

## INVITATION FOR PUBLIC REVIEW AND COMMENT

[Proposed Effective Date of January 1, 2013]

Pursuant to California Government Code § 70631 and California Rules of Court, Rule 10.613 (g) and 10.815(b), the following proposed amendments to the Local Rules are hereby distributed for public comment and notice. The affected items are:

### Proposed Revisions to Local Court Rules

**Fall 12 – 01** DIVISION IV – PROBATE DEPARTMENT

Rule 4.1 – General Provisions  
Rule 6.9 – Basis for Developing Northern Venue

**Fall 12 – 03** DIVISION III – CIVIL LAW AND MOTION – SUPERIOR COURT

Rule 3.15 – Unlawful Detainers

**Fall 12 – 05** DIVISION XI – CIVIL RULES

Rule 11.5 – Juries: Fees and Demands

**Fall 12 – 06** DIVISION V – FAMILY LAW DEPARTMENT AND FAMILY COURT SERVICES

Rule 5.12 – Department of Child Support Services

**Fall 12 – 08** DIVISION V – FAMILY LAW DEPARTMENT

Rule 5.2 – Court Locations

**Fall 12 – 09** DIVISION V – FAMILY LAW DEPARTMENT

Rule 5.6 – Ex Parte Orders  
Rule 5.6.1 – Request for Emergency Orders

**Fall 12 – 10** DIVISION V – FAMILY LAW DEPARTMENT

Rule 5.13 – Family Court Services

### Submitting Comments

- Comments must be submitted addressed to *Proposed Rules* via email at [smsccomment@sanmateocourt.org](mailto:smsccomment@sanmateocourt.org).
- Please state the proposal number, the section and paragraph number on which you are commenting and your comment.
- Comments must be received **no later than 3:30 p.m. on Friday, November 9, 2012.**

**Proposal Number FALL 12-01**

<p><b>Title</b></p>	<p><b>DIVISION IV – PROBATE DEPARTMENT RULE 4.1 – GENERAL PROVISIONS</b></p> <p><b>DIVISION VI – OTHER SPECIAL DEPARTMENTS AND CALENDARS, RULE 6.9 – BASIS FOR DEVELOPING NORTHERN VENUE</b></p>
<p><b>Summary</b></p>	<p>Consolidate all Probate Court functions at the Southern Division in Redwood City and cease hearing Probate matters at the Northern District Venue located in South San Francisco.</p>
<p><b>Discussion</b></p>	<p>Rule 6.9 currently allows all proceedings under the Probate Code where the deceased at the time of death or the missing person at the time of disappearance was, or where the incompetent, proposed conservatee or minor is, a resident of the Northern District, and all proceedings where the petitioner for appointment as executor, administrator, conservator or guardian at the time of filing the petition is a resident of the Northern District to be heard at the Northern District venue located in South San Francisco. Due to a very limited volume of northern filings (14 in 2011) and prior elimination of the Satellite Office in South San Francisco, there is no clerk’s office support for filing documents after hearings are conducted and legal research assistance staff is not on site. The process for having cases heard in the Northern District is cumbersome for the public, the processes courtwide are inconsistent, which leads to confusion as to specific courtrooms where hearings will be held.</p> <p>Rule 4.1 is amended so that it is evident to the public that all Probate matters and Family DVPA, harassment and temporary orders under Family Law statutes are to be filed and heard at the Southern Division in Redwood City.</p>
<p><b>Recommendation</b></p>	<p>Modify Rule 4.1</p> <p>Modify Rule 6.9 to remove section (a)</p>
<p><b>Proposed Changes</b> (insert text of new rule or changes here with track changes)</p>	<p><u>Rule 4.1 General Provisions</u></p> <p><u>F. Venue for Probate Cases</u></p> <p><u>All proceedings under the Probate Code are to be filed with the Probate Division’s Clerk’s Office at the Hall of Justice, 400 County Center, first floor, Room B, Redwood City, California. All Probate Court proceedings will also be heard at the Southern Division in Redwood City, California, unless otherwise ordered by the Presiding Judge pursuant to Local Rule 6.9.</u></p> <p><u>Rule 6.9 Basis for Establishing Northern District Venue</u></p> <p><u>Northern District venue is proper in <del>the following cases:</del>any action or proceeding where, in the discretion of the presiding judge or a designated supervising judge, for the convenience of the witnesses, the efficient administration of the court or the ends of justice would be promoted by assignment to the Northern Department. Regularly set court hearings held at the Northern Branch will be posted on the Court’s calendars. Parties in other cases assigned to the Northern District will be notified of their assignment</u></p>

by written or verbal notice provided by the Court.

~~(a) All proceedings under the Probate Code where the deceased at the time of death or the missing person at the time of disappearance was, or where the incompetent, proposed conservatee or minor is, a resident of the Northern District, and all proceedings where the petitioner for appointment as executor, administrator, conservator or guardian at the time of filing the petition is a resident of the Northern District.~~

~~(b) Actions for domestic violence, harassment, and temporary orders only under the Family Law Act where the petitioner resides in the Northern District.~~

~~(c) Any action or proceeding where, in the discretion of the presiding judge, convenience of the witnesses, the efficient administration of the court or the ends of justice would be promoted by assignment to the Northern Department.~~

(Adopted, effective July 1, 1996) (Amended, effective January 1, 2013)

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**Proposal Number FALL 12-03**

<b>Title</b>	<b>DIVISION III – CIVIL LAW AND MOTION – SUPERIOR COURT LOCAL RULE 3.15 UNLAWFUL DETAINERS</b>
<b>Summary</b>	Amend Local Rule 3.15 so that setting of a hearing on a demurrer or other moving papers set forth in the Rule is consistent with the Code of Civil Procedure and the California Rules of Court.
<b>Discussion</b>	This proposal to amend Local Rule 3.15 or moving papers under CCP 1170.5 will bring the Rule on setting a hearing on a demurrer in line with the hearing setting requirements in the Code of Civil Procedures and the California Rules of Court. The current minimum 5 day requirement to set the hearing date is changed to no less than 16 court days to no more than 35 calendar days after filing of the demurrer or moving papers under CCP 1170.5.
<b>Recommendation</b>	Approval of the Rule change to be consistent with the CCP and CRC.
<b>Proposed Changes</b>	<p>Rule <u>3.15 Unlawful detainers</u></p> <p>(a) Reference CCP 418.10, 1170.5(b) and (c), and CCP '1005.</p> <p>(b) Timing.</p> <p>1) <u>Motion to Quash Service.</u> A motion to quash service of summons on the ground of lack of jurisdiction, pursuant to CCP§ 418.10(a), must be made not less than three days nor more than seven days after the filing of the notice. The hearing on the motion shall be automatically set on the first Law and Motion date, which is not less than three, nor more than seven days after the filing of the notice.</p> <p>2) <u>Demurrers.</u> When a demurrer, a motion pursuant to CCP 1170.5(b) and (c) or any other motion or pleading is filed other than an answer, the hearing thereon shall be automatically set on the <del>first</del> Law and Motion Calendar following the date of the filing, if that calendar is <del>five or more</del> <u>no less than 16 court days or more than 35 calendar</u> days after filing. If not, the hearing shall be set for the second Law and Motion Calendar following the date of the filing. (See CCP ' 1005, <u>California Rules of Court, Rule 3.1320(d)</u>.)</p> <p>3) <u>Summary Judgment Motions.</u> Motions for summary judgment or judgment on the pleadings shall be calendared on the first Law and Motion Calendar occurring five or more days after personal service of the notice of motion or ten or more days after service by mail.</p> <p>4) <u>Re-setting of hearing date.</u> Should any party notice a demurrer, motion for summary judgment or other motion on a date beyond the time set forth in this Rule, any other party may apply for an ex parte order setting an earlier hearing date.</p> <p style="text-align: center;">(Adopted, effective January 1, 2000). (<u>Amended, effective January 1, 2013</u>)</p>

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**Proposal Number FALL 12-05**

<b>Title</b>	<b>LOCAL RULE 11.5 JURIES: FEES AND DEMANDS</b>
<b>Summary</b>	Rule 11.5 is amended to make the advance jury fee non-refundable so that it will be consistent with recent legislative changes to CCP 631 and 631.3.
<b>Discussion</b>	<p>The Governor signed into law SB 1021, Stats, 2012, ch.41 (Budget Trailer Bill) that became into effect on June 27, 2012. Part of the Bill amended CCP 631 and 631.3 that in part made the advance jury fee of \$150 non-refundable.</p> <p>Formerly, when a party deposited their advance jury fee, which formerly set at up to \$150, they can seek a refund of their fee if a jury was not used in the proceedings or it was continued. Under SB 1021, the advance jury fee is now set at a flat rate of \$150 and is non-refundable, regardless of whether a jury was used or not. This amendment to Rule 11.5 is necessary to bring our Rule in line with the amendment.</p> <p>The recently enacted AB 1481 (Stats. 2012, chptr. 342) further amends CCP 631 that addresses the time requirements for posting of jury fees. These amendments incorporate those additional changes.</p>
<b>Recommendation</b>	Adoption of this amendment to remove the provisions of Rule 11.5 so that the advance jury fee paid will be non-refundable.
<b>Proposed Changes</b>	<p>Rule 1.5 Juries: Fees and Demands</p> <p>Jury fees shall be deposited <del>and may be refunded</del> as provided in Code of Civil Procedure Sections 631 and 631.3. <del>No refunds of the Jury fees deposited shall be made where the party making the deposit has failed to give the Clerk written notice of settlement or of the granting of a motion of continuance at least two court days before the date set for trial.</del> Parties in civil actions shall be deemed to have waived their right to a trial by jury in all cases in which they would otherwise be entitled to such a trial, by an express waiver or failure to demand a jury, or in any other manner prescribed by C.C.P. § 631 or 631.3, <del>specifically including but not limited to, a failure to demand a jury at the time the cause is first set for trial.</del></p> <p>In unlawful detainer cases in which a jury is demanded, a jury will be deemed to be waived unless the party demanding the jury either: (1) deposits jury fees <u>as required pursuant to C.C.P. § 631(c)(1)</u> or (2) obtains an order to proceed in forma pauperis, <del>and</del> prior to 10 AM on the <del>third full court</del><u>fifth</u> day prior to the day set for trial - not counting weekends or non-judicial days established pursuant to law.</p> <p>(Adopted, effective July 1, 1996) (Amended, effective January 1, 2009) <u>(Amended, effective January 1, 2013)</u></p>

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**Proposal Number FALL 12-06 (Revised)**

<b>Title</b>	<b>DIVISION V – FAMILY LAW DEPARTMENT AND FAMILY COURT SERVICES</b>
<b>Summary</b>	The meet & confer provision of Rule 5.12.B. should be changed from permissive to mandatory; and (2) the payee listed in rule 5.12.D.1. should be updated to the California State Disbursement Unit (SDU) in Sacramento.
<b>Discussion</b>	<p>The first request is consistent with Local Rule 5.7.F.1. (Meet and Confer Requirements) and is aimed at efficiently determining contested and uncontested issues for presentation to the Court, exchanging relevant information, and increasing the probability of settlement. The time frame for the mandatory meet and confer is consistent with the new CRC, Rule 5.98 that goes into effect on January 1, 2013. The proposed rule allows for the Meet and Confer to take place either in person or by conference call.</p> <p>The second request is in consonance with Federal and State mandates for the utilization of a State Disbursement Unit.</p>
<b>Recommendation</b>	Adoption of the recommend changes so that Rule 5.12 will be consistent with Local Rule 5.7.F.1 and with Federal and State mandates.
<b>Proposed Changes</b> (insert text of new rule or changes here with track changes)	<p><u>Rule 5.12 Department of Child Support Services</u></p> <p>A. All matters involving the Department of Child Support Services shall be heard and set on the Child Support Services (DCSS) calendar. All domestic relations matters involving the Department of Child Support Services shall be heard at the Hall of Justice, 400 County Center, Redwood City unless the Department has provided a written waiver.</p> <p>B. The DCSS calendars are set at either <del>8:30:00</del> a.m. or <del>1:30:00</del> p.m. <del>as p</del>Parties are <del>expected</del> <u>required</u> to meet and confer with <del>the</del> representative(s) <del>of at</del> the Department of Child Support Services office, <u>555 County Center, 2<sup>nd</sup> Floor, Redwood City, no later than one (1) hour</u> prior to the calendar call, <u>unless otherwise ordered by the Court. A party making a telephone appearance may meet and confer with DCSS telephonically.</u></p> <p>C. When the County of San Mateo is providing public assistance benefits to a custodial parent pursuant to Welfare and Institutions Code §11477, the San Mateo County Department of Child Support Services is an indispensable party to any action involving child support. The party seeking establishment, modification or enforcement of a child support order shall give the Child Support Agency written notice as required by case law. [See In re Marriage of Mena (1989) 212 Cal. App. Ed 12 and In re Marriage of Lugo (1985) 170 Cal. App. 3d 427.] Upon a showing that adequate notice was given to the Child Support Agency, the action may be heard despite the absence of a representative from the Child Support Agency’s office.</p> <p>D. All orders involving the Department of Child Support Services shall include the following provisions:</p> <ol style="list-style-type: none"> <li>1. All payments shall be made by wage assignment payable to the <del>Department of Child Support Services</del> <u>California State Disbursement</u></li> </ol>

[Unit, P.O. Box 989067, West Sacramento, CA 95798-9067;](#)

2. The Payor must provide the Department of Child Support Services with their date of birth, social security number, income information, employer's name, employer's address, and residential address.
3. The Payor must notify the Department of Child Support Services in writing with 48 hours of any change of address, income or employment.
4. The Payor shall provide health insurance for the child/children in the action, if available at no or reasonable cost through their employment.
5. The Payor shall provide documentation showing proof of health insurance coverage to the Department of Child Support Services within 48 hours.

E. The parties may use the Department of Child Support Services case number to litigate issues of child custody and visitation.

(Adopted, effective January 1, 2000) (Renumbered (formerly Rule 5.10) and amended, effective January 1, 2004) ([Amended, effective January 1, 2013](#))

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**Proposal Number FALL 12-08**



<b>Proposal Number FALL 12-09</b>	
<b>Title</b>	<b>DIVISION V – FAMILY LAW DEPARTMENT AND FAMILY COURT SERVICES</b>
<b>Summary</b>	This proposal will add a new local rule to comply with new procedures created in the California Rules of Court for requesting “emergency orders” as defined in CRC 5.151, et seq.
<b>Discussion</b>	This proposed new Local Rule 5.6.1 is being added to comply with the new California Rules of Court, Rules 5.151, et seq. that establishes new procedures for “Request for Emergency Orders” that goes into effect on January 1, 2013. The new CRCs establishes procedures for requesting order for specifically defined situations, thus taking them out of the regular “Ex Parte” process.
<b>Recommendation</b>	To add the new local Rule 5.6.1 to distinguish the procedures for the newly established “Emergency Orders” from our current Ex Parte Orders.
<b>Proposed Changes</b> (insert text of new rule or changes here with track changes)	<p><u>Rule 5.6 Ex Parte Orders (except Requests for Emergency Orders under CRC, 5.151, et seq., please see Rule 5.6.1).</u></p> <p>(Adopted, effective January 1, 2000) (Renumbered (<i>formerly 5.5</i>) and Amended, effective January 1, 2004) (Amended, effective January 1, 2008) (Amended section E, effective July 1, 2008) (Amended, effective January 1, 2012) (<u>Amended, effective January 1, 2013</u>)</p> <p><u>Rule 5.6.1 Request for Emergency Orders</u></p> <p><u>Please see California Rules of Court (CRC), Rules 5.151, et seq., for procedures governing requests for “Emergency Orders” as defined in CRC, Rule 5.151(a) and (b). For all other Ex Parte matters not covered under CRC 5.151, et seq. please see the procedures in Rule 5.6 above.</u></p> <p><u>(Adopted, effective January 1, 2013)</u></p>

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<b>Proposal Number FALL 12-10</b>	
<b>Title</b>	<b>DIVISION V – FAMILY LAW DEPARTMENT AND FAMILY COURT SERVICES</b>
<b>Summary</b>	This proposal updates the Rules to reflect the elimination of the Family Court Services at our Northern Branch.
<b>Discussion</b>	The Court is centralizing its Family Court Services operations and will no longer have hours at its Northern Branch. The change to Rule 5.13 eliminates reference to the Family Court Services hours at the Northern Branch.
<b>Recommendation</b>	Adopt the changes so that the Local Rules will reflect our Court’s change in services.
<b>Proposed Changes</b> (insert text of new rule or changes here with track changes)	<p><u>Rule 5.13</u>      <u>Family Court Services</u></p> <p>Paragraphs A, B 2 through 14, C 2 through 12 are unchanged.</p> <p>B.    Location of Family Court Services</p> <p>1.      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. <del>FCS maintains limited hours in the Northern District Branch for day of court referrals and appointments.</del></p> <p>(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).(Amended, effective January 1, 2012)(<a href="#">Amended, effective January 1, 2013</a>)</p>

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