



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

JOHN C. FITTON  
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March

28, 2011

To All Interested Persons,

The Court is proposing to make changes to its Local Court Rules. These new changes will become effective on July 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](mailto: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, Wednesday, May 11, 2011.

Sincerely,

John C. Fitton, Court Executive Officer

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

By:  
Court

Timothy Gee  
Rules Committee Staff

<b>Proposal Number 11-SPR - 01</b>	
<b>Title</b>	<b>DIVISION II, COURT MANAGEMENT CHAPTER 5. GENERAL RULES</b>
<b>Summary</b>	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.
<b>Discussion</b>	Proposals to facilitate the handling of exhibits after trial. The proposal will expedite the return of exhibits to the parties. These proposals will also assist in reducing the volume of records that the court will need to store when not statutorily mandated to do so. The court's capacity to store records is greatly diminishing. The Administration's options are running out as to how to handle the burgeoning volume of records being stored. This proposal will assist with reducing the records that have to be stored and gives administration the ability to remove exhibits that it does not need to store. This version of the proposal incorporates language from C.C.P. § 1952.2 regarding retention of exhibits after trial.
<b>Proposal</b>	<p>Chapter 5. General Rules Proposed NEW Rule 2.11 Return of Exhibits in Civil Cases</p> <p>Notwithstanding any other provisions of law, upon a judgment becoming final, at the expiration of the appeal period, unless an appeal is pending, all exhibits and other materials admitted into evidence or otherwise presented at a civil trial, including transcripts of depositions and administrative records, will be returned to the custody of the offering party.</p> <p>(Adopted, effective July 1, 2011)</p> <p>Rule 2.12 Certified Copies of Exhibits</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 July 1, 2011)</p>

<b>Proposal Number 11-SPR - 02</b>	
<b>Title</b>	<b>DIVISION 5 – FAMILY LAW DEPARTMENT, FAMILY COURT SERVICES</b>
<b>Summary</b>	<p>Calif. Rules of Court, 5.240(e) that addresses court ordered counsel to represent minors, mandates that courts are to:</p> <p><i>“By January 1, 2010, each court must develop local court rules in accordance with rule 10.613 that provide for acceptance and response to complaints about the performance of the court-appointed counsel for a child.”</i></p> <p>This proposal addresses this mandate so that we will be compliant with CRC 5.240.</p>
<b>Discussion</b>	<p>This proposed Rule is required in order to comply with the mandate in CRC 5.240. A search was conducted of several courts in the State for sample rules and this draft is drafted from those samples.</p>
<b>Proposal</b>	<p><b><u>PROPOSED NEW LOCAL COURT RULE [mandated by CRC 5.240(e)]</u></b></p> <p><b><u>Rule 5.14.1 Complaint Procedure for Court Appointed Counsel</u></b></p> <p>A. In a family law proceeding in which the Court has appointed counsel for minor children, any party or counsel or minor child may present a complaint about the performance of appointed counsel. The complaint must be in writing that must be delivered to the courtroom clerk for the Supervising Judge of the Family Law Court and is served on all counsel and self-represented parties in the action. The Supervising Judge of the Family Law Division shall respond to the complaint, either by setting the matter for hearing or by issuing a written response. In the event that the judicial officer, who appointed counsel to represent the minor, is the sitting Family Law Supervising Judge, the complaint will still be served as required herein but the matter will be referred to the Court’s Presiding Judge for review.</p> <p>B. The written complaint shall include the case name, number, the name of the judicial officer assigned to the case, and the name of the minor’s counsel. The complaint shall be as specific as possible regarding the alleged inadequacies or behaviors which give rise to the complaint. A copy of the complaint must also be served on all counsel and self-represented parties.</p> <p>C. The Family Law Supervising Judge shall have the discretion to investigate and respond to the complaint directly or set the matter for hearing.. The Court shall respond complaint within 60 days of receipt of the complaint. The Family Law Supervising Judge or Presiding Judge, when appropriate, will then take whatever steps he or she deems appropriate with respect to the complaint.</p> <p>(Adopted, effective July 1, 2011)</p>

**Proposal Number 11-SPR 03**

<b>Title</b>	<b>Amendment to Rule 4.81.1 “Petition for Appointment of a Conservator” and Rule 4.81.4 “Special Requirements on Appointment or Termination of Conservator</b>
<b>Summary</b>	<p>Existing rules identify the necessary forms required to accompany a Petition for establishment of a conservatorship and indicate circumstances that require appointment of a Court Investigator to conduct an investigation.</p> <p>Rule 4.81.1, requires petitioners to file an “Order Appointing Court Investigator (GC-330) when filing a Petition for establishment of a conservatorship.</p> <p>Rule 4.81.4 requires a court investigation for all petitions to establish conservatorships, to add a co-conservator, or to appoint a successor conservator. A court investigation for a petition to terminate a conservatorship is not required unless otherwise ordered by the court and a limited investigation may be ordered by the court pursuant to Probate code section 1826(p).</p> <p>Effective January 1, 2011 the Judicial Counsel revised the “Order Appointing Court Investigator (GC-330) and created two new forms designated as form GC-331 “Order Appointing Court Investigator” (Review and Successor Conservator Investigations) and form GC-332 “Order Setting Biennial Review Investigation and Directing Status Report Before Review”. Each of the revised and new forms was designated for optional use and are no longer mandatory.</p> <p>This proposal will dispense with the use of the optional new and revised forms “GC-330, GC-331 and GC-332” as follows:</p> <ol style="list-style-type: none"><li>1. Local Rule 4.81.1 and 4.81.4 be modified to dispense with the use of the new forms and to list the situations in which the Court Investigator is appointed to conduct an investigation; and</li><li>2. That a “Standing Order” be adopted specifically to order and direct the Court Investigator to conduct an investigation as described and directed.</li></ol>
<b>Discussion</b>	<p>A survey of other bay area courts found that few, if any of the courts are utilizing the new forms and concerns have been raised regarding their content. Additionally, there is a move underway to further revise the new forms.</p> <p>A review of existing case filings within our own court found that correct use of the former mandatory form GC-330 was not consistent and resulted in</p>

improper and incomplete orders. Although the form was submitted for filing with the petition, it appears that in many cases the form was filed incomplete, with no boxes checked, or completed incorrectly. Parties, often pro pers, were charged with completing the forms, correctly or not. Once filed, they appear to have been subsequently stamped with the Judges signature, resulting in incomplete or inappropriate orders. Without changing the current local rules, GC-330 would continue to be completed and filed by the parties and keep the door open to inconsistent and inappropriate orders. The two new forms, GC-331 and GC-332 require “Preparation by court only” and the requisite time and expense for staff time to do so.

Rule CRC 7.1060 effective January 1, 2011 provides courts the authority to require or dispense with the use of the new and revised Judicial Council forms “GC-330, GC-331 and GC-332”. The committee adopting the new rule encouraged courts to make an election to explicitly use or dispense with the form orders explicitly by adoption of a local rule, and further granted several alternatives for an Order Appointing the Court Investigator to be made. The alternatives include a general order, a court-prepared order, or a local form order be used instead to appoint and direct the actions of court investigators concerning all or any of the investigations and reports described in the three forms.

In order to eliminate the need for parties to file the revised GC-330 which often results in the filing of improper and incomplete orders, and to avoid the time and expense necessary for court staff time to complete the new GC-331 and GC-332, it’s proposed that:

1. Local Rule 4.81.1 and 4.81.4 be modified to dispense with the use of the new forms and to list the situations in which the Court Investigator is appointed to conduct an investigation; and
2. That a “Standing Order” be adopted specifically to order and direct the Court Investigator to conduct an investigation as described and directed.

**Proposed Change(s)**

Rule 4.81.1 Petition for Appointment of a Conservator.

- A. A petition for establishment of a conservatorship requires the following forms:
- (1) Petition for Appointment of Probate Conservator (GC-310);
  - (2) Confidential Supplemental Information (GC-312);
  - (3) Notice of Hearing (GC-020);
  - ~~(4) Order Appointing Court Investigator (GC-330);~~
  - ~~(5)~~ Ex Parte Order Authorizing Disclosure of Proposed Conservatee’s Health Information to Court Investigator (HIPPA) (GC-336)
  - ~~(6)~~ Capacity Declaration-Conservatorship (GC-335 );
  - ~~(7)~~ Dementia Attachment to Capacity Declaration (GC-335A)
  - ~~(8)~~ Citation (GC-320);
  - ~~(9)~~ Confidential Conservator Screening (GC-314);

~~(409)~~ Duties of Conservator and Acknowledgment of Receipt of Handbook (GC-348);  
(~~410~~) Conservatee's Information and List of Relatives (Local Court Form PR-1);  
and  
(~~421~~) Appointment of Probate Referee (Estate) local form.

B. All filings regarding initial conservatorship petitions [initial petitions and supporting documentation, amended petitions or other amended supporting documents] or Petition for Independent Powers **must** consist of an original and three copies of each document stated herein. Signatures should be made with blue ink. The Clerk will retain the original and two copies of all documents filed. (The Clerk will deliver the copies to Court Investigators.) The third copy will be returned to the party for his or her records, stamped "endorsed-filed". The information contained in the Confidential Supplemental Information and Confidential Conservator Screening are not part of the public record.

C. Subsequent filings regarding conservatorships [accountings, confidential status reports, other petitions or documents] **must** consist of an original and two copies. Signatures should be made with blue ink. The clerk will retain the original and one copy of all documents filed. (The clerk will deliver the copy to the Office of the Court Investigator.) The second copy will be returned to the party for his or her records, stamped "endorsed-filed".

D. Petitions requesting Dementia Authority Powers, filings must consist of an original and three copies of all required documents. (The clerk will deliver two copies to the Office of the Court's Investigator). Reference: Probate Code section 1821; California Rules Of Court, Rule 7.1050; and Local Rule §.4.81.10.

(Adopted, effective July 1, 2004 [former Rule 4.81(a)]) (Amended 1/05)(Amended, July 1, 2005) (Amended, effective January 1, 2009) (Amended, effective July 1, 2010)

Rule 4.81.4 Special Requirements on Appointment or Termination of Conservator.

A. There shall be a court investigation of all petitions, *to establish* conservatorships to add a co-conservator or appoint a successor conservator.

[B. Following the appointment of a conservator, a court investigation shall be conducted for the first annual and each subsequent bi-annual review set by the court. A court investigation shall also be conducted for each established conservatorship as otherwise ordered by the court pursuant to Probate Code section 1850\(b\).](#)

[CB.](#) A court investigation of a petition to terminate conservatorships is not required unless so ordered by the court. A limited investigation may be ordered by the court pursuant to Probate code section 1826(p).

[D. By Standing Order of the Court the Court Investigator is appointed to conduct the above referenced court investigations](#)

E. C. When an initial petition for conservatorship is filed, and at any future time when conservatorship documents are filed, the Clerk will retain a copy, and will deliver the copy to the Court Investigator. (Parties should submit an original and two copies of any document in order to receive back an “endorsed-filed” copy.)

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

**Proposal Number 11-SPR 04**

<b>Title</b>	<b>Division V. Family Law Department and Family Court Services</b>
<b>Summary</b>	This proposal amends Local Rule 5.7 G allowing the admission of live testimony in hearings as mandated by AB 939 (Chapter 352, 2010) enacted January 1, 2011.
<b>Discussion</b>	<p>AB 939 (Chapter 352, 2010) enacted January 1, 2011 made several changes to procedures in Family Court proceedings. One in particular, new Fam.C. 217, was enacted in response to Elkins vs. Superior Court (2007) 41 Cal.4<sup>th</sup> 1337, that now allows live testimony “<i>at any hearing on any order to show cause or notice of motion brought pursuant to this code...</i>” _The proposed amendment to our Local Rule 5.7 eliminates our local procedures on presentation of evidence at hearings and adopts the proceedings set forth in Fam.C. 217 and any State Rules of Court (CRC) that will be developed by the Judicial Council in compliance with AB 939.</p> <p>While AB 939 makes many other changes to Family Court procedures that may impact other provisions of our Local Rules, the Administrative Office of the Courts has recommended that courts delay making any other changes to their local rules until the CRCs are developed and other guidelines are released as to court procedures to implement AB 939.</p> <p>However, the change to Rule 5.7 is needed now and presented for adoption in this cycle of changes since it is important to comply with the new Fam.C. 217 as soon as possible so to allow parties their ability to present live testimony in Family court proceedings.</p> <p>The new Fam.C. 217 is:</p> <p><b>217.</b> (a) <i>At a hearing on any order to show cause or notice of motion brought pursuant to this code, absent a stipulation of the parties or a finding of good cause pursuant to subdivision (b), the court shall receive any live, competent testimony that is relevant and within the scope of the hearing and the court may ask questions of the parties.</i></p> <p>(b) <i>In appropriate cases, a court may make a finding of good cause to refuse to receive live testimony and shall state its reasons for the finding on the record or in writing. The Judicial Council shall, by January 1, 2012, adopt a statewide rule of court regarding the factors a court shall consider in making a finding of good cause.</i></p> <p>(c) <i>A party seeking to present live testimony from witnesses other than the parties shall, prior to the hearing, file and serve a witness list with a brief description of the anticipated testimony. If the witness list is not served prior to the hearing, the court may, on request, grant a brief continuance and may make appropriate temporary orders pending the continued hearing.</i></p>
<b>Proposed</b>	<b>Rule 5.7 Order to Show Cause and Notice of Motion Rules</b>



**Change(s)**

A. to F. Unchanged Moving and Responsive Papers

G. Presentation of Evidence at the Hearing:

Presentation of testimony at the hearing is dictated by the provisions of Family Law Code section 217 and any rules of court adopted by the Judicial Council regarding implementation of Family Code section 217.

~~1. Limitation on Evidence/Oral Testimony: Counsel shall be prepared to present their case based upon their moving and responsive papers, declarations, and at the court's discretion by offer of proof. Generally, testimony by a witness is not permitted on the Order to Show Cause or motion calendars.~~

~~2. Declarations Received in Evidence: Consistent with the rule enunciated in *Reifler v. Superior Court* (1974) 39 Cal. App.3d 479, and subject to legal objection and cross examination where appropriate, all declarations will be considered received in evidence at the hearing. In granting or denying applications for orders, it is the court's policy to determine contested issues based solely on the moving and responsive papers, admissible evidence contained in the declarations timely filed with the court, and arguments based thereon.~~

~~1. Offer of Proof: In lieu of testimony an offer of proof may be made during any hearing or trial at the court's discretion. An offer of proof is a succinct statement given by counsel that states what a particular witness would say if called to the stand. Offers of proof are subject to the same evidentiary objections as testimony and should be distinguished and presented separately from argument.~~

~~2. Witnesses: A party seeking to introduce oral evidence by a witness at the hearing must comply with the requirements of California Rules of Court, Rule 3.1306. Even if such notice is given, receiving testimony shall be left solely to the discretion of the court.~~

Section H to I are unchanged.

(Adopted, effective January 1, 2000)(Amended and renumbered (*formerly Rule 5.6*), effective January 1, 2004) (Amended, effective January 1, 2005) (Amended, effective January 1, 2007) (Amended, effective January 1, 2010)(Amended, effective July 1, 2010) (Amended, effective July 1, 2011)