

## PROPOSED AMENDMENTS TO LOCAL RULES, EFFECTIVE JANUARY 1, 2009

### 1.02 Effective Date of Rules.

These Rules shall take effect ~~July 1, 2008~~ *January 1, 2009*.

(Effective 1/1/95; Amended 7/1/01; Amended 1/1/03; Amended 7/1/07; Amended 1/1/08; Amended 7/1/08; Amended 1/1/09)

### 6.08 Taking Matters Off Calendar.

A matter may be dropped up to 48 hours before the calendar appearance date by ~~notifying opposing counsel and the court~~ *stipulation and order*. In any event, all parties must appear unless excused by the court pursuant to ~~minute~~ *written* order.

(Effective 1/1/95; Amended 1/1/96; Amended 1/1/09)

### ~~11.06.2 Requirement for Court Reporter at Jury Trial and Contested Proceedings.~~

~~The services of the official reporter shall be required at jury trial and, as directed by the court, may be required at any contested proceeding. Unless other arrangements have been made, the parties shall be required to pay the costs of the court reporter in equal proportions (Gov. Code §69953).~~

~~(Effective 1/1/97)~~

### 6.19 Court Appointed Attorney Fees.

Interim claims for attorney fees must be submitted at least every ninety (90) days, while the matter is pending. Final claims must be submitted within sixty (60) days of completion of the case. For the purposes of this rule, completion of the case is defined as the pronouncement of judgment, the filing of a Substitution of Attorney replacing the court appointed counsel, or an order relieving the counsel of record, whichever occurs first.

If an attorney is appointed to represent a party in a habeas corpus or other post-judgment proceeding, including an appeal, interim claims for attorney fees must be submitted at least every ninety (90) days *and, on or before, May 31* while the matter is pending. Final claims must be submitted within thirty (30) days of the post-judgment ruling or order becoming final.

*Interim bills may be denied in whole or in part without prejudice. In those cases, those bills denied without prejudice may be resubmitted with the final bill or as otherwise ordered by the court.*

Untimely claims may, in the discretion of the court, be denied.

(Effective 7/1/08; Amended 1/1/09)

## **8.14 Civil Mediation Program.**

A. **Purpose:** The purpose of the civil mediation program is to promote and facilitate the voluntary resolution of civil disputes.

B. **Eligibility:** All general civil cases may be assigned to civil mediation if (1) the parties agree to participate; and (2) the court so orders. Cases will be ordered to mediation at a Case Management Conference. A failure by any party to participate in good faith in the mediation may result in the imposition of sanctions.

### **C. Mediators:**

1. The court will maintain a roster of court-approved mediators, referred to as “Panel Mediators.” All mediators will be required to attend an orientation session before they are accepted on the Panel. Members of the Mediation Panel shall have been admitted to practice law in the State of California for a minimum of five (5) years and have either completed a mediator training course or have substantial experience as a mediator. The court will retain discretion to modify these requirements for good cause on a case-by-case basis. Membership on the Panel shall be at the sole discretion of the Presiding Judge.
2. Within ten (10) days following the order to mediate, the parties shall provide the court with written notification of their agreed mediator by using the court’s Stipulation to Mediator Form (see Appendix A), which is located on the court’s website. If the court is not notified of the selected mediator within ten (10) days, the court will appoint a mediator from the Panel.
3. The parties may stipulate, in writing, to use a non-Panel mediator. In such cases, the parties shall arrange payment directly to the mediator.

D. **Fees:** The court will pay for the first three (3) hours of the Panel Mediator’s services at the mediation session. The parties are responsible for payment of any mediation fees in excess of three (3) hours. Additional fees are subject to negotiation between the parties and the mediator.

E. **Appearance:** Each party must personally appear at the mediation, unless excused by the mediator. When the party is other than a natural person, it shall appear by a representative, other than its attorney, with full authority to resolve the dispute or, in the case of a governmental entity that requires an agreement to be approved by an elected official or legislative body, by a representative with authority to recommend such agreement. Each party is entitled to have counsel present at all mediation sessions and such counsel and an insurance representative of the covered party shall also be present unless excused by the mediator.

F. **Time Limits:**

1. The mediation shall be completed within the time specified by the court when the case is ordered to mediation.
2. The election to mediate in lieu of arbitration will not suspend any time periods specified by statute, California Rules of Court, or these local rules.

G. **Mediator's Statement:** Within ten (10) days of the conclusion of mediation, the mediator shall file a statement on Judicial Council Form ADR-100, advising the court whether the mediation ended in full agreement or non-agreement as to the entire case or as to particular parties in the case. Submission to the court of the mediator's statement does not relieve the parties of their obligation to promptly notify the court of a settlement pursuant to Rules of Court, Rule 3.1385.

H. **Mediator Fees:** *The mediator's fee statement must be submitted to the Court within thirty (30) days of completion of mediation.*

*Untimely claims may, in the discretion of the court, be denied.*

(Effective 7/1/06; Amended 1/1/07; Amended 7/1/08; Amended 1/1/09)

## **9.06 Arbitrator's Fees**

*Pursuant to Rule of Court 3.819, the arbitrator's award must be timely filed with the clerk of the court or a notice of settlement must have been filed before a fee may be paid to the arbitrator.*

*The arbitrator's fee statement must be submitted to the Court within thirty (30) days of completion of arbitration.*

*Untimely claims may, in the discretion of the court, be denied.*

(Effective 1/1/09)

## 11.06 Availability of Court Reporting Services.

- A. Pursuant to Rule 2.956 of California Rules of Court, the following enumerates the departments and proceedings for which the services of official court reporters are typically available:

Department 1: criminal proceedings

Department 2: criminal proceedings, juvenile proceedings, regularly scheduled law and motion calendar *and* habeas corpus evidentiary hearings, ~~and family support.~~

*Department 3: family support cases in which the Central Sierra Child Support Agency is involved.*

- B. Any party requiring the services of the official reporter for trial or any other hearing shall file a statement with the court requesting those services within seven days prior to the trial or hearing.

- C. The clerk shall notify any party having filed such a statement if the services of an official reporter will not be available. Pursuant to California Rules of Court, Rule 2.956, if the services of an official court reporter are not available for hearing or trial, a party may arrange for the presence of a certified shorthand reporter to serve as an official pro tempore reporter. It is the requesting party's responsibility to pay the pro tempore reporter's fee directly to the reporter for attendance at the proceedings. The official reporter may be contacted for assistance in securing a pro tempore reporter.

(Effective 1/1/95; Amended 1/1/96; Amended Effective 1/1/06; Amended 1/1/07; Amended 1/1/09)

## 11.21 Submission of Orders & Settlement Agreements.

- A. **Stipulations:** All stipulations, including those made in habeas corpus matters, must be accompanied by an order.
- B. **Requests for Continuances, Extensions of Time, and Other Motions Submitted on the Pleadings:** All requests for continuances, extensions of time, and other motions submitted on the pleadings, including in habeas corpus matters, shall be accompanied by a separate order and served on all parties according to the applicable rules and statutes.
- C. **Settlement Agreements:** All settlement agreements submitted to the court for approval shall be initialed by all parties on each page.
- D. **Format of Orders:** No order submitted shall have the judge's signature line on a page without substantive text, i.e. there shall be no "hanging orders."

*E. Orders Involving Hearings Dates: Parties must reserve hearing dates with the clerk prior to the submission of any order moving or setting a hearing date.*

(Effective 1/1/08; Amended 7/1/08; Amended 1/1/09)

#### **11.25 Media Coverage in Courthouse**

*Unless approved by a written order of the Presiding Judge, filming, videotaping, photographing, and electronic recording is not permitted in any area of the courthouse, including, but not limited to, entrances, exits, and hallways. Application for media coverage in said areas shall be directed to the Presiding Judge.*

*Cameras and recording devices shall be turned off on court premises, unless expressly permitted by Court order.*

*Filming, videotaping, and photographing the interior of the Courthouse, including the courtrooms, through windows or the glass portions of the courtroom doors is prohibited.*

*No microphones or cameras shall be permitted in any courtroom, unless the judge hearing the matter within the courtroom has expressly authorized the same via a written order, pursuant to California Rules of Court, Rule 1.150.*

(Effective 1/109)

### **13.08 Child Custody/Visitation; Referral for Report.**

#### **A. Process of Referral to Mediation.**

In any contested proceeding involving issues of custody and/or visitation, the court will refer the parties to mediation as follows:

1. Upon filing an application for any order to show cause or notice of motion where child custody and visitation are at issue.
2. Upon stipulation and order of the court.
3. On the court's own motion in the course of regular law and motion, domestic violence restraining order, ex parte, or other court proceedings.
4. Immediate referral may be made in an emergency with imminent danger to a child involving sudden and serious physical or emotional abuse, domestic violence, sexual abuse, neglect, or substance abuse, or if there is a risk of parental flight or other emergency circumstances deemed appropriate by the court.

## **B. Mediation Process.**

Referral to a mediator selected by the court for a maximum time of three hours. Mediation shall be confidential. The parties must attend a Parent Orientation prior to the mediation, unless they have participated in mediation during the six-month period before the referral.

The mediator shall prepare and have the parties sign any agreement that is reached through mediation. This agreement will then be forwarded to the court and copies provided to counsel, pursuant to Section 3186(b) of the Family Code. If mediation is successful and an agreement on all issues is reached, the mediation process is completed.

If the parties are unsuccessful in reaching an agreement, the mediator will so notify the court. The mediator will provide the court with a list of unresolved issues and may recommend that an attorney be appointed for the children or that the parties be referred for a child custody evaluation. The parties shall return to court and the court may refer the parties for an evaluation or make other orders as may be appropriate.

## **C. Evaluation Report and Recommendation.**

The court, in its discretion, may appoint an evaluator (different from the individual who performed mediation). The evaluation report and recommendation is not confidential. The evaluator is allowed 10 hours in which to complete the evaluation. The evaluator will interview the parents and the children and will provide the court with a written report and recommendation on the issue of custody, visitation and/or a proposed parenting plan. The evaluation report and recommendation will be reviewed and considered by the court. The court may order the parties to reimburse the court for the costs of the evaluation. If reimbursement is ordered, payment must be received before an evaluation will be scheduled.

1. When the court refers the matter for an evaluation, it is considered a court appointment pursuant to Evidence Code 730 and will be read and considered by the court at motion hearing or at trial.
2. When the report is presented to the court for its consideration on the regular law and motion calendar, or a specially set hearing without witnesses, the court may adopt, partially adopt, or reject the report. If either party contests the court's ruling at this stage of the proceedings, that party may request an evidentiary hearing. If custody/visitation is the only issue or if the parties wish to bifurcate that issue, the court may order the matter set for trial on a preferential trial date basis.

3. The party who wishes to have the evaluator present at the evidentiary hearing/trial must notify the evaluator at least 20 days prior to the evidentiary hearing/trial date and subpoena that person at least five court days prior to the evidentiary hearing/trial date. The party who subpoenas the evaluator to testify is responsible for paying the evaluator's for his or her appearance and testimony at the evidentiary hearing/trial.
4. Any deposition of an evaluator shall be noticed at least 10 days prior to the deposition date or by agreement between the evaluator and the party. Further, the party seeking the deposition is responsible for any and all evaluator fees in connection with the deposition testimony.

**D. Selection of Mediators/Evaluators.**

Mediators and evaluators shall be selected and appointed from a list of qualified professionals. Assignments or appointments are made on a rotational basis.

**E. Peremptory Challenge of Mediator or Evaluator.**

In light of the small pool of mediators/evaluators, the court will not permit a peremptory challenge). However, a challenge for cause may be presented to the court within five days of the appointment. The challenge for cause may be made on an ex parte basis, giving the opposing side at least 24 hours notice.

**F. Confidential Documents.**

The following documents are deemed to be confidential and are not available for inspection by the parties or their attorneys through the evaluator: CII records, medical reports; mental health professional's reports; drug test analysis; restricted law enforcement reports; mediation discussions; and NCADD (National Council of Alcohol and Drug Dependence) reports.

Parties seeking to inspect such reports must petition the court for an order permitting such inspection. To the extent that the contents of such records have been disclosed in another manner, or have otherwise been made discoverable, such documents will no longer be deemed confidential.

**G. Mediation and Evaluation Complaint Procedure.**

The court is committed to the delivery of quality mediation and evaluation services. Complaints must be in writing and directed to the Court Executive Officer, Amador Superior Court, 500 Argonaut Lane, Jackson, CA 95642. You will receive a written response within 10 business days of receipt of the written complaint.

**H. Other Issues.**

Issues concerning the need for counseling (Family Code §4608.1), for appointment of counsel for a child, for psychological examination or reevaluation, or any other subject involving the best interests of a child may at the discretion of the court be referred to mediation prior to the court making an order.

**I. Inspection of Related Court Files by Evaluator.**

The appointed evaluator may inspect other related and relevant Court files in conjunction with the preparation of his or her report.

**J. Ex Parte Communication Prohibited.**

Ex Parte communication between the mediator and either party is hereby prohibited, unless a stipulation regarding such contact is reached and approved by the Court.

**K. “Report” Defined.**

For purposes of these rules, the word "report" includes evaluations, recommendations, and total and partial agreements, applicable to a case, whether submitted by the evaluator appointed by the court, or mental health expert appointed pursuant to Evidence Code §730.

**L. Payment of Evaluation Costs by Parties**

*The parties shall pay the cost of evaluation within thirty (30) days of the Court’s referral.*

**M. Submission of Mediator and Evaluator Fees to the Court**

*All requests for payment of mediator fees and evaluation fees, when said fees are waived for the parties, are to be submitted within 30 days of submission of the mediator or evaluator report to the court.*

*All requests for payment of fees incurred as a result of testimony of a mediator or evaluator must be submitted within thirty (30) days of the completion of the proceeding in which the testimony is given.*

(Effective 1/1/95; 1/1/96; Amended 7/1/04; Amended 1/1/06; Amended 1/1/08; Amended 7/1/09; Amended 1/1/09)

**13.09 Appointment of Counsel for Minor Child(ren) Pursuant to Family Code §3150.**

- A. Counsel appointed by the court pursuant to Family Code §3150 shall ~~normally~~ have the following duties as a necessary part of that attorney's representation of the child:
1. Interview the child; and
  2. Review the court file and all accessible records available to the parties and make any further investigations as he or she deems necessary to ascertain facts relevant to the custody or visitation hearings.
- B. Counsel appointed by the court pursuant to Family Code §3150 shall normally have the following rights as designated by the court upon appointment:
1. Reasonable access to the child with adequate notice;
  2. Notice after appointment of any and all proceedings, including any request for examinations affecting the child;
  3. Full access to all court pleadings and records, as well as any medical and school records for the child;
  4. The right to veto any physical or psychological examination or evaluation, for purposes of trial, which has not been ordered by the court;
  5. The right to assert on behalf of the child any privilege for discovery purposes;
  6. The right to seek independent psychological and/or physical examination or evaluation of the child upon application to the court;
  7. Upon noticed motion to all parties and the local child protection services agency, request the court to authorize the release of relevant reports or files concerning the child represented by counsel. All such records shall be reviewed in camera to determine whether they are relevant to the pending action and the extent to which they should be released to counsel for the child.
- COUNSEL SHALL NOT DISCLOSE THE CONTENTS OR EXISTENCE OF THESE FILES OR RECORDS TO ANYONE UNLESS OTHERWISE PERMITTED BY LAW.**
- C. Unless otherwise ordered, full payment of the reasonable costs of counsel appointed pursuant to Family Code §3150 as determined by the court shall be shared by the parties in equal amounts.

D. *Interim claims for attorney fees must be submitted at least every ninety (90) days, while the matter is pending. Final claims must be submitted within thirty (30) days of completion of the case. For the purposes of this rule, completion of the case is defined as the filing of a Substitution of Attorney replacing the court appointed counsel or an order relieving the counsel of record, whichever occurs first. (see Cal. Rules of Ct., Rule 5.241)*

*Untimely claims may, in the discretion of the court, be denied.*

(Effective 1/1/95; Amended 7/1/06; Amended 1/1/09)

#### **14.04 Court Appointed Attorney Fees--Dependency**

*Interim claims for attorney fees must be submitted at least every ninety (90) days while the matter is pending. Final claims must be submitted within thirty (30) days of completion of the case. For the purposes of this rule, completion of the case is defined as the final disposition hearing or an order relieving the counsel of record, whichever occurs first.*

*Untimely claims may, in the discretion of the court, be denied.*

(Effective 1/1/09)

#### **15.02 Continuances.**

Prior to the date upon which the defendant promised to appear and without depositing bail, the defendant may request a continuance of the written promise to appear. Similarly, a traffic officer may request a continuance of the matter based upon his or her unavailability. All requests for continuances must be submitted at least ~~two weeks~~ *ten (10) court days* prior to the date of the hearing.

(Effective 1/1/06)

### **CHAPTER 17—PROBATE**

#### **17.01 Probate Tentative Rulings**

A. *The Court operates a tentative ruling proceeding for probate matters. On the afternoon of the court day before a probate matter is calendared for hearing, the court shall prepare a tentative ruling for each matter on calendar. Tentative rulings for the next court day will be available after 3:00 p.m. on the court's website, [www.amadorcourt.org](http://www.amadorcourt.org).*

- B. Parties satisfied with the tentative ruling need not appear at the scheduled hearing, unless ordered to do so by the court. Parties intending to appear and contest the tentative ruling must notify the court and the opposing party of such an intent by 4:00 p.m. on the first court day before the hearing. Unless opposing counsel has been notified of such intent, oral argument will not be permitted.*
- C. When appearance has been ordered by the court, limited oral argument will be entertained.*
- D. Absent oral argument, the tentative ruling will become the ruling of the court.*
- E. If the tentative ruling continues the hearing, the petitioner must provide notice of the continued hearing.*
- F. Excluded from said tentative rulings are hearings on conservatorships and guardians, minor's compromises, contested matters, matters set at a time other than the regular probate calendar, any matters requiring an appearance, and such matters as the court may determine in its sole judgment.*
- G. The implementation of the tentative ruling procedure is dependent upon Court resources. As such, upon commencement of the tentative ruling procedure, the Court will post a notice of the same on the Courthouse public notice board and on the Court's website.*

*(Effective 1/1/09)*

### **17.02 Accountings in Guardianships and Conservatorships**

*Pursuant to Probate Code §2620 (c)(3), the private professional or licensed guardian or conservator may elect to lodge with the Court the originals of the account statements referenced in §2620 (c)(1), (2), and (3). The originals of the account statements shall be released by the Court as provided in §2620 (c)(3).*

*(Effective (1/1/09)*