II, COURT MANAGEMENT CHAPTER 5. GENERAL RULES
Summary	New rules that will facilitate the return of records to parties at the conclusion of the case and will provide other parties the opportunity to obtain certified copies of records before the court returns them to the proffering party.
Discussion	Proposals to facilitate the handling of exhibits after trial. These proposals will also assist in reducing the volume of records that the court will need to store when not statutorily mandated.
Proposal	<p><u>Rule 2.11 Return of Exhibits</u></p> <p>At the conclusion of trial, all exhibits and materials admitted into evidence, including administrative records and transcripts of depositions, will be returned to the custody of the offering party. Any party in custody of any trial exhibit or trial material must maintain said item(s) in the same condition in which they were received from the clerk for at least 60 days after the expiration of the appeal period, unless an appeal is pending, in which case after the determination of the appeal when a final judgment or dismissal of the entire case is entered.</p> <p>(Adopted, effective January 1, 2011)</p> <p><u>Rule 2.12 Certified Copies of Exhibits</u></p> <p>Any party may request the court to provide certified copies of exhibits at the conclusion of trial and before the exhibits and materials are returned to the offering party. The clerk will prepare and provide such copies at the expense of the requesting party.</p> <p>(Adopted, effective January 1, 2011)</p>

Proposal Number 10-W 03

Title	DIVISION IV – PROBATE DEPARTMENT
Summary	Recommended changes are made to clarify that the deadline dates for filing in the specified sections are “court days” rather than calendar days. This brings all of the rules in this division in line with other rules where the changes were made earlier. The other change is to correct the title of the agency referenced.
Discussion	Comments on defining filing deadline dates to “court days” are suggestions that came out of meetings the Presiding Judge with the Local Probate Bar. The other change is made to clarify the correct name of the agency.
Proposal	<p><u>Rule 4.6 Appearance</u></p> <p><i>Paragraphs A thru C are unchanged.</i></p> <p>D. Proposed Order. Except in the case of confirmations of sales and contested matters, a proposed order must be submitted to the office of the Clerk of the Court, Probate Division, at least five (5) court days in advance of the scheduled hearing date, with the scheduled hearing date noted on the face sheet. Failure to submit a timely proposed order five (5) <u>court</u> days in advance of the hearing may result in a continuance of the hearing.</p> <p>E. Personal appearance by counsel will be required in the following cases:</p> <ol style="list-style-type: none">(1) Contested matters.(2) Proof of holographic wills, only when specially required by the hearing judge.(3) Hearings on petitions for court confirmation of sales of property.(4) Appointment of guardian or conservator.(5) Any non-routine matter that by law requires the personal appearance of any person. <p>(Adopted, effective July 1, 1996)(Amended, effective January 1, 2000; effective July 1, 2004) (<u>Amended, effective January 1, 2011</u>)</p> <p>Rule 4.77.3 Service of Document</p> <p><i>Paragraphs A to C are unchanged.</i></p> <p>D. A copy of the notice, petition, and Guardian Screening form shall be mailed to <u>youth-Children</u> and Family Services 400 Harbor Blvd., Belmont, CA at least fifteen (15) days prior to the hearing.</p> <p>E. For petitions filed by non-relatives, a copy of the notice of hearing and petition must be mailed to the Director of Social Services in Sacramento, California at least</p>

fifteen (15) days prior to the hearing.

(Adopted, effective July 1, 2004) (Amended, effective January 1, 2011)

Rule 4.77.14 Temporary Guardianship - Emergency Situations Only

A. If temporary guardianship is necessary, the court may consider the application with a short notice period (5 court days) or no notice (ex parte) [Prob.C. § 2250]. In exigent circumstances, petitions may be presented ex parte between 2:00 – 3:30 p.m. (M,TU, W, TH,F) On those days that the Probate Presiding Judge is not available, the petitioner shall present his/her petition to the court’s Presiding Judge or the judge designated to hear ex parte matters. It is the policy of the Court not to change the residence of the proposed ward absent exigent circumstances and a recommendation by the Court Investigation unit.

Paragraphs B thru H are unchanged.

(Adopted, effective July 1, 2004) (Amended, effective July 1, 2005)

(Amended, effective July 1, 2006) (Amended, effective January 1, 2009)

(Amended, effective July 1, 2009) (Amended, effective January 1, 2011)