



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 17, 2007

Following are proposed amendments to the Local Court Rules that will become effective on January 1, 2008 when adopted. The court invites you to review and provide comments to these proposals.

You may send your comments to:

smcomment@sanmateocourt.org

with a subject line stating "Comments on Proposed Local Rules". Please refer to the proposed rule number either F 07-01 or 07-02, Rule number and line number.

Comments must be received in our office no later than 4 PM, November 30, 2007.

Sincerely,
John C. Fitton, Court Executive Officer

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

By: Timothy Gee
Court Management Analyst

1 **PROPOSED LOCAL RULE CHANGE –F 07-01**

2
3 **Rule 5.6 Ex Parte Orders**

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5 *Sections A. to C. Unchanged.*

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7 **D. Declaration Regarding Noticing of Ex Parte Application.** An application for an ex parte order
8 must be accompanied by a written affidavit or declaration that shall include the following information
9 [\[See Local Form FL-8\]](#):

- 10 1. Information on whether the opposing party is represented by counsel; and
11 2. The name, address, and telephone number of the opposing attorney or the opposing self-
12 represented party; and
13 3. Explanation of how notice [of submitting the application](#) was given to the other party pursuant
14 to California Rules of Court 3.1203-3.1204 by either:
15 a) Providing the date, time and manner of giving notice; or
16 [b\)](#) Specifying reasons why notice has not been given.

17 This rule applies to initial applications whether or not the other party has appeared in the
18 proceedings or is represented by counsel.

19
20 **E. Notice Requirements-Generally.** Ordinarily, an ex parte order will not be issued without the
21 following :

22
23 1. Reasonable notice was given to the [adverseopposing](#) party so that the party might oppose the
24 application. Reasonable notice is defined according to the California Rules of Court, Rules 3.1203-
25 3.1204 [as notifying all parties no later than 10:00 a.m. the court day before the ex parte is presented](#)
26 [to the court](#). The moving party shall deliver the moving papers to the opposing party, or the
27 opposing party’s attorney, at the earliest reasonable opportunity in advance of presenting the
28 application to the court. [“Earliest reasonable opportunity” is defined as providing a copy of the](#)
29 [moving papers to the opposing parties simultaneously with submitted the moving papers to the](#)
30 [court](#).

31
32 [2.](#) Delivery of the moving papers to the [adverseopposing](#) party shall be made by the most
33 expeditious means available, including, but not limited to personal delivery or facsimile
34 transmission. Notice cannot be made by facsimile alone unless there is prior agreement between
35 the parties, which is set forth in the moving party’s declaration. If served by facsimile transmission,
36 the moving party shall include in their declaration evidence that the opposing party or their counsel
37 actually received said transmission during normal business hours.

38
39 [3.](#) –The moving party shall notify the opposing party of the specific date, time and location the ex
40 parte application will be submitted to the court.

41
42 [4.](#) [Responding/opposing attorneys or self-represented parties shall submit their objections to the](#)
43 [party moving for ex-parte application and the court in writing within 24 hours of submission of the](#)
44 [proposed orders to the Court. The Court may request an expedited response in some instances.](#)

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46 **F. Notice Requirement – Emergency Circumstances.** If the moving party alleges that notification
47 may negate the benefit of the requested relief, ex parte relief may be granted without the required notice if
48 the necessary statutory requirements have been met. The Declaration of Notice shall set forth the factual
49 basis upon which such claim is based. This includes an adequate showing that giving notice would
50 frustrate the purpose of the proposed order or that the applicant would suffer immediate and irreparable
51 injury before the [adverseopposing](#) party can be heard in opposition.

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53 *Sections G. to M. unchanged.*

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55 (Adopted, effective January 1, 2000) (Renumbered *formerly 5.5*) and Amended, effective January 1, 2004) (Amended,
56 effective January 1, 2008)

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58 *Discussion: These changes are made following a request from the San Mateo County Bar Association's*
59 *Family Law Division. The changes clarify the procedures to be followed when a party seeks to obtain an*
60 *Ex Parte court order in Family Law matters. These changes have been made after consulting with*
61 *members of this Court and of the local Bar Association. There are also proposed changes to the Local*
62 *Ex Parte Court form to conform with these proposed changes so that more of the necessary information*
63 *will be provided to the court to assure that the proper procedural steps were taken.*
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3 **PROPOSED LOCAL RULE CHANGE –F 07-02**
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5 **CHAPTER 8**

6 **LOCAL RULE 2.36 PUBLIC ACCESS TO COURT RECORDS, RULE 2.37 MARKING**
7 **OF CONFIDENTIAL OR SEALED RECORDS, RULE 2.38 PUBLIC ACCESS, RULE**
8 **2.39 ELECTRONIC ACCESS**

9
10 **RULE NUMBERS 2.31 TO 2.35 ARE RESERVED**

11 **CHAPTER 8. ACCESS TO COURT RECORDS**

12
13 **Rule 2.36 Public Access and Privacy**

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16 **A. Personal Identifiers** Except as provided in Rules of Court 2.500 through 2.506, an electronically
17 filed document is a public document at the time it is filed unless it is sealed under rule 2.551(b) or made
18 confidential by law. [See Rule of Court 2.254(d)]. In order to promote electronic access to case files
19 while also protecting personal privacy and other legitimate interests, parties must refrain from including,
20 or must redact (i.e. remove or black out) where inclusion is necessary, the following personal data
21 identifiers from all pleadings and other papers filed with the court, including exhibits thereto, whether
22 filed electronically or in paper/hard copy, unless otherwise ordered by the court:

23
24 **(1) Social Security numbers.** If an individual's social security number must be included in a
25 pleading or other paper, only the last four digits of that number should be used.

26
27 **(2) Names of minor children.** If the involvement of a minor child must be mentioned, only the
28 initials of that child should be used.

29
30 **(3) Dates of birth.** If an individual's date of birth must be included in a pleading or other paper,
31 only the month and year should be used.

32
33 **(4) Financial account numbers.** If financial account numbers are relevant, only the last four
34 digits of these numbers should be used.

35
36 **B. Privileged or confidential information.** No party shall intentionally include within pleadings, nor
37 attach as exhibits, any information or material that the filing party knows or should have known to be
38 subject to a claim of privilege or confidentiality.

39
40 **C. Filing of Sensitive Documents.** A party wishing to file a document containing the personal data
41 identifiers listed above, or material known to be subject to a claim of privilege, may file an unredacted
42 document under seal as provided herein. The party must file a redacted copy for the public file.
43

44 **D. Responsibility for Redaction.** The responsibility for redacting personal identifiers and privileged
45 or confidential information rests solely with counsel and the parties submitting the documents. The Clerk
46 will not review each pleading or other paper for compliance. The court may impose sanctions for
47 violation of these requirements if sought by an individual who's confidential or privileged information
48 was published.

51
52 **Rule 2.37 Marking of Confidential or Sealed Records.** Every document that is placed in a court file
53 must be marked filed, lodged or received and if a document is confidential by law or sealed by order of
54 the court, that document must be placed in a sealed envelope and marked either confidential or sealed.

56
57 **Rule 2.38 Public Access.** Exhibits or attachments to a document that are filed or lodged with or
58 otherwise presented to the court, that are not otherwise marked as confidential or sealed, may be subject
59 to public viewing and access either at the courthouse or electronically on-line (California Rules of Court,
60 Rule 2.503, et seq.).

62
63 **Rule 2.39 Electronic Access.** Documents that are part of a court record are reasonably made available
64 to the public electronically under the Court's Electronic Imaging program as permitted by California
65 Rules of Court, Rules 2.500, et seq. Documents that are not properly protected by being marked
66 confidential or sealed by court order may be subject to public access as discussed in Rule 2.38.

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68 (Adopted, effective January 1, 2008)

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71 *Discussion: These Rules are being proposed to codify the provisions of Standing Order 07-92. The*
72 *Rules will protect the privacy of confidential by law or other sensitive information from being viewable by*
73 *persons not authorized to see them as well as establishing protocol for the handling of court records that*
74 *contain confidential by law or privacy -sensitive materials.*

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3 **PROPOSED LOCAL RULE CHANGE –F 07-03**

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5 **RULE 9.10 LOCAL CRIMINAL FELONY AND MISDEMEANOR BAIL SCHEDULES**

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7 These procedures and schedule for adoption of local felony and misdemeanor bail schedules, hereinafter
8 referred to as "local bail schedules", are adopted pursuant to California Penal Code, sections 1269b (c)
9 and (d) and California Rules of Court(CRC), Rule 4.102. These uniform countywide bail schedules will
10 be used for setting bail at all times provided by law.

11
12 A. The local bail schedules are effective from July 1 to June 30 of the following year.

13
14 B. Judicial officers of this court designated by the Presiding Judge will review and revise the local bail
15 schedules annually and submit their revisions to the Judges Committee for review and approval. The
16 proposed revised local bail schedules will be reviewed and shall be adopted by a majority of the
17 judicial officers at the judges April meeting.

18
19 C. Amendments to the local bail schedules may be made during the year at any time upon a majority
20 vote of the judicial officers of this court.

21

22 D. Copies of the local bail schedules shall be sent to the officer in charge of the county jail and of each
23 city jail within the county, to each judicial officer of this court and to the Judicial Council [PC §
24 1269b(f), CRC, Rule 4.102].

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26 (Adopted and effective January 1, 2008)
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29 *Discussion: This proposed rule sets forth the procedures and schedule for the adoption of our court's*
30 *local criminal bail schedule as required by Penal Code section 1269b. The current procedures are not*
31 *set out in any written policies or procedures. Adopting this rule will memorialize the procedures and*
32 *schedule that the court can follow to meet this statutory requirement.*
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2 **PROPOSED LOCAL RULE CHANGE –F 07-04**
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4 ***RULE 11.1 Motions and Notice of Motions***
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6 ~~—(a)— All motions shall be heard only upon such notice as may be required by law. Any response~~
7 ~~shall be delivered to the Court with proof of actual service on the opposing party no less than two~~
8 ~~(2) court days before the date of the hearing, notwithstanding the provisions of C.C.P. Section 1005.~~
9 ~~Time constraints imposed as a result of the failure of a criminal defendant to waive time constitute good~~
10 ~~cause for an order shortening time.~~

11
12 ~~—(b)— All motions shall be noticed and responded to in writing, and all notices, responses, points~~
13 ~~and authorities and supporting documents shall state with particularity the grounds for the motion or the~~
14 ~~opposition, all relevant facts, and specific points and authorities in support of the motion or opposition.~~

15
16 ~~—(c)— All motions requiring testimony will be heard only upon a special setting or on a regular~~
17 ~~calendar appropriate for such hearing, the date to be obtained from the Clerk.~~

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19 (Adopted, effective July 1, 1996) (Repealed January 1, 2008)
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22 *Discussion: Local Rules that conflict with or are overridden by statute or State Rules of Court should be*
23 *revised to reference the statute or State Rule of Court. Rule 11.1 is repealed since it is superceded by our*
24 *Local Rule 3.1 and is governed by provisions in the Calif. Rules of Court as set forth in our local rules in*
25 *Division.*
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2 **PROPOSED LOCAL RULE CHANGE –F 07-05**
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4 **RULE 5.16.1 INFORMATION SHARING PROTOCOL BETWEEN AND AMONG THE**
5 **COURT AND DEPARTMENT OF CHILDREN & FAMILY COURT SERVICES (DCFS),**
6 **FAMILY COURT SERVICES (FCS), PROBATE COURT INVESTIGATORS (PCI), FAMILY**
7 **LAW FACILITATOR (FLF), DISTRICT ATTORNEY'S VIOLENT CRIME UNIT (VC), AND**
8 **JUVENILE PROBATION OFFICERS (JPO) STAFF.**
9

10 Sections A and D-F unchanged.
11

- 12 B. ~~FCS may include information described in Section “A” above in the confidential portion of their~~
13 ~~court reports and keep such information in their case files.~~ Any information received in under Section
14 “A” above shall be kept in the confidential portion of the Family Court Services case file.
15
- 16 C. Exchange of Documents.
- 17 1. The respective agencies may provide written documents to each other, unless otherwise
18 restricted under Family Code §3025.5. The documents may include, but are not limited to,
19 relevant portions of investigation notes, progress notes and summaries, information regarding
20 the health status of the minor, any documentation relative to paternity and court reports
21 containing information described in “A.1” and “A.2” above.
22
- 23 2. Child abuse and neglect reports described by Penal Code Section 11167.5 (*Suspected Child*
24 *Abuse Report* form #S-8572), information disclosing the identity of a reporting party, or court-
25 ordered psychological evaluations will not be exchanged between the agencies absent a court
26 order.
27
- 28 3. Copies of Department of Children Family Services (DCFS) or Juvenile Probation Office
29 (JPO) documents, used by Family Court Services(FCS), or Public Court Investigator
30 (PCI) shall not be attached to their respective court reports and shall not be made
31 available to the public without a juvenile court order.
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33 (Adopted, effective July 1, 2007) (Amended, eff. January 1, 2008)
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36 **Discussion:** A concern was raised, when Rule 5.16.1 was adopted earlier this year, that while
37 there should be an exchange and sharing of case information between the interested agencies and
38 the court, confidential information should be protected and not be inadvertently released and
39 shared with entities who may not be authorized to view the information. These proposed
40 changes tighten up the controls on information that can be made available for sharing. Other
41 minor changes are made to make the materials more understandable.
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2 **PROPOSED LOCAL RULE CHANGE –F 07-06**
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4 **RULE 5.8 TRIAL SETTING, STATUS CONFERENCE, AND MANDATORY SETTLEMENT**
5 **CONFERENCE RULES**
6

7 **Sections A- B are unchanged.**
8

9 C. Status Conference:

- 10 1. Date set upon filing: Except as set forth in paragraph 2. below, Eevery case for
11 dissolution of marriage, nullity, or legal separation filed after the effective date of
12 this rule will be assigned a Status Conference with the assigned judicial
13 department on a date and time to be provided by the court upon filing of a
14 Response. The Conference will be set in the assigned department approximately
15 120 days from the filing of the Response unless both counsel or self represented
16 parties request that the Status Conference be held earlier, a judgment has been
17 entered, or a dismissal has been filed. The court will serve a copy of the Notice of
18 Assignment and Status Conference on the parties when the Conference is set.
19
- 20 2. If the parties to a case for dissolution of marriage, nullity, or legal separation elect
21 to resolve their matter using the collaborative law process (also referred to as

collaborative practice), then they may defer the setting of a Status Conference provided they file a Stipulation and Order to Defer Setting of Status Conference. Thereafter, if upon termination of the collaborative law process, either party wishes to set a Status Conference, s/he may do so either by filing a Request to Set Status Conference or by filing a motion.

3. (former paragraph 2)
4. (former paragraph 3)
5. (former paragraph 4)
6. (former paragraph 5)
7. (former paragraph 6)
8. (former paragraph 7)
9. (former paragraph 8)
10. (former paragraph 9)
11. (former paragraph 10)

Sections D to F are unchanged.

(Adopted, effective Jan. 1, 2004) (Amended, effective Jan. 1, 2005)(Amended, effective July 1, 2005)(Amended, effective Jan. 1, 2007)(Amended, effective Jan. 1, 2008)

Discussion: Recommendation is submitted by the San Mateo County Bar Association’s Family Law Executive Committee.

PROPOSED LOCAL RULE CHANGE –F 07-07

Rule 4.81.17 ACCOUNTS AND REPORTS

- A. Accounting records that need to be provided to the court are set forth in See Probate Code sections 2620, and 1061-1063. ~~Specifically, conservators of the estate must file a Confidential Asset Verification as delineated in Probate Code section 2620(d).~~ Schedules for Income and Disbursements shall be stated in chronological and also categorical format.
- B. Private Professional or licensed guardians or conservators who are required to file original account statements with the court under Prob.C. § 2620(c)(3) shall “Lodge” those records with the court rather than filing them as permitted under this code section. These records will be returned to the submitting party when the court determines the guardian’s or conservator’s accounting is final.
- C. Any person who is submitting records as required pursuant to Prob.C. § 2620 shall file an affidavit captioned “CONFIDENTIAL FINANCIAL STATEMENT” that describes the character of the documents attached to it as described in Prob.C. § 2620(c)(7) [confidential or personal information contained in the accounting records]. The submitting party must comply with the provisions of § 2620(c)(7).
- D. Individuals who “Lodge” their records under this Rule shall:
 - (1) Review and comply with the Procedures for Lodging Confidential Financial Statements that can be found on the Court’s Website in the Probate section under the “General Information” tab or from the Probate Investigator’s Office.

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(2) Deliver the records to be lodged to the Court’s Probate Investigator’s Office in Redwood City, California.

(3) All statements must be placed in a 9x12 or 10x13 manila envelop. If one envelope is insufficient to hold all of the statements, additional envelopes shall be used and numbered in sequence (i.e. 2 of 4). However if ten or more packets are being submitted, the records shall stored in a cardboard storage box.

(4) Pick up the lodged documents from the court within (5) five court days after the “Order Approving Account”

B.E. The Public Guardian is exempt from stating their Schedule for Income and Disbursements in chronological format by account and in a categorical format as required in paragraph “A” above.

(Adopted, effective July 1, 2004 [formerly Rule 4.81(h)(1)])(Amended, effective January 1, 2008)

***Discussion:** The 2006 Omnibus Conservatorship and Guardianship Reform Act requires Private Professional Conservators to file every bank statement within any given accounting period. Previously they were required to file only the first and last account statements.. Probate Code Section 2620 now gives private professionals the option of "lodging" documents at the Court but indicates that a Local Court Rule would need to be developed. It is noted that this code section does not apply to Public Guardian or private family conservators.*

Provisions of Prob.C. §2620 allows for the return of the bank statements to the depositing person at the final determination of the guardian’s or conservator’s accounting. Not filing these records will eliminate the need for the records to be placed in the court file, thus reducing the size of the file, and allows for easier return of the records without further court action.

59 **PROPOSED LOCAL RULE CHANGE – LR07-01**
60