



Judicial Council of California Administrative Office of the Courts

455 Golden Gate Avenue, San Francisco, California 94102-3688

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on: February 28, 2012

Title

Family Law: New, Restructured, and Amended Family Law Rules of Court

Rules, Forms, Standards, or Statutes Affected

Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180

Recommended by

Family and Juvenile Law Advisory Committee

Hon. Kimberly Nystrom-Geist, Cochair
Hon. Dean Stout, Cochair

Elkins Family Law Implementation Task Force
Hon. Laurie D. Zelon, Chair

Agenda Item Type

Action Required

Effective Date

January 1, 2013

Date of Report

February 14, 2012

Contact

Gabrielle D. Selden, 415-865-8085
gabrielle.selden@jud.ca.gov

Julia Weber, 415-865-7693
julia.weber@jud.ca.gov

Executive Summary

The Elkins Family Law Implementation Task Force and the Family and Juvenile Law Advisory Committee recommend restructuring title V of the California Rules of Court to improve the cost effectiveness and accessibility of practices and procedures in family law.

This proposal was developed in response to the Judicial Council's charge to the Elkins Family Law Implementation Task Force in April 2010, when the council accepted the *Elkins Family Law Task Force: Final Report and Recommendations*.

Recommendation

To restructure and reorganize title V of the California Rules of Court, the Elkins Family Law Implementation Task Force (task force) and the Family and Juvenile Law Advisory Committee (committee) recommend that the Judicial Council, effective January 1, 2013:

1. Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440;
2. Amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and
3. Repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180.

The rules are attached at pages 38–105.

Previous Council Action

The Judicial Council has previously taken action to adopt and amend family law rules of court. Effective January 1, 1970, the Judicial Council approved Family Law Rules and Forms for mandatory use following the enactment of the Family Law Act in 1969.¹ Individual rules have been added, repealed, and amended periodically as necessary. The family rules as a whole were substantively changed effective January 1, 1994, and again effective January 1, 2003. Effective January 1, 2007, the Judicial Council reorganized and renumbered the California Rules of Court without substantive changes to the rules. The purpose was to make the rules clearer, better organized, and easier to read.

The Judicial Council has also previously taken actions that demonstrate a commitment to modernization of court management and assistance to self-represented litigants, which are key goals of the restructured rules. The actions, effective January 1, 2012, included adopting family centered case resolution rules, which allow family law judicial officers the opportunity to effectively manage their cases; adopting summary dissolution procedures to

¹ Judicial Council of Cal., Special Committee on Family Law, Family Law Rules and Forms (May 7, 1971).

allow all documents in this type of family law action to be filed at one time rather than requiring multiple trips to the clerk's office; and adopting a rule that provides guidance on the participation and testimony of children in family court proceedings.

Rationale for Recommendation

Within the existing structure of the California Rules of Court, some of the statewide civil rules apply to family law proceedings and some do not. It is often unclear which of the civil rules apply and which do not. Further, the current family law rules are not comprehensive and do not cover many of the areas of practice to which the civil rules do not apply. This has created a gap in the family law rules of court that has caused confusion and difficulty for courts, attorneys, and self-represented litigants. Courts have been forced to respond to the gap by addressing issues as they arise. As noted by the California Supreme Court in *Elkins v. Superior Court* (2007) 41 Cal.4th 1337, some local court rules have had a deleterious effect on self-represented litigants, despite the courts' best intentions.

In response to the decision in the *Elkins* case, the California Supreme Court recommended that the Judicial Council establish the Elkins Family Law Task Force to:

study and propose measures to assist trial courts in achieving efficiency and fairness in marital dissolution proceedings and to ensure access to justice for litigants, many of whom are self-represented. Such a task force might wish to consider proposals for adoption of new rules of court establishing statewide rules of practice and procedure for fair and expeditious proceedings in family law, from the initiation of an action to postjudgment motions. Special care might be taken to accommodate self-represented litigants. Proposed rules could be written in a manner easy for laypersons to follow, be economical to comply with, and ensure that a litigant be afforded a satisfactory opportunity to present his or her case to the court.²

Consequently, the Elkins Family Law Task Force recommended that the family law rules be revised to be more comprehensive, clarify which of the civil rules apply in family law cases, and integrate and organize all the family law rules into an orderly numerical system.³ The new organization makes it easier to locate certain categories of rules, and specific rules clarify whether or not civil rules apply in family proceedings. The cost in making these changes is small when compared to the time and legal proficiency required to understand the current family law rules of court.

This report addresses the task force and committee's recommendation and reflects significant legislative and judicial branch policy changes that have emerged over the last

² *Elkins v. Superior Court* (2007) 41 Cal.4th 1337, 1369, fn. 20.

³ The final report may be found at www.courts.ca.gov/xbcr/cc/elkins-finalreport.pdf.

several years as a result of Assembly Bill 939⁴ and other recommendations of the Elkins Family Law Task Force and the Family and Juvenile Law Advisory Committee. The task force and the committee intend that the new family law rules address the gap in the existing family law rules as efficiently and effectively as possible. Over one-half (55%) of the rules contained in this report do not include any substantive changes at all. They are simply renumbered or include technical changes to fit the overall organizational structure. Another 17 percent amend existing rules. Fewer than one-third (28%) are proposed new rules of court.⁵

The remaining new rules that are proposed are the product of extensive input from family law judicial officers, practitioners, litigants and other experts regarding current issues facing family courts throughout the state. The new rules also reflect the research conducted before developing the proposal, including reviewing existing family law rules of court, legislative mandates for rules, existing civil rules of court that might be appropriate for family law proceedings, local rules from all family courts in California, and research data obtained from focus groups and surveys that informed the final report of the Elkins Family Law Task Force. The new rules also reflect recent changes made to Judicial Council forms.

In response to this input and research, the task force and the committee have proposed rules that are intended to address the confusion caused by the gap in the existing family law rules while providing the most cost effective practices for both the courts and the public. For example, rules that are understandable and accessible to self-represented litigants are critical in family law. Over 80 percent of family law cases involve self-represented litigants. When these individuals have sets of rules that they can understand and apply, significant time is saved in both the court business office and the courtroom.

Specific new rules would help courts achieve cost savings. For example, under rule 5.440 (Related cases), cost savings can be accomplished by looking for related cases involving the same individuals so that unnecessary case initiations, redundant hearings, and conflicting orders can be avoided. In addition, under rule 5.393 (Trial settings and long-cause hearings), taking steps to conduct family law trials in consecutive court sessions reduces the overall amount of time it takes to conduct a trial when compared with protracting it over extended time periods in fragmented segments. Increasing the percentage of family law cases that reach disposition within one year reduces case inventories and can effect reduction in motions for temporary orders. The reduction of continuances can generate significant savings in the overall number of cases scheduled for hearings in family law matters.

⁴ AB 939 can be found at: http://www.leginfo.ca.gov/pub/09-10/bill/asm/ab_0901-0950/ab_939_bill_20100927_chaptered.pdf. The bill included many of the task force's recommendations, including those regarding live testimony, attorney's fees and costs, and appointment of counsel for a child.

⁵ See Attachment A for a list of the rule numbers in each of the three categories.

When the rules circulated for public comment in Spring 2011, the task force and committee recommended that the restructured rules be adopted effective January 1, 2012. The majority of commentators supported the effort to change the rules as of that date. Since then, the task force and committee revised their recommendation as to the effective date. They believe that courts and court users should be provided additional time to adjust to the changes incorporated into the rules in response to public comment and that courts be provided additional time to modify local rules of court so that they take effect at the same time as the restructured rules. Therefore, the task force and committee recommend that the restructured rules be adopted February 2012, and made effective on January 1, 2013.

The task force and committee also intend to provide other material and technical assistance regarding the restructured rules. Rules conversion tables will be posted on the California Courts website. Further, the task force and committee will work closely with the Center for Families, Children & the Courts as well as the Center for Judicial Education and Research to provide information to the courts about the rules and their rationale. They will also assist any court that requests information about the impact on their local rules and will share information about best practices in implementation between courts.

Comments, Alternatives Considered, and Policy Implications

The invitation to comment was circulated from April 21, 2011, through June 30, 2011. In addition to the standard mailing list for proposals—which includes appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, attorneys, mediators, family law facilitators and self-help center attorneys, and other family law professionals and attorney organizations—the task force and committee sought comment from the Joint Rules Working Group of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee (TCPJAC/CEAC).

Of a total of 42 commentators, the majority (74%) were in favor of the proposal (7 agreed with the proposal without narrative comments and 24 agreed if modifications were made). Two commentators indicated mixed positions (agreeing with the proposal as a whole, agreeing with certain rules if modified, and not agreeing with other specific rules). Further, 3 commentators did not indicate agreement or disagreement, but suggested changes to some rules in the proposal. Finally, 6 commentators did not agree with the proposal; of these, 4 commentators expressed disagreement only with particular rules in the proposal while 2 disagreed with the proposal in its entirety.

The first part of this section of the report will focus primarily on the general comments received about the proposal and comments regarding rules 5.43, 5.54, 5.125, 5.151, 5.165, 5.393, 5.420, and 5.440, which identified potential impacts to courts. This will be followed by a chapter-by-chapter discussion of the comments and responses to other rules and a discussion of alternatives considered.

In addition to the rules of court and a chart of the comments and the task force and committee responses, other attachments to the report include: (1) an outline showing the overall layout of the restructured family law rules of court; (2) a chart that distributes the restructured rules into specific categories; (3) conversion tables; and (4) rules that would be repealed and renumbered.

General comments

Although the majority of commentators addressed rules in each specific chapter, 8 commentators generally addressed the proposal as a whole. One commentator approved most of the new or amended rules without suggesting modifications; 4 generally did not agree; 2 suggested changes; and 1 suggested changes that do not apply to the proposal that was circulated for comment.

While it appears that most family law practitioners and judicial officers with a family law assignment have been anticipating these revised rules due to the *Elkins* opinion, final report and educational events, concerns were understandably raised by presiding judges and court administrators given the tremendous budget cuts to the branch.

The TCPJAC/CEAC stated that it cannot adopt an “Agree with proposed changes” position given the numerous and severe challenges facing California’s trial courts. It stated that “the new requirements created by the proposals, while well-intended, will only worsen the financial condition of the courts. At a time when courts are facing severe budget reductions, potential layoffs, possible court closures, and other urgent matters, rules of court should not create new responsibilities unless absolutely necessary and driven by statutory mandates. The trial courts must use this time to focus on ensuring continuation of the most critical services rather than on dedicating new resources to new requirements.”

A superior court judge provided a lengthy general opposition to the proposal. The points in the comment are similar to other commentators who generally did not agree with the proposal. The points included: “now is not the time for change”; that the proposed rules “load the court with greater burdens, both big and small”; that the changes “provide nominal benefit relative to the burdens imposed”; and that “access to justice is promoted by fewer rules and procedures and requirements, not more.”

In response to this feedback, the task force and committee modified many of the proposed rules to be responsive to the concerns of the commentators, especially those that pointed out potential difficulties for the courts. Where the burdens seemed significant on the courts, or where the costs seemed to outweigh benefits, the task force and committee modified the rules, either eliminating them or making changes to ensure that no proposals would go forward under those circumstances given the current fiscal situation. These modifications include:

- Allowing for the development of local rules for procedures relating to telephone appearances in rule 5.9;
- Removing rule 5.51, which required that a specific Judicial Council information sheet be served with a summons and petition or complaint, to avoid redundancy in the rules (as rule 5.83(g) covers the same matter) and allow additional time for the task force and committee to propose sample forms that provide the parties with information on resolving family law cases;
- Removing rule 5.54 from the proposal to await legislative action under Assembly Bill 1406, which covers the timeframe for serving a preliminary declaration of disclosure;⁶
- Giving courts discretion to specify the timeframes and procedures for preparation and submission of orders after hearing under rule 5.125;
- Including in rule 5.169 that courts may adopt local rules to provide procedures for requests for emergency orders that are considered by the court solely on the pleadings; and
- Deleting the requirement in rule 5.420 that courts implement a specific list of procedures for handling domestic violence in settlement services. Instead, the rule was redrafted to provide guidance to courts regarding developing those procedures and allows courts more flexibility regarding training, as further described in this report.

After a thorough review of all the rules, the task force and committee are convinced that the rules, as revised in response to comments, will increase court efficiency, will provide critical guidance to allow family law attorneys and litigants to present their cases more expeditiously, and will not be difficult to implement.

Information and comments on filing fees and fee waivers (rules 5.40–5.46)

The proposed rules in this chapter are new and relate to filing fees and fee waivers. These rules incorporate civil rules that are applicable to family law proceedings and also, based on requests for clarification made by many clerks, provide a statewide process to address the handling of family cases following the voiding of paperwork in fee waiver denials. While there is a high percentage of fee waivers in family law matters, there is currently no guidance in the family law rules for litigants about how these fee waivers should be filed and special issues regarding family law are not addressed. Seven commentators suggested changes to the proposed rules in this chapter.

Rule 5.43. Fee waiver denials; voided actions; dismissal.

⁶ Assembly Bill 1406 was introduced by the Committee on Judiciary (Feuer (Chair), Atkins, Dickinson, Huber, Huffman, Monning, and Wieckowski). The bill would amend Family Code section 2104 and provide time frames for service of a party's preliminary declaration of disclosure. The legislation was converted to a two-year bill in September 2011. The bill can be found at http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_1401-1450/ab_1406_bill_20110307_introduced.pdf.

Rule 5.43 responds to concerns raised by court clerks in trainings sponsored by the AOC that Government Code section 68634(g) does not provide guidance about what should be done if the court voids a petition for failure to pay court fees when a fee waiver is denied and a response has been filed.⁷

Although clerks reported that this situation does not often occur, they described various procedures that courts have implemented when it does happen. In some courts, if a petition is voided and a response was filed, the filed response is treated like the petition and the court looks at the relief in the response to determine how the case will proceed. In other courts, the court allows the respondents to ask for an order against the petitioner for filing fees paid. Other courts flip the case caption and allow the case to proceed, while others refund fees to the respondent and dismiss the case.

The proposed new rule at 5.43(b)(2)(A)-(B) incorporates best practices and procedures described by the clerks. It requires three actions by the court. First, the court reviews the response, or documents constituting respondent's appearance, to determine whether or how the case will proceed based on the relief requested. This allows the court flexibility to determine the most efficient way to proceed. The court then notifies the parties of the court's determination. If the court dismisses the case, it must return the filing fees paid by the respondent.

The TCPJAC/CEAC raised a concern that rule 5.43(b)(2)(A) would impose a burden on courts because it requires a court to review the response if a petition has been voided to determine whether or how the case will proceed, refund filing fees paid if the court dismisses the case, and provide notice of dismissal to the parties. As above indicated, the rule incorporates the practices that already exist in many courts, including file review, notice to parties, and the refunding of filing fees. While other courts would have to set aside the time for file review, given the relatively few number of cases in which this situation occurs, the rule should not impose an undue burden on courts.

Information and comments on starting and responding to a family law case; service of papers (rules 5.50–5.77)

Rule 5.51. Mandatory information packet. Rule 5.51 would have required the petitioner to serve *Legal Steps for a Divorce (Dissolution)* (form FL-107-INFO) to all parties when starting a family law case. The form included general information about how to resolve a family law case without formal litigation. One commentator suggested that the rule be redrafted so that it does not mention the specific form because it only applies to divorce

⁷ Government Code section 68634(g) provides that if an application is denied in whole or in part, the applicant shall pay the court fees and costs that ordinarily would be charged, or make the partial payment as ordered by the court, within 10 days after the clerk gives notice of the denial, unless within that time the applicant submits a new application or requests a hearing under subdivision (e). If the applicant does not pay on time, the clerk shall void the papers that were filed without payment of the court fees and costs.

actions. Instead, the commentator suggested the following language “Petitioner must serve all parties with a copy of an information sheet appropriate to the action which includes general information about how to resolve a family law case without formal litigation. The information sheet must be served with the petition and summons. This rule does not apply to amended petitions.”

The task force and committee reconsidered rule 5.51 in light of the adoption of rule 5.83 (Family centered case resolution), effective January 1, 2012.⁸ The requirements of (g) reflect the intent of rule 5.51 to impart information about settlement to the parties. Rather than impose an additional duty on a petitioner to serve a specific form with the initial papers under rule 5.51, the task force and committee believe that the court should dispense the information in the course of filing the case. Therefore, they removed rule 5.51 from the proposed new rules. This will also allow additional time for the task force and committee to propose sample forms that provide the parties with information on resolving family law cases.

Rule 5.54. Preliminary declaration of disclosure; time for service.

Rule 5.54 would have established the time frames for service of a party’s preliminary declaration of disclosure in a dissolution action. The Legislature (in AB 1406) is considering similar changes proposed in the rule as amendments to Family Code section 2104. If enacted in January 1, 2013, the statute would include the timeframe for service of a party’s preliminary declaration of disclosure. Because the legislation would cover the substance of the proposed rule that was circulated for comment, the task force and committee decided to remove rule 5.54 from the larger restructured rules proposed to take effect on January 1, 2013.

Information and comments about preparation, service, submission of orders after hearing (rule 5.125)⁹

Rule 5.125. Preparation, service, and submission of order after hearing. This rule provides the process for the preparation, service, and submission of orders after hearing.

⁸ Rule 5.83(g) provides that:(1) Upon the filing of first papers in dissolution, legal separation, nullity, or parentage actions the court must provide the filing party with the following: (A) Written information summarizing the process of a case through disposition; (B) A list of local resources that offer procedural assistance, legal advice or information, settlement opportunities, and domestic violence services; (C) Instructions for keeping the court informed of the person's current address and phone number, and e-mail address; (D) Information for self-represented parties about the opportunity to meet with court self-help center staff or a family law facilitator; and (E) Information for litigants on how to request a status conference, or a family centered case resolution conference earlier than or in addition to, any status conference or family centered case resolution conferences scheduled by the court.

⁹ As circulated, rule 5.125 was titled “Preparation and submission of order after hearing.”

Although family law forms include a mandatory findings and order after hearing, there are currently no statewide family law rules of court that provide procedures regarding the preparation, service, and submission of the orders. Local courts sometimes provide such procedures. Still, court orders often go unprepared by counsel or litigants after a hearing. This leads to hours of wasted time in court hearings arguing about what an order would have said had it been drafted, or even arguing about child custody exchanges or the division of property because litigants disagree about how to interpret the orders.

Including rule 5.125—which specifies that the court may prepare the order or direct one of the parties to do so—should substantially reduce the number of court appearances relating to disputes about orders after hearing in family law proceedings. Fewer litigants in court equates to additional cost savings in several areas of court operations. For example, there would be less congestion at filing windows and fewer filings for court clerks to sort, pull, and put on the calendar. The cost savings from hearings that no longer need to be held because of the clarity achieved through this rule would be substantial. Cost savings to family court services (FCS) and self-help centers are also implicated by fewer litigants at hearings. If litigants are not in court arguing about the content of court orders, they are not attending multiple mediation sessions or having other contacts with FCS or self-help centers.

Of all rules in the chapter, proposed rule 5.125 generated the most comments and suggestions for improvement. Generally, the task force and committee agreed with commentators that a statewide rule on the preparation of orders after hearing is vital to the efficient use of the court's time. As a commentator noted, "It is not uncommon for orders to be submitted months or even years after a hearing" and "getting a proper findings and order after hearing prepared and signed has been a process constantly misunderstood and/or abused by attorneys that generally results in a significant use of both the judge's and research attorney's time." The changes incorporated into the proposed rule would help curtail the problems that parties, attorneys, and the courts have experienced over the preparation of orders.

To address issues raised by commentators about this rule, the task force and committee recommend that the rule be modified to (1) increase the time for preparing and responding to the proposed order after hearing; (2) permit the court to change the timeframes and procedures in the rule when appropriate to a case; (3) require that any objections to a proposed order be specific, propose alternate language, and be presented in the same sequence as the original proposed order; (4) require the parties or their attorneys to meet and confer to attempt to resolve their differences before involving the court to settle a dispute over competing proposed orders; (5) provide procedures for submitting competing proposed findings and orders after hearing to the court; and (6) avoid redundancy in the rules by deleting references to sanctions in this specific rule.

Information and comments on request for emergency orders (ex parte orders) (rules 5.151–5.169)

At no other time before the proposed new family law rules have any statewide family law rules of court addressed ex parte proceedings. The rules did not provide a definition of the term “ex parte proceeding,” explain that the type of hearing is reserved for the court to address urgent matters, or explain if civil ex parte rules apply to family court proceedings. Consequently, there is substantial confusion around when a party should bring a matter before the court with shortened or no notice to the other party and whether the notice should be given following civil rules of court. The importance of clarifying these rules in family court proceedings cannot be understated, as the confusion can lead to wasted effort and bad outcomes for litigants and their children.

The task force and committee proposed new rules in this chapter relating to requests for emergency orders. Thirteen commentators suggested changes to these rules. Most comments concerned aspects of two rules—rule 5.151 (Request for emergency orders; application; required documents) and rule 5.165 (Requirements for notice).

Rule 5.151. Request for emergency orders; application; required documents. The task force and committee drafted the rule using the term “request for emergency orders” instead of “ex parte orders.” This change could create significant savings to the court if the term “emergency” is used rather than “ex parte” as the number of applications may decrease if this term is easier to understand. Using “emergency order” will make it clear to self-represented litigants and counsel that these hearings are intended to address very specific types of proceedings.

TCPJAC/CEAC was concerned with the use of the term “emergency order” in the rule because the change in terminology from “ex parte” to “emergency” could be confusing to practitioners and could imply a restriction in the type of relief that can be sought through this process. The commentator also noted that the rule would require courts to redraft their local rules.

The task force and committee recognize that the term “ex parte” has caused confusion for litigants who do not know or understand legal terminology. The proposed use of “request for emergency orders” would help these litigants understand that the procedure is reserved for very specific and urgent purposes. The application section of the rule does indicate that a “request for emergency orders” is synonymous with an application for ex parte orders. Further, proposed rule 5.151(a) provides as follows: “The rules in this chapter govern applications for emergency orders (also known as ex parte applications) in family law cases, unless otherwise provided by statute or rule.” Because the rule includes both terms, this may mitigate the need for courts to redraft their local rules that use the term “ex parte applications” or “ex parte hearings.”

Rule 5.165. Requirements for notice. As circulated, this rule provided that: “The court may adopt a local rule requiring that the party provide additional notice to the court that he or she will be requesting emergency orders the next court day. Courts that adopt this local rule must provide a dedicated telephone number for this purpose.”

The TCPJAC/CEAC stated that the rule regarding notice to the court could require courts to incur costs for a new dedicated telephone line if courts choose to require this notice. They recommended less specific language in the rule, such as “the local rule must include a method by which the party may give notice to the court by telephone.” The task force and committee agreed with the suggestion and made this change to the rule they are recommending for adoption.

Information and comments on trials and long-cause hearings (rules 5.393 and 5.394)

Rule 5.393 (Setting trials and long-cause hearings) provides that long-cause hearings and trials that cannot be completed in one day must, absent a finding of good cause, be continued to the next day routinely designated by the court for trials. Rule 5.394 (Trial or hearing brief) provides a standard for the contents of briefs for trials and long-cause hearings.

Rule 5.393. Setting trials and long-cause hearings.

Rule 5.393 is intended to increase the efficiency of the court and relieve the burden of extended hearings and trials. The task force and committee are concerned that as resources diminish, courts cannot continue to carry the burden of the unnecessary hearing and trial time that results from the fragmenting of family law trials into segments that are then separated by weeks and sometimes months.

The practice of interrupting long-cause hearings and trials was reported to increase the aggregate amount of time required to complete a trial. For example, a trial that could be completed in three sequential days could actually take 10 half-day sessions to complete because of the amount of time it takes to repeat any testimony from witnesses to refresh the judge’s memory, address issues that may have arisen between the hearings, and give the judge an opportunity to review notes and become reacquainted with the case.

Interrupting long-cause hearings and trials was a frequent complaint made to the Elkins Family Law Task Force from litigants and judges and in a survey of over 500 family law attorneys from around the state. Many attorneys complained that they had to litigate the same issue in the same trial more than once because neither the attorneys nor the judge remembered exactly what had occurred in a previous trial session, and the record was unclear. The task force and the committee are concerned that courts can no longer afford to operate in this manner. Judges reported that it was much easier to handle cases with consecutive hearing dates.

Nine commentators responded to one or both rules in this chapter. Seven commentators suggested changes to the rules; one commentator did not agree with the definition of long-cause hearing in rule 5.393; and the TCPJAC/CEAC did not agree with rule 5.393.

The TCPJAC/CEAC identified potential impacts to courts, including (1) the need for additional judicial resources, courtrooms, and court staff; (2) increased workload for presiding judges and supervising judges, as they will spend more time reshuffling and assigning case; (3) impacts on justice partners whose cases may be reassigned to accommodate an ongoing family law case; and (4) impacts on attorneys appearing before the court whose cases may potentially be reassigned due to a new priority for family law cases.

Based on the data provided in the survey discussed above, rule 5.393 does not increase the workload on courts and it does not add to the length of trial or hearing time— if anything, the rule decreases it. Further, the rule does not give family law trials preference over other case types. Instead, the rule allows cases to be set sequentially within the framework of the local court calendaring pattern. Under this rule, if a hearing is longer than two and a half hours, and it cannot be completed in the same court day, then scheduling must be as sequential as possible. However, the rule only provides that this occur as the calendar of the trial judges permits. This would be subject to the scheduling structure established by the local courts for hearings and trials.

The task force and committee drafted rule 5.393 to be consistent with the different scheduling structures of the local courts. For example, one court may hear family trials every afternoon, while another may schedule them only on Wednesday afternoons. The rule should be able to accommodate both and not require the court scheduling trials on Wednesday afternoons to change that structure in order to meet this goal.

While crafting a rule that seeks to minimize the costly interruptions in family law hearings and trials, the task force and the committee wanted to be careful not to define a trial day as longer than a half day of court time. Trial setting varies greatly from court to court. Some courts devote certain full days of the week to trials; others allocate specified half days. The two and a half hours (included in the definition of “trial day” in rule 5.393(a)(1)) is within a half day of court time.

Rule 5.394. Trial and hearing brief.

Six commentators responded to this proposed rule. One agreed with the original proposal. One requested that the Judicial Council adopt a mandatory trial/long-cause hearing brief, and the task force and committee agreed to review the suggestion for consideration in a future cycle.

The other commentators suggested the following changes to rule 5.394, which the task force and committee incorporated into the version of this rule they are recommending for

adoption: (1) clarifying in (a)(1)(D) that the brief need only list the minor children of the parties; (2) deleting the requirement in (a)(5) that the parties list “all witnesses” and, instead, requiring that the brief include a list of witnesses to be called at trial (this change would allow rebuttal and impeachment witnesses to be called as permitted by statute); and (3) making another change to (a)(5) to require “a brief description of the anticipated testimony of each witness,” to track the language of Family Code section 217, subdivision (b).

Information and comments on settlement services (rule 5.420)

Rule 5.420. Domestic violence procedures for court-connected settlement services providers.¹⁰ The task force and committee proposed the rule based on the work of the Elkins Family Law Task Force and the recognition that some courts are implementing non-child custody settlement services. Given the significant number of family cases involving domestic violence, and the dangers associated with negotiating between parties where violence is an issue, members agreed it was important that courts providing such services have consistent practices in place in both child custody mediation and non-custody settlement services.

Five commentators responded to rule 5.420; two agreed with the original proposal without narrative comments, one suggested changes without indicating a position, and two commentators did not agree with the proposed rule, citing concerns about the impact on the courts.

The Los Angeles County Bar Association, Family Law Section generally supported the rule’s efforts to protect against potential domestic violence. However, it commented that the draft was too broad and imposed stringent requirements for “court-connected settlement service providers” that would significantly deter participation by experienced family law attorneys in voluntary settlement and/or mediation programs. In addition, the TCPJAC/CEAC commented that that the proposal would increase the workload of court-connected settlement service providers by requiring additional duties not currently performed and have a fiscal and workload impact on courts by requiring them to provide such services without providing resources to do so.

In response to the comments, the task force and committee made several changes to rule 5.420. The redrafted rule would require that courts providing settlement services implement procedures for handling domestic violence cases, but unlike the proposed rule circulated, the redrafted rule would allow each court to determine the procedures that are most responsive to the services provided. The rule has also been rewritten to recommend, but not require, training on the issue of domestic violence for those providing settlement services.

¹⁰ As circulated, rule 5.420 was titled “Domestic violence protocol for court-connected settlement services providers.”

These post-circulation changes to rule 5.420 were developed with specific input from members of the committee from the Superior Court of Los Angeles County who indicated that the changes addressed their concerns. Training materials and programs have been offered on this topic to courts during 2011. The task force and committee recommend the continuation of such training to help courts develop the procedures described in rule 5.420.

While there may be some additional burden placed on those courts that are providing settlement services and do not have procedures in place for handling domestic violence matters, the task force and the committee recognize the importance of implementing procedures for safely handling these cases. Settlement services are a valuable tool for resolving cases. Given the number of family law cases involving domestic violence and potential lethality, it is important that parties be provided such services as safely and as effectively as possible.

Information and comments on court coordination rules (rules 5.440 and 5.445¹¹)

Rule 5.440 (Related cases) provides that, where resources permit, courts should identify cases related to a pending family law case to avoid issuing conflicting orders and make effective use of court resources.

The rule seeks to support implementation of approaches locally that could improve the efficient use of resources, including calendar time by avoiding duplication of efforts and issuance of conflicting orders that may increase the need for court resources and hearings. A court that identifies related cases could also avoid conflicting appearances scheduled or multiple hearings on the same issues. In addition, a related case search can identify critical information needed for a judicial officer to make comprehensive, fully informed decisions in a family law proceeding. Further, information gathered about risk through a related case search can result in increased safety for court staff and family members.

Three commentators responded to proposed rule 5.440: two agreed with the proposed rule, if modified; the third believed that the proposed rule would potentially have a significant negative impact on the courts. No comments were received regarding rule 5.445.

The first commentator stated that rule 5.440(b) appropriately requires that information related to juvenile court cases be kept confidential, but suggested that (b) be revised to recognize that exit orders from juvenile court cases are not confidential and are not appropriately subject to subdivision (b) under Welfare and Institutions Code section 362.4. The task force and committee agreed to incorporate the suggestion, with minor alterations, into the rule they are recommending for adoption.

The second commentator believed that identifying related cases should be primarily the responsibility of the parties and suggested that rule 5.440 require parties to file a “Notice of

¹¹ Recommended rule 5.445 is existing rule 5.450, which is renumbered without change to content.

Related Case” as soon as they become aware of any such case. The task force and committee did not agree to include that language because the rule is intended to address duties of the court, if resources permit. However, the rule does not prevent courts from creating local rules that require parties to file a notice of related cases in an effort to assist with identifying related cases.

The TCPJAC/CEAC raised concerns that rule 5.440 would have potential fiscal impacts on the courts, impact courts’ automated systems, and increase staff workload. They stated that many courts currently do identify related cases. However, courts that do not currently identify related cases would experience a staff workload increase as this confers additional duties on staff. Further, not all case management systems collect information on minor children.

While the proposed rule only requires searching for related cases where resources permit, many courts do complete these searches. Data from those courts indicate that it takes court staff an average of 15.57 minutes to open a new marital case and 19.58 minutes to open a domestic violence case.¹² It only takes an average of 2.43 minutes to look for related cases.¹³ The range was between 1 and 5 minutes, depending on the ability of the electronic case management system. Given the number of related cases in family law proceedings, this review can save significant resources in the time to open cases, in pulling multiple cases, or consolidating cases in the future.

Further, as previously noted, the rule does not impact court workload because it does not require courts to identify related cases. The rule does not impose additional duties on court staff. Instead, the rule suggests that, where resources permit, courts should identify related cases.

Comments and responses to other rules

Following is a chapter-by-chapter analysis of comments and responses to other rules circulated in “Family Law: New, Restructured, and Amended Family Law Rules of Court.”

Chapter 1. General Provisions (rules 5.1–5.14). Thirteen commentators suggested changes to the proposed rules in this chapter. The majority of commentators posed questions and proposed changes to new rules 5.9 (Appearance by telephone) and rule 5.14 (Sanctions for violations of rules of court in family law cases). Comments also related to proposed rule 5.1 (Division title; application of rules and laws); rule 5.4 (Preemption; local rules and forms); and rule 5.12 (Discovery motions).

Rule 5.1. Division title; application of rules and laws (now rule 5.2). Commentators suggested changing subdivision (b) to clarify the definition of the term “proceeding” and

¹² Family Law Resource Guideline (*publication pending*).

¹³ *Ibid.*

expand it appropriately to cover other matters mentioned in the Family Code, which were not explicitly included in (b). The task force and committee agreed with the suggestions and clarified the definition of “proceeding.” In response to comments received about rules in other chapters, the task force and committee also included and defined other terms in rule 5.2, including “parenting time,” “dissolution,” and “action.”

Rule 5.4. Preemption; local rules and forms. As circulated for comment, the rule provided that local rules and forms must not conflict with Judicial Council rules and forms. The task force and committee decided to redraft the proposed rule to state that each local court may adopt local rules and forms regarding family law actions and proceedings that are not in conflict with or inconsistent with California law or the California Rules of Court.

In addition, the task force and committee decided to add that “Effective January 1, 2013, local court rules and forms must comply with the Family Rules.” Including this language would be consistent with the changed recommendation that the rule become effective January 1, 2013.

The task force and committee also inserted an advisory committee comment to the rule to clarify that the Family and Juvenile Law Advisory Committee agrees with the *Elkins Family Law Task Force: Final Report and Recommendations* regarding local rules, which encourage local courts to continue piloting innovative family law programs and practices using local rules that are consistent with California law and California Rules of Court, but which must not create barriers for parties. The advisory committee comment includes a URL for the Elkins recommendations.

Rule 5.9. Appearance by telephone. Many self-represented litigants and some attorneys are not aware that an appearance by telephone could be an option to appearing at a simple hearing or continuing a hearing if a litigant is unable to appear in person in court. Rule 5.9 provides that a court may allow telephone appearances for certain matters and develop local rules to address procedures for the appearances. This rule serves to inform court users of the process and directs them to local rules for specific guidance in their county. The procedure can potentially result in saving to courts (saving significant court clerk time and other resources) and to litigants (avoiding time off of work, parking costs, child care, etc.).

Commentators suggested changes to the rule. These included that (1) the term “telephone appearance” be defined to include other forms of telecommunication, such as web-conferencing (e.g. Skype®) to permit individual courts flexibility in choosing a form of communications based on their specific resources and available technology and (2) a provision be added for appearing by phone at mediation or other matters with Family Court Services. Commentators also suggested that the rule either include specific procedures like those in civil rule 3.670 or reference the civil rules as applicable to family law proceedings.

The rule is intended to authorize courts to permit appearances by telephone. It is not intended to provide the exact process by which the appearance should be conducted. To support this point, the task force and committee agreed to expand the rule to provide that the court may develop local rules to specify procedures for appearances by telephone. However, because the second category of suggestions (see (2) in the paragraph above) includes important substantive changes, the task force and committee believe public comment should be sought before they are considered for adoption.

Two comments were received opposing the rule. One commentator stated that the rule is not necessary because it is duplicative of an existing rule or statute. The other stated that the rule conflicts with civil rule 3.670. The proposed rule about appearances by telephone does not conflict with civil rule 3.670 and is not duplicative of any existing statewide rule or statute, as they specifically exempt general family law proceedings. Civil rule 3.670(b) excludes family law proceedings and rule 5.324 (Telephone appearance in Title IV-D hearings and conferences) relates only to governmental child support cases.

Rule 5.14. Sanctions for violations of rules of court in family law cases. As circulated, subdivision (d)(1)(C) provided that a party's request for sanctions must identify the party, attorney, law firm, witness, or other person against whom sanctions are sought. However, the terms "attorney" and "law firm" were not included in the definition of persons subject to sanctions for violating rules of court in (b). Five commentators proposed that the rule specify in the definitions section that attorneys and law firms are subject to the sanctions for violating the California Rules of Court.

The task force and committee agreed with the above suggestions and have included them in this report's recommendations. The suggestion to add attorneys and law firms in subdivision (b) would implement the recommendation of the Elkins Family Law Task Force. The task force recommended at page 25 of the final report (recommendation 13) that:

Rule 2.30 of the California Rules of Court (Sanctions for rules violations in civil cases) should be amended to include family law matters, or a similar rule should be adopted into the family law rules. Currently, the only option that a judicial officer has for sanctioning inappropriate or delaying behavior is to order the offender to pay a portion of the other party's attorney's fees. This should be expanded to allow imposition of sanctions that the attorney should pay, not the interested party. In addition, where parties are self-represented, the judicial officer should be permitted to order the parties to reimburse the opposing party for costs such as time off work, transportation to court, and similar expenses.

Chapter 2. Parties and Joinder of Parties (rules 5.16–5.29). The rules in this chapter are existing rules relating to the designation and joinder of parties that would be amended and

renumbered under this report. Six commentators generally agreed with the rules in this chapter and suggested changes to improve rule 5.16 (Designation of parties) and rule 5.24 (Joinder of persons claiming interest). No commentators disagreed with the proposed rules in this chapter.

Rule 5.16. Designation of parties. Commentators generally suggested changes to more accurately identify the persons permitted to be parties in proceedings for divorce or nullity, to establish parentage, and under the Domestic Violence Prevention Act. In response, the task force and committee agreed to indicate, where appropriate, that a local child support agency that intervenes in a family law case is a party to the action. In addition, a putative or presumed parent and a minor child can be parties in an action to establish parentage. However, because a guardian ad litem is an officer of the court, the task force and committee did not agree with the suggestion to include a guardian ad litem in the rule as a permissible party in any action.

Rule 5.24. Joinder of persons claiming interest. One commentator noted that subdivision (e) concerning mandatory joinders did not mention “domestic partners” in the proposed language concerning child custody. To address the oversight, the task force and committee agreed to recommend that rule 5.24(e)(1) be amended to state: “The court must order that a person be joined as a party to the proceeding if any person the court discovers has physical custody or claims custody or visitation rights with respect to any minor child of the marriage, domestic partnership, or to any minor child of the relationship.”

A commentator also expressed concern that the family law rules of court relating to mandatory joinders do not address the issue of grandparent visitation under Family Code section 3104. Before visitation can be ordered, section 3104 requires that the court (1) determine that there is a preexisting relationship between the grandparent and the grandchild that has engendered a bond such that visitation is in the best interest of the child and (2) balance the interest of the child in having visitation with the grandparent against the right of the parents to exercise their parental authority. The commentator stated that “it seems inappropriate to require joinder to an action of grandparents that fail to meet the standard in Section 3104.”

To address the above issue, the task force and committee agreed to recommend reformatting proposed rule 5.24(e) and incorporating the following language in (e)(2): “Before ordering the joinder of a grandparent of a minor child in the proceeding under Family Code section 3104, the court must take the actions described in section 3104(a).”

Chapter 3. Filing Fees and Fee Waivers (rules 5.40–5.46)

Rule 5.41. Waiver of fees and costs. One commentator noted that current law requires the court to set a hearing even if a party is only requesting monthly payments and not a full fee waiver, and proposed that the forms and rules be changed to allow the court to order monthly payments based on the application without a hearing. The task force and

committee cannot recommend the suggested change because it would require a change to Government Code section 68634, which requires the court to grant or deny the application. Only after notice and an opportunity to be heard, may the court order an applicant to pay a portion of court fees or to pay court fees over a period of time or under some other equitable arrangement that meets the criteria of eligibility.

Rule 5.45. Repayment of waived court fees and costs in family law support actions. The rule is intended to simplify procedures for courts to recover fees initially waived for a party in a family law action under Government Code section 68637(d) and (e) after a support order or judgment has been entered.¹⁴ Court clerks have requested direction on this issue in education sessions on the new fee waiver forms and statutes enacted in 2009. The rule also serves as a companion to existing Judicial Council forms FL-336 and FL-337 adopted in July 2009. Based on a comment to the rule, the task force and committee recommended clarifying that rule 5.45 applies to family law actions and does not apply to actions initiated by a local child support agency.

Chapter 4. Starting and Responding to a Family Law Case; Service of Papers (rules 5.50–5.77)

Rule 5.66. Proof of service. The task force and committee agreed with the commentators' recommendations to delete the requirement that the petitioner file a completed proof of service of summons with the court within 60 days after the filing of the summons and petition, unless the court allows additional time for service. Commentators provided anecdotal evidence that the majority of parties require more than 60 days to complete service of process. Therefore, the task force and committee recommend striking the part of rule 5.66 requiring a specific deadline for filing a completed proof of service of summons and petition.

Chapter 5. Family Centered Case Resolution Plans (rule 5.83). The restructured rules proposal would provide a separate chapter for rule 5.83 (Family centered case resolution) which was adopted by the Judicial Council without change to rule number or content.

Chapter 6. Request for Order (rules 5.94–5.125). Thirteen commentators suggested changes to the rules proposed in this chapter. These resulted in significant changes rule 5.94 (Order shortening time; other filing requirements).^{15, 16}

¹⁴ Government Code section 68637(d) and (e) (enacted July 1, 2009) permit the trial court, after entry of a judgment or an order to pay support, to recover previously waived court fees from either the party ordered to pay support in the matter (the non-fee waiver recipient) or the initial fee waiver recipient.

¹⁵ As circulated, rule 5.94 was titled "Time for filing; service of request for order."

¹⁶ Comments received relating to proposed rule 5.92 as part of this proposal's invitation to comment were included in a separate report to the Judicial Council titled "Family Law: Request for Order in Lieu of Existing

Rule 5.94. Order shortening time; other filing requirements. The proposed rule was based on existing civil rule 3.1300, which requires that proof of service of motion papers be filed no later than five court days before the time appointed for the hearing. Some commentators objected and stated that the court's interest in timely and effective court procedures must be balanced against the legitimate concerns of litigants who are not able to afford making multiple trips to the court to file the request, return to file the proof of service five days before the hearing, and then return to the court for the hearing.

In light of the comments, the task force and committee reworded the rule so that it does not require a party to file the proof of service five court days before the hearing. Instead, the rule provides that the party *should* file it five court days before the hearing. In addition, the committee deleted proposed subdivision (a), which described the procedure for filing and serving *Request for Order* (form FL-300). This change avoids redundancy in the rules because the information is specifically provided in proposed rule 5.92. Rule 5.94(a) now addresses an order shortening time.

Chapter 7. Request for Emergency Orders (Ex parte Orders) (rules 5.151–5.170)

Rule 5.151. Request for emergency orders; application; required documents. Ten commentators responded to the proposed rule; three agreed, if modified. All others suggested changes to the rule as described below.

Some comments related to (c), which lists required documents. Two commentators recommended that the rule require service and filing of an *Income and Expense Declaration* (form FL-150) because “the law requires that a FL-150 be filed as part of an application for an injunctive or other order when relevant to the relief requested.” Two commentators also noted that the rule referred to a form (FL-310) that would be revoked if the *Request for Order* (form FL-300) is adopted, effective July 1, 2012.¹⁷ The task force and committee agreed with the suggestions and have incorporated form FL-150 into, and deleted form FL-310 from, the version of rule 5.151 they are recommending for adoption.

Some comments related to the requirements in (d)(5) to file for emergency orders granting or modifying child custody or visitation (parenting time). They generally stated that requiring a litigant to file copies of current custody orders, reveal all prior applications on the same issue, and include a *Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act* (form FL-105) would be unduly burdensome to litigants and would duplicate paperwork that would already be in the court case file.

Notice of Motion or Order to Shown Cause, and Witness List for Use in Family Law Proceedings.” The report was on the council’s agenda on January 24, 2012.

¹⁷ On January 24, 2012, the Judicial Council adopted *Request for Order* (form FL-300), effective July 1, 2012.

Proposed rule 5.151(d)(5) was drafted in response to those courts that are not always able to provide the judicial officer with the court's case file in time for the emergency hearing and must rely solely on the information provided by the litigant. To provide a more balanced rule, the task force and committee agreed to change the rule so that the litigant (1) must provide the current custody orders if they are available to the litigant; (2) should, by declaration, disclose a prior application; and (3) must file form FL-105 if the form was not already filed by a party or if the information has changed since it was filed.

Commentators suggested other changes to subdivision (d)(5). One suggested that this subdivision require the litigant to provide a full, detailed description of the most recent incidents of physical or emotional harm, threats of harm, or threats to remove the children from the state. Another proposed deleting the words "parenting time" from (d)(5) because the commentator believed including that term appears to prohibit ex parte applications concerning parenting time.

The proposed rule is intended to specify the information that should be contained in the declaration supporting the request for emergency orders granting or modifying child custody and visitation (parenting time) orders. It is not intended to change existing law regarding ex parte applications to grant or modify child custody as one commentator suggested. To clarify this point, the task force and committee agreed to redraft (d)(5) to include a reference to Family Code section 3064, which governs these matters. Further, the task force and committee believe that the proposed rules in this chapter should be reworded to include both terms "visitation" and "parenting time" to denote that the filing requirements apply to applications for emergency orders to grant or modify both child custody and visitation (parenting time).

Rule 5.165. Requirements for notice. Eight commentators provided input on this rule. One agreed with the original proposal; three agreed, if modified; and four suggested changes to various parts of the rule.

Most commentators suggested changes to the method of notice requirements of the proposed subdivision (c) (now (a)). The proposed rule provides: "Notice of appearance at a hearing to request emergency orders may be given by telephone, in writing, or by voicemail message." One suggested defining "in writing" because, under Evidence Code section 251, a writing could include a variety of communications, such as e-mails, faxes, Facebook, or a text message. Another believed that the rule eliminated contact by e-mail and the Web and, therefore, was overreaching. A third commentator believed that the rule may be confusing to litigants and should be "expanded to include personal (face-to-face) notice, text message, and e-mail or it should state "these methods of service are not exhaustive, and do not exclude other methods or media that are reasonably likely to impart notice to the other party."

The task force and committee believe that commentators raise important substantive issues about how the rules regarding notice can include evolving forms of communication. The task force and committee recommend that additional discussion and public comment be sought before considering a rule that is more detailed than the version that was circulated for comment. Therefore, they will consider these suggestions during a future rules cycle.

A commentator disagreed with the time requirements for providing notice of a request for emergency orders under (a) (now (b)). The commentator stated that “requiring filing by 10 a.m. means that the person who comes to court early that morning has very little time to complete the paperwork for the next day and it would be more efficient to make the filing window a little bigger since a judge may not be available to hear an ex parte on any given date (it could be heard by a judge other than the one regularly assigned to the case).”

Proposed rule 5.165(b) is modeled on existing civil rule 3.1203 regarding the timeframe for giving notice to other parties. Many courts in small and large counties already refer to the civil rule timeframe in their local rules. The proposed rule is intended to incorporate the civil rule and best practice of local courts.

Rule 5.169. Personal appearance at hearing for temporary emergency orders.

Commentators noted that the rules in this chapter generally assume that any application for emergency orders will lead to a hearing. However, a number of courts handle ex parte matters solely on the pleadings. Therefore, the rule regarding notice should allow for that procedure as an option. To address this matter, the task force and committee modified proposed rule 5.169 to include language to provide that courts may also make emergency orders based on the documents submitted without requiring the parties to appear at a hearing.

Rule 5.170. Matters not requiring notice to other parties. In response to a comment, the task force and committee decided to insert a third article and a new rule in this chapter for matters that are not necessarily emergencies but which do not require notice to the other party or a court appearance. Rule 5.170 now contains the matters formerly listed in rule 5.165(a)(3)—applications to restore a former name after judgment, stipulations by the parties, and others.

Chapter 9. Child, Spousal, and Domestic Partner Support (rule 5.260). Rules in this chapter address documentation requirements for child, spousal, and domestic partner support orders and judgments. Eight commentators responded to the rule in this chapter. One agreed with the proposal. All others suggested changes to the rule.

One commentator proposed that the rule provide timelines within which the required income and expense information must be filed and exchanged. The commentator also suggested that a sentence be added to state: “Where a court finds good cause to deviate from indicated guideline support, it must state its findings on the record or in writing.” The

task force and committee agreed with the suggestions and have incorporated them, with minor alterations, into the rule they are recommending for adoption.

Another commentator stated that rule 5.260(d) appropriately requires that the California Department of Child Support Services (DCSS) receive notice of motions concerning child support if DCSS is “providing services.” The commentator, however, noted that the phrase isn’t defined in the rule.” The same commentator also stated that “the rule requiring both parties to submit support calculations ignores that stipulated judgments usually include an agreed-upon amount of support, and that only a petitioner submits a true default judgment to the court.” In addition, the commentator stated that “it would be helpful if the rule set out the requirements for non-guideline orders, including that if the proposed support amount deviates from the guideline in any way, including “reserving” child support, the rule should remind parties they must include either a *Non-Guideline Child Support Findings Attachment* (Judicial Council form FL-342(A)) or language in the judgment conforming with Family Code sections 4056 and 4065.”

To address the first point above, the task force and committee recommend deleting the phrase “providing services.” Instead, the rule would specify that the local child support agency must be given notice if it is “providing support enforcement services or has intervened in the case as described in Family Code section 17400.” To address the second point, the task force and committee modified rule 5.260 to state that if child support is an issue in a judgment that is based on the default or stipulation of the parties, the moving party (not both parties) should file the child support calculation with other required documents. As to the commentator’s third point, the task force and committee believe that additional public comment should be sought before including the reservation of child support in the proposed rule regarding deviations from guideline support. However, they recommend including references to Family Code sections that address the requirements for orders that deviate from guideline support.

Two commentators disagreed with proposed rule 5.260(e)(2)(B). As circulated, the rule provided as follows: “If petitioner seeks a default judgment of dissolution or judgment of legal separation involving a marriage of over 10 years, petitioner must address the issue of spousal or domestic partner support for both parties considering the factors under Family Code section 4320 in the proposed judgment. *Spousal or Partnership Support Declaration Attachment* (form FL-157) may be used to provide this information.”

One commentator stated that the proposed rule seemed overly burdensome. The other commentators recommended that it should be deleted entirely because the factors listed in Family Code section 4320 must be addressed in any spousal support judgment, whether the marriage is a short- or long-term marriage.

The task force and committee decided to recommend simplifying rule (e)(2)(B) to cover two points (which are now addressed in (e)(2)(A) and (B)): (1) that use of support

calculation software is not appropriate when requesting a judgment or modification of a judgment for spousal or domestic partner support and (2) that *Spousal or Partnership Support Declaration Attachment* (form FL-157) may be used to address the issue of spousal or domestic partner support under Family Code section 4320 when relevant to the case.

Chapter 11. Domestic Violence Cases

Rules 5.380 and 5.381 were originally proposed for placement in chapter 11 of the comprehensive set of new family law rules of court. Due to the change in the proposed effective date of this proposal, and because rules 5.380 and 5.381 were proposed to take effect on January 1, 2012, rules 5.380 and 5.381 were placed under a new chapter 8 to fit the outline of the current family law rules of court. The Judicial Council adopted these rules, effective January 1, 2012. The task force and committee recommend a technical change by placing those rules under the chapter in which they were originally proposed (Chapter 11, article 1) if the council adopts the new family law rules of court. Rule 5.386, which was adopted by the Judicial Council, effective July 1, 2012, is recommended to be placed in these rules under article 2 of chapter 11.¹⁸

Chapter 12. Separate Trials (Bifurcation) and Interlocutory Appeals (rules 5.390 and 5.392). Five commentators responded to the proposed rules in this chapter, which combine and renumber existing rule 5.126 (Alternate date of valuation) and rule 5.175 (Bifurcation of issues). Two commentators agreed with the original proposal and two others suggested that the term “request for order” should be substituted for “notice of motion” where it appears in the chapter. The task force and committee recommend amending the rule to reflect the new form *Request for Order* (form FL-300).

The fifth commentator questioned whether rule 5.390(b) was needed because it seemed to be a restatement of the law. The rule, however, is not a restatement of any statute. Family Code section 2337 provides that “in a proceeding for dissolution of marriage, the court, on noticed motion, may sever and grant an early and separate trial on the issue of the dissolution of the status of the marriage apart from other issues.” Family Code section 3023 is the authority for separate trials on the issue of child custody. The family rules of court serve as the authority for the courts to bifurcate one or more other issues that are not covered by the two statutes. Those specific issues are currently contained in rule 5.175(c). The recommendation is to renumber the current rule to rule 5.390(b) and include other issues in a family law proceeding that may be bifurcated, such as termination of the status of a marriage or domestic partnership, attorney’s fees and costs, and other matters.

¹⁸ The recommendations in the report titled “Protective Orders: Registration and Enforcement of Protective Orders Issued by Tribal Courts” were adopted by the Judicial Council on January 24, 2012.

Finally, to reflect the family centered case resolution statutes and rules, which became effective January 1, 2012 (Fam. Code § 2450 and rule 5.83),¹⁹ the task force and committee deleted the language in the bifurcation rule that set the limit on the hearing date on a motion to request a separate trial. The current rule requires that a motion (to bifurcate) be heard not later than the trial-setting conference. The task force and committee believe that removing the requirement could avoid interfering with a judicial officer's ability to provide assistance and management to the parties who participate in family centered case resolution, especially if it is in the parties' best interest to address an issue by separate trial after a the date of a trial-setting conference. Deleting the language also makes the rule consistent with Family Code section 2451(a)(7), which specifically includes bifurcations as an order that judges can include in a family-centered case resolution plan. However, the statute does not impose a time requirement on the bifurcation hearing.

Chapter 14. Default Proceedings and Judgments (rules 5.401–5.415). The rules in this chapter are the renumbering of current rules with minor amendments made to content or format in response to comments. Six commentators responded to rules 5.401, 5.402, 5.411, 5.413, and 5.415. Suggestions to modify the rules in this chapter included: (1) generally replacing the term “stipulation for judgment” with “stipulated judgment”; (2) providing in rule 5.411 that stipulated judgments must dispose of all matters subject to the court's jurisdiction or request reservation of jurisdiction; (3) changing the format of the signature lines of a stipulated judgment to provide a separate line for the parties' attorneys to note that the settlement's terms conform to the parties' agreement; and (4) providing more specific language in rule 5.415 regarding the requirements for the envelopes that accompany the judgments submitted to the court for processing. The task force and committee agreed with the above suggestions and have incorporated them, with minor alterations, into the rules they are recommending for adoption.

One commentator suggested changing rule 5.411 to require that the signatures of unrepresented parties on a stipulated judgment be notarized. The task force and committee believe that this would be an important substantive change requiring public comment before it can be considered for adoption.

Chapter 16. Limited Scope Representation (rule 5.425). Proposed rule 5.425 (Limited scope representation; application of rules) consolidates existing rules 5.70 and 5.71, which have been in effect since 2003. In addition, the task force and committee decided to make changes to the rule to better inform courts and court users about the nature and the procedures involved in limited scope representation.

¹⁹ Family Code section 2450 can be found at: <http://www.leginfo.ca.gov/cgi-bin/waisgate?WAISdocID=15091719480+0+0+0&WAIAction=retrieve>. Rule 5.83 of the California Rules of Court can be found at: http://www.courtinfo.ca.gov/cms/rules/index.cfm?title=five&linkid=rule5_83.

Specifically, the proposed rule is expanded to incorporate language from existing civil rules 3.35 and 3.36 regarding limited scope representation, including the definition of “limited scope representation” and an “application” section. In addition, the proposed rule includes procedures that are presently only found on the companion forms *Notice of Limited Scope Representation* (form FL-950) and *Application to Be Relieved as Counsel Upon Completion of Limited Scope Representation* (form FL-955).

Ten commentators responded to the proposal. One commentator generally agreed with the original proposal and eight commentators proposed changes to the rule. Eight commentators suggested changes to the rule and one commentator did not agree with a specific procedural requirement regarding form FL-955. The task force and committee made changes to the rule in response to the comments, as identified below.

Comments about 5.425(d) suggested that the rule be more narrowly tailored to require service on the attorney of papers that fall within the scope of the representation and on the client when the papers fall outside of the scope of representation, instead of requiring that service be made on both the attorney and the client. The task force and committee agreed with the suggestion and have incorporated it, with minor alterations, into the rule they are recommending for adoption.

Commentators suggested three different methods for simplifying the process for an attorney to be relieved as counsel upon completion of the issues specified in the *Notice of Limited Scope Representation*. Commentators proposed that the rule (1) specify that attorneys who contract for a single hearing do not have to file a substitution of attorney form or request an order to be relieved as counsel of record following the appearance, (2) permit counsel to be relieved after filing a certificate of completion, or (3) require that the attorney submit an updated *Application to Be Relieved as Counsel Upon Completion of Limited Scope Representation* (form FL-955) only if there have been objections to form FL-955. Because these would be important substantive changes to the proposal, the task force and committee believe they should be considered in a future rules cycle and that public comment be sought before the task force and committee make a recommendation.

Another commentator suggested that “limited scope representation” must be clearly written on the substitution-of-counsel form, which must be filed with the court and served on all parties. Rule 5.425(e) and item 4 on *Notice of Limited Scope Representation* (form FL-950) provide that a party has to sign *Substitution of Attorney—Civil* (form MC-050) at the completion of the representation. The task force and committee believe that this is sufficient to enable the court to relieve an attorney as counsel of record and they prefer not to impose additional requirements on the party or the attorney.

Finally, a commentator disagreed with the existing rule that allows attorneys to assist in preparing documents without disclosing their participation. The commentator believes the rule “opens the door for an attorney to leave their customers hanging without any

accountability to the attorney” The rule, which has been in place since 2003, was designed to assist parties to obtain legal assistance on specific issues in a family law case. It does not limit any rights a party may have against an undisclosed attorney who fails to comply with the terms of their agreement.

Chapter 17. Family Law Facilitator (rule 5.430). This rule is merely the renumbering and rechartering of existing rule 5.35 regarding minimum standards for the Office of the Family Law Facilitator, without change to content. Two commentators responded to the rule in this chapter. Both commentators agreed with the proposal without providing specific comments.

Alternatives considered

Option 1: Adopt restructured rules effective July 1, 2012.

The task force and committee considered recommending that the rules be adopted in February 2012, for an effective date of July 1, 2012. However, they were concerned that courts and court users might require more than five months to review and fully implement the changes included in the restructured rules.

Courts, for example, would have to modify their local rules to be consistent with the family law rules of court. Adopting the restructured rules effective July 1, 2012, would not provide sufficient time for the process of modifying the local rules, circulating them for comment, and reviewing and redrafting them based on comments. Attorneys, litigants, and legal publication companies might also be pressed to make changes if the rules were adopted by the Judicial Council in February for an effective date of July 1, 2012.

While the task force and committee believe it is important to implement the restructured family law rules of court in a timely manner, they prefer that all persons and organizations affected by the changes have more time to fully understand and comply with the rules. For this reason, the task force and committee rejected this option and recommended that the rules take effect on January 1, 2013. This provides the public with 11 months’ notice before the rules actually take effect.

Option 2: Phase in family law rules of court.

The task force and committee also considered recommending that the rules be phased in over various cycles.

Although the task force and committee originally recommended that all the rules take effect on January 1, 2012, the restructured rules on the whole are necessarily being phased in over several periods starting in January 1, 2012. For example, family rules of court mandated to take effect on January 1, 2012, such as rule 5.250 regarding children’s participation and testimony in family law proceedings, have been separated from this original proposal and were adopted by the Judicial Council in 2011. Further, rule 5.92 and the related *Request for*

Order (form FL-300) and rule 5.386 regarding the registration and enforcement of protective orders issued by tribal courts were adopted by the Judicial Council in January 2012.

Because phasing in the remaining rules would require courts to make repeated adjustments to their forms, practices, and local rules, the task force and committee believe that it would be more efficient for the family rules of court to be implemented at one time. Further, having eliminated those rules identified by commentators as negatively impacting court operations, the task force and committee believe that additional phasing in of the rules beyond this report's recommended effective date of January 1, 2013, is not required.

Implementation Requirements, Costs, and Operational Impacts

As above noted, since the family rules were first adopted, the Judicial Council has restructured or renumbered the family rules of court several times. As with past restructuring, the task force and committee recognize that there will be an initial investment of time to train court staff, implement the new rules, and develop new local rules consistent with the new statewide rules. However, the task force and committee believe that once implemented, the new procedures in the family rules will save a significant amount of time for judges, clerks, and self-help staff. Further, they believe that these savings will more than offset the initial investment of time.

The task force and committee will also work with the Center for Families, Children & the Courts and the Center for Judicial Education and Research to provide training to judicial officers and court staff in the form of broadcasts and reference materials as well as technical assistance to the courts.

Relevant Strategic Plan Goals and Operational Plan Objectives

These recommendations serve Goal I: Access, Fairness and Diversity. The rules organize the statewide family law rules of court to enable judicial officers, attorneys, and litigants to quickly find appropriate rules and be aware of the variety of rules that pertain to family law. Court procedures that are more efficient and understandable increase equal access to the courts and litigants' access to justice.

These proposed rules also serve Goal III.B: Modernization of Management and Administration. Statewide rules such as rules 5.125, 5.151, 5.165, and 5.420 help courts implement fair and effective practices in handling family law matters.

These recommendations also serve Goal IV: Quality of Justice and Service to the Public, by implementing court procedures and processes that are fair and understandable.

Attachments

1. Restructured rules outline, at pages 31–37
2. New, amended, and repealed and renumbered Family Law Rules of Court (Cal. Rules of Court, title 5), at pages 38–105
3. Chart of comments, at pages 106–256
4. Attachment A: Chart categorizing rules
5. Attachment B: Conversion tables
6. Attachment C: Rules to be repealed and renumbered

RESTRUCTURED RULES OUTLINE
FAMILY RULES OF COURT (5.1–5.487)

Title 5. Family and Juvenile Rules

Rule 5.1. Title

Division 1. Family Rules

Chapter 1. General Provisions

Article 1. General Provisions

Rule 5.2. Division title; application of rules and laws

Rule 5.4. Preemption; local rules and forms

Article 2. Use of Forms

Rule 5.7. Use of forms

Article 3. Appearance by Telephone

Rule 5.9. Appearance by telephone

Article 4. Discovery

Rule 5.12. Discovery motions

Article 5. Sanctions

Rule 5.14. Sanctions for violations of rules of court in family law cases

Chapter 2. Parties and Joinder of Parties

Article 1. Parties to Proceedings

Rule 5.16. Designation of parties

Rule 5.17. Other causes of action

Rule 5.18. Injunctive relief and reservation of jurisdiction

Article 2. Joinder of Parties

Rule 5.24. Joinder of persons claiming interest

Article 3. Joinder of Employee Pension Benefit Plan

Rule 5.29. Joinder of employee pension benefit plan

Chapter 3. Filing Fees and Fee Waivers

Article 1. Filing Fees and Fee Waivers

Rule 5.40. Filing Fees

Rule 5.41. Waiver of fees and costs

Article 2. Special Procedures

RESTRUCTURED RULES OUTLINE
FAMILY RULES OF COURT (5.1–5.487)

Rule 5.43. Fee waiver denial; voided actions; dismissal

Rule 5.45. Repayment of waived court fees and costs in family law support actions

Rule 5.46. Waiver of fees and costs—Supreme Court or Court of Appeal

Chapter 4. Starting and Responding to a Family Law Case; Service of Papers

Article 1. Summonses, Notices, and Declarations

Rule 5.50. Papers issued by the court

Rule 5.52. Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)

Article 2. Initial Pleadings

Rule 5.60. Petition or complaint; alternative relief

Rule 5.62. Appearance by respondent or defendant

Rule 5.63. Motion to quash proceeding or responsive relief

Article 3. Service of Papers

Rule 5.66. Proof of service

Article 4. Manner of Service

Rule 5.68. Manner of service of summons and petition; response; jurisdiction

Rule 5.72. Court order for service of summons by publication or posting when respondent's address is unknown

Article 5. Pleadings and Amended Pleadings

Rule 5.74. Pleadings and amended pleadings

Article 6. Specific Proceedings

Rule 5.76. Domestic partnerships

Rule 5.77. Summary dissolution

Chapter 5. Family Centered Case Resolution Plans

Rule 5.83. Family centered case resolution

Chapter 6. Request for Court Orders

Article 1. General Provisions

Rule 5.90. Format of papers

Rule 5.91. Individual restraining order

RESTRUCTURED RULES OUTLINE
FAMILY RULES OF COURT (5.1–5.487)

Article 2. Filing and Service

Rule 5.92. Request for court order; response

Rule 5.94. Order shortening time; other filing requirements

Rule 5.96. Place and manner of filing

Article 3. Meet-and-Confer Conferences

Rule 5.98. Meet-and-confer requirements; document exchange

Article 4. Evidence at Hearings

Rule 5.111. Declarations supporting and responding to a request for court order

Rule 5.112.1. Declaration page limitation; exemptions

Rule 5.113. Live testimony

Rule 5.115. Judicial notice

Article 5. Reporting and Preparation of Order After Hearing

Rule 5.123. Reporting of hearing proceedings

Rule 5.125. Preparation, service, and submission of order after hearing

Chapter 7. Request for Emergency Orders (Ex Parte Orders)

Article 1. Request for Emergency Orders

Rule 5.151. Request for emergency orders; application, required documents

Article 2. Notice, Service, Appearance

Rule 5.165. Requirements for notice

Rule 5.167. Service of application; temporary emergency orders

Rule 5.169. Personal appearance at hearing for temporary emergency orders

Article 3. Procedural Matters Not Requiring Notice (Non-Emergency Orders)

Rule 5.170. Matters not requiring notice to other parties

Chapter 8. Child Custody and Visitation (Parenting Time) Proceedings

Article 1. Child Custody Mediation

Rule 5.210. Court-connected child custody mediation

Rule 5.215. Domestic violence protocol for Family Court Services

Article 2. Child Custody Investigations and Evaluations

Rule 5.220. Court-ordered child custody evaluations

Rule 5.225. Appointment requirements for child custody evaluators

RESTRUCTURED RULES OUTLINE
FAMILY RULES OF COURT (5.1–5.487)

Rule 5.230. Domestic violence training standards for court-appointed child custody investigators and evaluators

Article 3. Ex Parte Communications in Child Custody Proceedings

Rule 5.235. Ex parte communication in child custody proceedings

Article 4. Counsel Appointed to Represent a Child

Rule 5.240. Appointment of counsel to represent a child in family law proceedings

Rule 5.241. Compensation of counsel appointed to represent a child in a family law proceeding

Rule 5.242. Qualifications, rights, and responsibilities of counsel appointed to represent a child in family law proceedings

Article 5. Children’s Participation in Family Court

Rule 5.250. Children’s participation and testimony in family court proceedings

Chapter 9. Child, Spousal, and Domestic Partner Support

Article 1. General Provisions

Rule 5.260. General provisions regarding support cases

Article 2. Certification of Statewide Uniform Guideline Support Calculators

Rule 5.275. Standards for computer software to assist in determining support

Chapter 10. Government Child Support Cases (Title IV-D Support Cases)

Rule 5.300. Purpose, authority, and definitions

Rule 5.305. Hearing of matters by a judge under Family Code sections 4251(a) and 4252(b)(7)

Rule 5.310. Use of existing family law forms

Rule 5.311. Implementation of new and revised governmental forms by local child support agencies

Rule 5.315. Memorandum of points and authorities

Rule 5.320. Attorney of record in support actions under title IV-D of the Social Security Act

Rule 5.324. Telephone appearance in title IV-D hearings and conferences

Rule 5.325. Procedures for clerk's handling of combined summons and complaint

RESTRUCTURED RULES OUTLINE
FAMILY RULES OF COURT (5.1–5.487)

Rule 5.330. Procedures for child support case registry form

Rule 5.335. Procedures for hearings on interstate income withholding orders

Rule 5.340. Judicial education for child support commissioners

Rule 5.350. Procedures for hearings to set aside voluntary declarations of paternity when no previous action has been filed

Rule 5.355. Minimum standards of training for court clerk staff whose assignment includes title IV-D child support cases

Rule 5.360. Appearance by local child support agency

Rule 5.365. Procedure for consolidation of child support orders

Rule 5.370. Party designation in interstate and intrastate cases

Rule 5.375. Procedure for a support obligor to file a motion regarding mistaken identity

Chapter 11. Domestic Violence Cases

Article 1. Domestic Violence Prevention Act Cases

Rule 5.380. Agreement and judgment of parentage in Domestic Violence Prevention Act Cases

Rule 5.381. Modification of child custody, visitation, and support orders in Domestic Violence Prevention Act cases

Article 2. Tribal Court Protective Orders

Rule 5.386. Procedures for filing a tribal court protective order

Chapter 12. Separate Trial (Bifurcation) and Interlocutory Appeals

Article 1. Separate Trials

Rule 5.390. Bifurcation of issues

Article 2. Interlocutory Appeals

Rule 5.392. Interlocutory appeals

Chapter 13. Trials and Long-Cause Hearings

Rule 5.393. Setting trials and long-cause hearings

Rule 5.394. Trial or hearing brief

Chapter 14. Default Proceedings and Judgments

Rule 5.401. Default

RESTRUCTURED RULES OUTLINE
FAMILY RULES OF COURT (5.1–5.487)

Rule 5.402. Request for default; forms

Rule 5.405. Judgment checklists

Rule 5.407. Review of default and uncontested judgment documents submitted on the basis of declarations under Family Code section 2336

Rule 5.409. Default and uncontested judgment hearings on judgments submitted on the basis of declarations under Family Code section 2336

Rule 5.411. Stipulated judgments

Rule 5.413. Notice of entry of judgment

Rule 5.415. Completion of notice of entry of judgment

Chapter 15. Settlement Services

Rule 5.420. Domestic violence procedures for court-connected settlement services providers

Chapter 16. Limited Scope Representation; Attorney’s Fees and Costs

Article 1. Limited Scope Representation

Rule 5.425. Limited scope representation; application of rules

Article 2. Attorney’s Fees and Costs

Rule 5.427. Attorney’s fees and costs

Chapter 17. Family Law Facilitator

Rule 5.430. Minimum standards for the Office of the Family Law Facilitator

Chapter 18. Court Coordination Rules

Rule 5.440. Related cases

Rule 5.445. Court communication protocol for domestic violence and child custody orders

Division 2. Rules Applicable in Family and Juvenile Proceedings

Chapter 1. Contact and Coordination

Rule 5.451. Contact after adoption agreement

Rule 5.460. Request for sibling contact information

Rule 5.475. Custody and visitation orders following termination of a juvenile court proceeding or probate court guardianship proceeding

RESTRUCTURED RULES OUTLINE
FAMILY RULES OF COURT (5.1–5.487)

Chapter 2. Indian Child Welfare Act

Rule 5.480. Application

Rule 5.481. Inquiry and notice

Rule 5.482. Proceedings after notice

Rule 5.483. Transfer of case

Rule 5.484. Placement of an Indian child

Rule 5.485. Termination of parental rights

Rule 5.486. Petition to invalidate orders

Rule 5.487. Adoption record keeping

Rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440 of the California Rules of Court are adopted; rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487 are amended; and rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180 are repealed and renumbered, effective January 1, 2013, to read:

1 **Title 5. Family and Juvenile Rules**

2
3 **Rule 5.1. Title**

4
5 ***

6 **Division 1. Family Rules**

7
8 **Chapter 1. General Provisions**

9
10 **Article 1. General Provisions**

11
12 **Rule 5.2. Division title; definitions; application of rules and laws**

13
14 **(a) Division title**

15
16 The rules in this division may be referred to as the Family Rules.

17
18 **(b) Definitions and use of terms**

19
20 As used in this division, unless the context or subject matter otherwise requires, the
21 following definitions apply:

22
23 (1) “Family Code” means that code enacted by chapter 162 of the Statutes of
24 1992 and any subsequent amendments to that code.

25
26 (2) “Action” is also known as a lawsuit, a case, or a demand brought in a court of
27 law to defend or enforce a right, prevent or remedy a harm, or punish a crime.
28 It includes all the proceedings in which a party requests orders that are
29 available in the lawsuit.

30
31 (3) “Proceeding” is a court hearing in an action under the Family Code, including
32 a hearing that relates to the dissolution or nullity of a marriage or domestic
33 partnership, legal separation, custody and support of minor children, a parent

1 and child relationship, adoptions, local child support agency actions under the
2 Family Code, contempt proceedings relating to family law or local child
3 support agency matters, and any action filed under the Domestic Violence
4 Prevention Act, Uniform Parentage Act, Uniform Child Custody Jurisdiction
5 and Enforcement Act, Indian Child Welfare Act, or Uniform Interstate
6 Family Support Act.

7
8 (4) “Dissolution” is the legal term used for “divorce.” “Divorce” commonly
9 refers to a marriage that is legally ended.

10
11 (5) “Attorney” means a member of the State Bar of California. “Counsel” means
12 an attorney.

13
14 (6) “Party” is a person appearing in an action. Parties include both self-
15 represented persons and persons represented by an attorney of record. Any
16 designation of a party encompasses the party’s attorney of record, including
17 “party,” “petitioner,” “plaintiff,” “People of the State of California,”
18 “applicant,” “defendant,” “respondent,” “other parent,” “other parent/party,”
19 “protected person,” and “restrained person.”

20
21 (7) “Best interest of the child” is described in Family Code section 3011.

22
23 (8) “Parenting time,” “visitation,” and “visitation (parenting time)” refer to how
24 parents share time with their children.

25
26 (9) “Property” includes assets and obligations.

27
28 (10) “Local rule” means every rule, regulation, order, policy, form, or standard of
29 general application adopted by a court to govern practice and procedure in
30 that court.

31
32 **(c) Application of rules**

33
34 The rules in this division apply to every action and proceeding to which the Family
35 Code applies and, unless these rules elsewhere explicitly make them applicable, do
36 not apply to any other action or proceeding that is not found in the Family Code.

37
38 **(d) General law applicable**

39
40 Except as otherwise provided in these rules, all provisions of law applicable to civil
41 actions generally apply to a proceeding under the Family Code if they would
42 otherwise apply to such proceeding without reference to this rule. To the extent that
43 these rules conflict with provisions in other statutes or rules, these rules prevail.

1
2 **(e) Law applicable to other proceedings**

3
4 In any action under the Family Code that is not considered a “proceeding” as
5 defined in (b), all provisions of law applicable to civil actions generally apply. Such
6 an action must be commenced by filing an appropriate petition, and the respondent
7 must file an appropriate response within 30 days after service of the summons and
8 a copy of the petition.

9
10 **(f) Extensions of time**

11
12 The time within which any act is permitted or required to be done by a party under
13 these rules may be extended by the court upon such terms as may be just.

14
15 **(g) Implied procedures**

16
17 In the exercise of the court’s jurisdiction under the Family Code, if the course of
18 proceeding is not specifically indicated by statute or these rules, any suitable
19 process or mode of proceeding may be adopted by the court that is consistent with
20 the spirit of the Family Code and these rules.

21
22 **Drafters’ Notes:**

23 Existing rule 5.5 is renumbered as rule 5.2(a). Existing rule 5.10 is renumbered as rule
24 5.2(b). Existing rule 5.20 is renumbered as rule 5.2(c). Existing rule 5.21 is renumbered
25 as 5.2(d). Existing rule 5.22 is renumbered as 5.2(e) and amended to change the title
26 and reference rule 5.2(b)’s definition of “proceeding.” Existing rule 5.15 is renumbered as
27 5.2(f). Existing rule 5.140 is renumbered as 5.2(g).

28
29 **Rule 5.4. Preemption; local rules and forms**

30
31 Each local court may adopt local rules and forms regarding family law actions and
32 proceedings that are not in conflict with or inconsistent with California law or the
33 California Rules of Court. Effective January 1, 2013, local court rules and forms must
34 comply with the Family Rules.

35
36 **Advisory Committee Comment**

37
38 The Family and Juvenile Law Advisory Committee agrees with the *Elkins Family Law Task*
39 *Force: Final Report and Recommendations* (final report) regarding local rules of court (see final
40 report at pages 31–32). The final report is available at www.courts.ca.gov/elkins-finalreport.pdf.

1 The advisory committee encourages local courts to continue piloting innovative family law
2 programs and practices using local rules that are consistent with California law and the California
3 Rules of Court.

4
5 Courts must not adopt local rules that create barriers for self-represented litigants or parties
6 represented by counsel in getting their day in court. Further, courts should not adopt general rules
7 for a courtroom as they pose substantial barriers to a party's access to justice.

8 9 **Article 2: Use of Forms**

10 11 **Rule 5.7. Use of forms**

12 13 **(a) Status of family law and domestic violence forms**

14
15 All forms adopted or approved by the Judicial Council for use in any proceeding
16 under the Family Code, including any form in the FL, ADOPT, DV, and EJ series,
17 are adopted as rules of court under the authority of Family Code section 211; article
18 VI, section 6 of the California Constitution; and other applicable law.

19 20 **(b) Forms in nonfamily law proceedings**

21
22 The forms specified by this division may be used, at the option of the party, in any
23 proceeding involving a financial obligation growing out of the relationship of
24 parent and child or husband and wife or domestic partners, to the extent they are
25 appropriate to that proceeding.

26 27 **(c) Interstate forms**

28
29 Notwithstanding any other provision of these rules, all Uniform Interstate Family
30 Support Act forms approved by either the National Conference of Commissioners
31 on Uniform State Laws or the U.S. Department of Health and Human Services are
32 adopted for use in family law and other support actions in California.

33 34 **Drafters' Notes:**

35 Existing rule 5.25 is renumbered as rule 5.7(a). Existing rule 5.26 is retitled and
36 renumbered as rule 5.7(b). Existing rule 5.27 is retitled and renumbered as rule 5.7(c).

37 38 **Article 3. Appearance by Telephone**

39 40 **Rule 5.9. Appearance by telephone**

41 42 **(a) Application**

1 This rule applies to all family law cases, except for actions for child support
2 involving a local child support agency. Rule 5.324 governs telephone appearances
3 in governmental child support cases.

4
5 **(b) Telephone appearance**

6
7 The court may permit a party to appear by telephone at a hearing, conference, or
8 proceeding if the court determines that a telephone appearance is appropriate.

9
10 **(c) Need for personal appearance**

11
12 (1) At its discretion, the court may require a party to appear in person at a
13 hearing, conference, or proceeding if the court determines that a personal
14 appearance would materially assist in the determination of the proceedings or
15 in the effective management or resolution of the particular case.

16
17 (2) If, at any time during a hearing, conference, or proceeding conducted by
18 telephone, the court determines that a personal appearance is necessary, the
19 court may continue the matter and require a personal appearance.

20
21 **(d) Local rules**

22
23 Courts may develop local rules to specify procedures regarding appearances by
24 telephone.

25
26 **Article 4. Discovery**

27
28 **Rule 5.12. Discovery motions**

29
30 **(a) Applicable law**

31
32 Family law discovery motions are subject to the provisions of Code of Civil
33 Procedure sections 2016.010 through 2036.050 and Family Code section 2100 et
34 seq. regarding disclosure of assets and liabilities.

35
36 **(b) Applicable rules**

37
38 Discovery proceedings brought in a case under the Family Code must comply with
39 applicable civil rules, including:

40
41 (1) The format of supplemental and further discovery (rule 3.1000);
42

- (2) Oral deposition by telephone, videoconference, or other remote electronic means (rule 3.1010);
- (3) Separate statement requirements (rule 3.1345);
- (4) Service of motion papers on nonparty deponent (rule 3.1346); and
- (5) Sanctions for failure to provide discovery (rule 3.1348).

Article 5: Sanctions

Rule 5.14. Sanctions for violations of rules of court in family law cases

(a) Application

This sanctions rule applies to any action or proceeding brought under the Family Code.

(b) Definition

For purposes of the rules in this division,

- (1) “Sanctions” means a monetary fine or penalty ordered by the court.
- (2) “Person” means a party, a party’s attorney, a law firm, a witness, or any other individual or entity whose consent is necessary for the disposition of the case.

(c) Sanctions imposed on a person

In addition to any other sanctions permitted by law, the court may order a person, after written notice and an opportunity to be heard, to pay reasonable monetary sanctions to the court or to an aggrieved person, or both, for failure without good cause to comply with the applicable rules. The sanction must not put an unreasonable financial burden on the person ordered to pay.

(d) Notice and procedure

Sanctions must not be imposed under this rule except on a request for order by the person seeking sanctions or on the court’s own motion after the court has provided notice and an opportunity to be heard.

- (1) A party’s request for sanctions must:

- 1 (A) State the applicable rule of court that has been violated;
2
3 (B) Describe the specific conduct that is alleged to have violated the rule;
4 and
5
6 (C) Identify the party, attorney, law firm, witness, or other person against
7 whom sanctions are sought.
8

9 (2) The court on its own motion may issue an order to show cause that must:

- 10
11 (A) State the applicable rule of court that has been violated;
12
13 (B) Describe the specific conduct that appears to have violated the rule; and
14
15 (C) Direct the attorney, law firm, party, witness, or other person to show
16 cause why sanctions should not be imposed for violation of the rule.
17

18 **(e) Award of expenses**

19
20 In addition to the sanctions awardable under this rule, the court may order the
21 person who has violated an applicable rule of court to pay to the party aggrieved by
22 the violation that party’s reasonable expenses, including reasonable attorney’s fees
23 and costs, incurred in connection with the motion or request for order for sanctions.
24

25 **(f) Order**

26
27 A court order awarding sanctions must be in writing and must recite in detail the
28 conduct or circumstances justifying the order.
29
30

31 **Chapter 2. Procedural Rules Parties and Joinder of Parties**

32
33 **Article 1. Parties to Proceedings**

34
35 **Rule 5.16. Designation of parties**

36
37 **(a) Designation of parties**

- 38
39 (1) In cases filed under the Family Code, the party starting the case is referred to
40 as the “petitioner,” and the other party is the “respondent.”
41
42 (2) In local child support agency actions, the local child support agency starts the
43 case and is the petitioner or plaintiff in the case. The parent sued by the child

1 support agency is the “respondent” or “defendant,” and the parent who is not
2 the defendant is referred to as the “Other Parent.” Every other proceeding
3 must be prosecuted and defended in the names of the real parties in interest.
4

5 **(b) Parties to proceeding**
6

7 (1) The only persons permitted to be parties to a proceeding for dissolution, legal
8 separation, or nullity of marriage are the spouses, except as provided in (3), a
9 third party who is joined in the case under rule 5.24, or a local child support
10 agency that intervenes in the case.
11

12 (2) The only persons permitted to be parties to a proceeding for dissolution, legal
13 separation, or nullity of domestic partnership are the domestic partners,
14 except as provided in (3), a third party who is joined in the case under rule
15 5.24, or a local child support agency that intervenes in the case.
16

17 (3) In a nullity proceeding, the case can be started by the spouses or domestic
18 partners. The case may also be started by a parent or guardian, conservator,
19 or other person specified in Family Code section 2211. For this type of case,
20 the person starting the case is a party and the caption on all papers must be
21 appropriately changed to reflect that fact.
22

23 (4) The only persons permitted to be parties to a proceeding under the Domestic
24 Violence Prevention Act are those identified in Family Code section 6211.
25

26 (5) The only persons permitted to be parties to a family law proceeding to
27 establish parentage are the presumed or putative parents of the minor child,
28 the minor child, a third party who is joined in the case under rule 5.24, or a
29 local child support agency that intervenes in the case.
30

31 **Drafters' Notes:**

32 Existing rule 5.100 is renumbered as rule 5.16(a) with minor changes to formatting.
33 Existing rule 5.102 is renumbered as 5.16(b) with changes made to reference new rule
34 numbers.
35

36 **Rule 5.17. Other causes of action**
37

38 A party in a family law proceeding may only ask that the court make orders against or
39 involving the other party, or any other person, that are available to the party in these
40 rules, Family Code sections 17400, 17402, and 17404, or other sections of the California
41 Family Code.
42

43 **Drafters' Notes:**

1 Existing rule 5.104 is renumbered as rule 5.17 with substantive changes.
2
3

4 **Rule 5.18. Injunctive relief and reservation of jurisdiction**
5

6 **(a) Injunctive relief**
7

8 When a party in a family law case applies for a court order under rule 5.92, the
9 court may grant injunctive or other relief against or for the following persons to
10 protect the rights of either or both parties:
11

12 (1) A person who has or claims an interest in the case;
13

14 (2) A person who would be a necessary party to a complete disposition of the
15 issues in the case, but is not permitted to be a party under rule 5.16; or
16

17 (3) A person who is acting as a trustee, agent, custodian, or similar fiduciary with
18 respect to any property subject to disposition by the court in the proceeding,
19 or other matter subject to the jurisdiction of the court in the proceeding.
20

21 **(b) Reservation of jurisdiction**
22

23 If the court is unable to resolve the issue in the proceeding under the Family Code,
24 the court may reserve jurisdiction over the particular issue until such time as the
25 rights of such person and the parties to the proceeding under the Family Code have
26 been determined in a separate action or proceeding.
27

28 **Drafters' Notes:**

29 Existing rule 5.106 is renumbered as rule 5.18 with changes to formatting. The rule is
30 amended to include a reference to a new rule number.
31

32 **Article 2. Joinder of Parties**
33

34 **Rule 5.24. Joinder of persons claiming interest**
35

36 A person who claims or controls an interest in any matter subject to disposition in the
37 proceeding may be joined as a party to the family law case only as provided in this
38 chapter.
39

40 **(a) Applicable rules**
41

1 (1) All provisions of law relating to joinder of parties in civil actions generally
2 apply to the joinder of a person as a party to a family law case, except as
3 otherwise provided in this chapter.

4
5 (2) The law applicable to civil actions generally governs all pleadings, motions,
6 and other matters pertaining to that portion of the proceeding as to which a
7 claimant has been joined as a party to the proceeding in the same manner as if
8 a separate action or proceeding not subject to these rules had been filed,
9 except as otherwise provided in this chapter or by the court in which the
10 proceeding is pending.

11
12 **(b) “Claimant” defined**

13
14 For purposes of this rule, a “claimant” is an individual or an entity joined or sought
15 or seeking to be joined as a party to the family law proceeding.

16
17 **(c) Persons who may seek joinder**

18
19 (1) The petitioner or the respondent may apply to the court for an order joining a
20 person as a party to the case who has or claims custody or physical control of
21 any of the minor children subject to the action, or visitation rights with
22 respect to such children, or who has in his or her possession or control or
23 claims to own any property subject to the jurisdiction of the court in the
24 proceeding.

25
26 (2) A person who has or claims custody or physical control of any of the minor
27 children subject to the action, or visitation rights with respect to such
28 children, may apply to the court for an order joining himself or herself as a
29 party to the proceeding.

30
31 (3) A person served with an order temporarily restraining the use of property that
32 is in his or her possession or control or that he or she claims to own, or
33 affecting the custody of minor children subject to the action, or visitation
34 rights with respect to such children, may apply to the court for an order
35 joining himself or herself as a party to the proceeding.

36
37 **(d) Form of joinder application**

38
39 (1) All applications for joinder other than for an employee pension benefit plan
40 must be made by serving and filing form a *Notice of Motion and Declaration*
41 for Joinder (form FL-371). The hearing date must be less than 30 days from
42 the date of filing the notice. The completed form must state with particularity
43 the claimant’s interest in the proceeding and the relief sought by the

1 applicant, and it must be accompanied by an appropriate pleading setting
2 forth the claim as if it were asserted in a separate action or proceeding.

3
4 (2) A blank copy of *Responsive Declaration to Motion for Joinder and Consent*
5 *Order for Joinder* (form FL-373) must be served with the *Notice of Motion*
6 and accompanying pleading.

7
8 (e) **Court order on joinder**

9
10 (1) *Mandatory joinder*

11
12 (A) The court must order that a person be joined as a party to the
13 proceeding if any person the court discovers has physical custody or
14 claims custody or visitation rights with respect to any minor child of
15 the marriage, domestic partnership, or to any minor child of the
16 relationship.

17
18 (B) Before ordering the joinder of a grandparent of a minor child in the
19 proceeding under Family Code section 3104, the court must take the
20 actions described in section 3104(a).

21
22 (2) *Permissive joinder*

23
24 The court may order that a person be joined as a party to the proceeding if the
25 court finds that it would be appropriate to determine the particular issue in the
26 proceeding and that the person to be joined as a party is either indispensable
27 for the court to make an order about that issue or is necessary to the
28 enforcement of any judgment rendered on that issue.

29
30 In deciding whether it is appropriate to determine the particular issue in the
31 proceeding, the court must consider its effect upon the proceeding, including:

32
33 (A) Whether resolving that issue will unduly delay the disposition of the
34 proceeding;

35
36 (B) Whether other parties would need to be joined to make an effective
37 judgment between the parties;

38
39 (C) Whether resolving that issue will confuse other issues in the
40 proceeding; and

1 (D) Whether the joinder of a party to determine the particular issue will
2 complicate, delay, or otherwise interfere with the effective disposition
3 of the proceeding.

4
5 (3) Procedure upon joinder

6
7 If the court orders that a person be joined as a party to the proceeding under
8 this rule, the court must direct that a summons be issued on *Summons*
9 (*Joinder*) (form FL-375) and that the claimant be served with a copy of
10 *Notice of Motion and Declaration for Joinder* (form FL-371), the pleading
11 attached thereto, the order of joinder, and the summons. The claimant has 30
12 days after service to file an appropriate response.

13
14 **Drafters' Notes:**

15 Existing rule 5.150 is renumbered, with minor changes, as rule 5.24 (first subparagraph)
16 and 5.24(a)(1). Existing rule 5.160 is renumbered as rule 5.24(a)(2) with changes.
17 Existing rule 5.152 is renumbered as 5.24(b) with changes. Existing rule 5.154 is
18 renumbered as 5.24(c). Existing rule 5.156 is amended and renumbered as rule 5.24(d).
19 Existing rule 5.158 is renumbered as rule 5.24(e).

20
21 **Article 3. Employee Pension Benefit Plan**

22
23 **Rule 5.29. Joinder of employee pension benefit plan**

24
25 **(a) Request for joinder**

26
27 Every request for joinder of employee pension benefit plan and order and every
28 pleading on joinder must be submitted on *Request for Joinder of Employee Benefit*
29 *Plan and Order* (form FL-372) and *Pleading on Joinder—Employee Benefit Plan*
30 (form FL-370).

31
32 **(b) Summons**

33
34 Every summons issued on the joinder of employee pension benefit plan must be on
35 *Summons (Joinder)* (form FL-375).

36
37 **(c) Notice of Appearance**

38
39 Every notice of appearance of employee pension benefit plan and responsive
40 pleading filed under Family Code section 2063(b) must be given on *Notice of*
41 *Appearance and Response of Employee Benefit Plan* (form FL-374).

42
43 **Drafters' Notes:**

1 Existing rule 5.162 is renumbered as rule 5.29 with minor formatting changes.
2
3

4 **Chapter 3. Joinder of Parties Filing Fees and Fee Waivers**

5
6 **Article 1. Filing Fees and Fee Waivers**

7
8 **Rule 5.40. Filing Fees**

9
10 **(a) Filing fees**

11
12 Parties must pay filing fees to the clerk of the court at the time the parties file
13 papers with the court.

14
15 **(b) Authority**

16
17 The amount of money required to pay filing fees in family court is established by
18 the Uniform Civil Fees and Standard Fee Schedule Act of 2005 under Government
19 Code section 70670 et seq. and is subject to change. The act covers fees the court
20 may charge parties to file the first papers in a family law proceeding, motions, or
21 other papers requiring a hearing. It also covers filing fees that courts may charge in
22 proceedings relating to child custody or visitation (parenting time) to cover the
23 costs of maintaining mediation services under Family Code section 3160 et seq.

24
25 **(c) Other fees**

26
27 (1) The court must not charge filing fees that are inconsistent with law or with
28 the California Rules of Court and may not impose any tax, charge, or penalty
29 upon a proceeding, or the filing of any pleading allowed by law, as provided
30 by Government Code section 68070.

31
32 (2) In the absence of a statute or rule authorizing or prohibiting a fee by the
33 superior court for a particular service or product, the court may charge a
34 reasonable fee not to exceed the costs of providing the service or product, if
35 the Judicial Council approves the fee, as provided by Government Code
36 section 70631. Approved fees must be clearly posted and accessible to the
37 public.

38
39 **Rule 5.41. Waiver of fees and costs**

40
41 If unable to afford the costs to file an action in family court, a party may request that the
42 court waive fees and costs. The procedure and forms needed to request an initial fee

1 waiver in a family law action are the same as for all other civil actions, unless otherwise
2 provided by a statute or the California Rules of Court.

3
4 **(a) Forms**

5
6 The forms required to request a fee waiver may be obtained from the clerk of the
7 court, the public law library, or online at the California Courts website.

8
9 **(b) Rules**

10
11 Rules 3.50–3.56 of the California Rules of Court (title 3, division 2) govern fee
12 waivers in family law cases. Parties may refer to the civil rules for information
13 about:

- 14
15 (1) Applying for a fee waiver (rule 3.51);
16
17 (2) Forms for requesting a fee waiver (rule 3.51);
18
19 (3) How the court makes an order on a fee waiver application (rule 3.52);
20
21 (4) The time required for the court to grant a fee waiver (rule 3.53);
22
23 (5) The confidentiality of fee waiver applications and hearings (rule 3.54);
24
25 (6) Court fees and costs included in an initial fee waiver (rule 3.55); and
26
27 (7) Additional court fees and costs that may be included in the fee waiver (rule
28 3.56).

29
30 **Article 2. Special Procedures**

31
32 **Rule 5.43. Fee waiver denials; voided actions; dismissal**

33
34 **(a) Voided paperwork**

35
36 The clerk of the court must void the papers that were filed with a petitioner’s or
37 respondent’s fee waiver application if 10 days pass after notice of the fee waiver
38 denial and petitioner or respondent has not:

- 39
40 (1) Paid the fees owed;
41
42 (2) Submitted a new *Request to Waive Court Fees* (form FW-001) if the fee
43 waiver was denied because the first form was incomplete; or

1
2 (3) Requested a hearing using *Request for Hearing About Court Fee Waiver*
3 *Order (Superior Court)* (form FW-006).

4
5 **(b) Effect of voided petition or complaint; dismissal or continuation of case**

6
7 (1) *No response or notice of appearance filed*

8
9 If a petition or complaint is voided under (a) and a response to the petition or
10 complaint has not been filed, or respondent has not appeared in the action, the
11 court may dismiss the case without prejudice. If the court dismisses the case,
12 the clerk of the court must notify the parties.

13
14 (2) *Response or notice of appearance filed; case continuation or dismissal*

15
16 If a petition or complaint is voided and a response has been filed with the
17 court, or respondent has appeared in the action, the court must:

18
19 (A) Review the response, or documents constituting respondent's
20 appearance, to determine whether or how the case will proceed based
21 on the relief requested;

22
23 (B) Notify the parties of the court's determination; and

24
25 (C) Refund filing fees paid by the respondent if the court dismisses the
26 case.

27
28 **Rule 5.45. Repayment of waived court fees and costs in family law support actions**

29
30 **(a) Determination of repayment required**

31
32 When a judgment or support order is entered in a family law case, the court may
33 order either party to pay all or part of the fees and costs that the court waived under
34 Government Code section 68637. The court must consider and determine the
35 repayment of waived fees as required by Government Code section 68637(d) and
36 (e). The rule does not apply to actions initiated by a local child support agency.

37
38 **(b) Required forms**

39
40 (1) An order determining repayment of waived initial fees must be made on
41 *Order to Pay Waived Court Fees and Costs (Superior Court)* (form FL-336).
42 An order for payment of waived court fees must be accompanied by a blank

1 Application to Set Aside Order to Pay Waived Court Fees—Attachment (form
2 FL-337).

- 3
4 (2) An order granting or denying a request to set aside an order to pay waived
5 court fees and costs must be made on *Order After Hearing on Motion to Set*
6 *Aside Order to Pay Waived Court Fees (Superior Court)* (form FL-338).

7
8 **Rule 5.46. Waiver of fees and costs—Supreme Court or Court of Appeal**

9
10 **(a) Application**

11
12 Rule 8.26 of the appellate rules specifies the procedure and forms for applying for
13 an initial waiver of court fees and costs in the Supreme Court or Court of Appeal.

14
15 **(b) Information**

16
17 Parties may refer to rule 8.26 for information about:

- 18
19 (1) Applying for a fee waiver in appeals, writ proceedings, and petitions for
20 review;
21
22 (2) Required forms requesting a fee waiver;
23
24 (3) The confidentiality of fee waiver applications and hearings;
25
26 (4) Time required for the court to grant a fee waiver; and
27
28 (5) Denial of a fee waiver application.

29
30
31 **Chapter 4. ~~Bifurcation and Appeals~~ Starting and Responding to a Family Law**
32 **Case; Service of Papers**

33
34 **Article 1. Summonses, Notices, and Declarations**

35
36 **Rule 5.50. Papers issued by the court**

37
38 **(a) Issuing the summons; form**

39
40 If a summons is required to commence a family law case, the clerk of the court
41 must issue the summons using the same procedure for issuing a summons in civil
42 actions, generally.

1 (1) The clerk of the court must:

2
3 (A) Issue a *Summons (Family Law)* (form FL-110) for divorces, legal
4 separations, or annulment cases involving married persons or domestic
5 partnerships;

6
7 (B) Issue a *Summons (Uniform Parentage—Petition for Custody and*
8 *Support)* (form FL-210) for parentage or custody and support cases;

9
10 (C) Issue a *Summons (UIFSA)* (form FL-510) when a party seeks to
11 establish or enforce child support orders from other states; and

12
13 (D) Process a *Summons and Complaint or Supplemental Complaint*
14 *Regarding Parental Obligations* (form FL-600) as specified in rule
15 5.325.

16
17 (2) The clerk of the court must not give the original summons to the petitioner,
18 but must maintain it in the court file, except for support cases initiated by a
19 local child support agency.

20
21 **(b) Automatic temporary family law restraining order in summons; handling by**
22 **clerk**

23
24 Under Family Code section 233, in proceedings for dissolution, legal separation, or
25 nullity of a marriage or domestic partnership and in parentage proceedings, the
26 clerk of the court must issue a summons that includes automatic temporary
27 (standard) restraining orders on the reverse side of the summons.

28
29 (1) The summons and standard restraining orders must be issued and filed in the
30 same manner as a summons in a civil action and must be served and enforced
31 in the manner prescribed for any other restraining order.

32
33 (2) If service is by publication, the publication need not include the standard
34 restraining orders.

35
36 **(c) Individual restraining order**

37
38 (1) On application of a party and as provided in the Family Code, a court may
39 issue any individual restraining order that appears to be reasonable or
40 necessary, including those automatic temporary restraining orders in (b)
41 included on the back of the family law summons under Family Code section
42 233.

43

1 (2) Individual restraining orders supersede the standard family law restraining
2 orders on the back of the Family Law and Uniform Parentage Act
3 summonses.

4
5 **Drafters' Notes:**

6 Existing rule 5.110 is renumbered as rule 5.50, with substantive and formatting changes.

7
8 **Rule 5.52. Declaration Under Uniform Child Custody Jurisdiction and**
9 **Enforcement Act (UCCJEA)**

10
11 **(a) Filing requirements; application**

12
13 (1) Petitioner and respondent must each complete, serve, and file a *Declaration*
14 *Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)*
15 (form FL-105/GC-120) if there are children of their relationship under the
16 age of 18 years.

17
18 (2) The form is a required attachment to the petition and response in actions for
19 divorce, to establish parentage, or actions for custody and support of minor
20 children.

21
22 **(b) Duty to update information**

23
24 In any action or proceeding involving custody of a minor child, a party has a
25 continuing duty to inform the court if he or she obtains further information about a
26 custody proceeding in a California court or any other court concerning a child who
27 is named in the petition, complaint, or response. To comply with this duty, a party
28 must file an updated UCCJEA form with the court and have it served on the other
29 party.

30
31 **Article 2. Initial Pleadings**

32
33 **Rule 5.60. Petition or complaint; alternative relief**

34
35 **(a) Format**

36
37 A party starting a family law case must file an appropriate petition or complaint
38 using a form approved by the Judicial Council. Where the Judicial Council has not
39 approved a specific petition or complaint form, the party must submit the petition
40 or complaint in an appropriate format under Trial Court Rules, rules 2.100 through
41 2.119.

1 **(b) Request for alternative relief**

2
3 The petitioner or respondent may request alternative relief when filing a family law
4 action. The request for alternative relief must be indicated in the petition or
5 response.

6
7 **Drafters' Notes:**

8 Existing rule 5.114 is amended and renumbered as 5.60(b).

9
10 **Rule 5.62. Appearance by respondent or defendant**

11
12 **(a) Appearance**

13
14 Except as provided in Code of Civil Procedure section 418.10, a respondent or
15 defendant is deemed to have appeared in a proceeding when he or she files:

- 16
17 (1) A response or answer;
18
19 (2) A notice of motion to strike, under section 435 of the Code of Civil
20 Procedure;
21
22 (3) A notice of motion to transfer the proceeding under section 395 of the Code
23 of Civil Procedure; or
24
25 (4) A written notice of his or her appearance.

26
27 **(b) Notice required after appearance**

28
29 After appearance, the respondent or defendant or his or her attorney is entitled to
30 notice of all subsequent proceedings of which notice is required to be given by
31 these rules or in civil actions generally.

32
33 **(c) No notice required**

34
35 Where a respondent or defendant has not appeared, notice of subsequent
36 proceedings need not be given to the respondent or defendant except as provided in
37 these rules.

38
39 **Drafters' Notes**

40 Existing rule 5.120 is repealed and renumbered as rule 5.62 with minor formatting
41 changes.

1 **Rule 5.63. Motion to quash proceeding or responsive relief**

2
3 **(a) Respondent’s application**

4
5 Within the time permitted to file a response, the respondent may move to quash the
6 proceeding, in whole or in part, for any of the following reasons:

- 7
8 (1) Lack of legal capacity to sue;
9
10 (2) Prior judgment or another action pending between the same parties for the
11 same cause;
12
13 (3) Failure to meet the residence requirement of Family Code section 2320; or
14
15 (4) Statute of limitations in Family Code section 2211.

16
17 **(b) Service of respondent’s motion**

18
19 The motion to quash must be served in compliance with Code of Civil Procedure
20 section 1005(b). If the respondent files a notice of motion to quash, no default may
21 be entered, and the time to file a response will be extended until 15 days after
22 service of the court’s order denying the motion to quash.

23
24 **(c) Petitioner’s application**

25
26 Within 15 days after the filing of the response, the petitioner may move to quash, in
27 whole or in part, any request for affirmative relief in the response for the grounds
28 set forth in (a).

29
30 **(d) Waiver**

31
32 The parties are deemed to have waived the grounds set forth in (a) if they do not
33 file a motion to quash within the time frame set forth.

34
35 **(e) Relief**

36
37 When a motion to quash is granted, the court may grant leave to amend the petition
38 or response and set a date for filing the amended pleadings. The court may also
39 dismiss the action without leave to amend. The action may also be dismissed if the
40 motion has been sustained with leave to amend and the amendment is not made
41 within the time permitted by the court.

42
43 **Drafters’ Notes:**

1 Existing rule 5.121 is renumbered as rule 5.63 with minor changes to formatting.
2

3 **Article 3. Service of Papers**
4

5 **Rule 5.66. Proof of service**
6

7 Parties must file with the court a completed form to prove that the other party received
8 the petition or complaint or response to petition or complaint.
9

10 (1) The proof of service of summons may be a form approved by the Judicial Council
11 or a document or pleading containing the same information required in *Proof of*
12 *Service of Summons* (form FL-115).
13

14 (2) The proof of service of response to petition or complaint may be a form approved
15 by the Judicial Council or a document or pleading containing the same information
16 required in *Proof of Service by Mail* (form FL-335) or *Proof of Personal Service*
17 (form FL-330).
18

19 **Article 4. Manner of Service**
20

21 **Rule 5.68. Manner of service of summons and petition; response; jurisdiction**
22

23 **(a) Service of summons and petition**
24

25 The petitioner must arrange to serve the other party with a summons, petition, and
26 other papers as required by one of the following methods:
27

28 (1) Personal service (Code Civ. Proc., § 415.10);
29

30 (2) Substituted service (Code Civ. Proc., § 415.20);
31

32 (3) Service by mail with a notice and acknowledgment of receipt (Code Civ.
33 Proc., § 415.30);
34

35 (4) Service on person outside of the state (Code Civ. Proc., § 415.40);
36

37 (5) Service on person residing outside of the United States which must be done
38 in compliance with service rules of the Hague Convention on the Service
39 Abroad of Judicial and Extrajudicial Documents in Civil or Commercial
40 Matters; or
41

42 (6) Service by posting or publication (Code Civ. Proc., §§ 415.50 and 413.30).
43

1 **(b) Service of response to petition**

2
3 A response to a family law petition may be served by the methods described in (a)
4 but may also be served by mail without notice and acknowledgment of receipt.

5
6 **(c) Continuing jurisdiction**

7
8 The court has jurisdiction over the parties and control of all subsequent proceedings
9 from the time of service of the summons and a copy of the petition. A general
10 appearance of the respondent is equivalent to personal service within this state of
11 the summons and a copy of the petition upon him or her.

12
13 **Drafters' Notes:**

14 Existing rule 5.112 is renumbered as rule 5.68(c).

15
16
17 **Rule 5.72. Court order for service of summons by publication or posting when**
18 **respondent's address is unknown**

19
20 **Drafters' Notes:**

21 Rule 5.72 is included in the Judicial Council report titled "Family Law: Proof of Service by
22 Posting or Publication."

23
24 **Article 5. Pleadings and Amended Pleadings**

25
26 **Rule 5.74. Pleadings and amended pleadings**

27
28 **(a) Definitions**

29
30 (1) "Pleading" means a petition, complaint, application, objection, answer,
31 response, notice, request for orders, statement of interest, report, or account
32 filed in proceedings under the Family Code.

33
34 (2) "Amended pleading" means a pleading that completely restates and
35 supersedes the pleading it amends for all purposes.

36
37 (3) "Amendment to a pleading" means a pleading that modifies another pleading
38 and alleges facts or requests relief materially different from the facts alleged
39 or the relief requested in the modified pleading. An amendment to a pleading
40 does not restate or supersede the modified pleading but must be read together
41 with that pleading.

1 (4) “Supplement to a pleading” and “supplement” mean a pleading that modifies
2 another pleading but does not allege facts or request relief materially different
3 from the facts alleged or the relief requested in the supplemented pleading. A
4 supplement to a pleading may add information to or may correct omissions in
5 the modified pleading.

6
7 **(b) Forms of pleading**

8
9 The forms of pleading and the rules by which the sufficiency of pleadings is to be
10 determined are solely those prescribed in these rules. Demurrers or summary
11 judgment motions must not be used in family law actions.

12
13 **(c) Amendment to pleadings**

14
15 (1) Amendments to pleadings, amended pleadings, and supplemental pleadings
16 may be served and filed in conformity with the provisions of law applicable
17 to such matters in civil actions generally, but the petitioner is not required to
18 file a reply if the respondent has filed a response.

19
20 (2) If both parties have filed initial pleadings (petition and response), there may
21 be no default entered on an amended pleading of either party.

22
23 **Drafters’ Notes:**

24 Existing rule 5.108 is renumbered as rule 5.74(b) and (c) with minor changes to
25 formatting.

26
27 **Article 6. Specific Proceedings**

28
29 **Rule 5.76. Domestic partnerships**

30
31 To obtain a dissolution, a legal separation, or an annulment of a domestic partnership:

32
33 (1) *Petition—Domestic Partnership/Marriage (Family Law)* (form FL-103) must be
34 filed to commence an action for dissolution, legal separation, or annulment of a
35 domestic partnership. *Response—Domestic Partnership/Marriage (Family Law)*
36 (form FL-123) must be filed in response to this petition.

37
38 (2) All other forms and procedures used for the dissolution, legal separation, or
39 annulment of a domestic partnership are the same as those used for the dissolution,
40 legal separation, or annulment of a marriage.

41
42 **Drafters’ Notes:**

43 Existing rule 5.28 is amended and renumbered as rule 5.76.

1
2 **Rule 5.77. Summary dissolution**

3
4 **(a) Declaration of disclosure**

5
6 To comply with the disclosure requirements of chapter 9 (beginning with section
7 2100) of part 1 of division 6 of the Family Code in proceedings for summary
8 dissolution, each joint petitioner must complete and give each other the following
9 documents before signing a property settlement agreement or completing a divorce:

10
11 (1) A preliminary declaration of disclosure as described in Family Code section
12 2104 and *Declaration of Disclosure* (form FL-140); or

13
14 (2) The completed worksheet pages indicated in *Summary Dissolution*
15 *Information* (form FL-810) listing separate and community property and
16 obligations as well as a completed *Income and Expense Declaration* (form
17 FL-150).

18
19 **(b) Fee for filing**

20
21 The joint petitioners must pay one fee for filing a *Joint Petition for Summary*
22 *Dissolution of Marriage* (form FL-800) unless both parties are eligible for a fee
23 waiver order. The fee is the same as that charged for filing a *Petition—Marriage*
24 (form FL-100). No additional fee may be charged for the filing of any form
25 prescribed for use in a summary dissolution proceeding.

26
27 **Drafters' Notes:**

28 Existing rule 5.130 is renumbered as rule 5.77 with changes to format and content.

29
30
31 **Chapter 5. ~~Child Custody~~ Family Centered Case Resolution Plans**

32
33 **Rule 5.83. Family Centered Case Resolution**

34
35 ***

36 **Drafters' Notes:**

37 Rule 5.83 was adopted by the Judicial Council, effective January 1, 2012, as proposed
38 in the Judicial Council report titled "Family and Juvenile Rules: Family-Centered Case
39 Management Rule and Forms."

1 Chapter 6. ~~Certification of Statewide Uniform Guideline Support Calculators~~
2 Request for Court Orders

3
4 Article 1. General Provisions

5
6 Rule 5.90. Format of papers

7
8 The rules regarding the format of a request for order are the same as the rules for format
9 of motions in civil rules 3.1100 through 3.1116, except as otherwise provided in these
10 Family Rules.

11
12 Rule 5.91. Individual restraining order

13
14 On a party's request for order and as provided in the Family Code, a court may issue any
15 individual restraining order that appears to be reasonable or necessary, including those
16 automatic temporary restraining orders included on the back of the family law summons.
17 Individual orders supersede the standard family law restraining orders on the back of the
18 Family Law and Uniform Parentage Act summonses.

19
20 Article 2. Filing and Service

21
22 Rule 5.92. Request for court order; response

23
24 ***

25
26 Rule 5.94. Order shortening time; other filing requirements

27
28 (a) Order shortening time

29
30 The court, on its own motion or on application for an order shortening time
31 supported by a declaration showing good cause, may prescribe shorter times for the
32 filing and service of papers than the times specified in Code of Civil Procedure
33 section 1005.

34
35 (b) Time for filing proof of service

36
37 Proof of service of the *Request for Order* (FL-300) and supporting papers should be
38 filed five court days before the hearing date.

39
40 (c) Failure to timely serve moving papers

41
42 If a *Request for Order* (FL-300) is not timely served on the opposing party, the
43 moving party must notify the court as soon as possible before the date assigned for

1 the court hearing and request a new hearing date to allow additional time to serve
2 the *Request for Order* (FL-300) and supporting documents.

3
4 The moving party must also request that the court reissue the *Request for Order*
5 (FL-300) and any temporary orders. To do so, the moving party must complete and
6 submit to the court an *Application and Order for Reissuance of Request for Order*
7 (form FL-306).

8
9 **(d) Filing of late papers**

10
11 No moving or responding papers relating to a request for order may be rejected for
12 filing on the ground that it was untimely submitted for filing. If the court, in its
13 discretion, refuses to consider a late filed paper, the minutes or order must so
14 indicate.

15
16 **(e) Computation of time**

17
18 Moving or responding papers submitted before the close of the clerk’s office to the
19 public on the day that the paper is due is deemed timely filed.

20
21 **Rule 5.96. Place and manner of filing**

22
23 **(a) Papers filed in clerk’s office**

24
25 All papers relating to a request for order proceeding must be filed in the clerk’s
26 office, unless otherwise provided by local rule or court order.

27
28 **(b) General schedule**

29
30 The clerk must post a general schedule showing the days and departments for
31 hearing the matters indicated in the *Request for Order* (form FL-300).

32
33 **(c) Duty to notify court of settlement**

34
35 If the matter has been settled before the scheduled court hearing date, the moving
36 party must immediately notify the court of the settlement.

37
38
39 **Article 3. Meet-and-Confer Conferences**

40
41 **Rule 5.98. Meet-and-confer requirements; document exchange**

1 **(a) Meet and confer**

2
3 All parties and all attorneys are required to meet and confer in person, by
4 telephone, or as ordered by the court, before the date of the hearing relating to a
5 Request for Order (FL-300). During this time, parties must discuss and make a
6 good faith attempt to settle all issues, even if a complete settlement is not possible
7 and only conditional agreements are made. The requirement to meet and confer
8 does not apply to cases involving domestic violence.

9
10 **(b) Document exchange**

11
12 Before or while conferring, parties must exchange all documentary evidence that is
13 to be relied on for proof of any material fact at the hearing. At the hearing, the court
14 may decline to consider documents that were not given to the other party before the
15 hearing as required under this rule. The requirement to exchange documents does
16 not relate to documents that are submitted primarily for rebuttal or impeachment
17 purposes.

18
19 **Article 4. Evidence at Hearings**

20
21 **Rule 5.111. Declarations supporting and responding to a request for court order**

22
23 Along with a Request for Order (form FL-300) or a Responsive Declaration (form FL-
24 320), a party must file a supporting declaration with the court clerk and serve it on the
25 other party. The declarations must comply with the following requirements:

26
27 **(a) Length of declarations**

28
29 A declaration included with a request for court order or a responsive declaration
30 must not exceed 10 pages in length. A reply declaration must not exceed 5 pages in
31 length, unless:

- 32
33 (1) The declaration is of an expert witness; or
34
35 (2) The court grants permission to extend the length of a declaration.

36
37 **(b) Form, format, and content of declarations**

- 38
39 (1) The form and format of each declaration submitted in a case filed under the
40 Family Code must comply with the requirements set out in California Rules
41 of Court 2.100 et. seq.

1 (2) A declaration must be based on personal knowledge and explain how the
2 person has acquired that knowledge. The statements in the declaration must
3 be admissible in evidence.

4
5 **(c) Objections to declarations**

6
7 (1) If a party thinks that a declaration does not meet the requirements of (b)(2)
8 the party must file their objections in writing at least 2 court days before the
9 time of the hearing, or any objection will be considered waived, and the
10 declaration may be considered as evidence. Upon a finding of good cause,
11 objections may be made in writing or orally at the time of the hearing..

12
13 (2) If the court does not specifically rule on the objection raised by a party, the
14 objection is presumed overruled. If an appeal is filed, any presumed
15 overrulings can be challenged.

16
17 **Drafters' Notes:**

18 Existing rule 5.118(f) was adopted by the Judicial Council, effective July 1, 2011. Rule
19 5.92, effective July 1, 2012, covered the substance of rule 5.118(a)-(e) and technical
20 amendments were subsequently made to strike rule 5.118(a)-(e) and rename rule 5.118
21 as *Declarations supporting and responding to a request for court order*. Effective
22 January 1, 2013, rule 5.118 is repealed and renumbered as rule 5.111 with changes to
23 format and content.

24
25 **Rule 5.112.1. Declaration page limitation; exemptions**

26
27 The Judicial Council form portion of a declaration does not count toward the page
28 limitation for declarations specified in rule 5.111. In addition, the following documents
29 may be attached to a *Request for Order* (form FL-300) or *Responsive Declaration* (form
30 FL-320) without being counted toward the page limitation for declarations:

31
32 (1) *An Income and Expense Declaration* (form FL-150) and its required attachments;

33
34 (2) *A Financial Statement (Simplified)* (form FL-155) and its required attachments;

35
36 (3) *A Property Declaration* (form FL-160) and required attachments;

37
38 (4) Exhibits attached to declarations; and

39
40 (5) A memorandum of points and authorities.

1 **Rule 5.113. Live testimony**

2
3 **(a) Purpose**

4
5 Under Family Code section 217, at a hearing on any request for order brought
6 under the Family Code, absent a stipulation of the parties or a finding of good
7 cause under (b), the court must receive any live, competent, and admissible
8 testimony that is relevant and within the scope of the hearing.

9
10 **(b) Factors**

11
12 In addition to the rules of evidence, a court must consider the following factors in
13 making a finding of good cause to refuse to receive live testimony under Family
14 Code section 217:

15
16 (1) Whether a substantive matter is at issue—such as child custody, visitation
17 (parenting time), parentage, child support, spousal support, requests for
18 restraining orders, or the characterization, division, or temporary use and
19 control of the property or debt of the parties;

20
21 (2) Whether material facts are in controversy;

22
23 (3) Whether live testimony is necessary for the court to assess the credibility of
24 the parties or other witnesses;

25
26 (4) The right of the parties to question anyone submitting reports or other
27 information to the court;

28
29 (5) Whether a party offering testimony from a non-party has complied with
30 Family Code section 217(c); and

31
32 (6) Any other factor that is just and equitable.

33
34 **(c) Findings**

35
36 If the court makes a finding of good cause to exclude live testimony, it must state
37 its reasons on the record or in writing. The court is required to state only those
38 factors on which the finding of good cause is based.

39
40 **(d) Minor children**

41
42 When receiving or excluding testimony from minor children, in addition to
43 fulfilling the requirements of Evidence Code section 765, the court must follow the

1 procedures in Family Code section 3042 and rule 5.250 of the California Rules of
2 Court governing children’s testimony.

3
4 **(e) Witness lists**

5
6 Witness lists required by Family Code section 217(c) must be served along with the
7 request for order or responsive papers in the manner required for the service of
8 those documents (*Witness List* (form FL-321) may be used for this purpose). If no
9 witness list has been served, the court may require an offer of proof before allowing
10 any nonparty witness to testify.

11
12 **(f) Continuance**

13
14 The court must consider whether or not a brief continuance is necessary to allow a
15 litigant adequate opportunity to prepare for questioning any witness for the other
16 parties. When a brief continuance is granted to allow time to prepare for
17 questioning witnesses, the court should make appropriate temporary orders.

18
19 **(g) Questioning by court**

20
21 Whenever the court receives live testimony from a party or any witness it may elicit
22 testimony by directing questions to the parties and other witnesses.

23
24 **Drafters’ Notes:**

25 Existing rule 5.119 was adopted by the Judicial Council, effective July 1, 2011. The rule
26 is repealed and renumbered as rule 5.113 with technical changes.

27
28 **Rule 5.115. Judicial notice**

29
30 A party requesting judicial notice of material under Evidence Code section 452 or 453
31 must provide the court and each party with a copy of the material. If the material is part
32 of a file in the court in which the matter is being heard, the party must specify in writing
33 the part of the court file sought to be judicially noticed and make arrangements with the
34 clerk to have the file in the courtroom at the time of the hearing.

35
36 **Article 6. Reporting and Preparation of Order After Hearing**

37
38 **Rule 5.123. Reporting of hearing proceedings**

39
40 A court that does not regularly provide for reporting of hearings on a request for order or
41 motion must so state in its local rules. The rules must also provide a procedure by which
42 a party may obtain a court reporter in order to provide the party with an official verbatim
43 transcript.

1
2 **Rule 5.125. Preparation, service, and submission of order after hearing**

3
4 The court may prepare the order after hearing and serve copies on the parties or their
5 attorneys. Alternatively, the court may order one of the parties or attorneys to prepare the
6 proposed order as provided in these rules. The court may also modify the timelines and
7 procedures in this rule when appropriate to the case.

8
9 **(a) In general**

10
11 The term “party” or “parties” includes both self-represented persons and persons
12 represented by an attorney of record. The procedures in this rule requiring a party
13 to perform action related to the preparation, service, and submission of an order
14 after hearing include the party’s attorney of record.

15
16 **(b) Submission of proposed order after hearing to the court**

17
18 Within 10 calendar days of the court hearing, the party ordered to prepare the
19 proposed order must:

- 20
21 (1) Serve the proposed order to the other party for approval; or
22
23 (2) If the other party did not appear at the hearing or the matter was uncontested,
24 submit the proposed order directly to the court without the other party’s
25 approval. A copy must also be served to the other party or attorney.

26
27 **(c) Other party approves or rejects proposed order after hearing**

- 28
29 (1) Within 20 calendar days from the court hearing, the other party must review
30 the proposed order to determine if it accurately reflects the orders made by
31 the court and take one of the following actions:
32
33 (A) Approve the proposed order by signing and serving it on the party or
34 attorney who drafted the proposed order; or
35
36 (B) State any objections to the proposed order and prepare an alternate
37 proposed order. Any alternate proposed order prepared by the objecting
38 party must list the findings and orders in the same sequence as the
39 proposed order. After serving any objections and the alternate proposed
40 order to the party or attorney, both parties must follow the procedure in
41 (e).
42

1 (2) If the other party does not respond to the proposed order within 20 calendar
2 days of the court hearing, the party ordered to prepare the proposed order
3 must submit the proposed order to the court without approval within 25
4 calendar days of the hearing date. The correspondence to the court and to the
5 other party must include:

6
7 (A) The date the proposed order was served on the other party;

8
9 (B) The other party's reasons for not approving the proposed order, if
10 known;

11
12 (C) The date and results of any attempts to meet and confer, if relevant; and

13
14 (D) A request that the court sign the proposed order.

15
16 **(d) Failure to prepare proposed order after hearing**

17
18 (1) If the party ordered by the court to prepare the proposed order fails to serve
19 the proposed order to the other party within 10 calendar days from the court
20 hearing, the other party may prepare the proposed order and serve it to the
21 party or attorney whom the court ordered to prepare the proposed order.

22
23 (2) Within 5 calendar days from service of the proposed order, the party who had
24 been ordered to prepare the order must review the proposed order to
25 determine if it accurately reflects the orders made by the court and take one
26 of the following actions:

27
28 (A) Approve the proposed order by signing and serving it to the party or
29 attorney who drafted the proposed order; or

30
31 (B) State any objections to the proposed order and prepare an alternate
32 proposed order. Any alternate proposed order by the objecting party
33 must list the findings and orders in the same sequence as the proposed
34 order. After serving any objections and the alternate proposed order to
35 the other party or attorney, both parties must follow the procedure in
36 (e).

37
38 (3) If the party does not respond as described in (2), the party who prepared the
39 proposed order must submit the proposed order to the court without approval
40 within 5 calendar days. The cover letter to the court and to the other party or
41 attorney must include:

- 1 (A) The facts relating to the preparation of the order, including the date the
2 proposed order was due and the date the proposed order was served to
3 the party whom the court ordered to draft the proposed order;
4
5 (B) The party's reasons for not preparing or approving the proposed order,
6 if known;
7
8 (C) The date and results of any attempts to meet and confer, if relevant; and
9
10 (D) A request that the court sign the proposed order.
11

12 **(e) Objections to proposed order after hearing**

- 13
14 (1) If a party objects to the proposed order after hearing, both parties have 10
15 calendar days following service of the objections and the alternate proposed
16 order after hearing to meet and confer by telephone or in person to attempt to
17 resolve the disputed language.
18
19 (2) If the parties reach an agreement, the proposed findings and order after
20 hearing must be submitted to the court within 10 calendar days following the
21 meeting.
22
23 (3) If the parties fail to resolve their disagreement after meeting and conferring,
24 each party will have 10 calendar days following the date of the meeting to
25 submit to the court and serve on each other the following documents:
26
27 (A) A proposed *Findings and Order After Hearing* (FL-340) (and any form
28 attachments);
29
30 (B) A copy of the minute order or official transcript of the court hearing;
31 and
32
33 (C) A cover letter that explains the objections, describes the differences in
34 the two proposed orders, references the relevant sections of the
35 transcript or minute order, and includes the date and results of the meet-
36 and-confer conferences.
37

38 **(f) Unapproved order signed by the court; requirements**

39
40 Before signing a proposed order submitted to the court without the other party's
41 approval, the court must first compare the proposed order after hearing to the
42 minute order; official transcript, if available; or other court record.

1
2 **(g) Service of order after hearing signed by the court**

3
4 After the proposed order is signed by the court, the court clerk must file the order.
5 The party who prepared the order must serve an endorsed-filed copy to the other
6 party.

7
8 **Chapter 7. Rules for Title IV-D Support Actions Request for Emergency Orders**
9 **(Ex parte Orders)**

10
11 **Article 1. Request for Emergency Orders (Ex parte Orders)**

12
13 **Rule 5.151. Request for emergency orders; application; required documents**

14
15 **(a) Application**

16
17 The rules in this chapter govern applications for emergency orders (also known as
18 ex parte applications) in family law cases, unless otherwise provided by statute or
19 rule. These rules may be referred to as “the emergency orders rules.” Unless
20 specifically stated, these rules do not apply to ex parte applications for domestic
21 violence restraining orders under the Domestic Violence Prevention Act.

22
23 **(b) Purpose**

24
25 The purpose of a request for emergency orders is to address matters that cannot be
26 heard on the court’s regular hearing calendar. In this type of proceeding, notice to
27 the other party is shorter than in other proceedings. Notice to the other party can
28 also be waived under exceptional and other circumstances as provided in these
29 rules. The process is used to request that the court:

- 30
31 (1) Make orders to help prevent an immediate danger or irreparable harm to a
32 party or to the children involved in the matter;
33
34 (2) Make orders to help prevent immediate loss or damage to property subject to
35 disposition in the case; or
36
37 (3) Make orders about procedural matters, including the following:
38
39 (A) Setting a date for a hearing on the matter that is sooner than that of a
40 regular hearing (granting an order shortening time for hearing);
41

1 (B) Shortening or extending the time required for the moving party to serve
2 the other party with the notice of the hearing and supporting papers
3 (grant an order shortening time for service); and

4
5 (C) Continuing a hearing or trial.

6
7 **(c) Required documents**

8
9 A request for emergency orders must be in writing and must include all of the
10 following completed documents when relevant to the relief requested:

11
12 (1) Request for Order (form FL-300) that identifies the relief requested;

13
14 (2) A current *Income and Expense Declaration* (form FL-150) or *Financial*
15 *Statement (Simplified)* (form FL-155) and *Property Declaration* (form FL-
16 160);

17
18 (3) Temporary Orders (form FL-305) to serve as the proposed temporary order;

19
20 (4) A written declaration regarding notice of application for emergency orders
21 based on personal knowledge; and

22
23 (5) A memorandum of points and authorities only if required by the court.

24
25 **(d) Contents of application and declaration**

26
27 (1) Identification of attorney or party

28
29 An application for emergency orders must state the name, address, and
30 telephone number of any attorney known to the applicant to be an attorney
31 for any party or, if no such attorney is known, the name, address, and
32 telephone number of the party, if known to the applicant.

33
34 (2) Affirmative factual showing required in written declarations

35
36 The declarations must contain facts within the personal knowledge of the
37 declarant that demonstrate why the matter is appropriately handled as an
38 emergency hearing, as opposed to being on the court's regular hearing
39 calendar.

40
41 An applicant must make an affirmative factual showing of irreparable harm,
42 immediate danger, or any other statutory basis for granting relief without
43 notice or with shortened notice to the other party.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43

(3) Disclosure of previous applications and orders

An applicant should submit a declaration that fully discloses all previous applications made on the same issue and whether any orders were made on any of the applications, even if an application was previously made upon a different state of facts. Previous applications include an order to shorten time for service of notice or an order shortening time for hearing.

(4) Disclosure of change in status quo

The applicant has a duty to disclose that an emergency order will result in a change in the current situation or status quo. Absent such disclosure, attorney's fees and costs incurred to reinstate the status quo may be awarded.

(5) Applications regarding child custody or visitation (parenting time)

Applications for emergency orders granting or modifying child custody or visitation (parenting time) under Family Code section 3064 must:

- (A) Provide a full, detailed description of the most recent incidents showing:
 - (i) Immediate harm to the child as defined in Family Code section 3064(b); or
 - (ii) Immediate risk that the child will be removed from the State of California.
- (B) Specify the date of each incident described in (A);
- (C) Advise the court of the existing custody and visitation (parenting time) arrangements and how they would be changed by the request for emergency orders;
- (D) Include a copy of the current custody orders, if they are available. If no orders exist, explain where and with whom the child is currently living; and
- (E) Include a completed Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) (FL-105) if the form was not already filed by a party or if the information has changed since it was filed.

1
2 **(e) Contents of notice and declaration regarding notice of emergency hearing**

3
4 **(1) Contents of notice**

5
6 When notice of a request for emergency orders is given, the person giving
7 notice must:

- 8
9 **(A) State with specificity the nature of the relief to be requested;**
10
11 **(B) State the date, time, and place for the presentation of the application;**
12
13 **(C) State the date, time, and place of the hearing, if applicable; and**
14
15 **(D) Attempt to determine whether the opposing party will appear to oppose**
16 **the application (if the court requires a hearing) or whether he or she**
17 **will submit responsive pleadings before the court rules on the request**
18 **for emergency orders.**

19
20 **(2) Declaration regarding notice**

21
22 An application for emergency orders must be accompanied by a completed
23 declaration regarding notice that includes one of the following statements:

- 24
25 **(A) The notice given, including the date, time, manner, and name of the**
26 **party informed, the relief sought, any response, and whether opposition**
27 **is expected and that, within the applicable time under rule 5.165, the**
28 **applicant informed the opposing party where and when the application**
29 **would be made;**
30
31 **(B) That the applicant in good faith attempted to inform the opposing party**
32 **but was unable to do so, specifying the efforts made to inform the**
33 **opposing party; or**
34
35 **(C) That, for reasons specified, the applicant should not be required to**
36 **inform the opposing party.**

37
38 **Article 2. Notice, Service, Appearance**

39
40 **Rule 5.165. Requirements for notice**

41
42 **(a) Method of notice**

1 Notice of appearance at a hearing to request emergency orders may be given by
2 telephone, in writing, or by voicemail message.

3
4 **(b) Notice to parties**

5
6 A party seeking emergency orders under this chapter must give notice to all parties
7 or their attorneys so that it is received no later than 10:00 a.m. on the court day
8 before the matter is to be considered by the court. After providing notice, each
9 party must be served with the documents requesting emergency orders as described
10 in rule 5.167 or as required by local rule. This rule does not apply to a party seeking
11 emergency orders under the Domestic Violence Prevention Act.

12
13 (1) Explanation for shorter notice

14
15 If a party provided notice of the request for emergency orders to all parties
16 and their attorneys later than 10:00 a.m. the court day before the appearance,
17 the party must request in a declaration regarding notice that the court approve
18 the shortened notice. The party must provide facts in the declaration that
19 show exceptional circumstances that justify the shorter notice.

20
21 (2) Explanation for waiver of notice (no notice)

22
23 A party may ask the court to waive notice to all parties and their attorneys of
24 the request for emergency orders. To make the request, the party must file a
25 written declaration signed under penalty of perjury that includes facts
26 showing good cause not to give the notice. A judicial officer may approve a
27 waiver of notice for good cause, which may include that:

28
29 (A) Giving notice would frustrate the purpose of the order;

30
31 (B) Giving notice would result in immediate and irreparable harm to the
32 applicant or the children who may be affected by the order sought;

33
34 (C) Giving notice would result in immediate and irreparable damage to or
35 loss of property subject to disposition in the case;

36
37 (D) The parties agreed in advance that notice will not be necessary with
38 respect to the matter that is the subject of the request for emergency
39 orders; and

40
41 (E) The party made reasonable and good faith efforts to give notice to the
42 other party, and further efforts to give notice would probably be futile
43 or unduly burdensome.

1
2 **(c) Notice to the court**

3
4 The court may adopt a local rule requiring that the party provide additional notice
5 to the court that he or she will be requesting emergency orders the next court day.
6 The local rule must include a method by which the party may give notice to the
7 court by telephone.

8
9 **Rule 5.167. Service of application; temporary restraining orders**

10
11 **(a) Service of documents requesting emergency orders**

12
13 A party seeking emergency orders and a party providing written opposition must
14 serve the papers on the other party or on the other party's attorney at the first
15 reasonable opportunity before the hearing. Absent exceptional circumstances, no
16 hearing may be conducted unless such service has been made. The court may waive
17 this requirement in extraordinary circumstances if good cause is shown that
18 imminent harm is likely if documents are provided to the other party before the
19 hearing. This rule does not apply in cases filed under the Domestic Violence
20 Prevention Act.

21
22 **(b) Service of temporary emergency orders**

23
24 If the judicial officer signs the applicant's proposed emergency orders, the
25 applicant must obtain and have the conformed copy of the orders personally served
26 on all parties.

27
28 **Rule 5.169. Personal appearance at hearing for temporary emergency orders**

29
30 Courts may require all parties to appear at a hearing before ruling on a request for
31 emergency orders. Courts may also make emergency orders based on the documents
32 submitted without requiring the parties to appear at a hearing.

33
34 **Article 3. Procedural Matters Not Requiring Notice (Non-Emergency Orders)**

35
36 **Rule 5.170. Matters not requiring notice to other parties**

37
38 The courts may consider a party's request for order on the following issues without notice
39 to the other parties or personal appearance at a hearing:

- 40
41 (1) Applications to restore a former name after judgment;
42
43 (2) Stipulations by the parties;

- 1
2 (3) An order or judgment after a default court hearing;
3
4 (4) An earnings assignment order based on an existing support order;
5
6 (5) An order for service of summons by publication or posting;
7
8 (6) An order or judgment that the other party or opposing counsel approved or agreed
9 not to oppose; and
10
11 (7) Application for an order waiving filing fees.
12

13
14 **Chapter 8. Child Custody and Visitation (Parenting Time) Proceedings**

15
16 **Article 1. Child Custody Mediation**

17
18 **Rule 5.210. Court-connected child custody mediation**

19
20 ***

21
22 **Rule 5.215. Domestic violence protocol for Family Court Services**

23
24 ***

25
26 **Article 2. Child Custody Investigations and Evaluations**

27
28 **Rule 5.220. Court-ordered child custody evaluations**

29
30 ***

31
32 **Rule 5.225. Appointment requirements for child custody evaluators**

33
34 ***

35
36 **Rule 5.230. Domestic violence training standards for court-appointed child custody**
37 **investigators and evaluators**

38
39 ***

40 **Article 3. Ex parte Communication**

41
42 **Rule 5.235. Ex parte communication in child custody proceedings**

43

1 ***

2
3 **Article 4. Counsel Appointed to Represent a Child**

4
5 **Rule 5.240. Appointment of counsel to represent a child in family law proceedings**

6
7 **(a)–(b) *****

8
9 **(c) Orders appointing counsel for a child**

10
11 The court must issue written orders when appointing and terminating counsel for a
12 child.

13
14 (1) ***

15
16 (2) The appointment orders may include the:

17
18 (A)–(F) ***

19
20 (G) Source of funds and manner of reimbursement for ~~costs and attorney's~~
21 fees counsel's fees and costs;

22
23 (H) Allocation of payment of ~~attorney's~~ counsel's fees to one party subject
24 to reimbursement by the other party;

25
26 (I)–(J) ***

27
28 **(d) Panel of counsel eligible for appointment**

29
30 (1)–(3) ***

31
32 (4) Any lists maintained from which the court might appoint counsel should be
33 reviewed at least annually to ensure that those on the list meet the education
34 and training requirements. Courts should ask counsel annually to update their
35 information and to notify the court if any changes would make them unable
36 to be appointed.

37
38 **(e)–(f) *****

39
40 **Rule 5.241. Compensation of counsel appointed to represent a child in a family law**
41 **proceeding**

1 ***

2
3 **Rule 5.242. Qualifications, rights, and responsibilities of counsel appointed to**
4 **represent a child in family law proceedings**

5
6 ***

7 **Article 5. Children’s Participation in Family Court**

8
9 **Rule 5.250. Children’s participation and testimony in family court proceedings**

10
11 ***

12
13 **Chapter 9. Child, Spousal, and Domestic Partner Support**

14
15 **Article 1. General Provisions**

16
17 **Rule 5.260. General provisions regarding support cases**

18
19 **(a) Financial declarations**

20
21 Except as provided below, for all hearings involving child, spousal, or domestic
22 partner support, both parties must complete, file, and serve a current *Income and*
23 *Expense Declaration* (form FL-150) on all parties.

24
25 (1) A party requesting support orders must include a current, completed *Income*
26 *and Expense Declaration* (form FL-150) with the *Request for Order* (form
27 FL-300) that is filed with the court and served on all parties.

28
29 (2) A party responding to a request for support orders must include a current,
30 completed *Income and Expense Declaration* (form FL-150) with the
31 *Responsive Declaration to Request for Order* (form FL-320) that is filed with
32 the court and served on all parties.

33
34 (3) “Current” means the form has been completed within the past three months
35 providing no facts have changed. The form must be sufficiently completed to
36 allow the court to make an order.

37
38 (4) In child support hearings, a party may complete a current *Financial*
39 *Statement (Simplified)* (form FL-155) instead of a current *Income and*
40 *Expense Declaration* (form FL-150) if he or she meets the requirements
41 allowing submission of a *Financial Statement (Simplified)* (form FL-155).
42

1 (5) Financial Statement (Simplified) (form FL-155) is not appropriate for use in
2 proceedings to determine or modify spousal or domestic partner support, to
3 determine or modify family support, or to determine attorney’s fees and
4 costs.
5

6 **(b) Deviations from guideline child support in orders and judgments**
7

8 (1) If a party contends that the amount of support as calculated under the
9 statewide uniform guideline formula is inappropriate, that party must file a
10 declaration stating the amount of support alleged to be proper and the factual
11 and legal bases justifying a deviation from guideline support under Family
12 Code section 4057.
13

14 (2) In its discretion, for good cause shown, the court may deviate from the
15 amount of guideline support resulting from the computer calculation. If the
16 court finds good cause to deviate from the statewide uniform guideline
17 formula for child support, the court must state its findings in writing or on the
18 record as required by Family Code sections 4056, 4057, and 4065.
19

20 (3) Stipulated agreements for child support that deviate from the statewide
21 uniform guideline must include either a *Non-Guideline Child Support*
22 *Findings Attachment* (form FL-342(A)) or language in the agreement or
23 judgment conforming with Family Code sections 4056 and 4065.
24

25 **(c) Request to change prior support orders**
26

27 The supporting declaration submitted in a request to change a prior child, spousal,
28 or domestic partner support order must include specific facts demonstrating a
29 change of circumstances. No change of circumstances must be shown to change a
30 previously agreed upon child support order that was below the child support
31 guidelines.
32

33 **(d) Notification to the local child support agency**
34

35 The party requesting court orders must provide the local child support agency
36 timely notice of any request to establish, change, or enforce any child, spousal, or
37 domestic partner support order if the agency is providing support enforcement
38 services or has intervened in the case as described in Family Code section 17400.
39

40 **(e) Judgment for support**
41

42 (1) If child support is an issue in a judgment:
43

1 (A) Each party should file a proposed support calculation with the proposed
2 judgment that sets forth the party’s assumptions with regard to gross
3 income, tax filing status, time-share, add-on expenses, and any other
4 factor relevant to the support calculation.

5
6 (B) The moving party should file the documents in (A) with the proposed
7 judgment if the judgment is based on respondent’s default or a
8 stipulation of the parties.

9
10 (C) The court may use and must permit parties or their attorneys to use any
11 software certified by the Judicial Council to present support
12 calculations to the court.

13
14 (2) If spousal or domestic partner support is an issue in a judgment:

15
16 (A) Use of support calculation software is not appropriate when requesting
17 a judgment or modification of a judgment for spousal or domestic
18 partner support.

19
20 (B) Petitioner or the parties may use *Spousal or Partnership Support*
21 *Declaration Attachment* (form FL-157) to address the issue of spousal
22 or domestic partner support under Family Code section 4320 when
23 relevant to the case.

24
25 **Drafters’ Notes:**

26 Existing rule 5.128 is renumbered as rule 5.260(a) with substantive changes.

27
28 **Article 2. Certification of Statewide Uniform Guideline Support Calculators**

29
30 **Rule 5.275. Standards for computer software to assist in determining support**

31
32 ***

33
34 **Chapter 10. Government Child Support Cases (Title IV-D Support Cases)**

35
36 **Rule 5.300. Purpose, authority, and definitions**

37
38 ***

1 **Rule 5.305. Hearing of matters by a judge under Family Code sections 4251(a) and**
2 **4252(b)(7)**

3
4 ***

5
6 **Rule 5.310. Use of existing family law forms**

7
8 ***

9
10 **Rule 5.311. Implementation of new and revised governmental forms by local child**
11 **support agencies**

12
13 ***

14
15 **Rule 5.315. Memorandum of points and authorities**

16
17 ***

18
19 **Rule 5.320. Attorney of record in support actions under title IV-D of the Social**
20 **Security Act**

21
22 ***

23
24 **Rule 5.324. Telephone appearance in title IV-D hearings and conferences**

25
26 ***

27
28 **Rule 5.325. Procedures for clerk's handling of combined summons and complaint**

29
30 ***

31
32 **Rule 5.330. Procedures for child support case registry form**

33
34 ***

35
36
37 **Rule 5.335. Procedures for hearings on interstate income withholding orders**

38
39 ***

40
41 **Rule 5.340. Judicial education for child support commissioners**

42
43 ***

1
2 **Rule 5.350. Procedures for hearings to set aside voluntary declarations of paternity**
3 **when no previous action has been filed**

4
5 ***

6
7 **Rule 5.355. Minimum standards of training for court clerk staff whose assignment**
8 **includes title IV-D child support cases**

9
10 ***

11
12 **Rule 5.360. Appearance by local child support agency**

13
14 ***

15
16 **Rule 5.365. Procedure for consolidation of child support orders**

17
18 ***

19
20 **Rule 5.370. Party designation in interstate and intrastate cases**

21
22 ***

23
24 **Rule 5.375. Procedure for a support obligor to file a motion regarding mistaken**
25 **identity**

26
27 (a) ***

28
29 (b) **Procedure for filing motion in superior court**

30
31 The support obligor's motion in superior court to establish mistaken identity must
32 be filed on *Notice of Motion* (form FL-301); *Request for Order* (form FL-300) with
33 appropriate attachments. The support obligor must also file as exhibits to the ~~notice~~
34 ~~of motion~~ request for order a copy of the claim of mistaken identity that he or she
35 filed with the local child support agency and a copy of the local child support
36 agency's denial of the claim.

37
38 **Drafters' Notes:**

39 Existing rule 5.375(b) is amended to reference the proposed name change to form FL-
40 300.

41
42 **Chapter 11. Domestic Violence Cases**

1 Article 1. Domestic Violence Prevention Act Cases

2
3 Rule 5.380. Agreement and judgment of parentage in Domestic Violence Prevention
4 Act cases

5
6 ***

7
8 Rule 5.381. Modification of child custody, visitation, and support orders in
9 Domestic Violence Prevention Act cases

10
11 ***

12
13 Article 2. Tribal Court Protective Orders

14
15 Rule 5.386. Procedures for filing a tribal court protective order

16
17 ***

18
19
20 Chapter 12. Separate Trials (Bifurcation) and Interlocutory Appeals

21
22 Article 1. Separate Trials

23
24 Rule 5.390. Bifurcation of issues

25
26 (a) Request for order to bifurcate

27
28 As part of the noticed *Request for Order* (FL-300) of a party, the stipulation of the
29 parties, case management, or the court's own motion, the court may bifurcate one
30 or more issues to be tried separately before other issues are tried. A party
31 requesting a separate trial or responding to a request for a separate trial must
32 complete *Application or Response to Application for Separate Trial* (form FL-315).

33
34 (b) When to bifurcate

35
36 The court may separately try one or more issues before trial of the other issues if
37 resolution of the bifurcated issue is likely to simplify the determination of the other
38 issues. Issues that may be appropriate to try separately in advance include:

39
40 (1) Validity of a postnuptial or premarital agreement;

41
42 (2) Date of separation;

- 1 (3) Date to use for valuation of assets;
- 2
- 3 (4) Whether property is separate or community;
- 4
- 5 (5) How to apportion increase in value of a business;
- 6
- 7 (6) Existence or value of business or professional goodwill;
- 8
- 9 (7) Termination of status of a marriage or domestic partnership;
- 10
- 11 (8) Child custody and visitation (parenting time);
- 12
- 13 (9) Child, spousal, or domestic partner support;
- 14
- 15 (10) Attorney's fees and costs;
- 16
- 17 (11) Division of property and debts;
- 18
- 19 (12) Reimbursement claims; or
- 20
- 21 (13) Other issues specific to a family law case.
- 22

23 **(c) Alternate date of valuation**

24

25 Requests for separate trial regarding alternate date of valuation under Family Code
26 section 2552(b) must be accompanied by a declaration stating the following:

- 27
- 28 (1) The proposed alternate valuation date;
- 29
- 30 (2) Whether the proposed alternate valuation date applies to all or only a portion
31 of the assets and, if the *Request for Order* (FL-300) is directed to only a
32 portion of the assets, the declaration must separately identify each such asset;
33 and
- 34
- 35 (3) The reasons supporting the alternate valuation date.
- 36

37 **(d) Separate trial to terminate status of marriage or domestic partnership**

- 38
- 39 (1) All pension plans that have not been divided by court order that require
40 joinder must be joined as a party to the case before a petitioner or respondent
41 may file a request for a separate trial to terminate marital status or the
42 domestic partnership. Parties may refer to *Retirement Plan Joinder*—

1 Information Sheet (form FL-318-INFO) to help determine whether their
2 retirement benefit plans must be joined.

3
4 (2) The party not requesting termination of status may ask the court:

5
6 (A) To order that the judgment granting a dissolution include conditions
7 that preserve his or her claims in retirement benefit plans, health
8 insurance, and other assets; and

9
10 (B) For other orders made as conditions to terminating the parties' marital
11 status or domestic partnership.

12
13 (3) The court must use *Bifurcation of Status of Marriage or Domestic*
14 *Partnership—Attachment* (form FL-347) as an attachment to the order after
15 hearing in these matters.

16
17 (4) In cases involving division of pension benefits acquired by the parties during
18 the marriage or domestic partnership, the court must use *Pension Benefits—*
19 *Attachment to Judgment* (form FL-348) to set out the orders upon severance
20 of the status of marriage or domestic partnership. The form serves as a
21 temporary qualified domestic relations order and must be attached to the
22 status-only judgment and then served on the plan administrator. It can also be
23 attached to a judgment to allow the parties time to prepare a qualified
24 domestic relations order.

25
26 (e) **Notice by clerk**

27
28 Within 10 days after the order deciding the bifurcated issue and any statement of
29 decision under rule 3.1591 have been filed, the clerk must mail copies to the parties
30 and file a certificate of mailing.

31
32 **Drafters' Notes:**

33 Existing rule 5.175(a) is renumbered as rule 5.390(a) and amended to: include a third
34 sentence referencing use of mandatory form FL-315; delete the reference to "a noticed
35 motion;" and insert a reference to *Request for Order* (FL-330). Existing rule 5.175(b) is
36 renumbered as rule 5.390(e). Existing rule 5.175(c) is renumbered as rule 5.390(b) and
37 amended to include new provisions (b)(7)–(13). Existing rule 5.126 is renumbered as
38 rule 5.390(c) and updated to include a reference to *Request for Order* (form FL-300).

39
40 **Article 2. Interlocutory Appeals**

41
42 **Rule 5.392 ~~5.180~~. Interlocutory appeals**

43

1 ***

2
3 **Drafters' Notes:**

4 Existing rule 5.180 is renumbered as rule 5.392 without change to content.
5
6

7 **Chapter 13. Trials and Long-Cause Hearings**

8
9 **Rule 5.393. Setting trials and long-cause hearings**

10
11 **(a) Definitions**

12
13 For purposes of this rule:

- 14
15 (1) A “trial day” is defined as a period no less than two and a half hours of a
16 single court day.
17
18 (2) A “long-cause hearing” is defined as a hearing on a request for order that
19 extends more than a single court day.
20
21 (3) A “trial brief” or “hearing brief” is a written summary or statement submitted
22 by a party that explains to a judge the party’s position on particular issues
23 that will be part of the trial or hearing.
24

25 **(b) Conference with judge before trial or long-cause hearing**

26
27 The judge may schedule a conference with the parties and their attorneys before
28 any trial or long-cause hearing.

29
30 (1) *Time estimates*

31
32 During the conference, each party must provide an estimate of the amount of
33 time that will be needed to complete the trial or long-cause hearing. The
34 estimate must take into account the time needed to examine witnesses and
35 introduce evidence at the trial.
36

37 (2) *Trial or hearing brief*

38
39 The judge must determine at the conference whether to require each party to
40 submit a trial or hearing brief. If trial briefs will be required, they must
41 comply with the requirements of rule 5.394. Any additional requirements to
42 the brief must be provided to the parties in writing before the end of the
43 conference.

1
2 **(c) Sequential days**

3
4 Consistent with the goal of affording family law litigants continuous trials and
5 long-cause hearings without interruption, when trials or long-cause hearings are set,
6 they must be scheduled on as close to sequential days as the calendar of the trial
7 judge permits.

8
9 **(d) Intervals between trial or hearing days**

10
11 When trials or long-cause hearings are not completed in the number of days
12 originally scheduled, the court must schedule the remaining trial days as soon as
13 possible on the earliest available days with the goal of minimizing intervals
14 between days for trials or long-cause hearings.

15
16 **Rule 5.394. Trial or hearing brief**

17
18 **(a) Contents of brief**

19
20 For cases in which the judge orders each party to complete a trial or hearing brief or
21 other pleading, the contents of the brief must include at least:

22
23 (1) The statistical facts and any disputes about the statistical facts. Statistical
24 facts that may apply to the case could include:

25
26 (A) Date of the marriage or domestic partnership;

27
28 (B) Date of separation;

29
30 (C) Length of marriage or domestic partnership in years and months; and

31
32 (D) Names and ages of the parties' minor children.

33
34 (2) A brief summary of the case;

35
36 (3) A statement of any issues that need to be resolved at trial;

37
38 (4) A brief statement summarizing the contents of any appraisal or expert report
39 to be offered at trial;

40
41 (5) A list of the witnesses to be called at trial and a brief description of the
42 anticipated testimony of each witness, as well as name, business address, and
43 statement of qualifications of any expert witness;

1
2 (6) Any legal arguments on which a party intends to rely; and

3
4 (7) Any other matters determined by the judge to be necessary and provided to
5 the parties in writing.

6
7 **(b) Service of brief**

8
9 The parties must serve the trial or hearing brief on all parties and file the brief with
10 the court a minimum of 5 court days before the trial or long-cause hearing.

11
12
13 **Chapter 14. Default Proceedings and Judgments**

14
15 **Rule 5.401. Default**

16
17 **(a) Entry of default**

18
19 Upon proper application of the petitioner, the clerk must enter a default if the
20 respondent or defendant fails within the time permitted to:

21
22 (1) Make an appearance as stated in rule 5.62;

23
24 (2) File a notice of motion to quash service of summons under section 418.10 of
25 the Code of Civil Procedure; or

26
27 (3) File a petition for writ of mandate under section 418.10 of the Code of Civil
28 Procedure.

29
30 **(b) Proof of facts**

31
32 (1) The petitioner may apply to the court for the relief sought in the petition at
33 the time default is entered. The court must require proof to be made of the
34 facts stated in the petition and may enter its judgment based on that proof.

35
36 (2) The court may permit the use of a completed *Income and Expense*
37 *Declaration* (form FL-150) or *Financial Statement (Simplified)* (form FL-
38 155) and *Property Declaration* (form FL-160) for all or any part of the proof
39 required or permitted to be offered on any issue to which they are relevant.

1 **(c) Disposition of all matters required**

2
3 A judgment based on a default must include disposition of all matters subject to the
4 court's jurisdiction for which a party seeks adjudication or an explicit reservation
5 of jurisdiction over any matter not proposed for disposition at that time.
6

7 **Drafters' Notes:**

8 Existing rule 5.122 is renumbered as rule 5.401, and updated to include a reference to a
9 new rule number at 5.401(a)(1).
10

11 **Rule 5.402. Request for default; forms**

12
13 **(a) Forms**

14
15 No default may be entered in any proceeding unless a request has been completed
16 on a *Request to Enter Default* (form FL-165) and filed by the petitioner. However,
17 an *Income and Expense Declaration* (form FL-150) or *Financial Statement*
18 *(Simplified)* (form FL-155) are not required if the petition contains no request for
19 support, costs, or attorney's fees. A *Property Declaration* (form FL-160) is not
20 required if the petition contains no request for property.
21

22 **(b) Service address required**

23
24 For the purpose of completing the declaration of mailing, unless service was by
25 publication and the address of respondent is unknown, it is not sufficient to state
26 that the address of the party to whom notice is given is unknown or unavailable.
27

28 **Drafters' Notes:**

29 Existing rule 5.124 is renumbered as rule 5.402 with minor changes to title and
30 formatting.
31

32 **Rule ~~5.405~~ 5.146. Judgment checklists**

33
34 ***
35

36 **Rule ~~5.407~~ 5.147. Review of default and uncontested judgments submitted on the**
37 **basis of declaration under Family Code section 2336**
38

39 Once a valid proof of service of summons has been filed with the court or respondent has
40 made a general appearance in the case:
41

42 **(a) Court review**

43

1 The court must conduct a procedural review of all the documents submitted for
2 judgment based on default or uncontested judgments submitted under Family Code
3 section 2336 and notify the attorneys or self-represented litigants who submitted
4 them of all identified defects.

5
6 ***

7
8 **Rule 5.409 5.148. Default and uncontested judgment hearings on judgments**
9 **submitted on the basis of declarations under Family Code section 2336**

10
11 ***

12
13 **Rule 5.411. Stipulated judgments**

14
15 **(a) Format**

16
17 A stipulated judgment (which must be attached to form FL-180 or form FL-250)
18 may be submitted to the court for signature as an uncontested matter or at the time
19 of the hearing on the merits and must contain the exact terms of any judgment
20 proposed to be entered in the case. At the end, immediately above the space
21 reserved for the judge's signature, the stipulated judgment must contain the
22 following:

23
24 The foregoing is agreed to by:

25

| | |
|-----------------------|-----------------------|
| <hr/> (Petitioner) | <hr/> (Respondent) |
|-----------------------|-----------------------|

26
27 Approved as conforming to the agreement of the parties:

28

| | |
|------------------------------------|------------------------------------|
| <hr/> (Attorney for Petitioner) | <hr/> (Attorney for Respondent) |
|------------------------------------|------------------------------------|

29
30 **(b) Disposition of all matters required**

31
32 A stipulated judgment must include disposition of all matters subject to the court's
33 jurisdiction for which a party seeks adjudication or an explicit reservation of
34 jurisdiction over any matter not proposed for disposition at that time. A stipulated
35 judgment constitutes a written agreement between the parties as to all matters
36 covered by the stipulation.

1
2 **Drafters' Notes:**

3 Existing rule 5.116 is renumbered as rule 5.411 with minor changes to formatting and
4 content.

5
6 **Rule 5.413. Notice of entry of judgment**

7
8 **(a) Notice by clerk**

9
10 Notwithstanding Code of Civil Procedure section 664.5, the clerk must give notice
11 of entry of judgment, using *Notice of Entry of Judgment* (form FL-190), to the
12 attorney for each party or to the party if self-represented, of the following:

13
14 (1) A judgment of legal separation;

15
16 (2) A judgment of dissolution;

17
18 (3) A judgment of nullity;

19
20 (4) A judgment establishing parental relationship (on form FL-190); or

21
22 (5) A judgment regarding custody or support.

23
24 **(b) Notice to local child support agency form**

25
26 This rule applies to local child support agency proceedings except that the notice of
27 entry of judgment must be on *Notice of Entry of Judgment and Proof of Service by*
28 *Mail* (form FL-635).

29
30 **Drafters' Notes:**

31 Existing rule 5.134 is renumbered as rule 5.413 with minor changes to formatting.

32
33 **Rule 5.415. Completion of notice of entry of judgment**

34
35 **(a) Required attachments**

36
37 Every person who submits a judgment for signature by the court must submit:

38
39 (1) Stamped envelopes addressed to the parties (if they do not have attorneys), or
40 to the attorneys of record (if the parties are represented) that show the address
41 of the court clerk as the return address; and

1 (2) An original and at least two additional copies of the *Notice of Entry of*
2 *Judgment* (form FL-190).

3
4 **(b) Fully completed**

5
6 Form FL-190 must be fully completed except for the designation of the date
7 entered, the date of mailing, and signatures. It must specify in the certificate of
8 mailing the place where notices have been given to the other party.

9
10 **(c) Address of respondent or defendant**

11
12 If there has been no appearance by the other party, the address stated in the
13 affidavit of mailing in part 3 of the *Request to Enter Default* (form FL-165) must be
14 the party's last known address and must be used for mailing form FL-190 to that
15 party. In support proceedings initiated by the local child support agency, an
16 envelope addressed to the child support agency need not be submitted. If service
17 was by publication and the address of respondent or defendant is unknown, those
18 facts must be stated in place of the required address.

19
20 **(d) Consequences of failure to comply**

21
22 Failure to complete the form or to submit the envelopes is cause for refusal to sign
23 the judgment until compliance with the requirements of this rule.

24
25 **(e) Application to local child support agencies**

26
27 This rule applies to local child support agency proceedings filed under the Family
28 Code except that:

29
30 (1) The local child support agency must use form *Notice of Entry of Judgment*
31 and *Proof of Service by Mail* (form FL-635);

32
33 (2) The local child support agency may specify in the certificate of mailing that
34 the address where the *Notice of Entry of Judgment* (form FL-190) was mailed
35 is on file with the local child support agency; and

36
37 (3) An envelope addressed to the local child support agency need not be
38 submitted.

39
40 **Drafters' Notes:**

41 Existing rule 5.136 is renumbered as rule 5.415 with minor changes to (a)(1).

1 **Chapter 15. Settlement Services**

2
3 **Rule 5.420. Domestic violence procedures for court-connected settlement service**
4 **providers**

5
6 **(a) Purpose**

7
8 This rule sets forth the protocol for court-connected settlement service providers
9 handling cases involving domestic violence and not involving child custody or
10 visitation (parenting time).

11
12 **(b) Definitions**

13
14 (1) “Domestic violence” is used as defined in Family Code sections 6203 and
15 6211.

16
17 (2) “Protective order” is synonymous with “domestic violence restraining order”
18 as well as the following:

19
20 (A) “Emergency protective order” under Family Code section 6215;

21
22 (B) “Protective order” under Family Code section 6218; and

23
24 (C) “Restraining order” under Welfare and Institutions Code section 213.5;
25 and

26
27 (D) “Orders by court” under Penal Code section 136.2.

28
29 (3) “Settlement service(s)” refers to voluntary procedures in which the parties in
30 a family law case agree to meet with a neutral third party professional for the
31 purpose of identifying the issues involved in the case and attempting to reach
32 a resolution of those issues by mutual agreement.

33
34 **(c) Duties of settlement service providers**

35
36 Courts providing settlement services must develop procedures for handling cases
37 involving domestic violence. In developing these procedures, courts should
38 consider:

39
40 (1) Reviewing court files or, if available, intake forms, to inform the person
41 providing settlement services of any existing protective orders or history of
42 domestic violence;

- 1 (2) Making reasonable efforts to ensure the safety of parties when they are
2 participating in services;
3
4 (3) Avoiding negotiating with the parties about using violence with each other,
5 whether either party should or should not obtain or dismiss a restraining
6 order, or whether either party should cooperate with criminal prosecution;
7
8 (4) Providing information and materials that describe the settlement services and
9 procedures with respect to domestic violence;
10
11 (5) Meeting first with the parties separately to determine whether joint meetings
12 are appropriate in a case in which there has been a history of domestic
13 violence between the parties or in which a protective order is in effect;
14
15 (6) Conferring with the parties separately regarding safety-related issues and the
16 option of continuing in separate sessions at separate times if domestic
17 violence is discovered after services have begun;
18
19 (7) Protecting the confidentiality of each party’s times of arrival, departure, and
20 meeting for separate sessions when appropriate; and
21
22 (8) Providing information to parties about support persons participating in joint
23 or separate sessions.
24

25 **(d) Training and education**

26
27 All settlement service providers should participate in programs of continuing
28 instruction in issues related to domestic violence, including child abuse.
29
30

31 **Chapter 16. Limited Scope Representation; Attorney’s Fees and Costs**

32
33 **Article 1. Limited Scope Representation**

34
35 **Rule 5.425. Limited scope representation; application of rules**

36
37 **(a) Definition**

38
39 “Limited scope representation” is a relationship between an attorney and a person
40 seeking legal services in which they have agreed that the scope of the legal services
41 will be limited to specific tasks that the attorney will perform for the person.
42

1 **(b) Application**

2
3 This rule applies to limited scope representation in family law cases. Rules 3.35
4 through 3.37 apply to limited scope representation in civil cases.

5
6 **(c) Types of limited scope representation**

7
8 These rules recognize two types of limited scope representation:

9
10 **(1) *Noticed representation***

11
12 This type occurs when an attorney and a party notify the court and other
13 parties of the limited scope representation. The procedures in (d) and (e)
14 apply only to cases involving noticed limited scope representation.

15
16 **(2) *Undisclosed representation***

17
18 In this type of limited scope representation, a party contracts with an attorney
19 to draft or assist in drafting legal documents, but the attorney does not make
20 an appearance in the case. The procedures in (f) apply to undisclosed
21 representation.

22
23 **(d) Noticed limited scope representation**

24
25 **(1) A party and an attorney must provide the required notice of their agreement**
26 **for limited scope representation by serving other parties and filing with the**
27 **court a *Notice of Limited Scope Representation* (form FL-950).**

28
29 **(2) After the notice in (1) is received and until either a substitution of attorney or**
30 **an order to be relieved as attorney is filed and served:**

31
32 **(A) The attorney must be served with documents that relate only to the**
33 **issues identified in the *Notice of Limited Scope Representation* (form**
34 **FL-950); and**

35
36 **(B) The party must be served directly with documents that relate to all**
37 **other issues outside the scope of the attorney's representation.**

38
39 **(e) Procedures to be relieved as counsel on completion of limited scope**
40 **representation**

41
42 An attorney who has completed the tasks specified in the *Notice of Limited Scope*
43 *Representation* (form FL-950) may use the following procedures in this rule to

1 request that he or she be relieved as attorney in cases in which the attorney has
2 appeared before the court as an attorney of record and the client has not signed a
3 Substitution of Attorney—Civil (form MC-050):
4

5 (1) Application
6

7 An application to be relieved as attorney on completion of limited scope
8 representation under Code of Civil Procedure section 284(2) must be directed
9 to the client and made on the Application to Be Relieved as Counsel Upon
10 Completion of Limited Scope Representation (form FL-955).
11

12 (2) Filing and service of application
13

14 The application to be relieved as attorney must be filed with the court and
15 served on the client and on all other parties or attorneys for parties in the
16 case. The client must also be served with a blank Objection to Application to
17 Be Relieved as Counsel on Completion of Limited Scope Representation
18 (form FL-956).
19

20 (3) No objection
21

22 If no objection is served and filed with the court within 15 days from the date
23 that the Application to Be Relieved as Counsel on Completion of Limited
24 Scope Representation (form FL-955) is served on the client, the attorney
25 making the application must file an updated form FL-955 indicating the lack
26 of objection, along with a proposed Order on Application to Be Relieved as
27 Counsel on Completion of Limited Scope Representation (form FL-958). The
28 clerk must then forward the order for judicial signature.
29

30 (4) Objection
31

32 If an objection to the application is served and filed within 15 days, the clerk
33 must set a hearing date on the Objection to Application to Be Relieved as
34 Counsel on Completion of Limited Scope Representation (form FL-956). The
35 hearing must be scheduled no later than 25 days from the date the objection is
36 filed. The clerk must send the notice of the hearing to the parties and the
37 attorney.
38

39 (5) Service of the order
40

41 If no objection is served and filed and the proposed order is signed, the
42 attorney who filed the Application to Be Relieved as Counsel on Completion
43 of Limited Scope Representation (form FL-955) must serve a copy of the

1 signed order on the client and on all parties or the attorneys for all parties
2 who have appeared in the case. The court may delay the effective date of the
3 order relieving the attorney until proof of service of a copy of the signed
4 order on the client has been filed with the court.

5
6 **(f) Nondisclosure of attorney assistance in preparation of court documents**

7
8 **(1) Nondisclosure**

9
10 In a family law proceeding, an attorney who contracts with a client to draft or
11 assist in drafting legal documents, but does not make an appearance in the
12 case, is not required to disclose within the text of the document that he or she
13 was involved in preparing the documents.

14
15 **(2) Attorney 's fees**

16
17 If a litigant seeks a court order for attorney's fees incurred as a result of
18 document preparation, the litigant must disclose to the court information
19 required for a proper determination of attorney's fees, including the name of
20 the attorney who assisted in the preparation of the documents, the time
21 involved or other basis for billing, the tasks performed, and the amount
22 billed.

23
24 **(3) Applicability**

25
26 This rule does not apply to an attorney who has made a general appearance or
27 has contracted with his or her client to make an appearance on any issue that
28 is the subject of the pleadings.

29
30 **Drafters' Notes:**

31 Existing rules 5.70 and 5.71 are repealed and renumbered as rule 5.425 (e) and (f),
32 respectively, with minor changes to formatting.

33
34 **Article 2. Attorney's Fees and Costs**

35
36 **Rule ~~5.93~~ 5.427. Attorney's fees and costs**

37
38 ***

1
2 **Chapter 17. Family Law Facilitator**

3
4 **Rule ~~5.35~~ 5.430. Minimum standards for the Office of the Family Law Facilitator**

5
6 ***

7
8 **Drafters' Notes:**

9 Existing rule 5.35 is renumbered as 5.430 without change to content.
10

11
12 **Chapter 18. Court Coordination Rules**

13
14 **Article 1. Related Cases**

15
16 **Rule 5.440. Related cases**

17
18 Where resources permit, courts should identify cases related to a pending family law case
19 to avoid issuing conflicting orders and make effective use of court resources.
20

21 **(a) Definition of "related case"**

22
23 For purposes of this rule, a pending family law case is related to another pending
24 case, or to a case that was dismissed with or without prejudice, or to a case that was
25 disposed of by judgment, if the cases:

- 26
27 (1) Involve the same parties or the parties' minor children;
28
29 (2) Are based on issues governed by the Family Code or by the guardianship
30 provisions of the Probate Code; or
31
32 (3) Are likely for other reasons to require substantial duplication of judicial
33 resources if heard by different judges.
34

35 **(b) Confidential information**

36
37 Other than forms providing custody and visitation (parenting time) orders to be
38 filed in the family court, where the identification of a related case includes a
39 disclosure of information relating to a juvenile dependency or delinquency matter
40 involving the children of the parties in the pending family law case, the clerk must
41 file that information in the confidential portion of the court file.
42

1 **(c) Coordination of title IV-D cases**

2
3 To the extent possible, courts should coordinate title IV-D (government child
4 support) cases with other related family law matters.

5
6 **Rule ~~5.450~~ 5.445. Court communication protocol for domestic violence and child**
7 **custody orders.**

8
9 ***

10
11 **Drafters' Notes:**

12 Existing rule 5.450 is renumbered as rule 5.445 without change to content.

13
14
15 **Title 5. Family and Juvenile Rules**

16
17 **Division 2. Rules Applicable in Family and Juvenile Proceedings**

18
19 **Chapter 1. Contact and Coordination**

20
21 **Rule ~~5.400~~ 5.451. Contact after adoption agreement**

22
23 **(a) Applicability of rule (~~Fam. Code, §§ 8714, 8714.5, 8714.7; Welf. & Inst. Code,~~**
24 **~~§§ 358.1, 366.26~~)**

25
26 ***

27
28 **(b) Contact after adoption agreement (~~Fam. Code, § 8714.7~~)**

29
30 ***

31
32 **(c) Court approval; time of decree (~~Fam. Code, § 8714.7~~)**

33
34 ***

35
36 **(d) Terms of agreement (~~Fam. Code, § 8714.7~~)**

37
38 ***

39
40 **(e) Child a party (~~Fam. Code, § 8714.7~~)**

41
42 ***

43

1 (f) Form and provisions of the agreement (~~Fam. Code, § 8714.7~~)

2 ***

3
4
5 (g) Report to the court (~~Fam. Code, § 8715~~)

6 ***

7
8
9 (h) Enforcement of the agreement (~~Fam. Code, § 8714.7~~)

10 ***

11
12
13 (i) Modification or termination of agreement (~~Fam. Code, § 8714.7~~)

14 ***

15
16
17 (j) Costs and fees (~~Fam. Code, § 8714.7~~)

18 ***

19
20
21 (k) Adoption final (~~Fam. Code, § 8714.7~~)

22 ***

23
24
25 **Drafters' Notes:**

26 Existing rule 5.400 is renumbered as rule 5.451 and amended by striking code sections
27 as indicated in the above text.

28
29 **Rule ~~5.410~~ 5.460. Request for sibling contact information under ~~Family Code section~~
30 ~~9205~~**

31
32 (a)–(b) ***

33
34 (c) Waiver submitted by person under the age of 18 years ~~under Family Code~~
35 ~~section 9205(f)~~

36 ***

37
38
39 (d) No waiver on file—sibling requesting contact ~~under Family Code section~~
40 ~~9205(g)~~

41 ***

1 **Drafters' Notes:**

2 Existing rule 5.410 is renumbered as rule 5.460 and amended by deleting code sections
3 as indicated in the above text.
4

5 **Rule 5.475. Custody and visitation orders following termination of a juvenile court**
6 **proceeding or probate court guardianship proceeding (~~Fam. Code, § 3105;~~**
7 **~~Welf. & Inst. Code, § 362.4; Prob. Code, § 1602)~~**
8

9 ***
10

11 **Drafters' Notes:**

12 Existing rule 5.475 is amended by deleting code sections as indicated in the above text.
13
14

15 **Division 2. Rules Applicable in Family and Juvenile Proceedings**
16

17 **Chapter 2. Indian Child Welfare Act**
18

19 **Rule 5.480. Application (~~Fam. Code, §§ 170, 177, 3041; Prob. Code, § 1459.5; Welf.~~**
20 **~~& Inst. Code, §§ 224, 224.1)~~**
21

22 ***
23

24 **Drafters' Notes:**

25 Existing rule 5.480 is amended by deleting code sections as indicated in the above text.
26

27 **Rule 5.481. Inquiry and notice (~~Fam. Code, §§ 177(a), 180; Prob. Code, §§~~**
28 **~~1459.5(b), 1460.2; Welf. & Inst. Code, §§ 224.2, 224.3)~~**
29

30 **(a) Inquiry (~~Fam. Code, § 177(a); Prob. Code, § 1459.5(b); Welf. & Inst. Code, §~~**
31 **~~224.3)~~**
32

33 ***
34

35 **(b) Notice (~~Fam. Code, § 180; Prob. Code, § 1460.2; Welf. & Inst. Code, § 224.2)~~**
36

37 ***
38

39 **Drafters' Notes:**

40 Existing rule 5.481 is amended by deleting code sections as indicated in the above text.
41

1 **Rule 5.482. Proceedings after notice (~~Fam. Code, §§ 177(a), 180(d), (e); Prob. Code,~~**
2 **~~§§ 1459.5(b), 1460.2(d), (e); Welf. & Inst. Code, §§ 224.2(e), (d); 25 U.S.C. §~~**
3 **~~1916(b))~~**

4
5 **(a) Timing of proceedings (~~Fam. Code, § 180(d), (e); Prob. Code, § 1460.2(d), (e);~~**
6 **~~Welf. & Inst. Code, § 224.2(e), (d))~~**

7
8 ***

9
10 **(b) Proof of notice (~~Fam. Code, § 180(d); Prob. Code, § 1460.2(d); Welf. & Inst.~~**
11 **~~Code, § 224.2(e))~~**

12
13 ***

14
15 **(c) *****

16
17 **(d) When there is no information or response from a tribe (~~Fam. Code, § 177(a);~~**
18 **~~Prob. Code, § 1459.5(b); Welf. & Inst. Code, § 224.3(e)(3))~~**

19
20 ***

21
22 **(e) Intervention (~~Fam. Code, § 177(a); Prob. Code, § 1459.5(b); Welf. & Inst.~~**
23 **~~Code, § 224.4)~~**

24
25 ***

26
27 **(f) Posthearing actions (~~25 U.S.C. § 1916(b))~~**

28
29 ***

30
31 **(g) *****

32
33 **Drafters' Notes:**

34 Existing rule 5.482 is amended by deleting code sections as indicated in the above text.

35
36 **Rule 5.483. Transfer of case (~~Fam. Code, § 177(a); Prob. Code, § 1459.5(b); Welf. &~~**
37 **~~Inst. Code, § 305.5; Guidelines for State Courts; Indian Child Custody~~**
38 **~~Proceedings, 44 Fed.Reg. 67584 (Nov. 26, 1979) Bureau of Indian Affairs~~**
39 **~~Guideline C)~~**

40
41 **(a)–(c) *****

1 (d) Cause to deny a request to transfer to tribal court with concurrent state and
2 tribal jurisdiction ~~under subdivision (b)~~

3
4 ***

5
6 (e) Evidentiary considerations ~~under subdivision (b)~~

7
8 ***

9
10 (f) Evidentiary burdens ~~under subdivision (b)~~

11
12 ***

13
14 (g)–(h) ***

15
16 **Drafters' Notes:**

17 Existing rule 5.483 is amended by deleting code sections and cross-references as
18 indicated in the above text.

19
20 **Rule 5.484. Placement of an Indian child** ~~(Fam. Code, § 177(a); Prob. Code, §~~
21 ~~1459.5(b); Welf. & Inst. Code, §§ 361, 361.31, 361.7(e))~~

22
23 (a) Evidentiary burdens ~~(Fam. Code, § 177(a); Prob. Code, § 1459.5(b); Welf. &~~
24 ~~Inst. Code, §§ 361, 361.31, 361.7(e))~~

25
26 ***

27
28 (b) Standards and preferences in placement of an Indian child ~~(Fam. Code, §~~
29 ~~177(a); Prob. Code, § 1459(b); Welf. & Inst. Code, § 361.31)~~

30
31 ***

32
33 (c) Active efforts ~~(Fam. Code, § 177(a); Prob. Code, § 1459.5(b); Welf. & Inst.~~
34 ~~Code, § 361.7)~~

35
36 ***

37
38 **Drafters' Notes:**

39 Existing rule 5.484 is amended by deleting code sections as indicated in the above text.

40
41 **Rule 5.485. Termination of parental rights** ~~(Fam. Code, § 7892.5; Welf. & Inst.~~
42 ~~Code, §§ 361.7, 366.26(e)(2)(B))~~

1 ***

2

3 **Drafters' Notes:**

4 Existing rule 5.485 is amended by deleting code sections as indicated in the above text.

5

6 **Rule 5.486. Petition to invalidate orders (~~Fam. Code, § 175(e); Prob. Code, §~~**
7 **~~1459(e); Welf. & Inst. Code, § 224(e))~~**

8

9 ***

10

11 **Drafters' Notes:**

12 Existing rule 5.486 is amended by deleting code sections as indicated in the above text.

13

14 **Rule 5.487. Adoption record keeping (~~Fam. Code, § 9208~~)**

15

16 ***

17

18 **Drafters' Notes:**

19 Existing rule 5.487 is amended by deleting code sections as indicated in the above text.

20

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| List of All Commentators, Overall Positions on the Proposal, and General Comments | | | | |
|--|---|-----------------|--|---------------------------|
| | Commentator | Position | Comment | Committee Response |
| 1. | Hon. Irma Poole Asbury Supervising Judge Superior Court of Riverside County | A | No specific comment provided. | No response required. |
| 2. | Association of Certified Family Law Specialist Diane Wasznicky, President San Rafael | AM | See comments on specific provisions below. | |
| 3. | Association of Family and Conciliation Courts Diane Wasznicky, Esq. Thousand Oaks | A | See comments on specific provisions below. | |
| 4. | Bay Area Legal Aid Jerel McCrary, Family Law Regional Counsel, Oakland | AM | See comments on specific provisions below. | |
| 5. | Hon. John Chemeleski, Commissioner Superior Court of Los Angeles County | AM | See comments on specific provisions below. | |
| 6. | Christine N. Donovan, CFLS Sr. Staff Attorney Superior Court of Solano County | A/AM | See comments on specific provisions below. | |
| 7. | Executive Committee of the Family Law Section of the State Bar of California (FLEXCOM) Saul Bercovitch, Legislative Counsel San Francisco | AM | See comments on specific provisions below. | |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| List of All Commentators, Overall Positions on the Proposal, and General Comments | | | | |
|--|--|-----------------|---|---------------------------|
| | Commentator | Position | Comment | Committee Response |
| 8. | Family Violence Law Center Kristy Whitehorse, Managing Attorney Oakland | A | No specific comment provided. | No response required. |
| 9. | Rod Firoozye Attorney at Law Palo Alto | AM | See comments on specific provisions below. | |
| 10. | Hon. Matthew M. Gary Judge Superior Court of Sacramento County | N | See comments on specific provisions below. | |
| 11. | Bryan Ginter Attorney and Mediator Ginter Family Law Sacramento | | For comments regarding rule 5.250, see Judicial Council report titled “Family Law: Children’s Participation and Testimony in Family Court Proceedings.” | |
| 12. | Anita Gumm Lawyer Westlake Village | AM | No specific comment provided. | No response required. |
| 13. | Harriett Buhai Center for Family Law Erin Dabbs Los Angeles | AM | See comments on specific provisions below. | |
| 14. | Robert Hovey Redding | AM | See comments on specific provisions below. | |
| 15. | Hon. Jack M. Jacobson Supervising Family Law Judge Superior Court of Stanislaus County | A | See comments on specific provisions below. | |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| List of All Commentators, Overall Positions on the Proposal, and General Comments | | | | |
|--|---|-----------------|---|---------------------------|
| | Commentator | Position | Comment | Committee Response |
| 16. | Virginia Johnson Staff Attorney Superior Court of San Diego County | A/AM/N | See comments on specific provisions below. | |
| 17. | Los Angeles County Bar Association Family Law Section Charles K. Wake | AM | See comments on specific provisions below. | |
| 18. | Enrique Monteagudo San Diego | N | See comments on specific provisions below. | |
| 19. | Eric Norris, Ph.D. Thousand Oaks | | For comments regarding rule 5.250, see Judicial Council report titled “Family Law: Children’s Participation and Testimony in Family Court Proceedings.” See specific comments on specific provisions below. | |
| 20. | Gary W. Norris Law Office of Gary W. Norris Camarillo | | For comments regarding rule 5.250, see Judicial Council report titled “Family Law: Children’s Participation and Testimony in Family Court Proceedings.” | |
| 21. | Orange County Bar Association John Hueston, President | A | Agree with proposed changes. | No response required. |
| 22. | Gary R. Rick, Ph.D Ventura. | | For comments regarding rule 5.250, see Judicial Council report titled “Family Law: Children’s Participation and Testimony in Family Court Proceedings.” | |
| 23. | Richard Rabbin | | For comments regarding rule 5.250, see Judicial | |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| List of All Commentators, Overall Positions on the Proposal, and General Comments | | | | |
|--|--|-----------------|---|---------------------------|
| | Commentator | Position | Comment | Committee Response |
| | Private Attorney Thousand Oaks | | Council report titled “Family Law: Children’s Participation and Testimony in Family Court Proceedings.” | |
| 24. | Safe and Sane Divorce Project Judith A. Kaluzny Mediator and Lawyer Fullerton | A | See general comments provided below. | |
| 25. | Sonoma County Bar Assn., Family Law Brittany Birnie Greene Attorney/Mediator Sebastopol | AM/N/I | See general comments provided below. | |
| 26. | Tom Stabile Attorney Orange | AM | See comments on specific provisions below. | |
| 27. | Hon. Mary Fingal Schulte, Supervising Judge, Probate/Mental Health Panel Superior Court of Orange County | | For comments regarding rule 5.250, see Judicial Council report titled “Family Law: Children’s Participation and Testimony in Family Court Proceedings.” | |
| 28. | Superior Court of Los Angeles County | A/AM | See comments on specific provisions below. | |
| 29. | Superior Court of Monterey County Minnie Monarque, Director Civil & Family Law Division | AM | See comments on specific provisions below. | |
| 30. | Superior Court of Napa County Hon. Diane M. Price | NI | See comments on specific provisions below. | |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| List of All Commentators, Overall Positions on the Proposal, and General Comments | | | | |
|--|--|-----------------|--|---------------------------|
| | Commentator | Position | Comment | Committee Response |
| 31. | Superior Court of Orange County Family Law Operations | AM | See comments on specific provisions below. | |
| 32. | Superior Court of Riverside County Staff | AM | See comments on specific provisions below. | |
| 33. | Superior Court of Sacramento County Staff | NI | See comments on specific provisions below. | |
| 34. | Superior Court of San Bernardino County Debra Meyers, Director | A/AM/N | See comments on specific provisions below. | |
| 35. | Superior Court of San Diego County Michael M. Roddy, Executive Officer | AM | See comments on specific provisions below. | |
| 36. | Superior Court of Santa Clara County Hon. Michael M. Clark, Mary Arand, Neal Cabrinha, Mary Ann Grilli | AM | See comments on specific provisions below. | |
| 37. | Superior Court of Santa Clara County Michael M. Clark, Mary Arand, Neal Cabrinha, Mary Ann Grilli | AM | See comments on specific provisions below. | |
| 38. | Superior Court of Shasta County Stacy Larson, Family Law Facilitator Redding | AM | See comments on specific provisions below. | |
| 39. | Superior Court of Ventura County Caron Smith Family Law Case Coordinating Attorney | AM | See comments on specific provisions below. | |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| List of All Commentators, Overall Positions on the Proposal, and General Comments | | | | |
|--|---|-----------------|---|---------------------------|
| | Commentator | Position | Comment | Committee Response |
| 40. | Hon. Sue M. Talia Private family law judge, Danville | A | See comments on specific provisions below. | |
| 41. | Hon. Scott Thomsen Superior Court of Nevada County | AM | See comments on specified provisions below. | |
| 42. | Trial Court Presiding Judges Advisory Committee (TCPJAC)/Court Executive Advisory Committee (CEAC) Joint Working Group | N | See comments on specific provisions below. | |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| General Comments | | |
|---|--|--|
| Commentator | Comment | Committee Response |
| Hon. Matthew M. Gary Judge Superior Court of Sacramento County | 1. <u>Timing</u> : Now is not the time for change. We do not have the resources to implement the changes. Throughout, the proposed Rules load the court with greater burdens, both big and small. For example, the proposed "Family Centered Resolution" provision of 5.83 will be devastatingly burdensome. We do not have the resources and funding to accomplish that which we are required to do now. Unless JC intends to fund us with the money needed for full implementation, do not approve. There are other many smaller changes such as proposed Rule 5.41(2) which requires the court to <i>"Review the response to determine whether or how the case will proceed based on the relief requested in the response"</i> and then <i>"notify the parties of the court's determination."</i> This is an additional burden on the court. If a Petitioner's fee isn't paid, and the pleading is voided per the government code, the Respondent may simply proceed by "default". There is no need for this Rule. There are numerous other burdens added by these proposed Rules that we simply do not have the staff resource and funding to implement. | The Elkins Family Law Implementation Task Force (task force) and the Family and Juvenile Law Advisory Committee (committee) believe that timing of implementation of family centered case resolution is an important factor. While the current budget constraints make the need for this change critical, those courts that are currently without a family centered case resolution caseflow management system will need time for a strategic transition that integrates caseflow management into operations. There are already models of caseflow management operating in California courts that are not significantly resource intensive from which other courts can learn. The task force and the committee anticipate facilitating connections among the courts and providing education and technical assistance. While recognizing that there are up-front resources required to change a business practice and transition to a family centered case resolution caseflow management system, the Trial Court Presiding Judges Advisory Committee (TCPJAC)/Court Executives Advisory Committee (CEAC)/Joint Rules Working Group concluded that this increase will be offset by a reduction in continuances as well as reducing order to show cause (OSC) calendars, all of which lessen staff workload. |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| General Comments | | |
|------------------|--|--|
| Commentator | Comment | Committee Response |
| | <p>2. <u>Effect of Change</u>: The Judicial Council must recognize the fact that even small changes in the Rules have significant impact on the court. For example, Proposed Rule 5.92 states, <i>“In a family law proceeding, . . . a notice of motion or order to show cause must be filed on a Request for Order (form FL-300), unless there is another Judicial Council form adopted or approved for the specific motion or order to show cause.”</i> If this Rule changing the NOM/OSC to a “Request for Order” form is approved, our court will be required to redirect 10’s, if not 100’s, of staff work hours away from critical core court function to the non-core function job of modifying our Local</p> | <p>In recognition of the need for a strategic transition period, the task force and the committee has modified the implementation dates currently set out in the rule. The requirement that cases be reviewed periodically will apply to cases filed on January 1, 2013 rather than January 1, 2012. This provides an additional year for courts to develop the most efficient models for this purpose. Further, the disposition goals set out in 5.83(c)(5) will apply to cases filed on January 1, 2014 rather than January 1, 2012. This provides the courts with two years to work on their family centered case resolution caseload management process.</p> <p>The task force and committee understand Judge Gary's concerns about the impact of implementing new procedures and forms on court staff. The Elkins Task Force recommended that a new <i>Request for Order</i> form be created to replace the existing <i>Order to Show Cause</i> and <i>Notice of Motion</i> forms in family law. The task force found that judges and attorneys statewide do not agree on the appropriate use of the forms. In some courts, the two forms are used interchangeably. In other courts they are used for distinct purposes, although the intended differences are not written and may not be clear</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| General Comments | | |
|------------------|--|---|
| Commentator | Comment | Committee Response |
| | <p>Rules, our Self-Help Instruction Packets, our General Information Packets, our web site instructions, our case management system, our data entry codes, our records and statistics, and our Family Law Facilitator’s Office packets and Instruction guides. Frankly, the change provide nominal benefit relative to the burden it imposes.</p> <p>At the time I write this Response, our court suffers from underfunding so badly that a party’s wait time just to file a document at the front counter exceeds 5 hours. In our county, we have 10 intake windows. Of the 10, only 2 are open for lack of funding. At any given time, we may have in excess of 150 waiting to be helped. This past Tuesday, people waiting to be served began chanting “open another window” in protest. Our court’s doors open at 7:30 a.m. The windows for service open at 8:30 a.m. This past Thursday morning, I asked the folks who were first in line at the window what time they arrived at the court that morning. Answer: 5:30 a.m. If a person is not in the building with a number waiting for service before 9:30 a.m., she or he will likely spend the entire day waiting in the lobby only to be told at 4:00 p.m. close that he or she must leave and try again another day. This is obscene. We are court; not Walmart selling the latest PlayStation game. People should not have to be camping out in order to get help or to file a document.</p> | <p>to self-represented litigants or attorneys who do not regularly practice in that county’s court. Rule 5.92 and the new <i>Request for Order</i> are intended to simplify the process and make family law practice more uniform statewide.</p> <p>The committee recognizes that there will be an initial investment of time to train court staff and implement the new form. However, the committee believes that once implemented, the new procedures will save self-help and clerk staff time in processing cases and that these savings will offset the initial investment of time. The committee anticipates that the Center for Families, Children & the Courts will provide training and implementation assistance to courts that request assistance.</p> <p>The task force and committee understand that it is difficult for courts to make changes to procedures when the courts are experiencing funding cutbacks. However, the budget shortages are not likely to improve in the near future and the committee believes that the courts must become more efficient and change the way they do business in order to adapt to this new budget</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| General Comments | | |
|------------------|---|--|
| Commentator | Comment | Committee Response |
| | <p>If the Judicial Council desires to make these types of non-essential changes that burden the court with more and more required tasks and services, then it must provide funding to the court to cover the hours required to meet the burdens. If it cannot or will not fund, it must not approve these changes. On the other hand, if the JC does have funding to cover the costs required to implement the proposed Rules, then those available funds should be offered to relieve the existing burdens before it considers adding more.</p> <p>The general intent of Elkins is to promote “Access to Justice”. Making changes like the Request for Order – and all the hours required to practically implement the Rule - does NOT improve "access to justice". In fact quite the opposite is true. In truth, “Access to Justice” is promoted by fewer rules and procedures and requirements, not more. Every year new Rules are stacked upon rules; change is changed by more change. All of this complicates the process. We keep shooting ourselves in the foot. It’s akin to the poor carpenter who complains, “I’ve cut this board three times and it’s still too short!” Continuing to cut the board will not make it long enough to fit and continuing to add rules and requirements and changes will not make the system easier to navigate. Less is more.</p> | <p>environment.</p> <p>The task force and committee believe that the proposal organizes the statewide family law rules of court to enable judicial officers, attorneys, and litigants to quickly find appropriate rules and be aware of the variety of rules that pertain to family law.</p> <p>Most of the family law rules of courts are legislatively mandated. Others implement the vetted suggestions of judicial officers, court professionals, attorneys, bar associations, and litigants received in the period of over 41 years since the rules were first mandated by the Legislature and adopted by the Judicial Council.</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| General Comments | | |
|------------------|---|--|
| Commentator | Comment | Committee Response |
| | <p>3. <u>User’s Manual</u>: The proposed rewrite of Title 5 is not so much a Rule of Court as it is a User’s Manual for Family Law. This, in my mind, is not appropriate. In 2006, the JC approved a “major reorganization” of the CRC’s that included “<i>major restructuring, reordering, and renumbering . . . to make the law clearer, more accessible, and user-friendly</i>”. In the reorganization process, the neither the JC nor Chief Justice George suggested transforming the Rules of Court into a User’s Manual for each subject matter area. The reorganized Rules that went into effect 1/1/07 do not reflect a User’s Manual approach.</p> <p>I point this out because the Proposed Title 5 Rules are now much more involved, complicated, and redundant than the existing Rules. These proposed Rules, if approved, will now exceed the scope and breadth of the Civil Rules and Criminal Rules combined. Incorporated in these proposed Rules are word for word recitations of existing Family Code, CCP, and other code sections. It is extremely unlikely that any self-represented party will navigate through all of these Rules as a guide to process his or her case. Rather, it is far more likely that a simple User’s Manual – akin to what most court throughout the state already offer – will be far more effective in instructing the party as to how to proceed. The volume of these proposed Rules itself will run self-represented litigants away.</p> | <p>The task force and committee believe that the proposal is in line with the suggestions made by former Chief Justice Ronald George and the California Supreme Court in <i>Elkins v. Superior Court</i> (2007) 41 Cal.4th 1337, 1369. In <i>Elkins</i>, the court recommended the formation of a task force (later known as the Elkins Family Law Task Force) and recommended that:</p> <p>The task force consider proposals for adoption of new rules of court establishing statewide rules of practice and procedure for fair and expeditious proceedings in family law, from the initiation of an action to postjudgment motions. Special care might be taken to accommodate self-represented litigants. Proposed rules could be written in a manner easy for laypersons to follow, be economical to comply with, and ensure that a litigant be afforded a satisfactory opportunity to present his or her case to the court.</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| General Comments | | |
|------------------|--|--|
| Commentator | Comment | Committee Response |
| | <p>This will not enhance “Access to Justice” while at the same time adding burden to the court.</p> <p>4. <u>“The Thump Factor”</u>: If someone were to walk by your desk and drops a one page memo describing a proposed policy change and asks you to review it and comment by a certain date, it is likely you would. If someone walked by and dropped a 10 page memo and asked for review and comment, the likelihood that you’ll review and comment falls. If the memo is 50 pages, it is not likely that you’ll review and comment. If the “memo” is nearly 1000 pages, the likelihood of review and comment by you, or anyone, is probably 5 in 100 or less. This is called “The Thump Factor”. It goes like this: Take your finger and “thump” the memo. The thicker the memo, the deeper the “thump”; the deeper the “thump”, the fewer the comments; the fewer the comments the easier the pass (of the proposed change). “The Thump Factor” related to this Invitation is enormous. The result of "The Thump Factor" is rarely good.</p> <p>Take Family Code 217 – “live testimony” passed last year and went into effect 1/1/11. This was the result: This past Wednesday, I presided over my usual Law and Motion Calendars. I had 7 matters on at 9:00 a.m., and 8 matters set on my 10:00 a.m., and a dozen plus on my 1:30 p.m. calendar. On</p> | <p>The task force and committee acknowledge that the 128-page proposal is lengthy. To assist commentators, the comment period was extended ten days beyond that of other proposals in the same cycle. In addition, the invitation to comment included detailed conversion tables that clearly identified new rules and rules that were merely being renumbered. Further, a specific reply form was created and included with the proposal to help commentators organize and submit comments in Word version.</p> <p>The comment relates to the enactment of a family law statute by the California Legislature. To help implement the statute and provide guidance to judicial officers, attorneys, and litigants, the Judicial Council adopted rule 5.119. Live testimony, effective July 1, 2011. The rule</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| General Comments | | |
|------------------|--|---|
| Commentator | Comment | Committee Response |
| | <p>the 9:00 a.m. calendar, one of the parties had made the 217 demand to put on live testimony. The party noticed that she'd be calling 4 witnesses, including two mental health professionals. With direct examination, cross, redirect, and so forth, counsel and I estimated that the hearing would take a full day. What was I to do? Tell all of the other litigants and counsel on my 9, 10 and 1:30 calendars that I must send them away because I had a request for live testimony? If I sent the matter to Long Cause hearing, they would not get in until late August or September (from an early June setting). If I attempted to 'special set' on a Tuesday afternoon, I'd be able to give the parties 1 – 2 hours on non-consecutive Tuesday afternoons over the court of 4 or 5 days over the course of two to four months. What if I had 5 cases demanded 217 live testimony? Such is the utopian nature of Elkins.</p> <p>The point is that legislation is passed many times based on "The Thump Factor". Many of us grumbled against Elkins. Unfortunately, most of us are far too busy doing our day jobs at the court and our domestic jobs at home. Who has time to read 1,000 pages of proposed CRC's and comment? I don't. And that's how FC 217 passed. As I write this, it's Sunday morning and, after a long week grinding through Family Law, I've spent my weekend pouring over this pile and attempting to meaningfully "comment". And so goes "The Thump Factor".</p> | <p>would be renumbered in this proposal as rule 5.113.</p> <p>The task force and committee understand that it is sometimes difficult for courts to make changes to procedures given the daily demands on judicial officers. However, the task force and committee believe that the proposed family rules help litigants and attorneys achieve a higher level of understanding of family court proceedings. In turn, family law court rooms become more efficient in the adjudication of family law cases.</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| General Comments | | |
|---|---|--|
| Commentator | Comment | Committee Response |
| | 5. I strongly oppose the proposed Rule changes. Unless the JC can offer funding to bring staff to the level of current need, and then provide more funding needed to hire staff to meet the further burdens that these proposed CRC's will bring, the JC should not approve the changes. | |
| Robert Hovey Redding | The major downfall of this effort is the fact that this task force assumes the components of the court ie judges, attorneys, mediators, therapists, evaluators etc. will always be honest, upstanding and objective. As we have seen in many cases, there is an epidemic of inappropriate and illegal action against litigants representing themselves in family court; these litigants did not decide to become pro pers, most were forced in to this position by greedy and unscrupulous family law attorneys. Litigants left on their own must be protected aggressively by the rules and laws of the court, they must have the same privileges and rights as the practicing and educated lawyers they are forced to face in their element. None of these recommendations go far enough. | The task force and committee believe that the proposal will help litigants better understand the requirements of litigating family law cases and place them in a better position to determine whether the actions of his or her counsel, mediator, or evaluator warrant corrective measures by the court or other professional licensing agency. |
| Hon. Jack M. Jacobson Supervising Family Law Judge Superior Court of Stanislaus County | Although I do not have any particular objection or modification to the proposed rule changes and new forms, I am concerned about the number of changes and their impact on the entire family law divisions of the courts. In the past, maybe a few new forms or rules were amended. Given the number new forms and | The task force and committee recognize that there will be an initial investment of time to train court staff and implement the requirements associated with the new rules and forms. However, they believes that once implemented, the new procedures will save self-help and |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| General Comments | | |
|-------------------------|---|--|
| Commentator | Comment | Committee Response |
| | <p>procedures being proposed all at one time will create a real challenge not only for judicial officers but clerk's offices and self-help centers trying to catch up to speed and have the ability to disseminate the proper information.</p> <p>There are many new procedures being proposed. There will need to be education to the bar and the vast numbers of self-represented parties to understand these new procedures. I anticipate that there will be many continuances or motions being dropped because many of these new procedures and forms have not been properly done.</p> <p>My proposal would to phase in all these proposed changes over the next 1 to 1/2 years, so that everyone has time to understand and be prepared to enforce the new rules. Just the request for order will take some time to make the transition. This is a</p> | <p>clerk staff time in processing cases and that these savings will offset the initial investment of time. The committee anticipates that the Center for Families, Children & the Courts will provide training and implementation assistance to courts that request assistance. Also, the AOC's Center for Judicial Education and Research will provide training to judicial officers and court staff in the form of broadcasts and reference materials.</p> <p>As with past restructuring of rules by the Judicial Council, the proposed restructuring of family rules would initially require court users, court professionals, and those who support the courts to familiarize themselves with the changes. Education and training programs (including conferences, meetings, web broadcasts and written materials) are currently being provided or are under development by the Administrative Office of the Courts to help with the process.</p> <p>The task force and committee agreed to phase-in aspects of the legislatively mandated rule 5.83, the family-centered case resolution rule, which is coordinated with the family rules proposal (See Judicial Council Report</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| General Comments | | |
|--------------------|--|---|
| Commentator | Comment | Committee Response |
| | <p>significant change in form and procedure from what family court have dealt with in the past. I think it is an excellent improvement, but any change of this nature takes a period of time for people to become knowledgeable and comfortable.</p> <p>I think the educated people who worked on these rules and forms need to see the big picture of those with less education and experience taking on any knew form or procedure. What might appear to be a simple legal form for us experienced judicial officers or attorneys may be another overwhelming document for the self-represented litigant.</p> <p>I have always felt that less is more!</p> | <p>titled “Family Centered Case Resolution.”) However, instead of phasing-in the restructuring of the rules, the task force and committee modified many of the rules to be responsive to the concerns of the commentators, especially those that pointed out potential impacts on the courts. Where the burdens seemed significant on the courts, or where the costs seemed to outweigh benefits, the task force and committee made changes so that no proposals would go forward under those circumstances given the current fiscal situation.</p> <p>The task force and committee were committed to restructuring rules so that they would be easier to find and follow than the current family rules. In addition, the conversion tables accompanying the proposal would illustrate the renumbered and the new rules. With respect to the request for order rules, a new information sheet would take effect at the same time as the new form to guide users on when to use and how to complete and serve the new <i>Request for Order</i> (form FL-300). The tools built into the rules and other proposals this cycle will mitigate the perceived need to delay the implementation of the new rules proposal beyond January 1, 2013.</p> |
| Enrique Monteagudo | The stated purpose of this Proposal is to make court “make the | The commentator suggests that the Judicial Council |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| General Comments | | |
|-------------------------|--|---|
| Commentator | Comment | Committee Response |
| San Diego | <p>rules easier for self represented litigants to understand.” However, besides overloading litigants with many new rules loaded with legal jargon, the Proposal fails to provide basic information required of most family law litigants having children. In particular, the following terms, although used through cases need to be given at least a working definition that a litigant can understand:</p> <ol style="list-style-type: none"> 1) "Best interest of the child" -what are the standards/guidelines judges must adhere to? 2) "Frequent and continuous contact" -what are the standards/guidelines judges must adhere to? 3) "Joint physical custody" -when a parent has joint physical custody, how much time must the judge allow the parent before the parenting schedule falls into "de facto sole physical custody"? 4) "which parent is more likely to allow the child frequent and continuing contact with the noncustodial parent" -FC 3040(a)(1) requires this finding yet what are the what are the standards/guidelines judges must adhere to? 5) "Facts vs Argument" -With the advent of live testimony, it is | <p>adopt rules that make certain legal terms understandable and accessible to the layperson as well as the legal community. However, the suggested changes are not within the purview of the Judicial Council as they require changes to existing statutes or are included in case law interpreting child custody statutes.</p> <p>Family Code section 3040(a)(1) does not require that the court make a finding as to which parent is more likely to allow the child frequent and continuing contact with the noncustodial parent. Rather, it is one of many factors that the court must consider.</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| General Comments | | |
|-------------------------|---|--|
| Commentator | Comment | Committee Response |
| | <p>crucial that pro se litigants understand this distinction as "undisputed facts" would preclude live testimony and greatly reduce consumption of court resources (i.e., the witness stand is neither a soap box, nor a opportunity to badger a witness).</p> <p>If the new rules are to reach their stated purpose, these legal terms must be made understandable and accessible to the layperson (as well as the legal community).</p> <p>The rules should include guidance on mandatory finding of which parent is most willing to share. This should preferably be included as a check box in the Judicial Minute Order forms. The finding should state whether one party, the other party, neither party, or both parties are most willing to share in the care of the child. The court may also consider any other relevant factors.</p> <p>The operative language of the rule should be substantially as follows:“Chapter 8., Article 6., Rule 5.255: Mandatory Findings Pursuant to Family Code Section 3040(a)(1) proceedings under this chapter require a judicial finding of ‘which parent is more likely to allow the child frequent and continuing contact with the other parent’. The court shall notify the parties of this requirement and shall require Family Court Services to address this consideration when meeting with</p> | <p>The commentator suggests changes which are not within the purview of the Judicial Council, as they would be inconsistent with the Family Code. Further, Family Code section 3040(a)(1) does not require that the court make a finding as to which parent is more likely to allow the child frequent and continuing contact with the noncustodial parent. Rather, it is one of many factors that the court must consider</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| General Comments | | |
|--|--|---|
| Commentator | Comment | Committee Response |
| | <p>the parties. Upon issuing an order under this chapter, the court shall include this statutory finding in the record.”</p> <p>* The commentator also stated that the Judicial Council's Family and Juvenile Law Advisory Committee should include fewer judges and court staff, and at least one of the following: “(1) Men/Fathers; (2) Women/Mothers; (3) Custodial Parents; (4) Non-custodial parents; (5) Parents facing termination of parental rights in juvenile court; and (6) Parents facing interference of parental rights through governmental entities such as child protective services.</p> | <p>The proposal is intended to respond to the recommendation of the Elkins Task Force regarding family law rules of court. The suggestion to add a public member to the Family and Juvenile Law Advisory Committee is beyond the scope of the proposal.</p> |
| <p>Safe and Sane Divorce Project Judith A. Kaluzny Mediator and Lawyer Fullerton</p> | <p>You are codifying what Jeffrey Elkins complained of. This massive set of rules is not what we need for dealing with children and their parents who need to separate their households.</p> <p>Go back to the Governor's Commission on the Family Report 1966. That intent was good. Too bad children were excluded. They are at risk the way things are now, and will continue to be under these proposals.</p> | <p>The majority of the rules(55%) in the proposal consist of existing rules that have been renumbered and reorganized into more specific categories. The new presentation of the rules is designed to assist all court users to more easily navigate the rules that apply to family law proceedings, including those that pertain to child custody and visitation (parenting time).</p> <p>The California Governor’s Commission on the Family, Report (1966) is considered the landmark report in the development of no-fault divorces. The suggestion made by the commentator does not apply to the proposed family rules.</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| General Comments | | |
|--|---|---|
| Commentator | Comment | Committee Response |
| Superior Court of Los Angeles County | Approve with no changes for most of the new or revised rules. | No response required. |
| Superior Court of Monterey County Minnie Monarque, Director Civil & Family Law Division | Generally, the judicial council may wish to review and revise these rules, generally, to harmonize the rules provided to the extent possible with the rules addressing civil litigation, including the rules as they relate to case management. To the extent possible, given the exigencies created by the varying sizes of the courts, the availability of resources, including fiscal resources, staffing, and facilities, and acknowledging that there are dwindling budgets for courts generally, that these rules be made discretionary. | The task force and committee reviewed the proposed rules and determined where it would be appropriate to make them discretionary. |
| Trial Court Presiding Judges Advisory Committee (TCPJAC)/Court Executive Advisory Committee (CEAC) Joint Working Group | While the TCPJAC/CEAC Joint Rules Working Group recognizes that some of these proposals are statutorily mandated, it cannot adopt an “Agree with proposed changes” position given the numerous and severe challenges facing California’s trial courts. The working group has adopted a “Do not agree with the proposed changes” position because the proposals create numerous and significant operational and fiscal impacts upon trial courts that are grappling with one of the worst economies in recent U.S. history. The new requirements created by the proposals, while well-intended, will only worsen the financial condition of the courts. At a time when courts are facing severe budget reductions, potential layoffs, possible court closures, and other urgent matters, rules | The task force and the committee are concerned that the budget constraints identified by the commentator actually make the implementation of family centered case resolution caseflow management critically necessary to the family law courts. The task force and the committee do not believe that the challenges of the future for the courts can be met by attempting to continue doing business as we have always done it in the past, only now with significantly less resources. Instead the reduction in resources is viewed by the task force and the committee as a sign that many operational models might be outdated and require redesign in order to move forward in a reasonable manner. |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| General Comments | | |
|-------------------------|---|---|
| Commentator | Comment | Committee Response |
| | <p>of court should not create new responsibilities unless absolutely necessary and driven by statutory mandates. The trial courts must use this time to focus on ensuring continuation of the most critical services rather than on dedicating new resources to new requirements.</p> <p>The working group recommends that the committee re-evaluate how the proposals can be implemented with minimal impact to court operations. The committee could consider only moving forward the most critical and clearly mandated proposals, moving back or phasing in implementation deadlines, and identifying all available alternatives to lessen negative impacts to the courts.</p> <p>This rule proposal was very complex. It covered the restructure and re-organization of the family law division of the California Rules of Court. Within this proposal were several proposals that were packaged under separately numbered and solicited invitations to comment. There were, however, a number of new rules and/or substantive rule changes included within this</p> | <p>The task force and committee discussed options regarding the implementation of the rules proposal. To help minimize impact to court operations, they decided to recommend various change to the proposals. These include: changing rule 5.4 to give courts 12 months to adopt local rule s that are consistent with the proposal; making substantial changes to proposed rule 5.420 regarding settlement services that permit courts the discretion to develop such procedures; and permitting courts to develop local rules regarding certain procedures (i.e., telephone appearances and emergency hearings).</p> <p>Specific comments were received regarding rules 5.43, 5.54, 5.72, 5.151, 5.165, 5.250, 5.393, 5.420, and 5.440. The text of the comments and responses to each comment are included under specific chapters later in this document.</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| General Comments | | |
|-------------------------|--|---------------------------|
| Commentator | Comment | Committee Response |
| | proposal for which no separate request for comment was circulated. It is from those proposals that we identified the following rules that if implemented would have an administrative and/or operational impact. [Rules 5.43, 5.54, 5.72, 5.151, 5.165, 5.250, 5.393, 5.420, and 5.440.] | |

| Division 1. Family Rules | | |
|---|--|---|
| Chapter 1. General Provisions (Rules 5.1 through 5.14) | | |
| Commentator | Comment | Committee Response |
| Association of Certified Family Law Specialists Diane Wasznicky, President San Rafael | Rule 5.14 This rule would authorize monetary sanctions for violations of the California Rules of Court, Subdivision (b)(2) of the proposed rule contains a definition of the “persons” against whom a court may issue sanctions. Attorneys/law firms are not included in the definition, but are referenced in (d)(1)(C) as possible individual or entity against whom sanctions may be sought. The definition of “persons” in subdivision (b)(2) should be changed to include attorney or law firm appearing on behalf of any party in the action. This change would be consistent with the apparent purpose of the rule to allow courts to hold attorneys responsible for violation of the Rules of Court. Without the change, it could be argued that attorneys are not subject to sanction. If this Rule is not intended to sanction attorneys then all reference to attorneys should as possible | The Elkins Family Law Implementation Task Force (task force) and the Family and Juvenile Law Advisory Committee (committee) discussed all comments that suggest including attorneys in the proposed rule regarding sanctions. In addition, they reviewed the Final Recommendations of the Elkins Family Law Task Force, which state: Rule 2.30 of the California Rules of Court (Sanctions for rules violations in civil cases) should be amended to include family law matters, or a similar rule should be adopted into the family law rules. Currently, the only option that a judicial officer has for sanctioning inappropriate or delaying |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Division 1. Family Rules | | |
|---|--|---|
| Chapter 1. General Provisions (Rules 5.1 through 5.14) | | |
| Commentator | Comment | Committee Response |
| | targets of sanctions should be omitted from this Rule. The Code of Civil Procedure provides oversight on attorney conduct as well. | behavior is to order the offender to pay a portion of the other party’s attorney’s fees. This should be expanded to allow imposition of sanctions that the attorney should pay, not the interested party. In addition, where parties are self-represented, the judicial officer should be permitted to order the parties to reimburse the opposing party for costs such as time off work, transportation to court, and similar expenses. In light of the above, the task force and committee recommend including attorneys as persons who may be sanctioned for violating the family law rules of court. |
| Bay Area Legal Aid Jerel McCrary Family Law Regional Counsel Oakland | Rule 5.14 (d) Notice and Procedure – Sentence should be revised to read: “Sanctions must not be imposed under this rule except on a request for order by the party seeking sanctions or on the court’s own motion after the party has been provided notice and an opportunity to be heard. | The task force and committee agree with this suggestion and have incorporated it, with minor alterations, into the amendments they are recommending for adoption. Specifically, they recommend that the rule read as follows: “ <u>Sanctions must not be imposed under this rule except on a request for order by the person seeking sanctions or on the court’s own motion after the court has provided notice and an opportunity to be heard.</u> ” |
| Christine N. Donovan, CFLS | Rule 5.1 (<i>now rule 5.2</i>): | The task force and committee recommend amending |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Division 1. Family Rules | | |
|---|--|--|
| Chapter 1. General Provisions (Rules 5.1 through 5.14) | | |
| Commentator | Comment | Committee Response |
| <p>Sr. Staff Attorney Superior Court of Solano County</p> | <p>The definition in subpart (b) conflicts with subpart (c) and other rules. Subpart (b) seems to cover most proceedings. However, by limiting the types of actions to specifically enumerated acts, it impliedly excludes other actions that are also under the Family Code.</p> <p>For example, an action to set aside a voluntary declaration of paternity might not be included as a “proceeding” because it is not part of the Uniform Parentage Act, nor is it included in the types of actions enumerated in the rule. (The UPA is in Part 3 of Division 12, whereas the action to rescind a voluntary declaration of paternity is in Part 2 of Division 12.) Similarly, an adoption matter per Division 13 is also not within the definition of a proceeding under subpart (b) because adoptions aren’t mentioned; this is contrary to proposed Rule 5.7, which refers to the use of ADOPT forms in “any proceeding under the Family Code.” This implies that adoption actions are intended to be proceedings.</p> <p>Adding to the confusion is subdivision (e), which would make laws applicable to civil actions also applicable to family law actions that aren’t proceedings. This doesn’t seem to recognize that civil laws don’t always appropriately apply to family law</p> | <p>rule 5.2 as suggested by the commentator to clarify the definition of a proceeding and that a proceeding generally includes matters under the Family Code.</p> <p>Same response as above.</p> <p>The task force and committee recommend amending rule 5.2 as suggested by the commentator to clarify the definition of a proceeding and that a proceeding generally includes matters under the Family Code.</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Division 1. Family Rules | | |
|---|--|--|
| Chapter 1. General Provisions (Rules 5.1 through 5.14) | | |
| Commentator | Comment | Committee Response |
| | <p>actions such as adoptions.</p> <p>Subpart (c) says that the rule applies to every action and proceeding to which the Family Code applies. I suggest this inconsistency be resolved by broadening the definition of a proceeding in subpart (b).</p> <p>Rule 5.4: I agree with the proposed rule.</p> <p>Rule 5.7: I agree with the proposed rule. However, I suggest that the Judicial Council forms website include links to the UIFSA forms on the appropriate websites, as many family law practitioners do not know these forms exist or where to find them.</p> <p>Rule 5.9: I agree with the proposed rule. However, I suggest that the term “telephone appearance” be defined to include other forms of telecommunication, such as web-conferencing (e.g. Skype®). This will allow individual courts flexibility to permit communications based on their specific resources and available technology.</p> <p>Rule 5.12: I do not understand what is meant by subpart (a)’s</p> | <p>Same response as above.</p> <p>No response required.</p> <p>The suggestion does not concern a proposed rule in this proposal. However, the comment will be referred to Administrative Office of the Courts staff who manage the California Courts website for consideration.</p> <p>The intent of the proposed rule is to generally permit telephone appearances in family law proceedings. Because the suggestions include important substantive changes, the task force and committee believe public comment should be sought before they are considered for adoption.</p> <p>The proposed rule is not intended to grant a party rights</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Division 1. Family Rules | | |
|---|---|---|
| Chapter 1. General Provisions (Rules 5.1 through 5.14) | | |
| Commentator | Comment | Committee Response |
| | <p>statement that family law discovery motions are subject to “Family Code section 2100 et seq. regarding disclosure of assets and liabilities.” What is the intent? The mandatory duty to disclose per Family Code section 2100 et seq. is separate from a party’s option to propound discovery. I fear this rule could be read as meaning that if a party fails to comply with discovery concerning assets or liabilities, the other party can elect to pursue discovery remedies <u>or</u> a motion per Family Code section 2107.</p> <p>Rule 5.14: Subpart (a) refers to “proceedings.” This implies that sanctions are not available in family law actions that aren’t proceedings. (See proposed Rule 5.1 for actions versus proceedings.) I suggest revising subpart (a) to reflect that it applies to any action or proceeding brought under or governed by the Family Code.</p> <p>Subpart (d) appears to contain an error, which I suggest be corrected as follows: “Sanctions must not be imposed under this rule except on a request for order by the party seeking sanctions or on the court’s own motion after the <u>party</u> court has been provided notice and an opportunity to be heard.”</p> | <p>in addition to those available under the specified statutes.</p> <p>The task force and committee recommend incorporating the suggestion into the proposal they are recommending for adoption.</p> <p>See above response to Bay Area Legal Aid.</p> |
| Executive Committee of the Family | Rule 5.14. This rule would authorize monetary sanctions for | See above response to Association of Certified Family |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Division 1. Family Rules | | |
|---|---|---|
| Chapter 1. General Provisions (Rules 5.1 through 5.14) | | |
| Commentator | Comment | Committee Response |
| Law Section of the State Bar of California (FLEXCOM) Saul Bercovitch Legislative Counsel San Francisco | violations of the California Rules of Court. FLEXCOM suggests the following modification to this rule: Subdivision (b)(2) of the proposed rule contains a definition of the “persons” against whom a court may issue sanctions. Attorneys/law firms are not included in the definition, but are referenced in (d)(1)(C) as a possible individual or entity against whom sanctions may be sought. The definition of “persons” in subdivision (b)(2) should be changed to include an attorney or law firm appearing on behalf of any party in the action. This change would be consistent with the apparent purpose of the rule to allow courts to hold attorney’s responsible for violation of the Rules of Court. Without the change, it could be argued that attorneys are not subject to sanction. | Law Specialists. |
| Rod Firoozye Attorney at Law Palo Alto | Re Rule 5.9. Appearance by Telephone: (a) Application: Add provision for appearing by phone for mediation or other matters with Family Court Services. Also add that prior to appearance by phone being allowed, the party seeking appearance by phone must notify opposing counsel and the court of such request. A Party opposed to such a request must further notify the court of such prior to the scheduled hearing date. | As circulated for comment, the proposed rule does not require or prevent telephone appearances at mediation. The rule is intended to authorize courts to permit appearances by telephone. It is not intended to provide the exact process by which the appearance should be conducted. To support this point, the task force and committee recommend expanding the rule to provide |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Division 1. Family Rules | | |
|--|---|--|
| Chapter 1. General Provisions (Rules 5.1 through 5.14) | | |
| Commentator | Comment | Committee Response |
| | | that the court may develop local rules to specify procedures regarding appearances by telephone. |
| Virginia Johnson Staff Attorney Superior Court of San Diego | Agree if modified: 5.1(b)(2) (<i>now 5.1(b)(2)</i>) - add Parental Kidnapping Prevention Act 5.9(b) - please specify how and when a request for telephone appearance is made or reference Rule 3.670 if the same procedure will be used in Family Court. 5.14(b)(2) - a “person” should include an attorney of record. | The rule pertains to those proceedings that are part of the Family Code. The Parental Kidnapping Prevention Act is a Federal Law. The Family Code contains statutes that relate to parental kidnapping, such as in Family Code section 3064. The rule is intended to authorize courts to permit appearances by telephone. It is not intended to provide the exact process by which the appearance should be conducted. To support this point, the task force and committee recommend adding an item (d) to provide that the court may develop local rules to specify procedures regarding appearances by telephone. The task force and committee recommend including the suggested language in the rule. |
| Los Angeles County Bar Association, Family Law Section Charles Wake | Rule 5.9: Agrees with this proposed new rule. Rule 5.12: Agrees with this proposed rule. Rule 5.14: Agrees with this proposed rule. | No response required. No response required. No response required. |
| Superior Court of Monterey County Minnie Monarque, Director | Proposed rule 5.9 Appearance by Telephone is in direct conflict with proposed rule 3.670, which continues to exclude family | The proposed rule does not conflict with the civil rules. As the commentator notes, the civil rules regarding |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Division 1. Family Rules | | |
|---|--|---|
| Chapter 1. General Provisions (Rules 5.1 through 5.14) | | |
| Commentator | Comment | Committee Response |
| Civil & Family Law Division | law matters from its scope. When read together, the logical interpretation of the rules is that telephonic appearances in family law are free of charge, because the rule setting forth charges for telephonic appearances excludes family law matters. In instances where there is a fee waiver or the case proceeds under Title IV-D, no fee should be charged, however the fee structure recited in proposed rule 3.670 should be expanded to cover all family law matters. | telephone appearances do not apply in family law cases. The rule is intended to authorize courts to permit parties to make appearances by telephone. It is not intended to provide the exact process by which the appearance should be conducted. It is not intended to provide the fee structure that is covered in the civil rules. To support this point, the task force and committee recommend expanding the rule to provide that the court may develop local rules to specify procedures regarding appearances by telephone. |
| Superior Court of Orange County Family Law Operations | Rule 5.14(d), 2nd line should read: "or on the court's own motion after the court has provided notice and an opportunity to be heard." | See above response to the same comment by Bay Area Legal Aid. |
| Superior Court of Sacramento County, Staff | Rule 5.4 It is not necessary to add this rule, it is duplicative of an existing rule or statute. However, in the event its not removed, what is the consequence if local rules & forms are in conflict with JC rules? It appears "next steps" are required. Rule 5.9. Appearance by telephone. It is not necessary to add this rule, it is duplicative of an existing rule or statute. | The proposed rule is responsive to the final recommendations of the Elkins Family Law Task Force, regarding local rules, at pages 31-32. The task force and committee recommend that the rule be changed to allow courts additional time to comply with the rule. The proposed rule about appearances by telephone is not duplicative of any existing rule or statute. There are civil rules on this subject that do not apply in family law |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Division 1. Family Rules | | |
|---|---|---|
| Chapter 1. General Provisions (Rules 5.1 through 5.14) | | |
| Commentator | Comment | Committee Response |
| | <p>However, in the event it is not removed, what is the consequence if local rules & forms are in conflict with JC rules? It appears "next steps" are required.</p> <p>Rule 5.12. Discovery motions It is not necessary to create a rule that cross references other rules and codes.</p> <p>This may set a precedence for SRL to conclude that "if it's not x-ref in the CRC's then it doesn't exist elsewhere."</p> | <p>cases. There are rules regarding telephone appearances in Title IV-D cases that also do not apply in family cases. Further, the rule is intended only to authorize telephone appearances in family law cases. Courts are free to develop local rules on this matter.</p> <p>The proposed rule is responsive to the final recommendations of the Elkins Family Law Task Force (at page 31) that centralized statewide rules identify all relevant statewide rules of court and organize them into a unified family law section that references all general rules of court as well as the civil rules, such as those pertaining to discovery and settlement sanctions that are applicable to family law.</p> |
| Superior Court of San Bernardino County | Agree with proposed changes. | No response required. |
| Superior Court of San Diego County, Michael M. Roddy Court Executive Officer | Rule 5.14(d): Our court recommends to remove the word "been" from the second line, as the court would not be the one noticed and given an opportunity to be heard – the party proposed to be sanctioned would. It should read, "Sanctions must not be imposed under this rule except on a request for order by the party seeking sanctions or on the court's own motion after the court has provided notice and an opportunity to | See above response to the same comment by Bay Area Legal Aid. |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Division 1. Family Rules | | |
|---|--|---|
| Chapter 1. General Provisions (Rules 5.1 through 5.14) | | |
| Commentator | Comment | Committee Response |
| | <p>be heard."</p> <p>Rule 5.1(b)(2) (<i>now rule 5.2(b)(2)</i>) – Why isn’t domestic partnership included?</p> <p>Rule 5.9 Appearance by Telephone – Is it the intent that family law cases are exempt from telephonic appearance fees and consequently not required to proceed through a vendor (or direct payment to the court) as provided in SP11-04?</p> | <p>The task force and committee recommend incorporating the suggested change into the rule.</p> <p>See the response to Superior Court of Sacramento County, Staff.</p> |
| <p>Superior Court of Santa Clara County. Michael M. Clark, Mary Arand, Neal Cabrinha, Mary Ann Grilli</p> | <p>RULE 5.12(b): - change “under” in the first line to read “brought in a case filed under the Family Code”. This is needed since technically the discovery is not brought under the Family Code, but rather the CCP.</p> <p>We suggest an additional new rule that permits a simplified set of standardized discovery forms for less complex family cases. Such standardized forms of discovery would assist self represented litigants.</p> <p>RULE 5.14- We propose that this rule should be amended to make it clear that, on notice, sanctions may also be made and</p> | <p>The task force and committee recommend incorporating this suggestion into the rule they are recommending for adoption.</p> <p>The task force and committee believe that public comment should be sought on the issue of simplified discovery forms before they are considered for adoption. A rule authorizing the forms is not necessary as Judicial Council forms are considered rules under existing rule 5.25.</p> <p>See above response to Association of Certified Family Law Specialists.</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Division 1. Family Rules | | |
|---|---|--|
| Chapter 1. General Provisions (Rules 5.1 through 5.14) | | |
| Commentator | Comment | Committee Response |
| | <p>directed to counsel. In the discovery motion provisions of the code of civil procedure, a party seeking sanctions is required to identify whether sanctions are sought against a party, their attorney, or both.</p> <p>RULE 5.14(b)(2): Add “attorney, law firm” after “witness” and before “any other individual...”</p> <p>RULE 5.14 (d), at line 17: delete the word “been” to read instead “after the court has provided notice...”</p> <p>Also, the rule permits the Court to issue an OSC for a rule violation. Query: does the Court write the OSC? Who acts as the moving party in the hearing of such an OSC? Can it be directed at counsel?</p> | <p>Same response as above.</p> <p>See above response to Bay Area Legal Aid.</p> <p>The court would follow the appropriate procedures outlined in statutes relating to civil procedure.</p> |
| Hon. Scott Thomsen Superior Court of Nevada County | <p>Rule 5.14 (d) : Should be amended to delete the words "the court" following the word "after" and replaced by the words "a person" to be consistent with the definition under subsection (b)(2).</p> <p>Additionally, given the apparent inclusion of the ability to seek attorney’s fees payable against an attorney or law firm under subsection (d)(1)(c), the rule should be stated clearer under the</p> | <p>The task force and committee recommend changes to this rule as specified in their response to Bay Area Legal Aid.</p> <p>See above response to Association of Certified Family Law Specialists.</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Division 1. Family Rules | | |
|---|---|---------------------------|
| Chapter 1. General Provisions (Rules 5.1 through 5.14) | | |
| Commentator | Comment | Committee Response |
| | definition of "Person" in subsection (b)(2) to insert the the words "attorney, law firm" preceding the words "or any other individual...." Lets avoid the argument that a lawyers 'consent' is necessary for the disposition of the case... | |

| Chapter 2. Parties and Joinder of Parties (Rules 5.16 through 5.29) | | |
|---|---|---|
| Commentator | Comment | Committee Response |
| Bay Area Legal Aid Jerel McCrary Family Law Regional Counsel Oakland | Rule 5.24(e) (2) Sentence should be revised to read: “is either indispensible for the court to make an order about that issue or is necessary...” The sentence as it currently reads is ungrammatical and unintelligible. | The task force and committee recommend including the commentator’s suggestion into the proposed rule. |
| Christine N. Donovan, CFLS Sr. Staff Attorney Superior Court of Solano County | Rule 5.16: It may be helpful to include guardians ad litem as permissible parties to an action. | A guardian ad litem is not a party in an action, but an officer of the court who has the right to control the lawsuit on behalf of the person for whom they appear. <i>Sarracino v. Superior Court</i> (1974) 13 Cal.3d 1, 13[18 Cal.Rptr.21, 529 P.2d 53]. |
| | Rule 5.17: I agree with the proposed rule. | No response required. |
| | Rule 5.18: I agree with the proposed rule. | No response required. |
| | Rule 5.24: My comment concerns subpart (e). Subsection (1) of subpart (e) reflects the current rule of court mandating joinder | The task force and committee recommend the following amendment to rule 5.24(e)(1): <u>The court must order that</u> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 2. Parties and Joinder of Parties (Rules 5.16 through 5.29) | | |
|--|---|--|
| Commentator | Comment | Committee Response |
| | <p>of a party who claims “custody or visitation rights with respect to any minor child of the marriage.”</p> <p>First, the reference to “of the marriage” seems to exclude registered domestic partnerships and unmarried parents with a UPA action from this joinder rule. I suggest that the language in subpart (c), which simply refers to “minor children subject to the action,” be used instead.</p> <p>Second, I have had a longstanding concern with mandatory joinder when it comes to grandparent visitation under Family Code section 3104. Before visitation can be ordered, Section 3104 requires that the court determine there is a “there is a preexisting relationship between the grandparent and the grandchild that has engendered a bond such that visitation is in the best interest of the child” and balance “the interest of the child in having visitation with the grandparent against the right of the parents to exercise their parental authority.” (Fam. C. § 3014, subd. (a).) I have seen cases where grandparents petitioned for visitation and were joined as parties, even though they had no factual basis for actually obtaining visitation orders once they were joined. Instead, it seemed that the joinder petitions were disguised attempts to meddle in the custody orders and harass the other parent.</p> | <p><u>a person be joined as a party to the proceeding if any person the court discovers has physical custody or claims custody or visitation rights with respect to any minor child of the marriage, domestic partnership, or to any minor child of the relationship.</u></p> <p>The task force and committee recommend incorporating the following language in proposed rule 5.24: <u>Before ordering the joinder of a grandparent of a minor child in the proceeding under Family Code section 3104, the court must take the actions described in Section 3104(a).</u></p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 2. Parties and Joinder of Parties (Rules 5.16 through 5.29) | | |
|---|--|---|
| Commentator | Comment | Committee Response |
| | <p>It seems inappropriate to require joinder to an action of parties that fail to meet the standard in Section 3104. I suggest that this rule be modified to allow a court to determine whether the parties petitioning per Section 3104 make a prima facie case showing a right to claim visitation prior to ordering their joinder.</p> <p>Rule 5.29: I agree with the proposed rule.</p> | <p>Same as above response.</p> <p>No response required.</p> |
| <p>Virginia Johnson Staff Attorney Superior Court of San Diego County</p> | <p>Agree if modified:</p> <p>5.16(b) - include an additional paragraph that parties to a proceeding for parentage and/or child custody are the <i>living</i> parents or presumed parents. In San Diego, paternity cases are often filed erroneously naming a deceased parent or an uninvolved grandparent as the respondent. <i>See William M. v. Superior Court (3rd Dist. 1990) 225 Cal.App.3d 447.</i></p> | <p>In <i>William M. v. Superior Court (3rd Dist. 1990) 225 Cal.App.3d 447</i>, the court noted that,</p> <p>Although Civ. Code, § 7006, subd. (c), permits the parents of the deceased presumed or putative father to bring an action against the mother and child to establish paternity, there is no reciprocal right for a mother to bring a paternity action naming the putative grandparents as defendants. Grandparents have no involvement in, nor responsibility for, the conception of the child, nor do grandparents have any legal responsibilities for the support or rearing of the child. Thus, defendants were not proper parties to the action.</p> <p>The task force and committee recommend that the following language be included in proposed rule 5.16:</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 2. Parties and Joinder of Parties (Rules 5.16 through 5.29) | | |
|---|--|--|
| Commentator | Comment | Committee Response |
| | <p>5.24 - include that the definition of a person or claimant for joinder means an individual or an entity.</p> <p>5.24(e)(1) - it would seem that a person who has or claims custody of a minor child in a domestic partnership and a paternity action should be included in a mandatory joinder.</p> | <p><u>The only persons permitted to be parties to a family law proceeding to establish parentage are the presumed or putative parents of the minor child, the minor child, a third party is joined in the case under rule 5.24, or a local child support agency that intervenes in the case.</u></p> <p>The task force and committee recommend that rule 5.24(b) state, “For purposes of this rule, a ‘claimant’ is an individual or an entity joined or sought or seeking to be joined as a party to the family law proceeding.”</p> <p>See proposed changes described in the above response to Christine N. Donovan, CFLS.</p> |
| Superior Court of San Bernardino County | Agree with proposed changes. | No response required. |
| Superior Court of Santa Clara County Hon. Michael M. Clark, Mary Arand, Neal Cabrinha, Mary Ann Grilli | <p>RULE 5.16(b)- should be amended to add the parties to a DVPA proceeding, since they are different from the other listed proceedings and are under the Family Code.</p> <p>RULE 5.24- In subsection c, a section should be added to</p> | <p>The task force and committee recommend that the rule provide as follows:<u>(b)(4) The only persons permitted to be parties to a proceeding under the Domestic Violence Prevention Act are those identified in Family Code section 6211.</u></p> <p>Because these are important substantive changes to the</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 2. Parties and Joinder of Parties (Rules 5.16 through 5.29) | | |
|---|--|--|
| Commentator | Comment | Committee Response |
| | <p>allow Family Court Services to recommend joinder of a party in a custody or visitation matter, or the Court to order joinder on its own motion.</p> <p>RULE 5.24(d): add a provision to allow stipulations to Joinder without the full application process. This often occurs in custody matters, where a grandparent or other interested party is being joined.</p> <p>RULE 5.24(e): after “child of the marriage” add “or child of the relationship”, to cover UPA cases as well as marital cases.</p> <p>RULE 5.24(e)(3): Service of these papers on a claimant would not be necessary where the claimant filed the motion for joinder, or where there is a stipulation for joinder.</p> | <p>proposal and the task force and committee believe public comment should be sought before it is considered for adoption.</p> <p>Same response as above.</p> <p>The task force and committee recommend incorporating the suggestion into the rule they are recommending for adoption.</p> <p>The rule addresses the procedure for a party who seeks to join a claimant using the forms specified in the rule. Before considering the suggested language, public comment should be sought in a future cycle.</p> |
| <p>Superior Court of Shasta County Stacy Larson, Family Law Facilitator Redding</p> | <p>CRC 5.16(b)(1): This rule would appear to preclude DCSS from intervening in a dissolution case. In our county, DCSS commonly intervenes, which allows us to have child-support orders made in the dissolution case, so the judgment encompasses all issues. Additionally, it saves us the trouble of having to consolidate the DCSS case with the dissolution case and is more efficient in terms of case management. Our procedure has the drawback of necessitating that DCSS sign off</p> | <p>The task force and committee recommend that rule 5.16 (b) be changed to read as follows:</p> <p><u>(1) The only persons permitted to be parties to a proceeding for dissolution, legal separation, or nullity of marriage are the spouses, except as provided in (3), a third party joined in the case under rule 5.24, or a local child support agency that</u></p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 2. Parties and Joinder of Parties (Rules 5.16 through 5.29) | | |
|--|--|--|
| Commentator | Comment | Committee Response |
| | on judgments, but this is a small price to pay in terms of overall efficiency. Without a better understanding of why we would wish to preclude DCSS from intervening in dissolution cases, I would object to this change. However, if the intent is to allow DCSS to intervene as an interested party pursuant to CRC 5.24(c), I think we should clarify this as DCSS is a common intervening party, and the rules as written do not appear conducive to allowing DCSS to do so. | <u>intervenes in the case.</u> (2) <u>The only persons permitted to be parties to a proceeding for dissolution, legal separation, or nullity of domestic partnership are the domestic partners, except as provided in (3), a third party joined in the case under rule 5.24, or a local child support agency that intervenes in the case.</u> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 3. Filing Fees and Fee Waivers (Rules 5.40 through 5.46) | | |
|---|--|---|
| Commentator | Comment | Committee Response |
| Christine N. Donovan, CFLS Sr. Staff Attorney Superior Court of Solano County | Rule 5.40: I agree with the proposed rule. | No response required. |
| | Rule 5.41: I agree with the proposed rule. | No response required. |
| | Rule 5.43: I generally agree with the proposed rule. However, I suggest revising subpart (b)(1) as follows: “If a petition or complaint is voided under (a) and a response to the petition or complaint has not been filed the respondent has not appeared in the action, the court may dismiss the case...” This would make it consistent with proposed Rule 5.62, which recognizes that a respondent can appear through means other than a Response. I suggest a similar change for subpart (b)(2): “If a petition or complaint is voided and a response has been filed with the court the respondent has appeared in the action, the court must...” | The task force and committee recommend incorporating the suggestions into the rule they are recommending for adoption. |
| | Rule 5.45: The title to this rule is confusing. Is it meant to apply only to DCSS actions? Or is it intended to apply to any judgments or orders that concern support? | The rule does not apply to actions initiated by a local child support agency. The task force and committee recommend amending the rule to so indicate. |
| | Rule 5.46: No comment. | No response required. |
| | I fully agree with the development of rules concerning fee waivers in family law. However, it would be even more helpful if the rules addressed judgments and post-judgment orders, too. | The task force and committee believe that these would be important substantive changes to the rule and public comment should be sought before they are considered |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 3. Filing Fees and Fee Waivers (Rules 5.40 through 5.46) | | |
|---|---|---|
| Commentator | Comment | Committee Response |
| | Specifically, Government Code section 68637, subdivision (e), requires that the court reconsider a person’s fee waiver whenever a “judgment is entered in a family law case.” Furthermore, fee waiver orders expire 60 days after “judgment, dismissal, or other final disposition of the case.” (Gov. C. § 68639.) These statutes have created confusion for courts as to what judgments trigger the obligation to review fee waivers or start the 60-day expiration period. For example, does a bifurcated judgment terminating marital status constitute a “final disposition” of the case? Or is it the judgment on reserved issues that triggers it? What if there are multiple judgments on reserved issues? What about bifurcated judgments establishing paternity but deferring custody orders in a UPA case? Also, many family law cases have post-judgment modifications of custody or support. Does each post-judgment order constitute a “final disposition” of the case? Additions to the proposed rules that address these questions could prove extremely helpful to litigants and courts alike. | for adoption. The suggestions will be considered in a future rules cycle. |
| Virginia Johnson Staff Attorney Superior Court of San Diego County | Agree with proposed changes. | No response required. |
| Superior Court of Monterey County Minnie Monarque, Director | Proposed rule 5.43 Fee Waiver denials, voided actions, dismissal by clerk. It is noted that this rule primarily addresses the denial of a fee waiver for a Petitioner. It is proposed that | The task force and committee recommend incorporating the suggestion into the rule they are recommending for adoption. |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 3. Filing Fees and Fee Waivers (Rules 5.40 through 5.46) | | |
|---|---|---|
| Commentator | Comment | Committee Response |
| Civil & Family Law Division | the time restrictions as noted in sub part a) Voided Paperwork, expand to include Respondent. | |
| Superior Court of Sacramento County, Staff | <p>Rule 5.40. Filing fees</p> <p>It is not necessary to create a rule that cross references other rules and codes.</p> <p>This may set a precedence for SRL that "if it's not x-ref in the CRC then it doesn't exist elsewhere."</p> <p>Rule 5.43(b)(1) If a petition or complaint is voided under (a) and a response to the petition or complaint has not been filed, the court may dismiss the case without prejudice and the clerk of the court must notify the parties. This doesn't make sense - the court "may" but the clerk must "must". Shouldn't it be "must" in both cases.</p> <p>Rule 5.43(b)(2)(A) (A) Review the response to determine whether or how the case will proceed based on the relief requested in the response. This is an added burden to the court, and is in conflict with Government Code. Pursuant to Government Code section 68634(g), the clerk shall void the filing.</p> | <p>The proposed rule is responsive to the final recommendations of the Elkins Family Law Task Force (at page 31) that centralized statewide rules identify all relevant statewide rules of court and organize them into a unified family law section that references all general rules of court as well as the civil rules, such as those pertaining to discovery and settlement sanctions that are applicable to family law.</p> <p>The task force and committee recommend that proposed rule 5.43(b)(1) be changed to state: "If a petition or complaint is voided under (a) and a response to the petition or complaint has not been filed, the court may dismiss the case without prejudice. If the court dismisses the case, the clerk of the court must notify the parties.</p> <p>The proposed rule is an attempt to respond to what should be done if the petition is voided as directed by the Government Code, and a response has or has not been filed. Courts have various procedures for this situation. In some courts, if a petition is voided and a response was filed, the filed response is treated like the petition and the court looks at the relief in the response</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 3. Filing Fees and Fee Waivers (Rules 5.40 through 5.46) | | |
|--|--|---|
| Commentator | Comment | Committee Response |
| | Does Cal Rule have authority to create this rule? | to determine how the case will proceed. In other courts, the court allows the respondents to ask for an order against the petitioner for filing fees paid. Other courts simply flip the case caption, while others refund fees to the respondent and dismisses the case. The proposed rule provides some guidance to the court while allowing it the discretion to continue as seems appropriate to the case. Family Code section 211 authorizes the Judicial Council to provide by rule for the practice and procedure in all proceedings under this Code notwithstanding any other provision of law. |
| Superior Court of San Bernardino County | Agree with proposed changes. | No response required. |
| Superior Court of Santa Clara County, Michael M. Clark, Mary Arand, Neal Cabrinha, Mary Ann Grilli | RULE 5.41: Current procedures require the Court to set a hearing even if a party is only requesting monthly payments and not a full fee waiver. We propose that the forms and rules be changed to allow the Court to order monthly payments based on the application without a hearing. RULE 5.43(a) requires the clerk to void papers if no payment after a denied fee waiver. Subsection (b)(1) allows dismissal if | The suggested change would be inconsistent with Government Code section 68634, which requires the court to grant or deny the application. Only after notice and an opportunity to be heard, the court may require an applicant to pay a portion of court fees or to pay court fees over a period of time or under some other equitable arrangement that meets the criteria of eligibility. The proposed rule was developed to cover applications that are governed by Government Code section 68634 |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 3. Filing Fees and Fee Waivers (Rules 5.40 through 5.46) | | |
|---|--|--|
| Commentator | Comment | Committee Response |
| | the petition is voided and no response has been filed. This rule does not address the case where a petition is filed without fees, but orders such as restraining orders and child support orders have been made. Is the court required to void even these types of orders? | (g). Restraining order applications filed under the Domestic Violence Prevention Act that include orders for child support do not require a filing fee and would not be covered by the proposed rule. |
| Trial Court Presiding Judges Advisory Committee (TCPJAC)/Court Executive Adisory Committee (CEAC) Joint Working Group | <p>Proposed rule 5.43 (b)(1) (Dismissal or continuation of case) p. 36</p> <p><input checked="" type="checkbox"/> Potential Fiscal Impact</p> <p><input checked="" type="checkbox"/> Increased Staff Workload</p> <p>.</p> <p>This proposal will create the following impacts on the courts:</p> <ul style="list-style-type: none"> • Fiscal impact – increase in check fees. • Increase in court staff workload due to the requirements to refund filing fees paid if the court dismisses the case and to provide notice of dismissal. • Increased in court staff workload to generate refunds. • Increase in judicial workload to review and consider cases where petition is void but response has been filed. | <p>Rule 5.43 responds to concerns raised by court clerks in trainings sponsored by the Administrative Office of the Courts that Government Code section 68634(g) does not provide guidance about what should be done if the court voids a petition for failure to pay court fees when a fee waiver is denied and a response has been filed.</p> <p>Although clerks reported that this situation does not often occur, they described various procedures that courts have implemented when it does happen. In some courts, if a petition is voided and a response was filed, the filed response is treated like the petition and the court looks at the relief in the response to determine how the case will proceed. In other courts, the court allows the respondents to ask for an order against the petitioner for filing fees paid. Other courts flip the case caption and allow the case to proceed, while others refund fees to the respondent and dismiss the case.</p> <p>The proposed new rule at 5.43(b)(2)(A)-(B) incorporates</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 3. Filing Fees and Fee Waivers (Rules 5.40 through 5.46) | | |
|---|----------------|--|
| Commentator | Comment | Committee Response |
| | | <p>best practices and procedures described by the clerks. It requires three actions by the court. First, the court reviews the response, or documents constituting respondent’s appearance, to determine whether or how the case will proceed based on the relief requested. This allows the court flexibility to determine the most efficient way to proceed. The court then notifies the parties of the court’s determination. If the court dismisses the case, it must return the filing fees paid by the respondent.</p> <p>The TCPJAC/CEAC raised a concern that rule 5.43(b)(2)(A) would impose a burden on courts because it requires a court to review the response if a petition has been voided to determine whether or how the case will proceed, refund filing fees paid if the court dismisses the case, and provide notice of dismissal to the parties. As above indicated, the rule incorporates the practices that already exist in many courts, including file review, notice to parties, and the refunding of filing fees. While other courts would have to set aside the time for file review, given the relatively few number of cases in which this situation occurs, the rule should not impose an undue burden on courts.</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 4. Starting and Responding to a Family Law Case; Service of Papers (Rules 5.50 through 5.77) | | |
|---|---|---|
| Commentator | Comment | Committee Response |
| Association of Certified Family Law Specialists Diane Wasznicky, President San Rafael | <p>Rule 5.54 This rule would require service of the PDD within 60 days of filing the petition (as to the petitioner) or 60 days from the filing of the response (as to the respondent).</p> <p>A. The rule should state in subdivision (b) that the deadline may be extended or shortened by written agreement of the parties or order of the court.</p> <p>B. The rule should make it clear that it does not alter a party's duty to disclose. The law requires an immediate disclosure post-separation. (Fam. Code, 2101, subd. (a)(1).) The rule, as proposed, could be interpreted as allowing a party to wait up to 60 days to make a disclosure and to excuse any failure to disclose within that period.</p> | <p>The task force and committee recommend that rule 5.54 be deleted from the proposed restructured rules of court to await legislative action under Assembly Bill 1406, which covers the time frame for serving a preliminary declaration of disclosure.</p> <p>Same response as above.</p> |
| John Chemeleski, Commissioner Superior Court of Los Angeles County | <p>This requirement of including federal and state income tax returns with the declaration of disclosure is in conflict with FC§3552 and exceeds the requirements of FC§2104 and should be deleted from this proposed rule. FC§3552 provides for a limited exception the confidentiality of tax returns that applies only in support cases and provides a procedure to protect the confidentiality by sealing the court records or returning all copies to the taxpayer. This proposed rule would render those protections meaningless or unenforceable. Although FC§3552</p> | <p>See above response to Association of Certified Family Law Specialists.</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 4. Starting and Responding to a Family Law Case; Service of Papers (Rules 5.50 through 5.77) | | |
|---|--|--|
| Commentator | Comment | Committee Response |
| | also provides that such returns are discoverable (in support proceedings only) the discovery process requires a formal request for discovery that allows for objections and protective orders that would not be apparent under this proposed rule. Such a drastic change to these requirements should only, if at all, be made by the legislature. Additionally, because of the uncertainties in the enforceability of this proposed rule it would likely lead to inconsistencies in its application by the courts. | |
| Christine N. Donovan, CFLS Sr. Staff Attorney Superior Court of Solano County | <p>Rule 5.50: I agree with the proposed rule.</p> <p>Rule 5.51: I agree with the idea in this rule. However, not all family law cases are dissolution cases. It therefore makes little sense to require service of a <i>Legal Steps for a Divorce</i> information sheet in cases that don't concern dissolution of marriage. I therefore suggest two revisions.</p> <p>First, the rule itself should be revised to include more types of cases and to direct when the information sheet should be served. For example, "When starting a family law case, <u>the petitioner must serve all parties with a copy of an information sheet appropriate to the action which</u> Legal Steps for a Divorce (Dissolution) (form FL-107-INFO) which includes general information about how to resolve a family law case without formal litigation. <u>The information sheet shall be served</u></p> | <p>No response required.</p> <p>The task force and committee agree with the suggestion. However, they recommend that the rule be removed from those being proposed for adoption during this cycle. Instead, the members recommend that the task force and committee first develop specific information sheets for litigants and courts before promulgating a rule requiring petitioner to serve the information sheet.</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 4. Starting and Responding to a Family Law Case; Service of Papers (Rules 5.50 through 5.77) | | |
|---|---|---|
| Commentator | Comment | Committee Response |
| | <p><u>concurrently with the petition and summons. This rule shall not apply to amended petitions.”</u></p> <p>Second, I suggest the development of information sheets for other actions, such as nullities, legal separations, registered domestic partnerships, and parentage actions.</p> <p>Rule 5.52: The proposed rule requires the declaration be attached to the petition or response. I suggest revising the rule to allow the UCCJEA declaration to be filed separately from the petition and response, which is the actual practice in most courts.</p> <p>Also, I suggest that the declaration requirement be imposed on a respondent whenever he or she makes a written appearance in the case, not just when a response is filed.</p> <p>Rule 5.54: This rule could prove more helpful if it addressed technical defaults, e.g. cases where a defaulted respondent signs a stipulated agreement. It is a matter of ongoing debate which of the following is true under those circumstances: (1) The respondent is excused from all disclosure requirements because he or she is defaulted and cannot be compelled to file anything;</p> | <p>The task force and committee recommend the development of information sheets for the actions indicated in the comment.</p> <p>The UCCJEA form is required to be attached to petitions and responses that involve child custody issues. The requirement is included in the relevant Judicial Council petitions and responses. The task force and committee do not recommend changing the existing forms.</p> <p>The committee and task force prefer that the rule reflect the current Judicial Council forms and require the UCCJEA form to be completed and attached to a specific petition or response.</p> <p>See above response to Association of Certified Family Law Specialists regarding rule 5.54.</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 4. Starting and Responding to a Family Law Case; Service of Papers (Rules 5.50 through 5.77) | | |
|--|--|----------------------------|
| Commentator | Comment | Committee Response |
| | <p>(2) The respondent is excused from the final declaration of disclosure requirement per Family Code § 2110, but must still serve a preliminary declaration of disclosure per Family Code § 2104; or,</p> <p>(3) The respondent is subject to both the preliminary and final declaration of disclosure requirements (unless the final declaration is waived by stipulation) because Family Code § 2110 only applies to true defaults.</p> <p>I noticed that the proposed <i>Judgment Checklist</i> (Judicial Council form FL-182) in Invitation to Comment SPR11-45 treats scenario (3) as the correct one, as it requires preliminary and final declarations of disclosure (or a waiver of the final declaration) from both parties notwithstanding the respondent’s default. But the <i>Judgment Checklist</i> is at odds with subpart (b), which only requires a respondent to serve a completed preliminary declaration of disclosure “either along with the response or within 60 days of filing the response.” This suggests that a defaulted respondent (who by definition doesn’t serve a response) is exempt from the disclosure requirements, even if they later sign a stipulated agreement.</p> <p>I therefore suggest that subpart (b) be revised as follows: (b) Time for service (1) Petitioner must serve respondent with a completed</p> | <p>See above response.</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 4. Starting and Responding to a Family Law Case; Service of Papers (Rules 5.50 through 5.77) | | |
|--|--|---|
| Commentator | Comment | Committee Response |
| | <p>preliminary declaration of disclosure either along with the petition or within 60 days of filing the petition.</p> <p>(2) <u>If the respondent appears per Rule 5.62, the</u> The respondent must serve petitioner with a completed preliminary declaration of disclosure either along with the response <u>or other written appearance</u> or within 60 days of filing the response <u>or other written appearance</u>.</p> <p>(3) <u>If a defaulted respondent stipulates to a judgment, the respondent must serve the petitioner with a completed preliminary declaration of disclosure prior to execution of the stipulated agreement.</u></p> <p>Subpart (c) appropriately discusses a proof of service for declarations of disclosure. However, there is a small but vocal minority who consider the <i>Stipulation and Waiver of Final Declaration of Disclosure</i> (Judicial Council form FL-144) to be an appropriate substitute for a <i>Declaration Regarding Service of Preliminary Declaration of Disclosure</i> (Judicial Council form FL-141). I have no personal position on this contention, but it would be helpful to have a rule of court clarifying whether the FL-144 may in fact serve this additional purpose.</p> <p>Rule 5.60: I agree with the proposed rule.</p> | <p>See above response.</p> <p>No response required.</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 4. Starting and Responding to a Family Law Case; Service of Papers (Rules 5.50 through 5.77) | | |
|---|---|--|
| Commentator | Comment | Committee Response |
| | Rule 5.62: I agree with the proposed rule. | No response required. |
| | Rule 5.63: I agree with the proposed rule. | No response required. |
| | Rule 5.66: This proposed rule appears to be copied from the civil rules, which require service of the summons and petition within 60 days. This time period makes sense in a civil case, where delay reduction applies to most matters, but isn't as logical in family law cases. Family law cases are overwhelmingly handled by self-represented litigants. The process is difficult enough without requiring parties who miss the arbitrary 60-day deadline to come back and seek an extension. This would also increase the work load for facilitator's offices, as they would have to assist litigants with requesting extensions of time, and the court themselves in processing these extensions. The current fiscal crisis makes our judicial branch less able to cope with existing work, not to mention added responsibilities. If a deadline is in fact imposed, I suggest it be lengthened to 90 days. | The task force and committee recommend removing the provision of the rule that includes a deadline for filing the summons. |
| | Rule 5.68: I suggest that Rule 5.68 remind parties that service on individuals in foreign countries may have to comply with the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters. | The task force and committee agree with the suggestion and have incorporated into the proposal they are recommending for adoption. |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 4. Starting and Responding to a Family Law Case; Service of Papers (Rules 5.50 through 5.77) | | |
|---|---|---|
| Commentator | Comment | Committee Response |
| | <p>Rule 5.74: Subpart (b) differentiates between “amendments to pleadings” and “amended pleadings.” However, neither the family law rules, nor the rules applicable to all courts (Rule 1) or trial courts (Rule 2) define the differences. I suggest that this proposed rule adopt and include the same definitions found in the probate rules (Rule 7) at Rule 7.3, subparts (3) and (4).</p> <p>Also, it would be helpful if this rule addressed whether and when the entry of a default is affected if an amended petition is filed after the default is entered. Case law indicates that in civil matters at least, the default is reopened if the amended petition asks for substantially different relief than the original petition. (<i>Ostling v. Loring</i> (1994) 27 Cal.App.4th 1731, 1744 [“A material amendment to the complaint opens a default because it permits the plaintiff to prove matters not in issue when the default was taken, which ‘would materially affect the defendant’s decision not to contest the action’”]) For example, if a petition seeks a legal separation but indicates an intent to amend to a dissolution once the residency requirements are met, a default is subsequently entered on the original petition, and the petitioner thereafter does amend the petition to seek a dissolution of marriage, does that amendment “open” the default to permit the filing of a response to the amended petition?</p> | <p>The task force and committee agree with the suggestions and have incorporated them into the proposal they are recommending for adoption.</p> <p>The comments include important substantive changes to the proposal that the task force and committee believe require public comment before they are considered for adoption.</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 4. Starting and Responding to a Family Law Case; Service of Papers (Rules 5.50 through 5.77) | | |
|--|--|--|
| Commentator | Comment | Committee Response |
| | <p>Rule 5.76: I agree with the proposed rule.</p> <p>Rule 5.77: I generally agree with the proposed rule. However, the <i>Joint Petition for Summary Dissolution of Marriage</i> (Judicial Council form FL-800) does not conform with the proposed rule. First, the language in the rule makes it clear that the parties can attach completed worksheets <u>to the petition</u> as a means of complying with the preliminary declaration of disclosure requirements. However, the form states that the following “meets the requirements of preliminary declaration of disclosure: “We each have filled out and <u>given the other</u> copies of the worksheets on pages 8, 10, and 12 of the <i>Summary Dissolution Information</i> booklet (form FL-810) used in determining the value and division of our property. We have told each other in writing about any investment, business, or other income-producing opportunities that came up after we were separated based on investments made or work done during the marriage or domestic partnership and before our separation.” (Judicial Council form FL-800, item 12, emphasis added.) The form says nothing about attaching the worksheets to the petition. This should be corrected on the form.</p> <p>Second, the rule permits the attachment of worksheets as an alternative to the traditional declaration of disclosure</p> | <p>No response required.</p> <p>The task force and committee recommend deleting the requirement that the joint petitioners attach the worksheets to the petition. The proposed new rule would also provide the option for exchanging the same disclosure documents for parties in marital dissolution actions or the documents listed in form FL-810.</p> <p>Same response as above.</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 4. Starting and Responding to a Family Law Case; Service of Papers (Rules 5.50 through 5.77) | | |
|---|--|--|
| Commentator | Comment | Committee Response |
| | <p>requirements. But the form lacks a checkbox giving the parties the alternative between the two, which may lead the parties into mistakenly believing attaching the worksheets is the parties' only option.</p> <p>I also suggest the rule address a situation created by the recent amendment of Family Code section 2403. Prior to January 1, 2011, couples meeting the criteria for a summary dissolution followed this procedure:</p> <ol style="list-style-type: none"> (1) They signed a joint petition for summary dissolution. (2) They waited six months. (3) Once six months expired, then either party could file an FL-820, an omnibus form that requests the entry of a judgment, actually enters the judgment, and provides notice of the entry of the judgment. The burden was on the party to request the entry of the judgment; the court did nothing until the party asked for the judgment to be entered. If either party revoked the joint petition prior to the six months ending, then the judgment was not to be entered. <p>But effective January 1, 2011, the law changed. Now, we have a new procedure as follows:</p> <ol style="list-style-type: none"> (1) The couple signs a joint petition for summary dissolution. (2) They wait six months. (3) Once six months have expired, then the court is required to | <p>The summary dissolution forms are being updated during this cycle to comply with the statutory changes. Because under existing rules family law forms are considered rules of court, the task force and committee believe the summary dissolution forms should reflect the recent legislative changes.</p> <p>Because the comment relates to the forms for summary dissolution, it is addressed in the proposal titled Family Law: Summary Dissolution, which was circulated as SPR11-43.</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 4. Starting and Responding to a Family Law Case; Service of Papers (Rules 5.50 through 5.77) | | |
|---|--|---|
| Commentator | Comment | Committee Response |
| | <p>enter judgment if neither party has revoked the petition.</p> <p>It is unclear whether petitions filed in 2010 that became eligible for entry of a judgment in 2011 should have the judgment entered automatically (per the new law) or only if the party asks for it (per the old law). "If a document or paper is filed before the operative date, the contents, execution, and notice thereof are governed by the old law and not by the new law; but subsequent proceedings taken after the operative date concerning the document or paper, including an objection or response, a hearing, an order, or other matter relating thereto is governed by the new law and not by the old law." (Family Code section 4, subd. (d).) This suggests that if, for example, H and W filed a joint petition on November 1, 2010, the requirements for the filing of the petition itself had to be met under the old law. But, because the new law went into effect on January 1, 2011, they should be able to obtain an automatic entry of judgment because that part of the process is governed by the new law. It would be helpful to have a rule of court (or clean up legislation) that specifically provides for this.</p> | |
| <p>Executive Committee of the Family Law Section of the State Bar of California (FLEXCOM) Saul Bercovitch</p> | <p>FLEXCOM suggests the following modifications to this rule:</p> <ol style="list-style-type: none"> 1. The rule should state in subdivision (b) that the deadline may be extended or shortened by written agreement of the parties or order of the court. This authority may be implied, | <p>See response to Association of Certified Family Law Specialists.</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 4. Starting and Responding to a Family Law Case; Service of Papers (Rules 5.50 through 5.77) | | |
|---|--|---|
| Commentator | Comment | Committee Response |
| Legislative Counsel San Francisco | <p>but should be made express for the benefit of self-represented litigants and to make it clear that a court could order production of the disclosure earlier than the 60-day deadline.</p> <p>2. The rule should make it clear that it does not alter a party’s duty to disclose. The law requires an immediate disclosure post-separation. (Fam. Code, 2102, subd. (a)(1).) The rule, as proposed, could be interpreted as allowing a party to wait up to 60 days to make a disclosure and to excuse any failure to disclose within that period. This sort of interpretation would weaken the protections afforded by the fiduciary duty and provide a potential defense to those who fail to make a required disclosure.</p> | <p>See response to Association of Certified Family Law Specialists.</p> |
| Harriett Buhai Center for Family Law, Erin Dabbs Los Angeles | <p>Rule 5.50: <u>Item 5.50(a)(1)(A):</u> Change the word “divorce” to “dissolution.”</p> <p>Rule 5.54: <u>Item 5.54 introductory statement:</u> Change the word “divorce” to “dissolution.”</p> <p><u>Item 5.54(a)(2):</u> Add that the <i>Financial Statement (Simplified)</i></p> | <p>The task force and committee prefer to use the term divorce in the rules as a plain language term for dissolution. However, the task force and committee agree to propose clarifying in the definitions section of the rules (rule 5.2(b)) that a divorce is synonymous with the term dissolution.</p> <p>See above response to Association of Certified Family Law Specialists regarding the removal of rule 5.54.</p> <p>Same response as above. Also, for reasons specified</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 4. Starting and Responding to a Family Law Case; Service of Papers (Rules 5.50 through 5.77) | | |
|--|---|---|
| Commentator | Comment | Committee Response |
| | <p>is an optional form to complete in lieu of the <i>Income and Expense Declaration</i> with the <i>Preliminary Declaration of Disclosure</i>. The <i>Income and Expense Declaration</i> can always be filed, but in many cases, the <i>Financial Statement (Simplified)</i> is sufficient.</p> <p>Rule 5.66: <u>Item 5.66(b)</u>: We object to the requirement that the proof of service of summons be filed within 60 days of filing of the Petition. We recommend that the date for filing be extended to 120 days in order to accommodate service of respondents who might be out of the state or the county, in the military, or in prison. In our experience, the majority of our clients require greater than 60 days to complete service of process. We believe that this applies across the board to self-represented and/or low income litigants who will usually have to find a friend or family member to complete service as they cannot afford the costs of a process server to handle service quickly.</p> <p>Rule 5.68: <u>Item 5.68(a)</u>: We recommend that item (5) be added here to state “Service by Posting or Publication (Code Civ. Proc. §§ 415.50 and 413.30)”</p> <p>Minor formatting note. The commas following “Code Civ.</p> | <p>below in the response to the Superior Court of Ventura County, the task force and committee do not agree to include in the rule that a party may file a <i>Financial Statement (Simplified)</i> (form FL-155) instead of an <i>Income and Expense Declaration</i> (form FL-150).</p> <p>For the reasons stated in the comment, the task force and committee agree to recommend eliminating the proposed requirement of a specific deadline for filing the proof of service of summons.</p> <p>The task force and committee agree with the suggestion and have incorporated it, with minor alterations, into the amendments they are recommending for adoption.</p> <p>The Judicial Council follows the <i>California Style</i></p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 4. Starting and Responding to a Family Law Case; Service of Papers (Rules 5.50 through 5.77) | | |
|---|---|---|
| Commentator | Comment | Committee Response |
| | Proc.” can be deleted in items (1)-(4). | <i>Manual</i> , which specifies that commas follow the abbreviation of the Code of Civil Procedure as shown in the rule. |
| Virginia Johnson Staff Attorney Superior Court of San Diego | *Commentator agreed with proposed changes to rule 5.72, if modified. | The full comment and response to the comment are included in the proposal titled: Family Law: Proof of Service by Publication or Posting. |
| Los Angeles County Bar Association, Family Law Section Charles Wake | <p>Rule 5.54 The LACBA Family Law Section agrees with this proposed rule if subsection (a), and especially paragraph (a)(4), is deleted.</p> <p>The LACBA Family Law Section considers subsection (a) superfluous. Applicable statutes and existing forms already establish the required contents of a preliminary declaration of disclosure (“PDD”). Re-defining those requirements in this proposed rule complicates the preparation and service of a PDD by adding yet another source to which a party must refer before serving a PDD. Adding yet another source establishing the requirements of a PDD also creates potential conflicts between the various sources.</p> <p>This potential conflict is apparent, and especially important, in proposed paragraph 5.54(a)(4), which would require parties to attach their last two years’ income tax returns to a PDD. Such a requirement conflicts with Cal. Fam. Code §§3552 and 3665</p> | See above response to Association of Certified Family Law Specialists regarding rule 5.54. |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 4. Starting and Responding to a Family Law Case; Service of Papers (Rules 5.50 through 5.77) | | |
|---|--|--|
| Commentator | Comment | Committee Response |
| | <p>("Sections 3552 and 3665") and exceeds the requirements of Cal. Fam. Code §2104 ("Section 2104"). It may therefore be unenforceable. Even if enforceable, those inconsistencies will lead to disparate interpretation and enforcement by the courts.</p> <p>Sections 3552 and 3665 provide limited exceptions to the tax return privilege that apply only in support cases. They also include provisions protecting the confidentiality of any tax returns discovered in such cases. This proposed rule would render those protections meaningless or unenforceable.</p> <p>Moreover, although Section 3552 provides that tax returns are discoverable in support proceedings, the discovery process inherently includes methods by which a tax payer can protect the privacy of his or her return. This proposed rule abrogates such protections without including any equivalent alternatives. Such a drastic change should only, if at all, be made by the legislature.</p> <p>Rule 5.66. Agrees with proposed new rule.</p> | |
| Superior Court of Monterey County Minnie Monarque, Director Civil & Family Law Division | Proposed rule 5.54: Preliminary Declarations of disclosure; time for service. 5.54(b) addresses the timing of the service of the preliminary declarations of disclosure. While the goal of having the disclosures served contemporaneously with the Petition or within 60 days of filing the petition is laudable, it is | See above response to Association of Certified Family Law Specialists. |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 4. Starting and Responding to a Family Law Case; Service of Papers (Rules 5.50 through 5.77) | | |
|---|---|---|
| Commentator | Comment | Committee Response |
| | not always practical or possible. As the language of this section is mandatory in nature, it is proposed that the Council either modify the language to extend the time for service of preliminary declarations of disclosure or to include a clause that permits a party to file a motion to request an extension of time to comply with the rule upon good cause shown. The proposed addition would be as follows: “b) (1): A party may, prior to the expiration of the time allowed for service of the preliminary declaration of disclosure, file a noticed motion with the court requesting an extension of time to comply. Such motion may be granted by the court upon a showing of good cause for the need for the extension of time to comply.” | |
| Superior Court of Orange County Family Law Operations | Rule 5.52: should be more specific regarding the requirements to update the initial UCCJEA; the rule states "continuing duty to inform the court" but doesn't say how to inform the court; the Judgment Checklist, FL-182, tells the parties that a new UCCJEA form must be filed if there are changes, the rule should say the same. Rule 5.54: should include requirements for service of Preliminary Declaration of Disclosure when the Petition has been served by Publication or Posting; service on the clerk would be accepted, however the documents being served are | The task force and committee agree with the suggestion and have included it with the amendments they are recommending for adoption. Specifically, the task force and committee agree to add the following as the final sentence: “To comply with this duty, a party must file a new UCCJEA form with the court and have it served on the other party.” See above response to Association of Certified Family Law Specialists regarding rule 5.54 The comment relates to a separate proposal regarding posting or publication cases that proceed by default. Therefore, the comment |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 4. Starting and Responding to a Family Law Case; Service of Papers (Rules 5.50 through 5.77) | | |
|---|---|--|
| Commentator | Comment | Committee Response |
| | not normally filed with the court, suggest rule include requirement that the documents be filed into the court file; if Respondent appears later to queries the file, the documents would be available. | and response will appear in the Judicial Council Report titled “Family Law- Proof of Service by Publication or Posting.” |
| Superior Court of Sacramento County, Staff | <p>Rule 5.54. Preliminary declaration of disclosure; time for service. 5.54: We are opposed to rephrasing existing rules and codes and putting them in the CRC.5.54: This rule should be limited to (b) and(d) which create new rules. The others are simply restating rules that already exist, and thus should be deleted.</p> <p>Rule 5.62. Appearance by respondent or defendant 5.62: This is simply a restatement of rules and statutes. It is not necessary to restate rules, recommend this be removed.</p> <p>Rule 5.63. Motion to quash proceeding or responsive relief 5.63: This is simply a restatement of rules and statutes. Recommendation: delete.</p> <p>Rule 5.68. Manner of service of summons and petition; response; jurisdiction 5.68: This is simply a restatement of rules and statutes. Recommendation: delete.</p> | <p>See above response to Association of Certified Family Law Specialists regarding rule 5.54</p> <p>As specified in the drafters’ notes following the rule, rule 5.62 is a renumbering of existing rule 5.120.</p> <p>As specified in the drafters’ notes following the rule, rule 5.63 is a renumbering of existing rule 5.121.</p> <p>As specified in the drafters’ notes following the rule, rule 5.68 is a renumbering of existing rule 5.112.</p> |
| Superior Court of San Bernardino County | 1. Preliminary Declaration of Disclosure Rule 5.54(a)(3): As written, it sounds like the Schedule of Assets and Debts | See above response to Association of Certified Family Law Specialists regarding rule 5.54. |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 4. Starting and Responding to a Family Law Case; Service of Papers (Rules 5.50 through 5.77) | | |
|--|---|----------------------------|
| Commentator | Comment | Committee Response |
| | <p>form can be substituted with the Property Declaration. Is that how it is meant? FC 2337 specifically requires a schedule of assets and debts in the bifurcation motion situation, but there doesn't seem to be other references to requiring it.</p> <p>2. Preliminary Declaration of Disclosure Rule 5.54(a)(4): Strongly disagree with the new requirement that the federal and state income tax returns for the last 2 years be completed as part of the required disclosure has no legal basis under the Family Code or case law for this specific requirement. While this may be a practice in some jurisdictions within the State of California, not all courts are requiring the disclosure of tax returns. The information may be helpful, but is it legally required for a divorce and does it add valuable information for the litigants as compared to the burden of providing the returns? For the litigant, it could mean copying an additional 40 to 50 sheets of paper and having them served on the other person who most likely signed the tax returns, too. For a person of limited means, the extra money spent on copying tax returns may mean skipping a meal. In our county, a substantial number of cases end by way of default. In 2010, 7909 dissolution cases were filed. In 2010, 5253 dissolution cases ended with a default judgment. In those</p> | <p>See above response.</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 4. Starting and Responding to a Family Law Case; Service of Papers (Rules 5.50 through 5.77) | | |
|---|---|--|
| Commentator | Comment | Committee Response |
| | <p>uncontested cases, is there a reason to add another step to the divorce process? Shouldn't the process be streamlined?</p> <p>3. Preliminary Declaration of Disclosure Rule 5.54(b): By designating a specific time limit, this change reversed the 1998 amendment to Family Code Section 2014 which deleted the 60 days. Is there a need to go back to this specific timing deadline? What is the penalty if someone doesn't file the disclosures? If there is no penalty and there needs to be a specific time limit for purposes of case flow management (milestones), then why not make it "should" so as to avoid differences among judges as to how to interpret this section regarding effect of failure to follow.</p> <p>4. Preliminary Declaration of Disclosure Rule 5.54(d): Can the filings (request for entry of default and FL-165) be made concurrently?</p> <p>5. Proof of Service deadlines Rule 5.66(b): By imposing a 60 day deadline to serve the Petition, isn't that contrary to the idea of persons trying to work out their family law situation without getting a divorce? Code of Civil Procedure Section 583.420 provides 2 years to serve a complaint – why should the family law litigant be deprived of 22 months of additional time? What is the penalty if the service is not</p> | <p>Same as above response.</p> <p>Same as above response.</p> <p>The task force and committee have recommended removing from the rule a deadline for serving a petition. See response to Harriett Buhai Center for Family Law on the same issue.</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 4. Starting and Responding to a Family Law Case; Service of Papers (Rules 5.50 through 5.77) | | |
|---|---|---|
| Commentator | Comment | Committee Response |
| | completed within 60 days? The case gets dismissed? The person needs to file an OSC (Request for Order) to ask for additional time, with the consequence of adding to an already overburdened court calendar? | |
| Superior Court of Santa Clara County | <p>Rule 5.68. Manner of Service - subdivision (a) should be amended to add a paragraph (5) which states, "Service on person outside of the U.S.A. in compliance with Hague Convention." Rationale: service of papers on parties who reside outside of the U.S.A. must be done in compliance with the service rules contained in the Hague Convention. For instance, where one of the parties resides in Mexico, the party here will often arrange for a friend to personally serve the other party in Mexico. This is not proper service under the Hague.</p> <p>Rule 5.68 Manner of Service - subdivision (c) should be amended to read, "The court has jurisdiction over the parties " not "the court has jurisdiction of the parties . . .".</p> | <p>The task force and committee agree with this suggestion and have incorporated it into the amendments they are recommending for adoption.</p> <p>The task force and committee agree with this suggestion and have incorporated it into the amendments they are recommending for adoption.</p> |
| Superior Court of Santa Clara County, Michael M. Clark, Mary Arand, Neal Cabrinha, Mary Ann Grilli | <p>RULE 5.50(b): insert the word "Automatic" should at the beginning of the title of the section. Also, query why the ATROs are on the back of the summons. Many people do not read the backs of the forms.</p> <p>RULE 5.51: Modify to read "At the same time that the Petition in a family law proceeding is served, the Petitioner must also</p> | <p>The task force and committee agree with this suggestion and have incorporated it into the amendments they are recommending for adoption.</p> <p>Because the task force and committee decided to delete the requirement to serve a specific form from the rules</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 4. Starting and Responding to a Family Law Case; Service of Papers (Rules 5.50 through 5.77) | | |
|---|---|---|
| Commentator | Comment | Committee Response |
| | <p>serve...(the form title would go here)” Reference to the form should also be added to the standard proof of service, so that a box can be checked for the required service.</p> <p>RULE 5.52: In DVPA actions, a UCCJEA form is unnecessary because of the wording on the forms, so the rule should so reflect.</p> <p>RULE 5.54: It is not clear in the rule as drafted whether a party himself can serve the Declaration of Disclosure. It would be very helpful to parties to make a clear statement about whether or not a party can serve his or her own declaration.</p> <p>5.54 (c)(1): insert “filing” before “party” in the second line for clarification.</p> <p>5.54(c)(2) should really be its own subsection, and moved before the proof of service section.</p> <p>5.54 (e) is not needed. It is a statement of the law and it does not need to be repeated here.</p> <p>RULE 5.62- The rule should address whether a general appearance in court at a law and motion matter constitutes a</p> | <p>proposed in this cycle, they do not agree to include a reference to the form on the standard proof of service forms.</p> <p>The proposed rule specifies the types of actions that require a UCCJEA form. The task force and committee do not believe that the rule needs to specifically exclude DVPA actions.</p> <p>See above response to Association of Certified Family Law Specialists regarding rule 5.54.</p> <p>The proposal would renumber existing rule 5.120 to 5.62. The commentator proposes substantive changes to</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 4. Starting and Responding to a Family Law Case; Service of Papers (Rules 5.50 through 5.77) | | |
|---|---|---|
| Commentator | Comment | Committee Response |
| | <p>general appearance in the case or not. Similarly, is the filing of a responsive declaration to an osc or notice of motion an appearance? Many courts have taken the position that it is not, but the rule should clearly say one way or the other.</p> <p>RULE 5.62(a)(4): What is meant by a “written notice of appearance”.</p> <p>RULE 5.63(b): at the end of the sentence, add “denying motion to quash.” The order is not described.</p> <p>RULE 5.74(a): Modify the last sentence to read: “Demurrers or summary judgment motions must not be used.” (Or find another appropriate place to add a rule prohibiting summary judgment motions.) We have been seeing an increase in motions filed seeking summary judgment, a procedure that really is not appropriate in family cases.</p> <p>RULE 5.77- The rule should clearly state that each party must pay a filing fee for a summary dissolution and there are 2 separate filing fees required.</p> | <p>the rule and the task force and committee believe that public comment should be sought before they are considered for adoption.</p> <p>Same response as above.</p> <p>The task force and committee agree to include the suggested technical change with the amendments they are recommending for adoption.</p> <p>The task force and committee agree to include the suggested technical change with the amendments they are recommending for adoption.</p> <p>Government Code section 70677 provides that the uniform fee for filing the first paper in a proceeding for dissolution of marriage or domestic partnership, legal separation, or nullity, is three hundred fifty-five dollars (\$355). Because a summary dissolution of marriage consists of one joint petition or one “first paper,” only</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 4. Starting and Responding to a Family Law Case; Service of Papers (Rules 5.50 through 5.77) | | |
|---|--|--|
| Commentator | Comment | Committee Response |
| | | one filing fee is required. The task force and committee agree to recommend amending rule 5.77(b) to clarify this matter and to delete repealed Government Code section 28659. The proposed language would be: <u>5.77(b) “The joint petitioners must pay one fee for filing a <i>Joint Petition for Summary Dissolution of Marriage</i> (form FL-800). The fee is the same as that charged for filing a <i>Petition-Marriage</i> (form FL-100). No additional fee may be charged for the filing of any form prescribed for use in a summary dissolution.”</u> |
| Superior Court of Ventura County Caron Smith Family Law Case Coordinating Attorney | Rule 5.54 Many litigants are overwhelmed by the required disclosure forms listed in proposed rule 5.54. Using the Financial Form (Simplified) (FL-155) significantly helps many litigants to comply with the disclosure requirement. The proposed rule, however, precludes using the Financial Form (Simplified) (FL-155) as part of the disclosures. The rule also requires litigants to use the Schedule of Assets and Debts (FL-142) or the Property Declaration (FL-160). This prevents litigants from using a simplified form, or a simple list to disclose property, assets and debts. Family Code sections 2100, et seq. do not prohibit the use of these forms. Since simplified forms meet the requirements of the statute, the rule should be modified to allow | See above response to Association of Certified Family Law Specialists regarding rule 5.54. The commentator suggests that a party be permitted to serve either a <i>Financial Statement (Simplified)</i> (form FL-155) or an <i>Income and Expense Declaration</i> (form FL-150) to comply with the Family Codes disclosure requirements. The Judicial Council adopted form FL-155 for use in government child support cases so that a judge would have information about a party’s finances to assist in determining child support pursuant to the guideline formula in Family Code section 4055. In child support hearings, a party may complete a current <i>Financial</i> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 4. Starting and Responding to a Family Law Case; Service of Papers (Rules 5.50 through 5.77) | | |
|---|---|--|
| Commentator | Comment | Committee Response |
| | <p>their use. The Declaration of Disclosure (FL-140) should also be modified to be consistent with the statute.</p> <p>Use of the Financial Statement (Simplified) (FL-155)</p> <p>The Financial Form (Simplified) (FL-155) cannot be used if attorney’s fees, costs, or spousal support is requested. Nor, can it be used if the litigant is self-employed or receives income from any source other than those listed on the back of the form. If these conditions are met, the litigant can use the form in a dissolution, and other family law court procedures.</p> <p>Chapter 9 of the Family Code, Disclosures of Assets and Liabilities, states the public policy underlying the requirement to disclose income, expenses, assets and debts to the other party. Chapter 9 also includes the steps a litigant must follow to comply with the disclosure requirement. The legislature is very specific about the information that parties must exchange.</p> <p>Section 2101 of the Family Code defines the terms that apply to the chapter. Section 2101(e) defines "income and expense declaration" to include "the Income and Expense Declaration forms approved for use by the Judicial Counsel and any other financial statement that is approved for use by the Judicial Council in lieu of the Income and Expense Declaration, if the</p> | <p><i>Statement (Simplified)</i> (form FL-155) instead of a current <i>Income and Expense Declaration</i> (form FL-150) if he or she meets the requirements allowing submission of a <i>Financial Statement (Simplified)</i> (form FL-155). <i>Financial Statement (Simplified)</i> (form FL-155) is not appropriate for use in proceedings to determine or modify spousal or domestic partner support, to determine or modify family support, or to determine attorney’s fees and costs.</p> <p>Family Code sections pertaining to preliminary and final declarations of disclosure require each party to disclose with sufficient particularity the identity of all assets and all liabilities, as well as provide an income and expense declaration that includes all material facts and information regarding a party’s earnings, accumulations, and expenses.</p> <p>Form FL-155 simplifies the process for obtaining child support because it does not require a full disclosure of a party’s expenses. However, because form FL-155 does not request all expenses, it does not satisfy the applicable criteria to replace the <i>Income and Expense Declaration</i> (FL-150) for purposes of assisting a party to</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 4. Starting and Responding to a Family Law Case; Service of Papers (Rules 5.50 through 5.77) | | |
|---|---|---|
| Commentator | Comment | Committee Response |
| | <p>financial statement form satisfies all other applicable criteria." (emphasis added) The Financial Form (Simplified) (FL-155) can meet this definition. The preliminary and final declarations of disclosures require a full disclosure of all expenses. The Financial Form (Simplified) (FL-155) does not request all expenses. The form, however, allows litigants to attach an additional page, on which expenses could be listed, or attach page 3 of the Income and Expense Declaration (FL-150).</p> <p>The Financial Form (Simplified) (FL-155) form can be used for different purposes in a dissolution. Not allowing the use of the Financial Form (Simplified) (FL-155) creates conflicts or inconsistencies in the application of the Family Code and Rules of Court. For, example the proposed rule is inconsistent with the following:</p> <p>Family Code Section 4055(b)(E)(6) lays out how formula for the statewide uniform guideline for determining child support, is used in a default process when proof is by declaration pursuant to Family Code section 2336. The formula is used to determine child support in all dissolution dissolutions.</p> <p>Family Code section 4068(b): The Judicial Council was required to create a simplified form to assist in determining</p> | <p>fulfill his or her fiduciary and statutory duty to the other party to make a full disclosure. Therefore, the task force and committee cannot recommend that that the Judicial Council adopt the rule that the commentator suggests.</p> <p>As previously stated, a <i>Financial Statement</i> (Simplified) (form FL-155) is intended for use in child support proceedings. It not appropriate for use in all family law proceedings. It may not be used in proceedings to determine or modify spousal or domestic partner support, to determine or modify family support, or to determine attorney’s fees and costs.</p> <p>No response required.</p> <p>No response required.</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 4. Starting and Responding to a Family Law Case; Service of Papers (Rules 5.50 through 5.77) | | |
|---|--|--|
| Commentator | Comment | Committee Response |
| | <p>child support pursuant to the formula in 4055(a), the statewide uniform guideline. The form created was the Financial Form (Simplified) (FL-155). The guideline formula is used to calculate child support in all family law proceedings, including dissolution.</p> <p>However, pursuant to the proposed rule, litigants who qualify to use the simplified form, will have to complete the Income and Expense Declaration (FL-150) to comply with the disclosure requirement. Litigants in dissolutions will likely not have the benefit of using the simplified form, which was designed to help them. Some litigants will be forced to do double the work. If a child support order has been made, using the simplified form, they will have to also complete an Income and Expense Declaration (FL-150) to satisfy the disclosure requirement.</p> <p>Family Code section 2106 states a judgment cannot be entered without a current “income and expense declaration.” As indicated above, the definition of “income and expense declaration” in Family Code section 2100 et seq. includes the Financial Form (Simplified) (FL-155). The simplified form can be used to meet this requirement to file a judgment.</p> | <p>The <i>Income and Expense Declaration</i> (form FL-150) was designed to help parties fully comply with the disclosure requirements under the Family Code.</p> <p>Family Code section 2101(e) provides that:</p> <p>“Income and Expense Declaration” includes the Income and Expense Declaration forms approved for use by the Judicial Council, and any other financial statement that is approved for use by the Judicial Council in lieu of the Income and Expense Declaration if the financial</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 4. Starting and Responding to a Family Law Case; Service of Papers (Rules 5.50 through 5.77) | | |
|---|---|--|
| Commentator | Comment | Committee Response |
| | <p>Rule 5.401. Default, states the Income and Expense Declaration (FL-150) or the Financial Form (Simplified) (FL-155) can be used for all or any part of proof required on any issue on which they are relevant.</p> <p>Rule 5.402. Request for default; forms, indicates that a litigant must file a Request to enter Default. The Request lists the Income and Expense Declaration (FL-150) or the Financial Form (Simplified) (FL-155) as required forms, unless there have been no changes since the previous filing, or there are no issues of child, spousal or partner support or attorney’s fees and costs.</p> <p>Proposed Judgment Checklist (FL-182) disso/legal separation1(h). When there are minor children of the marriage, the checklist indicates a litigant is required to file the Income</p> | <p>statement form satisfies all other applicable criteria.</p> <p>The Judicial Council has not adopted form FL-155 as a financial statement that satisfies all other applicable criteria for it to be used as an “Income and Expense Declaration.”</p> <p>Rule 5.401 does not authorize form FL-155 to be used in lieu of an Income and Expense Declaration for purposes of satisfying a party’s statutory duty to disclosure all assets, debts, income, and expenses. The rule relates to the proof of facts in a default proceeding.</p> <p>Same response as above.</p> <p>Same response as above.</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 4. Starting and Responding to a Family Law Case; Service of Papers (Rules 5.50 through 5.77) | | |
|---|---|---|
| Commentator | Comment | Committee Response |
| | <p>and Expense Declaration (FL-150) or the Financial Form (Simplified) (FL-155).</p> <p>Support for Using Financial Form (Simplified) (FL-155)</p> <p>Proposed rule 5.54 was not written to comply with a new or amended statute. The rule must have been written to affirm current law. However, many attorneys, training, and reference materials indicate the Financial Form (Simplified) (FL-155) can be used to satisfy the disclosure requirement. (See Continuing Education of the Bar, 2011 Practice Under the California Family Code: Dissolution, Legal Separation Nullity). In 2010, after reviewing the applicable law, the Ventura Superior Court’s family law judicial officers accepted the use of the simplified form to satisfy the disclosure requirement.</p> <p>The Judicial Council’s website is in direct conflict with the proposed rule. Accessed from the court’s home page, are instructions on how to complete a divorce. Navigating to the site, litigants are instructed that, if they meet the requirements of the form, they can use the Financial Form (Simplified) (FL-155) as part of the disclosure packet served on the other party. At URL www.courtinfo.ca.gov/selfhelp/family/divorce/step3.htm, this information is given. It is also stated at URL</p> | <p>The task force and committee have discussed the issues raised in the comment and, for reasons indicated above, recommend that rules, forms, and published materials limit the use of form FL-155 to the purpose for which it was originally adopted—for use in child support proceedings.</p> <p>See above response.</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 4. Starting and Responding to a Family Law Case; Service of Papers (Rules 5.50 through 5.77) | | | | | | | | | | | | | | |
|---|--|---|------------------------------|---------|--------------|--|--------|---|------------------------------|--------------------------------|--|--|--|------------------------------|
| Commentator | Comment | Committee Response | | | | | | | | | | | | |
| | <p>www.courts.ca.gov/1230.htm. The following chart is found on the site:</p> <p>Forms to Complete Your Preliminary Disclosure To download a form (in PDF format), click on the form number in the table below.</p> <table border="0"> <tr> <td>Form Name</td> <td>Form Number</td> <td>Purpose</td> <td>Instructions</td> </tr> <tr> <td>Declaration of Disclosure (Family Law)</td> <td>FL-140</td> <td>Cover sheet listing all attachments included with your preliminary disclosure</td> <td>Instructions for Form FL-140</td> </tr> <tr> <td>Income and Expense Declaration</td> <td></td> <td></td> <td></td> </tr> </table> <p>OR</p> <p>Financial Statement (Simplified) FL-150</p> <p>OR</p> <p>Gives your financial information to the court and to your spouse or domestic partner. You need to use either Form FL-150 or Form FL-155.</p> <p>Using a Simplified List of Property and Debts</p> <p>Family Code section 2100 et seq. requires “a full and complete disclosure of all assets and liabilities in which one or both parties have or may have an interest” to be disclosed to the other party. In Family Code section 2112, the Judicial Council was required to “adopt appropriate forms and modify existing</p> | Form Name | Form Number | Purpose | Instructions | Declaration of Disclosure (Family Law) | FL-140 | Cover sheet listing all attachments included with your preliminary disclosure | Instructions for Form FL-140 | Income and Expense Declaration | | | | <p>No response required.</p> |
| Form Name | Form Number | Purpose | Instructions | | | | | | | | | | | |
| Declaration of Disclosure (Family Law) | FL-140 | Cover sheet listing all attachments included with your preliminary disclosure | Instructions for Form FL-140 | | | | | | | | | | | |
| Income and Expense Declaration | | | | | | | | | | | | | | |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 4. Starting and Responding to a Family Law Case; Service of Papers (Rules 5.50 through 5.77) | | |
|---|---|--|
| Commentator | Comment | Committee Response |
| | <p>forms to effectuate the purposes of this chapter.” To meet the property and debts disclosure requirement, the Judicial Council listed Schedule of Assets and Debt (FL-140) on the Declaration of Disclosure (FL-160). It does not appear that the legislative intent was to create an exclusive list of forms.</p> <p>Given that FL-160 is an optional form, Ventura Superior Court determined that it could develop an optional, 1 page simplified form, which would request the same information as the FL-160. The form is written in plain language and much easier to use than the 4 page FL-160. The form, developed last year, was conceived of and designed by the Supervising Judge of Family Law. Litigants have enough room to list all of their property and debts.</p> <p>Importance of Allowing Use of Simplified Forms</p> <p>The Elkins Family Law Task Force, in its Final Report and Recommendations, April 2010, highlighted the need to create “streamlined procedures,” (page 15), and “forms that would simplify the family court process,” (page 19). They indicated they were concerned about “the number, variety and complexity of the forms,” (page 33), and recommended that forms be “easy to use,” (page 33). In keeping with the spirit of the Task Force, the rule should be modified.</p> | <p>No response required.</p> <p>Merely modifying the rule as suggested by the commentator is not appropriate because form FL-155 does not include a provision that requires a complete disclosure of expenses. The task force and committee believe that creating a simplified form that would also help a party comply with his or her fiduciary and statutory duty to fully disclose assets, obligations, income and expenses is an important substantive issue.</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 4. Starting and Responding to a Family Law Case; Service of Papers (Rules 5.50 through 5.77) | | |
|--|---|--|
| Commentator | Comment | Committee Response |
| | <p>The importance of simplified forms cannot be overstated. Readability experts indicate 43% of the population read at a fourth grade level. English is a second language for a significant number of self-represented litigants. Even some college educated litigants have indicated that they cannot understand the forms or the process. Access to justice mandates that litigants are able to read, understand and complete the forms. Self-help programs are only part of the solution. These programs are understaffed and underfunded. At page 10 of its final report, the Elkins Task Force, states “even with self-help services some people find it difficult to follow legal rules and procedure.” The Judicial Council should not miss an opportunity to ensure a simplified process. To achieve this, the proposed rule only needs to be modified.</p> | <p>The task force and committee also believe that public comment should be sought before a proposed form is considered for adoption.</p> |
| <p>Trial Court Presiding Judges Advisory Committee (TCPJAC)/Court Executive Adisory Committee (CEAC) Joint Working Group</p> | <p>Proposed rule 5.54 (Preliminary declaration of disclosure; time for service) p. 39 <input checked="" type="checkbox"/> Potential Fiscal Impact <input checked="" type="checkbox"/> Impact on Automated Systems</p> <p>There could be an impact on those courts using interim case management systems. New rule 5.54 proposes new, 60-day deadline requirements for submitting declarations of disclosure. There may be configuration changes that might need to be made for “tickler/reminders”, verification of filing before</p> | <p>See above response to Association of Certified Family Law Specialists regarding rule 5.54.</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 4. Starting and Responding to a Family Law Case; Service of Papers (Rules 5.50 through 5.77) | | |
|---|---|---|
| Commentator | Comment | Committee Response |
| | <p>entering default, and time standards. New reports may also need to be generated on cases that do not meet these new timelines.</p> <p>*The commentator included comments regarding proposed rule 5.72.</p> | <p>*The full comment and response to the comment are included in the proposal titled: Family Law: Proof of Service by Publication or Posting.</p> |

| Chapter 6. Request for Order (rules 5.90 through 5.125) | | |
|---|--|---|
| Commentator | Comment | Committee Response |
| <p>Bay Area Legal Aid Jerel McCrary Family Law Regional Counsel Oakland</p> | <p>Rule 5.98 (b) The section should be explicit that the requirement to exchange documents does not relate to documents that are submitted primarily for rebuttal purposes.</p> <p>Rule 5.113 (a) & (e) Although this section has already been circulated for comment, it should be reworded to harmonize with the proposed changes contemplated in SPR 11-38. The language “order to show cause or notice of motion” should be replaced with “request for orders”.</p> <p>Rule 5.125 (b) The process of obtaining orders after hearing will benefit</p> | <p>The task force and committee agree with the suggestion and have incorporated it with the amendments they are recommending for adoption.</p> <p>The task force and committee agree with the suggestion and have incorporated it, with minor alterations, with the amendments they are recommending for adoption.</p> <p>The task force and committee recommend changing 5</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

Chapter 6. Request for Order (rules 5.90 through 5.125)

| Commentator | Comment | Committee Response |
|-------------|---|--|
| | <p>from having uniform, specific rules setting out the applicable timelines for preparation of those orders. However, the proposed limit of 5 calendar days after hearing seems unduly restrictive. As an example, for a Friday hearing, the Order After Hearing would have to be completed on the following Wednesday. A specific, but somewhat more workable rule would provide for the order to be prepared 5 court days after a hearing or alternatively 10 calendar days.</p> <p>Even though a party has not prepared an order after hearing in a timely fashion, the other party should be required to send a copy of the proposed order to that party. To avoid subsequent motions based upon disputes about the accuracy of orders after hearing, the section should be amended to read "...the other party may prepare the proposed order and send it directly to the court with a copy to the party originally ordered to prepare it."</p> <p>(c) (2) Clerk's minutes are often incomplete and sometimes inaccurate. Where a hearing before the court is reported, the court should first consult a transcript of the hearing, if available.</p> <p>(e) Proposed Rule 5.14 already provides for attorney's fees and costs for violation of any of the applicable rules. It is unnecessary to restate that here.</p> | <p>calendar days to 10 calendar days after the hearing. The proposed rule would also permit courts to change the timelines and procedures in the rule when appropriate to the case.</p> <p>The committee and task force agree with the suggestion and have agreed to incorporate them, with alterations, in the proposal they are recommending for adoption.</p> <p>Same response as above.</p> <p>The task force and committee recommend deleting the provision regarding sanctions from the rules about the preparation of orders after hearing.</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

Chapter 6. Request for Order (rules 5.90 through 5.125)

| Commentator | Comment | Committee Response |
|---|---|--|
| John Chemeleski, Commissioner Superior Court of Los Angeles County | This proposed rule that purports to adopt CRC Rules 3.1100-3.1116 from the civil law and motion rules for the format of a request for order, appears to be unnecessary and likely to cause needless confusion. Rule 3.1100 specifically says those rules apply only to specific proceedings that include discovery proceedings in family law matters, by implication excluding non discovery family law proceedings. By adopting that rule some may be confused as to whether or not the intent is to adopt that rule or the implied exception that is stated in that rule. More significantly, however, the form and format is already established by the mandatory use of the Judicial Council forms in Rule 5.92. Additionally Rule 3.113, requiring points and authorities, is in conflict with Rule 5.92(a)(3) stating they are not required. This rule should not be adopted. | The task force and committee suggest incorporating the following change to rule 5.90: <u>The rules regarding the format of a request for order are the same as the rules for format of motions in civil rules 3.1100 through 3.1116, except as otherwise provided in these Family Rules.</u> |
| Christine N. Donovan, CFLS Sr. Staff Attorney Superior Court of Solano CFLS | <p>Rule 5.94: I agree with the proposed rule.</p> <p>Rule 5.96: I agree with the proposed rule.</p> <p>Rule 5.98: I agree with the proposed rule.</p> <p>Rule 5.112.1: I agree with the proposed rule.</p> <p>Rule 5.115: I agree with the proposed rule.</p> <p>Rule 5.123: I agree with the proposed rule.</p> | <p>No response required.</p> <p>No response required.</p> <p>No response required.</p> <p>No response required.</p> <p>No response required.</p> <p>No response required.</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

Chapter 6. Request for Order (rules 5.90 through 5.125)

| Commentator | Comment | Committee Response |
|--|--|---|
| | <p>Rule 5.125: I suggest subpart (f) be revised as follows: “After the court order is signed, the courtroom clerk must file the order. The party who prepared the order must mail an endorsed filed copy to the other party.” This gives individual courts the flexibility to designate appropriate personnel other than courtroom clerks.</p> | <p>The task force and committee have made the following change to the rule 5.125: <u>After the court order is signed, the court clerk must file the order. The party who prepared the order must mail an endorsed filed copy to the other party.</u></p> |
| <p>Harriett Buhai Center for Family Law Erin Dabbs Los Angeles</p> | <p>Rule 5.94: <u>Item 5.94(c):</u> We object to the requirement that the proof of service of the <i>Request for Order</i> (FL-300) be filed no later than five court days before the hearing. As detailed further below in Item SPR11-46, it is a significant burden for self-represented litigants, especially those who are low income, to travel to the courthouse. To do so they will need to miss work, losing much needed income and possibly jeopardizing their employment. Those with children will have to find child care and all litigants will have to make transportation arrangements. The court’s interest in timely and effective court procedures must be balanced against the legitimate concerns of litigants who wish to avoid the significant costs of traveling to court.</p> <p>Here, we see no reason to require litigants to travel to court once to file their <i>Request for Order</i>, a second time to file the proof of service and a third time for their hearing. Added to this is a trip to conciliation court for those litigants whose</p> | <p>The proposed rule is based on existing civil rule 3.1300, which requires that the proof of service be filed no later than 5 court days before the time appointed for the hearing. However, the task force and committee recommend that the rule be reworded so as not to <i>require</i> filing but to state that the proof of service <i>should</i> be filed no later than five days.</p> <p>Same response as above.</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

Chapter 6. Request for Order (rules 5.90 through 5.125)

| Commentator | Comment | Committee Response |
|-------------|---|--------------------------------|
| | <p>hearing involves custody and visitation. Four trips to the courthouse for one hearing is too great a burden to place on vulnerable low income litigants. Nor is there a substantial interest in the court having the proof of service five days before the hearing that outweighs the significant burden placed on self-represented litigants. In our experience, the court reviews the proof of service on the day of the hearing, and no earlier. Given the volume of cases handled by the Los Angeles Superior Court, it is highly unlikely that the court will have time to review the proof of service or take any action on it, even if it is filed prior to the hearing.</p> <p>Those litigants who can afford to pay for an attorney will not have to travel to court as their attorney will pay an attorney’s service to do this. However, as noted in the Elkins task force recommendations, the majority of family law cases now involve at least one self-represented litigant. Therefore, this is not a fringe concern affecting only low income litigants, but a concern for the majority of litigants seeking relief through family law actions.</p> <p>We recommend that this section be modified to state “Proof of service of the Request for Order (FL-300) and supporting papers should be filed on the day of the hearing or if possible, five days before the court hearing.</p> | <p>Same as above response.</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

Chapter 6. Request for Order (rules 5.90 through 5.125)

| Commentator | Comment | Committee Response |
|-------------|---|--|
| | <p>Rule 5.125: We object to proposed Rule of Court, Rule 5.125(a) for the reason that the requirement to file a proposed Findings and Order After Hearing (FOAH) within five court days is unreasonable for self-represented litigants and unduly burdens legal service providers and self-help resource centers.</p> <p>We understand the court’s desire to encourage litigants to quickly prepare FOAHs quickly. However, self-represented litigants need assistance in preparing FOAHs, often seeking help from the local self-help resource center or from a legal services provider. These agencies are usually quite busy and operating at capacity. I can speak to the fact that our office would not be able to accommodate a litigant within five court days of their hearing. We simply do not have the resources to bring every client in on that sort of short time schedule.</p> <p>The proposed rule goes on to state that a litigant would be subject to sanctions in the form of attorney’s fees or court costs if they do not comply with the procedures in the rule. As noted above, this places a tremendous strain on the litigant, the court’s self-help resource centers and legal services providers who simply do not have the resources to comply with such a quick turnaround time.</p> | <p>The task force and committee have discussed all comments regarding proposed rule 5.125 and redrafted the proposed rule to allow greater flexibility in the preparation and submission of proposed orders after hearing.</p> <p>The task force and committee recommend deleting the item relating to sanctions in the proposed rule.</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

Chapter 6. Request for Order (rules 5.90 through 5.125)

| Commentator | Comment | Committee Response |
|---|---|---|
| | We propose that proposed rule 5.125(a) be changed to state “Within 30 calendar days of the court hearing, the party preparing the proposed order must submit it to the other party for approval.” | The task force and committee recommend redrafting the rule to allow courts to modify the timeframe for preparing and submitting orders after hearing. |
| Virginia Johnson Staff Attorney Superior Court of San Diego County | Agree if modified: *Commentator submitted comments regarding rule 5.111. *Commentator submitted comments regarding propose rule 5.113(a). 5.125 (b), (c) & (d) - The content of this rule is vital to the | As stated in the Drafters’ Notes following the rule, the task force and committee did not seek comments to rule 5.111 as it had been previously circulated for public comment from December 2010 to January 2011, as rule 5.118(f) in the proposal titled “Family Law: Live Testimony at Hearings and Declarations.” Rule 5.118(f) was amended by the Judicial Council, effective July 1, 2011. As stated in the Drafters’ Notes following the rule, proposed rule 5.113 was included only for context. It was circulated for public comment from December 2010 to January 2011, as rule 5.119 in the proposal titled “Family Law: Live Testimony at Hearings and Declarations.” Rule 5.119 was adopted by the Judicial Council, effective July 1, 2011. The task force and committee agree with the suggestion |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

Chapter 6. Request for Order (rules 5.90 through 5.125)

| Commentator | Comment | Committee Response |
|-------------|--|--|
| | <p>efficient use of the judge’s and judicial research attorney’s time. As the research attorney for anywhere from 8-12 family law judges in downtown San Diego, getting a proper Findings & Order After Hearing prepared and signed has been a process constantly misunderstood and/or abused by attorneys that generally results in a significant use of both the judges and research attorney time. It is not uncommon for orders to be submitted months or even years after a hearing. To help control the problems, I helped revise our San Diego revised local rule 5.11.2 in 2011. While our rule is lengthy and very specific, it has alleviated many of the past problems. The salient points of our rule are as follows:</p> <ul style="list-style-type: none"> • Specifies a timeline (5 calendar days) for the preparation of the order and submission to opposing party for approval or objection. Notably, this same timeline is already in the proposed CRC. • Requires the non-preparing party to provide a response to the request for approval of the order within a specified time (10 calendar days). • Provides that the order shall be deemed approved as to form and content if the non-preparing party fails to timely respond to the request for approval and further provides a | <p>and have incorporated many of them into the amendments they are recommending for adoption.</p> <p>As indicated above in the response to Bay Area Legal Aid, the task force and committee recommend changing 5 calendar days to 10 calendar days after the hearing, unless modified by court order.</p> <p>This suggestion is included in the proposed rule.</p> <p>The task force and committee have discussed all comments regarding proposed rule 5.125 and redrafted the proposed rule to allow greater flexibility in the</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

Chapter 6. Request for Order (rules 5.90 through 5.125)

| Commentator | Comment | Committee Response |
|-------------|--|---|
| | <p>mechanism for the order to be submitted to the court for approval. Again, the proposed CRC already includes similar language.</p> <ul style="list-style-type: none"> • Requires that any objections to the proposed order be specific, that alternate language be proposed, and that the objections be made in writing. • Once the objections are received, the parties have 10 days to reach an agreement on the language of the proposed order. • If they do not agree, the preparing party must advance the costs of 3 transcripts and upon receipt of the transcripts must provide a copy to the responding party. This revision to the rule eliminated the constant discord between the attorneys, the court report and the court as to copies and payments for transcripts. • Requires the parties to exchange new proposed orders within 15 days of the receipt of the transcript. | <p>preparation and submission of proposed orders after hearing.</p> <p>The task force and committee agree with the suggestions and have incorporated them into rule they are recommending for adoption.</p> <p>The task force and committee have discussed all comments regarding proposed rule 5.125 and redrafted the proposed rule to allow greater flexibility in the preparation and submission of proposed orders after hearing.</p> <p>The task force and committee have redrafted the proposed rule to allow courts greater flexibility in making orders regarding the preparation and submission of orders after hearing. However, they prefer not to include the suggestion in the rule recommended for adoption. Any orders relating to the fees for transcripts can be made by the court on a case-by-case basis or in local rules of court.</p> <p>Same response as above.</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

Chapter 6. Request for Order (rules 5.90 through 5.125)

| Commentator | Comment | Committee Response |
|-------------|--|---|
| | <ul style="list-style-type: none"> • Provides that if they still cannot agree on the language of the order, then the preparing party must submit to the court, within a specified time, a plain and concise explanation of how the two orders differ, the transcript, both proposed orders, and the written objections of the parties. • Most importantly, it requires a separate statement that allows the court to easily identify each objection, the proposed language from each party as to that issue and where that issue can be found in the transcript. This saves the court significant time and frustration. <p>The proposed rule has gaps that can leave an order after hearing dangling:</p> <ol style="list-style-type: none"> 1. Under subsection (b), what if neither party submits a proposed order? Suggest that, within 15 calendar days of the hearing, if no proposed order is submitted to the court or the court has not been notified that the parties are meeting over objections, the minutes shall become the final order of the court. 2. Under subsection (c), if the other party does not timely respond to the proposed order, how long can the preparing | <p>The task force and committee agree with the suggestion and have incorporated, with alterations, into the proposal they are recommending for adoption.</p> <p>Same response as above.</p> <p>The task force and committee discussed this suggestion and do not agree to recommend that court minutes become the final order of the court if an order is not prepared within the suggested timeframe. The content and completeness of minutes vary by local practice and may not be sufficient to serve as an enforceable order.</p> <p>The task force and committee have discussed all comments regarding proposed rule 5.125 and redrafted</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

Chapter 6. Request for Order (rules 5.90 through 5.125)

| Commentator | Comment | Committee Response |
|-------------|---|--|
| | <p>party wait to submit the proposed order to the court? Suggest that the party preparing the order submit the proposed order to the court within 15 calendar days of the hearing or the minutes shall become the final order of the court.</p> <p>3. Under subsection (d),</p> <p>(a) there are no time limits for the meet and confer or submission of the alternate proposed order. Suggest the parties meet and confer and submit the resolved order or the two proposed orders within 15 calendar days of the hearing or the minutes shall become the final order of the court.</p> <p>(b) there is no direction about who pays for the official transcript or how many copies, if any, must be ordered to avoid conflicts with Govt. Code §§69950, 69953, 69954 or the time limit for ordering the transcript. Suggest that within 5 calendar days of the meet and confer, the preparing party request and advance the cost for an original and two copies of the transcript with each party being responsible for one-half of the entire cost.</p> <p>(c) there is no way for the court to know what language is disputed or where the controversy can be found in the transcript which leaves the court trying to mix and match the two</p> | <p>the proposed rule to include timeframes for submission of proposed orders.</p> <p>The task force and committee have discussed all comments regarding proposed rule 5.125 and redrafted the proposed rule to allow greater flexibility in the preparation and submission of proposed orders after hearing.</p> <p>The task force and committee do not agree that the proposed language regarding payment for official court transcripts should be included in the proposal they are recommending for adoption. Any orders relating to the fees for transcripts can be made by the court on a case-by-case basis or in local rules of court.</p> <p>The task force and committee agree with the suggestion and have incorporated it, with alterations, into the rule they are recommending for adoption at (e)(c)(3).</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

Chapter 6. Request for Order (rules 5.90 through 5.125)

| Commentator | Comment | Committee Response |
|--|---|--|
| | <p>proposed orders and reading the entire transcript.</p> <p>Please consider using all or part of San Diego’s local rule 5.11.2.A. At the very least, the rule needs to include sufficient details and time frames to limit orders being submitted long after the hearing and making the court decipher the controversy.</p> | <p>The task force and committee discussed various local rules regarding the preparation and submission of orders after hearing and agreed to incorporate provisions of local rules into the proposal they are recommending for adoption.</p> |
| <p>Los Angeles County Bar Association, Family Law Section Charles Wake</p> | <p>Rule 5.90 The LACBA Family Law Section opposes this proposed new rule.</p> <p>This proposed rule makes general civil law and motion format rules (Rules 3.1100 through 3.1116) applicable whenever a party in a family law proceeding requests an order. Rule 3.1113(a) requires a memorandum of points and authorities in support of any motion and states that the absence of a memorandum may be construed as an admission that the motion is without merit. Rule 3.1113(d) limits the length of such memoranda to 15 pages.</p> <p>Application of Rule 3.1113 in family law cases is inappropriate in at least three separate respects. First, proposed family law rule 5.92(a)(3) states that “no memorandum of points and authorities need be filed . . . unless required by the court on a case-by-case basis.” Proposed rule 5.90 and proposed rule 5.92</p> | <p>See response to Hon. John Chemelesky, Commissioner.</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

Chapter 6. Request for Order (rules 5.90 through 5.125)

| Commentator | Comment | Committee Response |
|-------------|--|--------------------|
| | <p>therefore conflict and create confusion.</p> <p>Second, new rule 5.111 limits declarations in family law matters to 10 pages. No such restriction is imposed on declarations in civil law and motion matters generally. ITC SPR11-36 specifically states that it is intended to implement the California Supreme Court’s holding and observations in <i>Elkins v. Superior Court</i>, 141 Cal.4th 1337 (2007). One of the central principles of <i>Elkins</i> is that “family law litigants should not be subjected to second-class status or deprived of access to justice” and that “marital dissolution proceedings are to be conducted in accordance with the ordinary rules governing civil trials.”</p> <p>Applying both the page limitation on declarations in new rule 5.111 and the page limitation on memoranda of points and authorities in rule 3.1113 violates the spirit and intent of <i>Elkins</i> by curtailing family law litigants’ right to present their case, and subjecting them to second-class status, in the interest of expedience. Such limitations for such a reason were exactly what the Supreme Court rejected in <i>Elkins</i>.</p> <p>Third, the format of motion papers in family law matters is already governed by Rule 5.92 and the mandatory forms associated with that rule. This proposed new rule merely</p> | |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

Chapter 6. Request for Order (rules 5.90 through 5.125)

| Commentator | Comment | Committee Response |
|-------------|---|--|
| | <p>creates actual and potential conflicts resulting in unnecessary confusion.</p> <p>If this proposed new rule is nonetheless promulgated for any reason, it should, at a minimum, be amended to by adding the words “except as otherwise provided in this title 5 of the California Rules of Court.”</p> <p><u>Proposed Rule 5.94</u></p> <p>The LACBA Family Law Section agrees with this proposed new rule if amended.</p> <p>Subsection (a) should be amended to: (1) require service of a request for order promptly upon issuance by the court or assignment of a hearing date; and (2) state that waiting until the 16th court day before the hearing, which would otherwise satisfy the requirements of C.C.P. §1005, may constitute good cause for a continuance if the moving party has significantly delayed service after issuance by the court or obtaining a hearing date.</p> <p>Subsection (d) should be amended to clarify its meaning. Presumably, reissuance of a request for order would effectively continue the previously established hearing date. Any other</p> | <p>The task force and committee agree with the suggestion and have incorporated it into the proposal they are recommending for adoption.</p> <p>The task force and committee recommend that only rule 5.92 specify the procedures for service of a request for orders form.</p> <p>The task force and committee agree with the suggestion and have incorporated it into the proposal they are recommending for adoption.</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

Chapter 6. Request for Order (rules 5.90 through 5.125)

| Commentator | Comment | Committee Response |
|-------------|--|--|
| | <p>result would violate C.C.P. §1005 and very possibly due process requirements. If that is subsection (d)'s intent, it should be amended to make that intent explicit.</p> <p>Rule 5.98 Agrees with this proposed new rule.</p> <p>Rule 5.115 Agrees with this proposed new rule.</p> <p>Rule 5.125 The LACBA Family Law Section agrees with this proposed new rule if amended as follows.</p> <p>Subsection (b) allows an “other party,” <i>i.e.</i> the party <u>not</u> directed to prepare an order after hearing, to submit a proposed order directly to the court if the “party ordered by the court” (“Preparing Party”) fails to submit a proposed order for the “other party’s” approval within five calendar days. Subsection (d) then affords the Preparing Party no right to object regardless of how inaccurate or improper the “other party’s” proposed order might be.</p> <p>This proposed rule is far too punitive. If a Preparing Party fails to submit a proposed order to the “other party” within five</p> | <p>No response required.</p> <p>No response required.</p> <p>The task force and committee agree with the suggestion and have incorporated it, with alterations, into the proposal they are recommending for adoption.</p> <p>The task force and committee agree with the suggestion and have incorporated it, with alterations, into the</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

Chapter 6. Request for Order (rules 5.90 through 5.125)

| Commentator | Comment | Committee Response |
|-------------|--|---|
| | <p>calendar days, the “other party” should have the right to present his or her own proposed order to the Preparing Party. The procedure for objections, meeting and conferring, and submitting the proposed order to the court should thereafter be the same no matter which party initially prepares the proposed order.</p> <p>Amending this rule to conform to Cal. R. Ct. 3.1312 with respect to preparation of orders after hearing would be a sensible alternative. Rule 3.1312, which governs the preparation of orders after hearing in general civil litigation, is even-handed and has stood the test of time. Such an amendment would also promote consistency between family law and general civil litigation rules and procedures.</p> | <p>proposal they are recommending for adoption.</p> <p>The task force and committee have discussed all comments regarding proposed rule 5.125 and redrafted the proposed rule to allow greater flexibility in the preparation and submission of proposed orders after hearing. The proposed rule differs from rule 3.1312 because rule 3.1312 includes practices that do not apply to family law proceedings. For example, there is no “prevailing party” in family proceedings, electronic filing is not widely available in all family courts, and the civil rule does not include a provision relating to transcripts.</p> <p>The civil rule provides, in pertinent part:</p> <p>(a) Unless the parties waive notice or the court orders otherwise, the party prevailing on any motion must, within five days of the ruling, serve by any means authorized by law and reasonably calculated to</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

Chapter 6. Request for Order (rules 5.90 through 5.125)

| Commentator | Comment | Committee Response |
|-------------|---------|--|
| | | <p>ensure delivery to the other party or parties no later than the close of the next business day a proposed order for approval as conforming to the court's order. Within five days after service, the other party or parties must notify the prevailing party as to whether or not the proposed order is so approved. The opposing party or parties must state any reasons for disapproval. Failure to notify the prevailing party within the time required shall be deemed an approval. The extensions of time based on a method of service provided under any statute or rule do not apply to this rule.</p> <p>(b) The prevailing party must, upon expiration of the five-day period provided for approval, promptly transmit the proposed order to the court together with a summary of any responses of the other parties or a statement that no responses were received.</p> <p>(c) (Relates to electronic filing of the order to the court)</p> <p>(d) If the prevailing party fails to prepare and submit a proposed order as required by (a) and (b) above,</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

Chapter 6. Request for Order (rules 5.90 through 5.125)

| Commentator | Comment | Committee Response |
|---|---|---|
| <p>Enrique Monteagudo San Diego</p> | <p>The rules must include an appropriate response to testimonial and declaratory perjury.</p> <p>It is common knowledge that, beside a hollow disclaimer on declaration paperwork, there will be no recourse if a party or other witness lies to the court. As a result, it is also common knowledge that many, many people lie in the family court.</p> <p>One theme that was brought up repeatedly in the Elkins proceedings was the need to prosecute perjury. In fact, in their final Report, the Elkins Task Force recommended that: “The Judicial Council should assess the adequacy of existing civil remedies to respond to all types of perjury, oral and written. If necessary, the Judicial Council should seek legislation to expand the type of sanctions awardable to include, for example, restitution or fines, not just attorney’s fees. To the extent not already allowed, issue preclusion and evidentiary sanctions could be explicitly made available as remedies.” (Recommendation I (H). Assessing Mechanisms to Handle Perjury at p.43)</p> | <p>any other party may do so.</p> <p>The Elkins Family Law Task Force did not recommend creating a rule of court to address the issue of perjury such as the commentator has drafted. The Task Force’s recommendations at page 43 of the final report included that the Judicial Council should assess the adequacy of existing civil remedies to respond to all types of perjury, oral and written. If necessary, the council should seek legislation to expand the type of sanctions awardable to include, for example, restitution or fines, not just attorney’s fees. To the extent not already allowed, issue preclusion and evidentiary sanctions could be explicitly made available as remedies. Civil sanctions for perjury could also be extended to case types and situations beyond the currently limited scenarios of false declarations of disclosure, child support, and false child abuse allegations. If the Judicial Council decides to pursue additional remedies, it should consider whether the expansion of civil remedies for perjury should apply to all civil cases and not just family law. This would signal that the commission of perjury in a court setting is a serious matter and that judicial officers need sufficient tools to address situations when it occurs.</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

Chapter 6. Request for Order (rules 5.90 through 5.125)

| Commentator | Comment | Committee Response |
|---|--|---|
| | <p>It would be appropriate and responsive to the Elkins Task Force Recommendations to include language such as: “Rule 5.114: Perjury Both declarations under Rule 5.111 and testimony under Rule 5.113 shall be made under penalty of perjury. Upon a showing by clear and convincing evidence that a party has perjured himself or herself, sanctions shall be imposed pursuant to Rule 5.14, and, where appropriate, a change of circumstances may be presumed.”</p> | <p>Same response as above.</p> |
| <p>Tom Stabile Practicing Attorney Orange</p> | <p>Rule 5.125 should be modified regarding a timeline. What if an attorney has ordered a copy of the transcript with the order and it does not come to him or her within 5 calendar days?</p> | <p>The task force and committee agree to consider all comments regarding proposed rule 5.125 and incorporate various suggestions into the proposal they are recommending for adoption.</p> |
| <p>Superior Court of Riverside County, Staff</p> | <p>*Commentator submitted comments on rule 5.111.</p> | <p>This proposal did not seek comment on rule 5.111, as it was circulated for public comment from December 2010 to January 2011, as rule 5.118(f) The rule was adopted by the Judicial Council, effective July 1, 2011.</p> |
| <p>Superior Court of Sacramento County, Staff</p> | <p>5.90: This is simply a restatement of rules and statutes. Recommendation: Delete</p> <p>5.91: This is simply a restatement of rules and statutes. Recommendation: Delete</p> | <p>Including rule 5.90 in the proposal implements the Elkins recommendations to specify which civil rules apply in family law.</p> <p>As specified in the drafting note following the rule, rule 5.91 is a renumbering of existing rule 5.110(b).</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

Chapter 6. Request for Order (rules 5.90 through 5.125)

| Commentator | Comment | Committee Response |
|-------------|--|--|
| | <p>*The commentator submitted comments regarding 5.92. Application for court order; response.</p> <p>*5.96. Place and manner of filing (a) Papers filed in clerk’s office This will require the court to institute a local rule. We disagree as CRC is dictating where documents should be filed.</p> <p>Rule 5.96 (c) Duty to notify if matter not to be heard .The first sentence in the following rule needs to be deleted: The moving party must immediately notify the court if a matter will not be heard on the scheduled date. If the matter has been settled before the scheduled court date, the moving party must immediately notify the court of the settlement</p> <p>Rule 5.98. Meet and confer requirements; document exchange This is simply a restatement of existing rules and statutes. Recommendation: Delete.</p> | <p>For comments submitted and responses regarding rule 5.92, see Report to the Judicial Council titled “Family Law: Request for Order in Lieu of Notice of Motion or Order to Show Cause and Witness List for Use in Family Law Proceedings.”</p> <p>The proposed rule incorporates the language of existing civil rule 3.1302. Place and manner of filing, which provides: “Unless otherwise provided by local rule, all papers relating to a law and motion proceeding must be filed in the clerk's office.”</p> <p>The task force and committee agree with the suggestion and have incorporated it, with minor alterations, into the proposal they are recommending for adoption.</p> <p>Meet and confer requirements are pervasive in local rules and are also found in the Code of Civil Procedure relative to discovery matters. However, there is no statewide rule of court nor a Family Code section that establishes meet and confer requirements in family law proceedings.</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

Chapter 6. Request for Order (rules 5.90 through 5.125)

| Commentator | Comment | Committee Response |
|-------------|---|--|
| | <p>Rule 5.112.1. Declaration page limitation; exemptions Why put a limitation on the declaration if so many items are excluded? With so many exceptions this negates the reason to have a limitation and puts an undo burden on court staff.</p> <p>Rule 5.113. Live Testimony (a): should this be change to reflect the new terminology? Order to show cause vs. request for order</p> <p>Rule 5.123. Reporting of hearing proceedings. Pg 59, 5.123: 5.62: This is simply a restatement of existing rules and statutes. Recommendation: Delete</p> <p>*Rule 5.125(a). Preparation and submission of order after hearing. Pg 59, a: Five days is too short. Recommendation: change to 10 days in the following rule: Within five calendar days of the court hearing, the party preparing the proposed order must submit it to the other party for approval.</p> <p>Rule 5.125(b) Failure to prepare proposed order after hearing. Why is this required? This is unnecessary.</p> | <p>The proposed rule would clarify what items, including Judicial Council forms, are not declarations for purposes of the rule limiting the length of declarations that was adopted by the Judicial Council, effective July 1, 2011.</p> <p>The committee agrees to make a technical change to rule 5.113 by including the term request for order along with the terms order to show cause and notice of motion.</p> <p>Although civil rule 3.1310 was the model for the proposed rule, the proposed rule would be a new family law rule that is different from the civil rule. It also would address procedural matters that are not included in Government Code section 69957.</p> <p>The task force and committee agree with the suggestion and have incorporated it into the proposal they are recommending for adoption.</p> <p>The proposed rule would incorporate aspects of local rules and best practices in various counties. The task</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

Chapter 6. Request for Order (rules 5.90 through 5.125)

| Commentator | Comment | Committee Response |
|---|---|---|
| | <p>* Rule 5.125(c) Failure of other party to approve or reject proposed order after hearing. Why is it necessary to have a rule that the other party must include in the letter to the court with the proposed order information in (c)(1)(C) about the date and results of the parties’ attempt to meet and confer?</p> <p>Rule 5.125(c)(2): There is no need to make a common court procedure as a rule: The court must first compare the proposed order after hearing to the minute order or other court record before signing a proposed order submitted without the other party’s approval as to form and content.</p> <p>Rule 5.125(f) Service of order after hearing signed by the court. There is no need to make a common court procedure as a rule: After the court order is signed, the courtroom clerk must file the order. The party who prepared the order must mail an endorsed filed copy to the other party.</p> | <p>force and committee believes a uniform rule would assist parties and counsel to understand procedures that allow for the preparation of an order in the event that a party or counsel fails to do so.</p> <p>Same response as above.</p> <p>Same response as above.</p> <p>Same response as above.</p> |
| Superior Court of San Bernardino County | <p>Agree with the proposal, if modified.</p> <p>1. Place & manner of file Rule 5.96(a): Rule does not include a provision that paper could be filed otherwise</p> | <p>The task force and committee recommend that proposed rule 5.96 state: “All papers relating to a request for order</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

Chapter 6. Request for Order (rules 5.90 through 5.125)

| Commentator | Comment | Committee Response |
|-------------|---|--|
| | <p>by “court order”.</p> <p>2. Meet & Confer Rule 5.98(a): Does this rule apply to every single hearing? What is the proof? What happens if they don’t do it? What if both parties are self represented – who has the duty to initiate? How will the self represented persons know what a meet and confer should look like? What if the other person doesn’t have contact information?</p> <p>3. Declarations supporting and responding to applications for court orders Rule 5.111(a): instead of calling it “reply” declarations, should it be “responsive”, or might that be confusing with the form Responsive Declaration? Under typical law & motion terminology, a “reply” is what is sent out by the person who initiated the paperwork in response to an “opposition”. Also, does the 10 page rule include attachments? Rule 5.112.1 lists out several items that don’t count within the page limit, but what about when the attachments are not one of those items, such as police reports or paystubs?</p> | <p>proceeding must be filed in the clerk’s office, unless otherwise provided by local rule or court order.”</p> <p>The task force and committee agree to clarify that the proposed rule would apply to a hearing on a <i>Request for Orders</i> (form FL-300). The task force and committee also agree to include that the parties must meet in person, by telephone, or as ordered by the court. The rule is written broadly enough to permit the court discretion to provide information or make orders regarding the details of the meet and confer requirements.</p> <p>The 10-page declaration limitation applies to both the declaration in the request for orders and the responsive declaration. The term “reply” in the rule pertains to the typical law and motion terminology—the opposition to the responsive declaration.</p> <p>Rule 5.112.1 addresses the issue of the attachments that are exempt from the 10-page limitation.</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

Chapter 6. Request for Order (rules 5.90 through 5.125)

| Commentator | Comment | Committee Response |
|-------------|---|---|
| | <p>4. Declarations Rule 5111(b): As written, it sounds like the declaration must be typed if you are following Rules 2.104 to 2.105. A reference to Rule 2.100 et seq is vague, unless it is meant to apply only to declarations that are drafted on pleading paper. It should be noted that Rule 2.119 provides an exception to the requirements for forms and that rules pertaining to forms start with Rule 2.130. (2.135 provides that the court cannot reject a Judicial Council form solely on the grounds that it is completed in handwriting.) Preparation & submission of order after hearing Rule 5.125: The rule should allow the court to utilize a printed officer after the words: "It is so ordered."</p> <p>5. Preparation & submission of order Rule 5.125(a):</p> <p>a. There should be an exception to the rule that the proposed order must be submitted to the other party here should be an exception to the rule that the proposed order must be submitted to the other side for approval when the other party did not appear at the hearing. In those circumstances, the other party would have no valuable information regarding the correctness of the order and there would be no practical reason for burdening the litigant with an extra step. To not require a review for when the other party didn't appear</p> | <p>As stated in the drafters' notes following the rule, the task force and committee did not seek comments to rule 5.111 as it had been previously circulated for public comment from December 2010 to January 2011, as rule 5.118(f) in the proposal titled "Family Law: Live Testimony at Hearings and Declarations." Rule 5.118(f) was amended by the Judicial Council, effective July 1, 2011.</p> <p>The task force and committee agree with the suggestion and have incorporated, with minor alterations, into the proposal they are recommending for adoption.</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

Chapter 6. Request for Order (rules 5.90 through 5.125)

| Commentator | Comment | Committee Response |
|-------------|---|---|
| | <p>or contest a proceeding is consistent with other Rules of Court. See Rule 3.1312(d) which provides that if a motion is unopposed, then you don't need to send the order to the other party.</p> <p>b. Further, if the purpose of the reviewing order requirement is to make sure that the order is correct, why delete that requirement if the party not ordered to prepare the order prepares it when the other party fails to do it? It would seem that the guiding principle is the timing of the order and getting it sent to the court as soon as possible. If that is the guiding principle, then why ever require it be sent to the other side? The court typically will only process an order that matches the minute order.</p> <p>c. Also, the requirement that the order be prepared within 5 days after the hearing would have substantial impact for our self help program, as we prepare many of the orders for our litigants. It would require us to do the order the same day and then return it to the litigant to forward on to the other side within the 5 days. With all the other pressing business of the self help center, sometimes it can take a few weeks for staff to type up an order. A review of many counties current local</p> | <p>The proposed rule would be consistent with the requirements of <i>Findings and Order After Hearing</i> (form FL-340), which provides that the proposed order include the signature of the other party or his or her attorney stating their approval as to the order's form and content.</p> <p>The task force and committee have agreed to recommend that the proposed rule provide that the order be prepared 10 calendar days after the date of the hearing, unless extended by court order.</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

Chapter 6. Request for Order (rules 5.90 through 5.125)

| Commentator | Comment | Committee Response |
|-------------|--|--|
| | <p>rules regarding the time for preparation of order shows that 5 days is the minority view (San Francisco and Nevada). The local rules allow for 14 days in Monterey and 15 days in Butte; Los Angeles, Siskiyou and Solano give their litigants 10 days.</p> <p>6. Preparation & submission of order Rule 5.125(c): The rule sounds like it is requiring that the party notify the other side two times. The first time when asking for them to review and then again when submitting the order to the court. If the other party signed the proposed order (approved as to form and content, see bottom left of FL-340 (Findings & Order After Hearing), then why send it again to that party with a letter? Assuming that there was no signature (and the other party appeared at the hearing), it does make sense to submit that proposed order to the court with a letter/declaration explaining when the proposed order was sent to the other side and that no response was received. In the self represented world, failure to cooperate is the number one reason why the proposed orders get submitted with additional information. It is much rarer to have an actual dispute regarding the wording of the order. The rule presupposes that the reason for the failure is the wording, since subsection (1)(C) requires that the meet & confer information be included in the letter/declaration.</p> | <p>The requirement to send a letter to the court and to the other party follows the general principle prohibiting ex parte communication with the court.</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

Chapter 6. Request for Order (rules 5.90 through 5.125)

| Commentator | Comment | Committee Response |
|---|---|---|
| | <p>7. Preparation & submission of order Rule 5.125(f): Why limit who can file the court order to the courtroom clerk? What if the courtroom clerk is too busy with other duties to file the paperwork – couldn't some other clerk do it? Also, can't the court mail out a conformed copy of the order to the other party if the submitting party turned in an extra copy and an addressed envelope with postage? For self represented litigants, it is difficult to ensure compliance with the mailing of the order requirement if they have never been instructed on it.</p> | <p>The task force and committee agree to incorporate suggestions regarding proposed rule 5.125 into the proposal they are recommending for adoption.</p> |
| <p>Superior Court of Santa Clara County</p> | <p>Rule 5.125 - Preparation and submission of order after hearing - subdivision (a) should be amended to allow for preparation of the order within 10 calendar days, not five calendar days. Five days is unrealistic.</p> <p>Rule 5.125 - Subdivision (b) should be amended to provide that if the party ordered by the court to prepare the OAH does not do so within 10 calendar days, then "the other party may prepare the proposed order, but must first submit it to the other party for approval before sending it to the court." Rationale: This will minimize gamesmanship.</p> <p>Rule 5.125 - Subdivision (d) should be amended to add the following at the end of the paragraph: "Any alternate proposed</p> | <p>The task force and committee agree with the suggestion and have incorporated it into the proposal they are recommending for adoption.</p> <p>Same response as above.</p> <p>The task force and committee agree with the suggestion and have incorporated it into the proposal they are</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

Chapter 6. Request for Order (rules 5.90 through 5.125)

| Commentator | Comment | Committee Response |
|--|---|--|
| | order by the objecting party must list the findings and orders in the same sequence as the proposed order, and include an explanation of the differences." Rationale: this will make it easier for the court to compare the competing OAH's. | recommending for adoption. |
| <p>Superior Court of Santa Clara County Michael M. Clark, Mary Arand, Neal Cabrinha, Mary Ann Grilli</p> | <p>RULE 5.96(b): Change the word "holding" to "hearing." It is also unclear what is meant by "each type of request for order."</p> <p>RULE 5.98(a) requires a personal meet and confer, but exempts "domestic violence" cases. Does this mean only those cases with dv restraining orders or is a broader definition intended?</p> <p>RULE 5.98(b) should also exempt the exchange of impeachment documents</p> <p>RULE 5.111(a): Setting a limit on the length of declarations is an excellent concept. However, the rule neglects to address whether a limit on attachments is allowed. We propose that a reasonable limit on the number of pages of attachments be</p> | <p>The task force and committee agree with the suggestion and have incorporated it into the proposal they are recommending for adoption. They suggest the following language for rule 5.96(b): <u>The clerk must post a general schedule showing the days and departments for hearing the matters indicated in Request for Order (form FL-300).</u></p> <p>The task force and committee have proposed language to allow for a broad interpretation of the term "domestic violence" so that it does not mean only cases filed under the DVPA.</p> <p>The task force and committee agree with the suggestion and have incorporated in into the proposal they are recommending for adoption.</p> <p>As stated in the Drafters' Notes following the rule, the task force and committee did not seek comments to rule 5.111 as it had been previously circulated for public comment from December 2010 to January 2011, as rule</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

Chapter 6. Request for Order (rules 5.90 through 5.125)

| Commentator | Comment | Committee Response |
|-------------|--|---|
| | <p>included. For example, a recent declaration included 7 pages of text and an entire court volume of attachments. Some parties attach copies of documents already in the court file.</p> <p>RULE 5.111 (c) requires objections to be filed at least 2 court days before the hearing. It should read file and serve instead of just file.</p> <p>RULE 5.112.1: same comment about the length of attachments. We need some reasonable limits on attachments. For example, attaching copies of court pleadings as exhibits is not needed or warranted. Exhibits can total many, many pages and overwhelm the court file.</p> <p>RULE 5.113- Although this rule seems to in effect already, we suggest a change to section (f) to add the words “on request.” In subsection (g), questioning by the court should be permitted at <u>any</u> hearing where the court receives evidence, not just live testimony. Thus, if declarations are submitted and the court has questions, they should be permitted. We suggest an additional</p> | <p>5.118(f) in the proposal titled “Family Law: Live Testimony at Hearings and Declarations.” Rule 5.118(f) was amended by the Judicial Council, effective July 1, 2011. Further, because this would be an important substantive change to the proposal, the task force and committee believe public comment should be sought before they are considered for adoption.</p> <p>The task force and committee agree to correct the language so that it conforms to the language in rule 5.118(f) amended by the Judicial Council, effective July 1, 2011.</p> <p>Because setting a limit on the length of attachments would be an important substantive change to the proposal, the task force and committee believe public comment should be sought before they are considered for adoption.</p> <p>Because the suggestions would be important substantive changes to the proposal, the task force and committee believe public comment should be sought before they are considered for adoption.</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

Chapter 6. Request for Order (rules 5.90 through 5.125)

| Commentator | Comment | Committee Response |
|-------------|--|---|
| | <p>rule (or subsection) to make this clear.</p> <p>RULE 5.125: In the second line, add the words “or counsel” after “parties” and reverse the order of the sentence. It is much more common for counsel is ordered to prepare the order. Courts prepare the order only in unusual circumstances, outside of restraining orders or self help centers.</p> <p style="padding-left: 40px;">In subsection (b), while it is correct that the other party may prepare and submit the order to the court, they must copy the other side with the proposed order.</p> <p style="padding-left: 40px;">In subsection (d), there should be a requirement that the order be in the same paragraph order as the order submitted by the other side and it must be accompanied by a letter explaining the differences along with references to the sections of the transcript or minutes. In other words, if child support is paragraph 1 of the first order, it should also be paragraph 1 of the second submitted order. This saves a tremendous amount of court time in reviewing the orders.</p> <p style="padding-left: 40px;">Subsection (f) should be modified to delete the word “courtroom.” In our court, it is not always the courtroom clerk who files the order. It might be a document examiner or other clerk in the clerk’s office.</p> | <p>The task force and committee agree with the suggestion and have incorporated in into the proposal they are recommending for adoption.</p> <p>Same response as above.</p> <p>Same response as above.</p> <p>Same response as above.</p> |

Chapter 7. Request for Emergency Orders (Ex Parte Orders) (Rules 5.151 through 5.170)

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Commentator | Comment | Committee Response |
|--|---|---|
| <p>Association of Certified Family Law Specialists Diane Wasznicky, President San Rafael</p> | <p>Rule 5.151 This proposed rule specifies the requirements for ex parte applications, including the documents which must be filed in support of an ex parte application. A provision should be added to subdivision (c) to require that a FL-150 (Income and Expense Declaration) must be filed if an FL-150 is required by law. Form FL-150 is not mentioned in the list of required documents for an ex parte. The law requires that a FL-150 be filed as part of “an application for an injunctive or other order when relevant to the relief requested.” (CRC 5.118, see also 5.128.) Thus, if financial relief is being sought ex parte or on an Order Shortening Time, a FL-150 filed with the moving papers.</p> | <p>The task force and committee agree with the suggestion and have incorporated it into the proposal they are recommending for adoption.</p> |
| <p>Bay Area Legal Aid Jerel McCrary Family Law Regional Counsel Oakland</p> | <p>Rule 5.151 (d) (5) (A) This section is too narrowly focused. There are certainly situations not amounting to physical harm or threats that have the potential to so severely damage a child’s emotional wellbeing as to warrant an application for emergency orders. (This is especially true given that in many counties it can take up to three months or more for regularly calendared motions to be heard by the court.) The section should read, “Provide a full, detailed description of the most recent incidents of physical or emotional harm, threats of harm, or threats to remove the children from the state; Rule 5.165(a)(2) (D)</p> | <p>The task force and committee recommend changing the proposed rule so that it is consistent with Family Code section 3064. See below response to Los Angeles County Bar Association</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 7. Request for Emergency Orders (Ex Parte Orders) (Rules 5.151 through 5.170) | | |
|--|--|--|
| Commentator | Comment | Committee Response |
| | It seems logically inconsistent to have a section that says that the parties can waive notice by agreeing. If the parties have agreed it seems there must have been some notice given in order to obtain the agreement. Unless, the intent here is that where the parties have agreed in advance that a particular kind of application does not require notice, none shall be required. If that is the intent, then the section should say that no notice is required where the parties have agreed in advance that notice will not be necessary with respect to the particular matter that is the subject of the request for emergency orders. | The task force and committee agree with the suggestion and have incorporated it, with minor alterations, into the proposal they are recommending for adoption. |
| Christine N. Donovan, CFLS Sr. Staff Attorney Superior Court of Solano County | <p>Rule 5.151: Subpart (d)(5)(E) requires that an applicant submit a UCCJEA declaration. I suggest that this requirement be modified so it only applies if one has not been filed within a specific period of time, e.g. within the last three months.</p> <p>Rule 5.165: Subpart (c) permits notice of the hearing to be given “in writing.” I suggest that this be defined. For example, the term “writing” in Evidence Code section 250 includes e-mails, faxes, and “every other means of recording upon any tangible thing, any form of communication or representation...and any record thereby created.” Therefore, notice sent through Twitter, Facebook, or a text message could comply with subpart (c) as they could all be a “writing.”</p> <p>Rule 5.167: I agree with the proposed rule.</p> | <p>The task force and committee agree with the suggestion and have incorporated it, with alterations, into the proposal they are recommending for adoption.</p> <p>Because the commentator suggests important substantive changes to the proposal, the task force and committee believe public comment should be sought before they are considered for adoption. The comments will be considered in a future rules cycle.</p> <p>No response required.</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 7. Request for Emergency Orders (Ex Parte Orders) (Rules 5.151 through 5.170) | | |
|---|--|---|
| Commentator | Comment | Committee Response |
| | Rule 5.169: I agree with the proposed rule. | No response required. |
| Executive Committee of the Family Law Section of the State Bar of California (FLEXCOM) Saul Bercovitch Legislative Counsel San Francisco | FLEXCOM suggests the following modification to this rule: A provision should be added to subdivision (c) to require that a FL-150 (Income & Expense Declaration) must be filed if an FL-150 is required by law. Form FL-150 is not mentioned in the list of required documents for an ex parte. The law requires that a FL-150 be filed as part of “an application for an injunctive or other order when relevant to the relief requested.” (CRC 5.118, see also 5.128.) | The task force and committee agree with the suggestion and have incorporated it into the proposal they are recommending for adoption. |
| Virginia Johnson Staff Attorney Superior Court of San Diego County | Agree if modified; 5.151(d)(2) - limit declarations to 5 pages. | The suggestion would be contrary to existing rule 5.118(f) regarding length of declarations. |
| Los Angeles County Bar Association, Family Law Section Charles Wake | Rule 5.151 The LACBA Family Law Section agrees with this proposed new rule if amended. Subsection (d)(5) of this proposed rule: (1) significantly changes existing law; and (2) would promote disobedience of outstanding custody orders by effectively preventing parties from obtaining prompt relief from threatened violations. Cal. Fam. Code §3064 (“Section 3064”) prohibits the court from granting or modifying a custody order ex parte except in | The intention of the proposed rule was not to change existing law regarding ex parte applications to grant or modify child custody. To clarify this point, the task force and committee agree to include a reference to Family Code section 3064 in the propose rule. The commentator’s second point is based on an inaccurate interpretation of the proposed rule. Family Code section 3064(a) provides that: |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 7. Request for Emergency Orders (Ex Parte Orders) (Rules 5.151 through 5.170) | | |
|--|---|--|
| Commentator | Comment | Committee Response |
| | <p>situations involving domestic violence or sexual abuse. Section 3064 does not, however, prohibit ex parte applications to <u>enforce</u> custody orders if, for instance, the other parent is refusing to allow a required custody exchange.</p> <p>This proposed rule appears to extend Section 3064 to prohibit ex parte applications concerning parenting time. It would therefore prohibit ex parte applications to enforce existing custody orders. Such an extension would effectively prevent a</p> | <p>(a) The court shall refrain from making an order granting or modifying a custody order on an ex parte basis unless there has been a showing of immediate harm to the child or immediate risk that the child will be removed from the state of California.</p> <p>(b) "Immediate harm to the child" includes, but is not limited to, the following:</p> <p>(1) Having a parent who has committed acts of domestic violence, where the court determines that the acts of domestic violence are of recent origin or are a part of a demonstrated and continuing pattern of acts of domestic violence.</p> <p>(2) Sexual abuse of the child, where the court determines that the acts of sexual abuse are of recent origin or are a part of a demonstrated and continuing pattern of acts of sexual abuse.</p> <p>The proposed rule is intended to specify the information that should be contained in the declaration supporting the request for emergency orders granting or modifying child custody and visitation orders.</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 7. Request for Emergency Orders (Ex Parte Orders) (Rules 5.151 through 5.170) | | |
|--|---|---|
| Commentator | Comment | Committee Response |
| | <p>parent from obtaining prompt relief if the other parent refused to allow a required custody exchange. By eliminating the possibility of obtaining prompt relief, this rule would encourage parents to disobey existing custody orders. This proposed rule should be amended to remove the words “parenting time” from subsection (d)(5).</p> <p>Rule 5.165 Agrees with this proposed new rule.</p> <p>Rule 5.167 Agrees with this proposed new rule.</p> <p>Rule 5.169 Agrees with this proposed new rule.</p> | <p>The task force and committee believe that the proposed rules should be reworded to include both terms “visitation” and “parenting time” to denote that the rule applies to applications for emergency orders to grant or modify child custody or visitation (parenting time).</p> <p>No response required.</p> <p>No response required.</p> <p>No response required.</p> |
| <p>Sonoma County Bar Assn., Family Law Brittany Birnie Greene Attorney/Mediator Sebastopol</p> | <p>Agree if modified:</p> <p>1. “Emergency Order” should be eliminated from title of Chapter, since Article 1 deals specifically with emergency orders, whereas Article 2 deals with ex parte orders that are not necessarily emergencies (see specifically Rule 5.165(a)(3) matters where notice is automatically waived). Title should read: “Request for Ex Parte Orders”.</p> | <p>The task force and committee recommend that the rule provide a third article and a new rule 5.170 for rules relating to procedural, non-emergency matters that do not require notice to other parties or appearance at a hearing.</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 7. Request for Emergency Orders (Ex Parte Orders) (Rules 5.151 through 5.170) | | |
|--|--|--|
| Commentator | Comment | Committee Response |
| | 2. Rule 5.165(a)(3)(C) - “proceeding” should be changed to “court hearing” to make it clear that this category only deals with orders and judgments resulting from an appearance in court on a default matter, rather than <i>any</i> orders or judgments requested after <i>any</i> default <i>proceeding</i> , which could possibly include a default involving a written agreement between the parties. | The task force and committee agree with the suggestion and have incorporated it into the proposal they are recommending for adoption. |
| Superior Court of Sacramento County, Staff | <p>*Rule 5.151(d)(1). Request for emergency orders; application; required documents. This rule focuses on specific facts to be included in every case. If every application is required to contain the same facts, then the form should be updated.</p> <p>Rule 5.165. Requirements for notice (a) Notice to a party Pg 64, 5.165: 5.62: This is a restatement of existing rules and statutes. Recommendation: Delete</p> <p>Rule 5.165(b) Notice to the court. Pg 65, b: This eliminates contact by email and the web. This is over-reaching on the part of the Rules. Recommendation: Delete</p> | <p>The proposed rule is modeled on existing civil rules. The information could be included in the written declaration.</p> <p>Research of local court rules found that the notice requirement varied from court to court. The proposed rule is modeled on, but differs from, civil rules regarding notice (rule 3.1203 of the California Rules of Court) and would provide uniformity statewide.</p> <p>The proposed rule is written broadly and does not explicitly state that contact by email and web are eliminated. The task force and committee believe that the form of notice is an important substantive matter that should receive public comment before being considered for adoption. The suggestion will be considered in a future cycle.</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 7. Request for Emergency Orders (Ex Parte Orders) (Rules 5.151 through 5.170) | | |
|--|---|--|
| Commentator | Comment | Committee Response |
| Superior Court of San Bernardino County | <p>Agree with proposed changes, if modified.</p> <ol style="list-style-type: none"> 1. Request for emergency order Rule 5.151(c): FL-310 is being revoked as of 1/1/2012 and should be removed from this rule. Regarding the Points & Authorities, how will a litigant ever know when they will be required? Will the person first need to do an emergency application to the judge to find out if Points & Authorities are needed before filing the emergency application for the substantive order? 2. Request for emergency order Rule 5.151(d): This provision states that the application must state the name/address/phone number of the attorney or party. Where is the identification of the attorney or party supposed to be placed on the form FL-300? This information could be contained in the notice declaration, but there isn't any place on the FL-300 for it to go where the person will remember to fill out this information. It would be better to simply delete this requirement from 5.151(d)(1). 3. Also, why should the emergency orders include the current custody orders if those orders are already contained in the court's file? This would add additional burden to the litigant plus the court's file would be unnecessarily thick. | <p>The task force and committee agree with the suggestion to delete the reference to FL-310 from the proposed rule they are recommending for adoption. The rule does not prohibit local courts from developing local rules regarding when a memorandum of points and authorities would be required with the request for order.</p> <p>The information about the other party would be contained in the caption section of proposed form FL-300. The identification of the other party's attorney could be contained in the notice declaration. The committee prefers to maintain the requirement, which is modeled on civil rule 3.1202. Contents of application.</p> <p>The request for orders would require parties to provide information about existing custody orders. The proposed rule was drafted in response to those courts that are not always able to provide the judicial officer with the</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 7. Request for Emergency Orders (Ex Parte Orders) (Rules 5.151 through 5.170) | | |
|--|---|--|
| Commentator | Comment | Committee Response |
| | <p>4. Requirements for notice Rule 5.165(a):</p> <p>a. Since a judge may not be available to hear an ex parte on any given date (it could be heard by a judge other than the one regularly assigned to the case), that would mean notice of an ex parte cannot be given until the paperwork has been filed with the clerk’s office. Requiring filing by 10am means that the person who comes to court early that morning has very little time to complete the paperwork for the next day. Although there is a provision where the party can explain in a declaration why the notice was late, then what if the judge refuses to hear it because it was late? Wouldn’t it be more efficient to make the filing window a little bigger, such as noon?</p> <p>b. For the matter which can be heard without notice, the list should also include a termination of earnings assignment order</p> | <p>court’s case file in time for the hearing. To provide a more balanced rule, the task force and committee agree to change the proposed order to have the litigant provide the current custody orders if they are available to the litigant.</p> <p>Proposed rule 5.165(a) is modeled on existing civil rule 3.1203 regarding the timeframe for giving notice to other parties. Many courts in small and large counties already refer to the civil rule timeframe in their local rules. The proposed rule is intended to incorporate the civil rule and best practice of local courts into a uniform practice.</p> <p>The commentator raises an important substantive matter that should receive public comment before being considered for adoption.</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 7. Request for Emergency Orders (Ex Parte Orders) (Rules 5.151 through 5.170) | | |
|--|---|---|
| Commentator | Comment | Committee Response |
| | 5. Requirements for notice Rule 5.165(c): Many litigants will use texting to notify the other party of the hearing, which provides a reliable (and reviewable) method for notice. Suggestion: re-state the Rule as follows: "Notice to a party of appearance at a hearing to request emergency orders may be given by telephone, in writing, by voicemail message, or text message." | The proposed rule is written broadly and does not explicitly include text message as a form of notice. The task force and committee believe that the form of notice is an important substantive matter that should receive public comment before being considered for adoption. The suggestion will be considered in a future cycle. |
| Superior Court of Santa Clara County | <p>Rule 5.151 - Request for Emergency Orders. Subdivision (c)(5) should be amended to simplify the sentence to read: "A memorandum of points and authorities only if requested by the court on a case-by-case basis."</p> <p>Rule 5.151 - Amend subdivision (d)(5)(E) to add the phrase "if not already filed by the requesting party" at the end of the sentence so that it reads, "Include a completed <i>Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act</i> (UCCJEA) (FL-105) if not already filed by the requesting party." Rationale: we do not need duplicate copies of the UCCJEA form in the court file.</p> <p>Rule 5.165 - Requirements for Notice. Move subdivision (c) "Method of notice" up to become subdivision (a) so that the first thing the rule states is the method of notice.</p> | <p>The task force and committee agree with the suggestion and have incorporated it into the proposal they are recommending for adoption.</p> <p>The task force and committee agree with the suggestion and have incorporated it, with minor alterations, into the proposal they are recommending for adoption.</p> <p>The task force and committee agree with the suggestion and have incorporated it into the proposal they are recommending for adoption.</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 7. Request for Emergency Orders (Ex Parte Orders) (Rules 5.151 through 5.170) | | |
|---|---|--|
| Commentator | Comment | Committee Response |
| | Rule 5.169 - Personal appearance at hearing for temporary emergency orders. Replace "of" with "by" so that it reads: "The court may consider an application for emergency orders without requiring a personal appearance BY the applicant or other party." We also believe the council should expand this rule to describe the procedure for handling emergency orders without a hearing. For instance, Santa Clara County has a local rule which describes the procedure for obtaining emergency orders without a hearing. | The task force and committee agree with the suggestion and have incorporated it into the proposal they are recommending for adoption. |
| Superior Court of Santa Clara County Hon. Michael M. Clark, Mary Arand, Neal Cabrinha, Mary Ann Grilli | Somewhere the rules should generally state that points and authorities are only required when ordered by the court, and not only in the section about emergency orders. RULE 5.151: Although Rule 5.169 states that the Court may consider an application for emergency orders without a hearing, in general this rule assumes that any such application will lead to a hearing. The only procedures described to obtain ex parte or emergency orders are through a hearing. A number of courts, including Santa Clara County, handle ex parte matters on the papers only. The rule should allow for that as an option. Our procedure requires that notice be given and copies of the pleadings be provided to the opposing party, who then has 24 hours to file a written response. Our court would not be able to accommodate parties who show up in court for a hearing on all ex parte matters, and we are aware of other courts that have | The suggested language is contained in proposed rule 5.92. The task force and committee recommend that the proposal in rule 5.169 include language that takes into account that some courts may not requires an appearance at a hearing on a requests for emergency orders. |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 7. Request for Emergency Orders (Ex Parte Orders) (Rules 5.151 through 5.170) | | |
|--|--|---|
| Commentator | Comment | Committee Response |
| | <p>procedures for ex parte matters that are submitted on paperwork alone and do not hold hearings.</p> <p>RULE 5.151(c)(5): insert “is” before “required” and “specified” should be replaced by “ordered”.</p> <p>RULE 5.151(d)(5)(e)- generally the UCCJEA form is only required at the outset of the case. This section would appear to require it with any custody motion. This section should be clarified that the UCCJEA form is only required if not already filed by that party.</p> <p>ARTICLE 2: Reference to “Appearance” should be deleted from the title of this Article because of those courts that do not hold hearings on ex parte applications.</p> <p>RULE 5.165(a)(2)(E): Delete this section, as we found it to be over used in the notice form that we used for our court, and this is rarely a legitimate excuse for not giving notice. If an ex parte order would not result in either burden or inconvenience, it probably would not be requested. We removed a similar section from our local form.</p> <p>RULE 5.165(c): Add the following sentence, for those courts</p> | <p>The task force and committee recommend that rule 5.151(c)(5) read: <u>A memorandum of points and authorities only if required by the court.</u></p> <p>The task force and committee agree with the suggestion and have incorporated it, with minor alterations, into the proposal they are recommending for adoption.</p> <p>The task force and committee prefer to recommend that the reference to “appearance” remain part of the title and that the proposed rule relating to appearance be broadened to state that some courts do not require the parties to appear at a hearing.</p> <p>The task force and committee agree with the suggestion and have incorporated it into the proposal they are recommending for adoption.</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 7. Request for Emergency Orders (Ex Parte Orders) (Rules 5.151 through 5.170) | | |
|---|--|---|
| Commentator | Comment | Committee Response |
| | <p>that do not hold hearings: “For those courts that have adopted a procedure for emergency applications for submission on written papers only, notice of the ex parte application may be given by hand delivery, facsimile, overnight delivery or first class mail. Notice is not deemed complete if given by overnight delivery until two calendar days after delivery to the overnight carrier. Notice is not deemed complete if given by first class mail until five calendar days after mailing.”</p> <p>RULE 5.169: Add a sentence that reads: “Local courts may adopt local rules for applications for emergency orders that are handled on the documents submitted, without hearing. These local rules must provide for notice and an opportunity to submit responsive pleadings before the court rules on the emergency application, except in cases involving domestic violence applications, or the court orders that notice will not be required.”</p> | <p>The task force and committee prefer to recommend a rule that permits courts to develop local rules regarding requests for orders that proceed without a hearing. Such rules could include the procedures described in the comment.</p> <p>The task force and committee agree with the suggestion and have incorporated it, with minor alterations, into the proposal they are recommending for adoption.</p> |
| <p>Superior Court of Shasta County Stacy Larson, Family Law Facilitator Redding</p> | <p>CRC 5.151(c)(2): This section required FL-310 to accompany requests for emergency temporary orders. However, this form would seemingly be incorporated into the new FL-300 Request for Order.</p> <p>CRC 5.151(d)(3): This requirement to reveal all prior applications on the same issue will be cumbersome and nearly un-doable for self-represented litigants. Their issues of custody</p> | <p>The task force and committee agree with the suggestion and have incorporated it into the proposal they are recommending for adoption.</p> <p>The task force and committee recommend that the rule state that the applicant should reveal all prior applications, instead of making it a requirement.</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 7. Request for Emergency Orders (Ex Parte Orders) (Rules 5.151 through 5.170) | | |
|--|---|---|
| Commentator | Comment | Committee Response |
| | <p>and parenting time/visitation continue, in many cases, for eighteen years, revisiting the same issues (albeit sometimes with different facts) time after time after time. Their lives are often transitory such that they do not have copies of their prior papers or orders. Their files are often old enough, or voluminous enough, that earlier files are stored in archives and are not readily available to the Civil Clerk’s Office or the litigant. The court file has all of this information, and it can easily be accessed by the court. Moreover, at least in our courthouse, specified family-law judges are familiar with the cases and former orders made, often recognizing litigants by name. The minimal value of this requirement to the court is far outweighed by the burden to litigants.</p> <p>CRC 5.151(d)(5)(D): The requirement to submit a copy of the current order is similarly burdensome to self-represented litigants for the reasons stated above. This will create increased burden on the clerks’ and facilitator’s offices that must attempt to locate the file and make copies for the litigants. The judge will have the file, with copy of the current order, in court at the time of the hearing. There is no need to clutter the file with more copies of the same order each time a party wishes to modify it.</p> <p>CRC 5.151(d)(5)(E): The UCCJEA FL-105 is difficult for self-</p> | <p>The task force and committee recommend including that a copy of the current court order be included, if it is available.</p> <p>The task force and committee agree with the suggestion</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 7. Request for Emergency Orders (Ex Parte Orders) (Rules 5.151 through 5.170) | | |
|--|---|---|
| Commentator | Comment | Committee Response |
| | <p>represented litigants and is, consequently, frequently ignored. The purpose for filing a new form with Requests for Orders would be, I assume, to determine where the child is currently living and changes in residence since the last FL-105 was filed. It would be better to require that this information be required in their written declarations rather than requiring the entire form to be filled out again. Alternatively, we could require that the form be completed only if there have been changes since the last FL-105 was submitted.</p> <p>CRC 5.165(c): The “Method of Notice” section should be expanded to include personal (face-to-face) notice, text message, and email. The text message and email may be included in “in writing” in the same way that “telephone” encompasses “voicemail message,” but it may be confusing to litigants. We should include language that these methods of service are not exhaustive, e. g. “Notice of appearance . . . message or other similar mediums that are reasonably likely to provide notice.”</p> <p>CRC 5.167(b): As described in my commentary on rule CRC 5.92, this section is confusing. This section reads consistently with our current practice of personal service of temporary orders. However, CRC 5.92 seems to authorize service of such orders on the party’s attorney. We should clarify these two</p> | <p>and have incorporated it into the proposal they are recommending for adoption.</p> <p>Because this would be an important substantive change to the proposal, the task force and committee believe public comment should be sought before they are considered for adoption.</p> <p>The task force and committee recommend clarifying these rules so that they are consistent.</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 7. Request for Emergency Orders (Ex Parte Orders) (Rules 5.151 through 5.170) | | |
|---|--|--|
| Commentator | Comment | Committee Response |
| | sections, so they are easily read together. | |
| Trial Court Presiding Judges Advisory Committee (TCPJAC)/Court Executive Adisory Committee (CEAC) Joint Working Group | <p>Proposed rule 5.151 (Request for emergency orders; application; required documents) p. 60 <input checked="" type="checkbox"/> Local Rule or Form Changes</p> <p>This proposal may not require developing new rules, but will impact those courts that have existing rules that pertain to the required contents of emergency orders. New rule 5.4 would state that “local rules and forms must not conflict with Judicial Council rules and forms and may have to be amended to not conflict with these new rules.”</p> <p>There is a concern that change in terminology from “ex parte” to “emergency” could be confusing to practitioners and could infer a restriction in the type of relief that can be sought through this process. The term “ex parte” should continue to be used.</p> <p>Also, implementation will require changes to local rules.</p> <p>Proposed rule 5.165(b) and (c) (Notice to the court) p. 64 <input checked="" type="checkbox"/> Potential Fiscal Impact</p> | <p>The term “ex parte” has continued to cause confusion for litigants who do know or understand legal terminology. The proposed use of “emergency orders” would help litigants understand that the procedure is reserved for very specific and urgent purposes. The rules themselves do indicate that a request for emergency orders” is synonymous with ex parte applications. Specifically, proposed rule 5.165(a) would provides that: <u>The rules in this chapter govern applications for emergency orders (also known as ex parte applications) in family law cases, unless otherwise provided by statute or rule. These rules may be referred to as “the emergency orders rules.” Unless specifically stated, these rules do not apply to ex parte applications for domestic violence restraining orders under the Domestic Violence Prevention Act.</u></p> <p>The above application section to rule 5.151 may mitigate the need for courts to redraft their local rules that use the term “ex parte applications” or “ex parte hearings.”</p> <p>Proposed rule 5.165(b) and (c) As stated below, the task force and committee agree</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 7. Request for Emergency Orders (Ex Parte Orders) (Rules 5.151 through 5.170) | | |
|--|--|--|
| Commentator | Comment | Committee Response |
| | <input checked="" type="checkbox"/> Local Rule or Form Changes <input checked="" type="checkbox"/> Increased Staff Workload Subsection (b) provides that courts who decide to adopt a local rule that requires parties to provide additional notice to the court when they are requesting emergency orders the next court day must provide a dedicated telephone number for this purpose. Costs may be incurred for a new dedicated telephone line by those courts that choose to optionally require this notice. <u>Recommendation</u> It is difficult to know what is meant by “dedicated” phone line. If this number must be used only for the purpose of receiving this notice then courts would incur the cost of the line. Additional workload to court staff is anticipated if this line must be answered outside of the normal workflow for distribution of calls. The working group therefore recommends modification to less specific language such as “the local rule must include a method by which the party may give notice to the court by telephone.” | with the TCPJAC/CEAC Joint Working Group’s suggestion regarding rule 5.165 and have incorporated it into the proposal they are recommending for adoption. The task force and committee eliminated the language in the rule regarding a dedicated telephone line. The task force and committee incorporated the suggested language into the rule. |

Chapter 9. Child, Spousal, and Domestic Partner Support (rule 5.260)

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Commentator | Comment | Committee Response |
|---|---|---|
| <p>Bay Area Legal Aid Jerel McCrary Family Law Regional Counsel Oakland</p> | <p>Rule 5.260 (a) One of the most frequently abused procedures in family law is the failure to provide necessary financial information to the court and to the other party prior to scheduled hearings on support issues. This rule should provide timelines within which the required Income and Expense Information must be filed and exchanged. Addition of the following language would help to remedy this problem.</p> <p>The initial sentence should read,” For all requests for orders involving child, spousal or domestic partner support, both parties must complete, file and serve a current Income and Expense Declaration (form FL-150) on all parties. “A party requesting support orders must file and serve a current Income and Expense Declaration at the time the request is served upon the opposing party. A party responding to a request for support orders must file and serve the other party with a current Income and Expense Declaration no later than the time provided for responding to the request for orders.”</p> <p>(b) Deviations by the court from support guidelines should be explicit. A sentence should be added to state: “Where a court finds good cause to deviate from indicated guideline support, it must state its findings on the record or in writing.”</p> | <p>The task force and committee agree with the suggestion and have incorporated them, with minor alterations, into the proposal they are recommending for adoption.</p> <p>Same response as above.</p> <p>Same response as above.</p> |
| <p>Christine N. Donovan, CFLS Sr. Staff Attorney</p> | <p>Rule 5.260: Subpart (d) appropriately requires that DCSS receive notice of motions concerning child support if DCSS is</p> | <p>The task force and committee recommend modifying rule 5.260(d) to delete the phrase “providing services”</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 9. Child, Spousal, and Domestic Partner Support (rule 5.260) | | |
|---|---|---|
| Commentator | Comment | Committee Response |
| Superior Court of Solano CFLS | <p>“providing services.” But that phrase isn’t defined in the rule. For example, is “providing services” limited to welfare reimbursement cases? Or does it include any form of enforcement? It would clarify the rule (and each party’s service obligation) if a definition or explanation was included.</p> <p>I have two concerns with subpart (e). First, I agree with the requirement in subpart (e)(1)(A) that a proposed support calculation be submitted.</p> <p>However, the language of the rule ignores that stipulated judgments will usually include an agreed-upon amount of support, and that only a petitioner will be submitting a true default judgment. Thus a rule requiring both parties to submit support calculations with a judgment seems unnecessary.</p> <p>Second, it would be helpful if the rule set out the requirements for non-guideline orders. For example, if the proposed support amount deviates from guideline in any way, including “reserving” child support, the rule should remind parties they must include either a <i>Non-Guideline Child Support Findings Attachment</i> (Judicial Council form FL-342(A)) or language in the judgment conforming with Family Code sections 4056 and</p> | <p>and specify that the agency must be given notice if it is “providing support enforcement services or has intervened in the case as described in Family Code section 17400.”</p> <p>The task force and committee recommend removing the requirement that parties submit a support calculation. Instead, the rule would provide that parties should file a support calculation if support is at issue in the judgment.</p> <p>The task force and committee recommend that the proposal include an item in rule 5.260 that states: If child support is an issue in a judgment based on a default or the parties’ stipulation, the moving party should file the documents in (e)((1)A) with the proposed judgment.</p> <p>The task force and committee believe that additional public comment should be sought before including the reservation of child support in the proposed rule regarding deviations from guideline support. However, they recommend changing (b) to include references to Family Code sections which address the requirements for orders that deviate from guideline support.</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 9. Child, Spousal, and Domestic Partner Support (rule 5.260) | | |
|---|---|---|
| Commentator | Comment | Committee Response |
| | 4065. | |
| Virginia Johnson Staff Attorney Superior Court of San Diego County | Agree with proposed changes. | No response required. |
| Sonoma County Bar Assn., Family Law Brittany Birnie Greene Attorney/Mediator Sebastopol | Agree if modified: Rule 5.260(e)(2)(B) language should be clarified to reference a default <i>not involving a written agreement between the parties</i> . A rule which requires parties to a written agreement whose matter proceeds as a default to address each of the FC §4320 factor in the proposed judgment seems overly burdensome and onerous on such parties. Parties are free to enter into any agreement regarding spousal support, so long as they are fully informed, and enter into the agreement voluntarily, free from fraud, undue influence, coercion, or duress of any kind. This rule as written is especially burdensome on parties who have agreed to waive spousal support. Further, this might be unnecessarily costly to parties using attorneys' or paralegal services since the professional will charge additional fees to prepare the FL-157 form, or equivalent document. Finally, parties not using professional services may be unclear on why they need to fill out this form in addition to their written agreement, especially when their written agreement may be a waiver of spousal support. | The task force and committee have discussed the varying comments regarding proposed rule 5.260(e)(2)(B) and recommend a simplified rule that would focus on two points: (1) that use of support calculation software is not appropriate when requesting a judgment or modification of a judgment for spousal or domestic partner support and (2) Petitioner or the parties may use <i>Spousal or Partnership Support Declaration Attachment</i> (form FL-157) to address the issue of spousal or domestic partner support under Family Code section 4320 when relevant to the case. |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 9. Child, Spousal, and Domestic Partner Support (rule 5.260) | | |
|---|--|---|
| Commentator | Comment | Committee Response |
| Superior Court of Orange County Family Law Operations | Rule 5.260(e)(1)(A) states: "Each party must file a proposed support calculation that sets forth..." however, the Judgment Checklist, FL-182, states that a computer printout of guideline child support is optional; the difference may be that one uses the words "computer" and "guideline" and the other is simply a "proposed support calculation"; the two read the same; suggest they both read as the rule. | The task force and committee recommend that the proposed rule be changed so that submission of a proposed support calculation is not required. The wording in the Judgment Checklist is intended to refer to a computer calculated guideline amount. The word "calculation" would not really cover what is intended. |
| Superior Court of San Bernardino County | <p>Agree with proposed changes if modified.</p> <p>General provisions regarding support cases Rule 5.260(e):</p> <p>a. the rule now requires that each party must file a proposed support calculation when child support is an issue of the judgment.</p> <p>This rule is written too broadly. What if child support is being reserved because the Department of Child Support Services has an open case on it – what would be the purpose of having the parties do a calculation? Technically, the child support is an issue of the judgment since the court is agreeing to reserve at that time. What about when the judgment is based upon an in-court session (like a trial) – do the parties need to submit more child support calculations with the proposed judgment if the matter has already been ruled upon by the court? Or does this rule only apply to stipulated judgments where</p> | <p>See above response to Superior Court of Orange County.</p> <p>The suggestions raise important substantive issues that would benefit from public comment before they are considered for adoption. In the interim, the task force and committee have decided to delete from the proposed rule the requirement that parties submit a support calculation.</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 9. Child, Spousal, and Domestic Partner Support (rule 5.260) | | |
|---|---|--|
| Commentator | Comment | Committee Response |
| | <p>child support is not being reserved? Is there some particular method for submitting the calculation? Is there a timing requirement?</p> <p>b. For spousal support in long-term marriage where a party is knowingly waiving support, what is the benefit of the parties filling out the new attachment? Could there be a truncated form for default cases?</p> | <p>See above response to Sonoma County Bar Assn., Family Law</p> |
| <p>Superior Court of Santa Clara County Hon. Michael M. Clark, Mary Arand, Neal Cabrinha, Mary Ann Grilli</p> | <p>RULE 5.260(a): Should start with “Except as provided below”. This is needed because there are cases where the simplified statement is used and it would be inconsistent without this language.</p> <p>RULE 5.260(e)(1): add a section about default cases to require the moving party to submit a calculation.</p> <p>RULE 5.260(e)(2)(b) of the section, the reference to long marriage should be deleted. The 4320 factors must be addressed in any spousal support judgment, whether the marriage is a short or long term marriage. A declaration setting forth the relevant factors should be required where support other than a waiver or termination is requested. Similarly, if a termination for the defaulting side is requested, there should be a declaration indicating that the party is able to support him/herself, has no health problems affecting their ability to be</p> | <p>The task force and committee agree with the suggestion and have incorporated it into the proposal they are recommending for adoption.</p> <p>Same response as above.</p> <p>The task force and committee agree with the suggestion and recommend deleting rule 5.260(e)(2)(B). As circulated for comment, this section read as follows:</p> <p>(B) If petitioner seeks a default judgment of dissolution or judgment of legal separation involving a marriage of over 10 years, petitioner must address the issue of spousal or domestic partner support for both parties considering the</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 9. Child, Spousal, and Domestic Partner Support (rule 5.260) | | |
|---|---|--|
| Commentator | Comment | Committee Response |
| | self supporting, and whatever other factors apply. | factors under Family Code section 4320 in the proposed judgment. <i>Spousal or Partnership Support Declaration Attachment</i> (form FL-157) may be used to provide this information. The task force and committee have discussed the varying comments regarding proposed rule 5.260(e)(2)(B) and recommend a simplified rule that would focus on two points: (1) Use of support calculation software is not appropriate when requesting a judgment or modification of a judgment for spousal or domestic partner support and (2) Petitioner or the parties may use <i>Spousal or Partnership Support Declaration Attachment</i> (form FL-157) to address the issue of spousal or domestic partner support under Family Code section 4320 when relevant to the case. |
| Superior Court of Shasta County Stacy Larson, Family Law Facilitator Redding | CRC 5.260(e)(2): We should capitalize “petitioner” as it is being used as a proper noun throughout this section. Also, in the first sentence, we refer only to “marriage” and should replace this term with “marriage or domestic partnership” to include domestic partnerships. | Rules and forms follow the AOC Style Manual, which does not capitalize this word. The task force and committee agree with the suggestion and have incorporated it into the amendments they are recommending for adoption. |

| Chapter 10. Government Child Support Cases (Title IV-D support actions) (rule 5.375(b)) | | |
|--|----------------|---------------------------|
| Commentator | Comment | Committee Response |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 10. Government Child Support Cases (Title IV-D support actions) (rule 5.375(b)) | | |
|--|------------------------------|---------------------------|
| Commentator | Comment | Committee Response |
| Christine N. Donovan, CFLS Sr. Staff Attorney Superior Court of Solano County | Agree with proposed changes. | No response required. |
| Virginia Johnson Staff Attorney Superior Court of San Diego County | Agree with proposed changes. | No response required. |

| Chapter 12. Separate Trials (Bifurcation) and Interlocutory Appeals (rules 5.390 and 5.392) | | |
|--|---|---|
| Commentator | Comment | Committee Response |
| Christine N. Donovan, CFLS Sr. Staff Attorney Superior Court of Solano County | Agree with proposed changes. | No response required. |
| Virginia Johnson Staff Attorney Superior Court of San Diego County | Agree with proposed changes. | No response required. |
| Superior Court of Orange County Family Law Operations | Rule 5.390(a), where the word "motion" is used, "request for order" should be substituted, or a "Motion" check box should be added to the Request for Order FL-300 form. To use "motion" in the rules and not have a quick identifier on the form will result in confusion among the public and court staff who need to appropriately calendar the hearing. | The task force and committee agree with the suggestion and have incorporated it into the amendments they are recommending for adoption. |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 12. Separate Trials (Bifurcation) and Interlocutory Appeals (rules 5.390 and 5.392) | | |
|--|---|--|
| Commentator | Comment | Committee Response |
| Superior Court of San Bernardino County | Agree with proposal if modified: Bifurcation of issues Rule 5.390(a): should that read “request for order” rather than motion? (same for subsection (c)) | Same response as above. |
| Superior Court of Santa Clara County, Hon. Michael M. Clark, Mary Arand, Neal Cabrinha, and Mary Ann Grilli | RULE 5.390(b). This appears to be a restatement of the law. Is it really needed? | Rule 5.390(b) is not merely a restatement of any statute. The rule, however, is not merely a restatement of any statute. Family Code section 2337 provides that in a proceeding for dissolution of marriage, the court, on noticed motion, may sever and grant an early and separate trial on the issue of the dissolution of the status of the marriage apart from other issues.” Family Code section 3023 is the authority for separate trials on the issue of child custody. The family rules of court also serve as the authority in California for the court to bifurcate one or more other issues that are not covered by the two statutes. Those specific issues are currently contained in rule 5.175(c). The recommendation is to renumber the current rule to rule 5.390(b) and include other issues in a family law proceeding that may be bifurcated, such as termination of the status of a marriage or domestic partnership, attorney’s fees and costs, and other matters. |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 13. Trials and Long-Cause Hearings (rules 5.393 and 5.394) | | |
|---|---|---|
| Commentator | Comment | Committee Response |
| Association of Certified Family Law Specialists Diane Wasznicky, President San Rafael | <p>Rule 5.394 This proposed rule specifies the information which must be contained in a trial brief, if the court order one.</p> <p>A. Subdivision (a)(1)(D) should be modified to make it clear that the brief need only list the minor children of the parties. The language could be amended to read: “Names and ages of (the) parties’ (minor) children.”</p> <p>B. Subdivision (a)(5) states that a list of “all” witnesses to be called shall be included in the brief. It is unclear whether this is meant to apply to rebuttal and impeachment witnesses. The rule should be amended to exclude rebuttal and impeachment witnesses from the requirement that those witnesses be listed in a trial brief.</p> <p>C. Subdivision (a)(5) would also require a brief summary of the testimony of each witness. This should be changed to read: “a brief” description of the anticipated testimony of each witness.” Such language would track Family Code section 217, subdivision (b).</p> | <p>The task force and committee agree with the suggestion and have incorporated it into the proposal they are recommending for adoption.</p> <p>The task force and committee recommend deleting the word “all.” Rebuttal and impeachment witness would be allowed as permitted by statute.</p> <p>The task force and committee agree with the suggestion and have incorporated it into the proposal they are recommending for adoption.</p> |
| Bay Area Legal Aid Jerel McCrary Family Law Regional Counsel Oakland | <p>Rule 5.393 (a) (2) The phrase ...”over a single court day” is ambiguous. Does it mean more than a single day, or does it mean the full duration of a single day? If the latter, it should</p> | <p>The task force and committee agree with the suggestion and have incorporated it into the proposal they are recommending for adoption. Specifically, the proposed</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 13. Trials and Long-Cause Hearings (rules 5.393 and 5.394) | | |
|---|---|--|
| Commentator | Comment | Committee Response |
| | say “A long cause hearing is defined as a hearing on a request for order that extends more than a single court day.” If the former, it should say, “A long cause hearing is defined as a hearing on a request for order that lasts at least a single court day.” | rule would be modified to clarify the intent of the task force and the committee that a long cause hearing is to be defined as a hearing that will go longer than one court day. |
| Christine N. Donovan, CFLS Sr. Staff Attorney Superior Court of Solano County | <p>Rule 5.393: I suggest that subpart (a)(2) be revised as follows: “A ‘long cause hearing’ is defined as a hearing on a request for order that extends over a single court day <u>or more than one court day.</u>”</p> <p>Subpart (d) requires a court to schedule additional days for trial if the original time estimate proves insufficient. However, some counties have local rules that give the court discretion to call a mistrial for failure to stay within the original time limits. (See, e.g., Sacramento County Superior Court, local rule 14.11, subdivision (J)(3) [“Attorneys and self-represented parties are required to provide the court with reasonable and accurate time estimates for trials. If the time estimates of either party are exceeded, the court may, in its discretion, continue the matter to a new trial date or declare a mistrial.”]) Subpart (d) eliminates that discretion by requiring the court to schedule additional days.</p> <p>Rule 5.394: I generally agree with this proposed rule. However, I suggest that subpart (a)(7) be modified so as to permit a court</p> | <p>The language has been modified to clarify the issue raised by the commentator.</p> <p>Under the rule, only “remaining trial days” are required to be set in as soon as possible on the earliest available days with the goal of minimizing intervals between days for trials or long-cause hearings. If a mistrial is called, presumably there would be no remaining trials days.</p> <p>The list of requirement for trial briefs under this rule is not an exclusive list. There is nothing that would</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 13. Trials and Long-Cause Hearings (rules 5.393 and 5.394) | | |
|---|---|--|
| Commentator | Comment | Committee Response |
| | to set out additional requirements for trial briefs in a local rule. | prohibit a court from adding additional requirements. |
| Executive Committee of the Family Law Section of the State Bar of California (FLEXCOM) Saul Bercovitch Legislative Counsel San Francisco | <p>Rule 5.394. This rule would specify the information that must be contained in a trial brief.</p> <p>FLEXCOM suggests the following modifications to this rule:</p> <ol style="list-style-type: none"> 1. Subdivision (a)(1)(D) should be modified to make it clear that the brief need only list the minor children of the parties. The language could be amended to read: “Names and ages of [the] parties’ [minor] children.” 2. Subdivision (a)(5) states that a list of “all” witnesses to be called shall be included in the brief. It is unclear whether this is meant to apply to rebuttal and impeachment witnesses. The rule should be amended to exclude rebuttal and impeachment witnesses from the requirement that those witnesses be listed in a trial brief. 3. Subdivision (a)(5) would also require a brief summary of the testimony of each witness. This should be changed to read: “a brief description of the anticipated testimony of each witness.” Such language would track Family Code section 217, subdivision (b). FLEXCOM is concerned that the “brief summary” language could be interpreted as requiring a party to provide a narrative of the testimony. | <p>Please see prior response to ACFLS</p> <p>Please see prior response to ACFLS</p> <p>Please see prior response to ACFLS.</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 13. Trials and Long-Cause Hearings (rules 5.393 and 5.394) | | |
|---|---|--|
| Commentator | Comment | Committee Response |
| | This could lead to the same sort of conduct that was criticized in the Elkins case. The court should be provided with the information needed to manage the trial, similar to what would be required if an offer of proof were requested. | |
| Virginia Johnson Staff Attorney Superior Court of San Diego County | Agree if modified: 5.393(a)(2) - unclear whether any time frames are involved. Is it still a long cause hearing if it is heard the last hour of one court day and the first hour of the following court day? 5.394 - it would really help the court to have a Judicial Council mandatory form trial/long cause hearing brief. | The rule requires that if the original time estimate for a trial is over two and a half hours, and it cannot be completed in a single calendar day, it should be scheduled to continue on as close to sequential days as the judge's trial calendar permits. In the commentator's example, the hearing did not last over two hours so it would not bring it within the definition of this rule; however, if a hearing or trial is scheduled for the last hour of a court day, then continued for its next required hour to a date weeks or months in the future, it would not reflect the intent of this rule. This will be reviewed for consideration in a future comment cycle. |
| Los Angeles County Bar Association, Family Law Section Charles Wake | Rule 5.393 The LACBA Family Law Section agrees with this proposed new rule if amended. The purpose of this proposed rule seems apparent and is | The task force and committee agree with the suggestion |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 13. Trials and Long-Cause Hearings (rules 5.393 and 5.394) | | |
|---|---|---|
| Commentator | Comment | Committee Response |
| | <p>laudable. However, the language is ambiguous and confusing. Subsection (a)(2) defining “long cause hearing” logically only applies to hearings not completed in a single day. Yet, the language of this subsection on its face applies to hearings that <u>are</u> completed “over” a single day. This subsection should be amended to define a “long cause hearing” as one “that is not completed in a single day.”</p> <p>The requirement in subsections (c) and (d) that trials or long cause hearings requiring more than one day be heard “on as close to sequential days” as possible should be extended to situations when a court schedules a pre-trial or pre-hearing conference and orders the parties to prepare trial or hearing briefs under subsection (b). If the parties appear for a scheduled hearing, and the court determines the matter will likely be a long cause, the parties should not be required to wait any longer than reasonably necessary for the hearing to actually commence.</p> <p>Finally, if the parties appear for a hearing and are prepared to proceed on the date originally scheduled, but the court is unable to hear the matter on that day, the continued hearing date should be “as close to sequential” as possible.</p> | <p>and have incorporated it into the proposal they are recommending for adoption.</p> <p>The modification suggested by the commentator was considered by the task force and the committee. The modification requested would make a substantive change to the rule that would require it to be circulated again for comment.</p> <p>The modification suggested by the commentator was considered by the task force and the committee. The modification requested would make a substantive change to the rule that would require it to be circulated again for comment.</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 13. Trials and Long-Cause Hearings (rules 5.393 and 5.394) | | |
|---|---|---|
| Commentator | Comment | Committee Response |
| | Rule 5.394: Agrees with this proposed new rule. | No response required. |
| Superior Court of Santa Clara County | <p>Rule 5.393 Setting trials and long-cause hearings. We object to subdivision (a) which defines trial day and long cause hearing. These definitions should be left to local rules based on local practice. If there must be a state rule, then at a minimum, a long cause hearing should be defined as a hearing on a request for order that "extends beyond the available time designated by local rule for matters on the law and motion calendar."</p> <p>Subdivision (b) should be amended to provide: "The court may require parties to submit settlement conference statements."</p> <p>Subdivision (b) should further be amended to provide: "The court may establish local rules which govern settlement conference procedures." Rationale: most cases set for trial eventually settle, and local courts should be encouraged to adoptive creative settlement strategies and programs.</p> | <p>This rule is intended to increase the efficiency of the court and relieve the burden of extended hearings and trials. The task force and the committee are concerned that as resources diminish, the court cannot continue to carry the burden of unnecessary hearing and trial time such as that necessitated by fragmenting family law trials into segments separated by weeks and sometimes months. This practice was a frequent complaint made to the Elkins Family Law Task Force from litigants, judges and a survey of over 500 family law attorneys from around the state. The practice of interrupting long cause hearings and trials was reported to increase the aggregate amount of time required to complete a trial. For example, a trial that could be completed in three sequential days could actually take 10 half day sessions to complete because of the amount of time it takes to address issues that arise during the breaks and for the judge to review notes to get back up to speed each time. Many attorneys complained that they had to litigate the same issue in the same trial more than once because neither the attorneys nor the judge remembered exactly what had occurred in a previous trial session, and the record was unclear. The task force and the committee are concerned that the court can no longer afford to</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 13. Trials and Long-Cause Hearings (rules 5.393 and 5.394) | | |
|---|---|---|
| Commentator | Comment | Committee Response |
| | | <p>operate in this manner.</p> <p>While crafting a rule that seeks to minimize the costly interruptions in family law hearings and trials, the task force and the committee wanted to be careful not to define a trial day as longer than a half day of court time. Trial setting varies greatly from court to court. Some courts devote certain full days of the week to trials, others allocate specified half days. The two and a half hours is within a half day of court time. Under this rule, if a hearing is longer than two and a half hours, and it cannot be completed in the same court day, then scheduling must be as sequential as possible. However, the rule only provides that this occur as the calendar of the trial judges permits. This would be subject to the scheduling structure established by the local courts for hearings and trials.</p> <p>The task force and the committee agree that settlement strategies and programs are important and should be encouraged. There is nothing in the rule that would prevent a court from implementing such procedures and programs.</p> |
| Superior Court of Santa Clara County, Michael M. Clark, Mary | RULE 5.393 (b) does not mention mandatory settlement conferences. Courts should have the ability by local rule to set | There is nothing in the rule that would prevent a court from setting mandatory settlement conference by local |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 13. Trials and Long-Cause Hearings (rules 5.393 and 5.394) | | |
|---|---|--|
| Commentator | Comment | Committee Response |
| Arand, Neal Cabrinha, Mary Ann Grilli | <p>up mandatory settlement conferences and to require settlement conference statements.</p> <p>RULE 5.393(b)(1): time estimates should include time needed for final argument.</p> <p>RULE 5.394: The contents of the brief section sounds very much like what we require for settlement conference statements. It is vital to effective settlement conferences to have this information. Courts should not have to wait until trial to get it.</p> | <p>rule.</p> <p>The task force and the committee anticipate that time estimates will include argument.</p> <p>There is nothing in the rule that would prevent a court from requiring this information in a settlement conference statement or case management conference statement, for example. The rule does not set out a time frame for submission of the trial or hearing brief, only that it be completed prior to the hearing or trial. The task force and the committee wanted the courts to be able to design their settlement and trial structure in a manner best suited their own practices, but within the intent of the rule to ensure that family law long cause hearings and trials proceed with as little interruption as possible.</p> |
| Trial Court Presiding Judges Advisory Committee (TCPJAC)/Court Executive Adisory Committee (CEAC) Joint Working Group | <p>Proposed Rule 5.393 – Setting Trials and Long Cause Hearings; Sequential days for trial and Intervals in Days for Trial</p> <p><input checked="" type="checkbox"/> Potential Fiscal Impact</p> <p><input checked="" type="checkbox"/> Increased Staff Workload</p> <p><input checked="" type="checkbox"/> Impact to PJ/Supv Judge Duties</p> <p><input checked="" type="checkbox"/> Impact on Justice Partners</p> | <p>Rule 5.393 is intended to increase the efficiency of the court and relieve the burden of extended hearings and trials. The task force and committee are concerned that as resources diminish, courts cannot continue to carry the burden of the unnecessary hearing and trial time that results from the fragmenting of family law trials into segments that are then separated by weeks and sometimes months.</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 13. Trials and Long-Cause Hearings (rules 5.393 and 5.394) | | |
|---|---|--|
| Commentator | Comment | Committee Response |
| | <p>This rule is aspirational and not enforceable, and as such is not appropriate for a rule of court. This rule cannot be considered without considering its relevance and priority against all other case types.</p> <p>A court could not implement this rule and maintain control over its own calendar. This rule gives family law matters a priority they may not otherwise be entitled to under statute. If not in statute, it should not be a rule. This would require legislation to set forth how this priority fits with other priorities. Given the current statewide fiscal crisis, courts need maximum flexibility to calendar their cases. This rule would debilitate efforts to move family law cases. This rule would simply be impossible to fulfill given the reductions to the judicial branch budget.</p> <p>This proposal will create the following impacts on the courts:</p> <ul style="list-style-type: none"> • Fiscal impact - The need for additional judicial resources, courtrooms, court staff. • Increases workload for PJs and supervising judges – They will spend more time re-shuffling and assigning cases. • Other impact - This rule will impact justice partners | <p>The practice of interrupting long-cause hearings and trials was reported to increase the aggregate amount of time required to complete a trial. For example, a trial that could be completed in three sequential days could actually take 10 half-day sessions to complete because of the amount of time it takes to repeat any testimony from witnesses to refresh the judge’s memory, address issues that may have arisen between the hearings, and for the judge to review notes to become reacquainted with the case.</p> <p>Interrupting long-cause hearings and trials was a frequent complaint made to the Elkins Family Law Task Force from litigants and judges and in a survey of over 500 family law attorneys from around the state. Many attorneys complained that they had to litigate the same issue in the same trial more than once because neither the attorneys nor the judge remembered exactly what had occurred in a previous trial session, and the record was unclear. The task force and the committee are concerned that courts can no longer afford to operate in this manner. Judges reported that it was much easier to handle cases with consecutive hearing dates.</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 13. Trials and Long-Cause Hearings (rules 5.393 and 5.394) | | |
|---|--|---|
| Commentator | Comment | Committee Response |
| | <p>whose cases may be re-assigned to accommodate an ongoing family law case.</p> <ul style="list-style-type: none"> • Other impact - This rule will affect all attorneys appearing before the court whose cases would potentially be reassigned due to a new priority for family law cases. | <p>Based on the data provided in the survey mentioned above, rule 5.393 does not increase a court’s workload and it does not add to the length of trial or hearing time; if anything, the rule decreases it. Further, the rule does not give family law trials preference over other case types. Instead, the rule allows cases to be set sequentially within the framework of the local court calendaring pattern. Under this rule, if a hearing is longer than two and a half hours, and it cannot be completed in the same court day, then scheduling must be as sequential as possible. However, the rule only provides that this occur as the calendar of the trial judges permits. This would be subject to the scheduling structure established by the local courts for hearings and trials.</p> <p>The task force and committee drafted rule 5.393 to be consistent with the different scheduling structures of the local courts. For example, one court may hear family trials every afternoon, while another may schedule them only on Wednesday afternoons. The rule should be able to accommodate both and not require the court scheduling trials on Wednesday afternoons to change that structure in order to meet this goal.</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 13. Trials and Long-Cause Hearings (rules 5.393 and 5.394) | | |
|---|----------------|---|
| Commentator | Comment | Committee Response |
| | | While crafting a rule that seeks to minimize the costly interruptions in family law hearings and trials, the task force and the committee wanted to be careful not to define a trial day as longer than a half day of court time. Trial setting varies greatly from court to court. Some courts devote certain full days of the week to trials; others allocate specified half days. The two and a half hours (included in the definition of “trial day” in rule 5.393(a)(1)) is within a half day of court time. |

| Chapter 14. Default Proceedings and Judgments (rules 5.401 through 5.415) | | |
|--|---|--|
| Commentator | Comment | Committee Response |
| Hon. John Chemeleski Commissioner Superior Court of Los Angeles County | The term “Stipulation for Judgment” should be replaced with “Stipulated Judgment.” In general civil use the term “Stipulation for Judgment” is used to describe a separate document signed by the parties that is the basis for the judgment whereas a “Stipulated Judgment” is a proposed judgment approved by the parties. Since this rule refers to a document that is attached to the Judgment form it becomes part of the judgment and should more accurately be described as a “Stipulated Judgment.” Corresponding changes should be made to the Judgment form FL-180. | The task force and the committee agree to include the commentator’s suggested change in the proposal they are recommending for adoption. |
| Christine N. Donovan, CFLS Sr. Staff Attorney | Rule 5.401: Stipulated judgments “must include disposition of all matters subject to the court’s jurisdiction for which a party | The task force and the committee agree with the suggestion and have agreed to incorporate it into the |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 14. Default Proceedings and Judgments (rules 5.401 through 5.415) | | |
|--|--|--|
| Commentator | Comment | Committee Response |
| Superior Court of Solano County | <p>seeks adjudication or an explicit reservation of jurisdiction over any matter not proposed for disposition at that time.” (Proposed CRC 5.411.) Similar or identical language in Rule 5.401 concerning default judgments would likewise be appropriate.</p> <p>Rule 5.411: No comment.</p> <p>Rule 5.413: No comment.</p> <p>Rule 5.415: I suggest conforming subpart (a)(1) with Family Code section 2338.5 as follows: “(1) Stamped envelopes addressed to the parties; addressed to the attorney for each party or to the party, if unrepresented.” This makes the requirements consistent, regardless of whether the matter is proceeding by default.</p> | <p>proposal they are recommending for adoption. Specifically, a new item (c) would be included in the rule to read:</p> <p>(c) <u>Disposition of all matters required</u> <u>A judgment based on a default must include disposition of all matters subject to the court’s jurisdiction for which a party seeks adjudication or an explicit reservation of jurisdiction over any matter not proposed for disposition at that time.</u></p> <p>No response required.</p> <p>No response required.</p> <p>The task force and committee agree with the suggestion and have incorporated it, with minor alterations, into the proposal they are recommending for adoption.</p> |
| Virginia Johnson Staff Attorney Superior Court of San Diego | <p>Agree if modified:</p> <p>5.415(a)(1) - suggest including “...addressed to the parties or</p> | <p>The task force and the committee agree to modify the language in the rule to include mailing to the attorney of record, if any.</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 14. Default Proceedings and Judgments (rules 5.401 through 5.415) | | | | | | | | | | | | |
|--|--|---|-------|---------------------|---------------------|-------|-------|----------------------------------|----------------------|--|-------|-------|
| Commentator | Comment | Committee Response | | | | | | | | | | |
| County | the attorneys of record or an attorney messenger slip; and” | | | | | | | | | | | |
| Los Angeles County Bar Association, Family Law Section Charles Wake | Rule 5.411 The term “Stipulation for Judgment” should be replaced with “Stipulated Judgment.” In general civil practice, the term “Stipulation for Judgment” describes a separate document signed by the parties that serves as the basis for subsequent entry of a judgment. This proposed rule refers to a document attached to the actual judgment form, which is thereby incorporated in the judgment itself. The document referred to by this proposed rule is more accurately referred to as a “Stipulated Judgment,” and that is the prevailing practice in family law. | See above response to Hon. John Chemeleski, Commissioner, Superior Court of Los Angeles County. | | | | | | | | | | |
| Superior Court of Monterey County Minnie Monarque Director of Civil & Family Law Division | Proposed Rule 5.411: Stipulation for judgment. The proposed rule states, at sub part (a), that the stipulation “must contain the following: <i>The foregoing is agreed to by</i> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; text-align: center;">_____</td> <td style="width: 50%; text-align: center;">_____</td> </tr> <tr> <td style="text-align: center;"><i>(Petitioner)</i></td> <td style="text-align: center;"><i>(Respondent)</i></td> </tr> <tr> <td style="width: 50%; text-align: center;">_____</td> <td style="width: 50%; text-align: center;">_____</td> </tr> <tr> <td style="text-align: center;"><i>(Attorney for Petitioner)</i></td> <td style="text-align: center;"><i>(Attorney for</i></td> </tr> </table> | _____ | _____ | <i>(Petitioner)</i> | <i>(Respondent)</i> | _____ | _____ | <i>(Attorney for Petitioner)</i> | <i>(Attorney for</i> | The task force and committee agree with the suggestion and have incorporated it, with minor alterations, into the proposal they are recommending for adoption. Specifically, 5.411 would require the following language for stipulated judgments: <u>The foregoing is agreed to by:</u> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; text-align: center;">_____</td> <td style="width: 50%; text-align: center;">_____</td> </tr> </table> | _____ | _____ |
| _____ | _____ | | | | | | | | | | | |
| <i>(Petitioner)</i> | <i>(Respondent)</i> | | | | | | | | | | | |
| _____ | _____ | | | | | | | | | | | |
| <i>(Attorney for Petitioner)</i> | <i>(Attorney for</i> | | | | | | | | | | | |
| _____ | _____ | | | | | | | | | | | |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 14. Default Proceedings and Judgments (rules 5.401 through 5.415) | | |
|---|---|--|
| Commentator | Comment | Committee Response |
| | <div style="border: 1px solid black; padding: 2px; margin-bottom: 10px; text-align: right;">Respondent)</div> <p>The issue with this proposed format is that the attorneys for parties are being asked whether they agree to the terms of the proposed judgment or stipulation for judgment. While attorneys should indicate that they have reviewed the documents and agree that they conform to the agreements of the parties, this requirement treats counsel as if they themselves are agreeing to the terms of the judgment. As the attorneys are not parties to the judgment or stipulation, this format is inappropriate. It is proposed that the proposed format be altered as follows:</p> <p>“The foregoing is agreed to by:</p> <p>_____ (Petitioner) _____ (Respondent)</p> <p>The foregoing has been reviewed and conforms to the agreement of the parties:</p> <p>_____ (Attorney for Petitioner) _____ (Attorney for Respondent)</p> | <div style="border: 1px solid black; padding: 2px; margin-bottom: 10px; text-align: center;"> (Petitioner) (Respondent) </div> <p><u>Approved as conforming to the agreement of the parties:</u></p> <div style="border: 1px solid black; padding: 2px; margin-top: 10px; text-align: center;"> _____ (Attorney for Petitioner) _____ (Attorney for Respondent) </div> |
| Superior Court of Santa Clara County | Rule 5.411 Stipulation for Judgment. Our practice in Santa Clara County is to require that the signatures of unrepresented parties be notarized. This greatly reduces the likelihood of | The comment proposes a change that would require recirculation of the rule. The task force and committee recommend that the proposed change be reviewed and |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 14. Default Proceedings and Judgments (rules 5.401 through 5.415) | | |
|--|--|---------------------------------------|
| Commentator | Comment | Committee Response |
| | fraudulent signatures. The rule should be amended to either require that the signatures of unrepresented parties be notarized, or provide that the court may adopt local rules which govern the notarization of signatures on stipulations for judgment. | considered in a future comment cycle. |

| Chapter 15. Settlement Services (rule 5.420) | | |
|---|---|--|
| Commentator | Comment | Committee Response |
| Bay Area Legal Aid Jerel McCrary Family Law Regional Counsel Oakland | <p>Rule 5.420</p> <p>It must be made absolutely clear throughout this rule that participation in any form of mediation involving domestic violence must be strictly voluntary, that the process is absolutely confidential and that court may not use the process as a substitute fact finder.</p> <p>(b) (3) Should read “Settlement service(s)” refers to voluntary confidential procedures in which the parties ...”</p> <p>Another sentence should be added saying “ The court may not refer parties in cases involving domestic violence to settlement services if either party objects.”</p> <p>A new section should be added (h) Reports to the Court... “Following settlement negotiations, the service shall limit any information provided to the court to a statement of matters agreed upon by the parties and matters in contention.</p> | <p>The proposed rule defines settlement services as “voluntary”.</p> <p>The rule is narrowly focused on the handling of domestic violence cases and does not propose to regulate settlement services more generally.</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

Chapter 15. Settlement Services (rule 5.420)

| Commentator | Comment | Committee Response |
|---|--|---|
| | Settlement services are not meant to operate as finders of fact and shall not speculate or offer an opinion as to whether the alleged domestic violence occurred or make any recommendations to the court.” | |
| Christine N. Donovan, CFLS Sr. Staff Attorney Superior Court of Solano County | Agree with proposed changes. | No response required. |
| Virginia Johnson Staff Attorney Superior Court of San Diego County | Agree with proposed changes. | No response required. |
| Los Angeles County Bar Association, Family Law Section Charles Wake | Rule 5.420 The LACBA Family Law Section opposes this proposed new rule. The LACBA Family Law Section generally supports efforts to protect against potential domestic violence. However, this rule is so sweeping in its application, and imposes such stringent requirements for “court-connected settlement service providers,” that it would significantly deter, if not entirely eliminate, participation by experienced family law attorneys in voluntary settlement and/or mediation programs. | The task force and committee proposed the rule based on the work of the Elkins Family Law Task Force and the recognition that some courts are implementing non-child custody settlement services. Given the significant number of family cases involving domestic violence, and the dangers associated with negotiating between parties where violence is an issue, members agreed it was important that courts providing such services have consistent practices in place in both child custody mediation and non-custody settlement services. The task force and committee made several changes to |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

Chapter 15. Settlement Services (rule 5.420)

| Commentator | Comment | Committee Response |
|-------------|--|--|
| | <p>Many experienced family law attorneys and forensic accountants in Los Angeles County volunteer to assist the courts in settling outstanding disputes by acting as either settlement officers or mediators. Their efforts significantly reduce the family law courts' case load. Those volunteers usually have busy practices of their own and are not involved for extended periods in the cases they mediate or attempt to settle.</p> <p>If this proposed rule is promulgated, the burden on those volunteers would drastically increase. They would be required to affirmatively review and identify cases that might involve domestic violence. If they identified such a case, the time spent would increase significantly. Finally, this rule arguably creates a basis for potential liability in the event of domestic violence associated with, or arising from, a settlement conference or mediation.</p> <p>A more balanced approach would establish a special settlement and/or mediation program for cases involving a history of domestic violence ("Domestic Violence Cases"). Special procedures such as those contemplated by this proposed rule would apply in Domestic Violence Cases, but settlement officers and/or mediators handling other cases would be exempted from those procedures. A party could request</p> | <p>rule 5.420 based on comments. The post-circulation changes to rule 5.420 were developed with specific input from members of the committee from the Superior Court of Los Angeles County who indicated that the changes addressed their concerns.</p> <p>The redrafted rule would require that courts providing settlement services implement procedures for handling domestic violence cases but unlike the proposed rule circulated, the redrafted rule would allow each court to determine the procedures that are most responsive to the services provided. The rule has also been rewritten to recommend, but not require, training on the issue of domestic violence for those providing settlement services.</p> <p>Training materials and programs have been offered on this topic to courts during 2011. The task force and committee recommend the continuation of such training to help courts develop the procedures described in rule 5.420.</p> <p>While there may be some additional burden placed on those courts that are providing settlement services and do not have procedures in place for handling domestic</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

Chapter 15. Settlement Services (rule 5.420)

| Commentator | Comment | Committee Response |
|---|---|---|
| | assignment to a settlement officer and/or mediator as a Domestic Violence Case. A settlement officer and/or mediator in a non-Domestic Violence Case could also refer that case as a Domestic Violence Case if appropriate. But unless a case was identified as a Domestic Violence Case, no special procedures would apply and no special requirements would be imposed on settlement officers and/or mediators. | violence matters, the task force and the committee recognize the importance of implementing procedures for safely handling these cases. Settlement services are a valuable tool for resolving cases. Given the number of family law cases involving domestic violence and potential lethality, it is important that parties be provided such services as safely and as effectively as possible. |
| Trial Court Presiding Judges Advisory Committee (TCPJAC)/Court Executive Adisory Committee (CEAC) Joint Working Group | <p>Proposed rule 5.420 (Domestic violence protocol for court-connected settlement service providers) p. 90</p> <p><input checked="" type="checkbox"/> Potential Fiscal Impact</p> <p><input checked="" type="checkbox"/> Increased training needs</p> <p>This proposal will create the following impacts on the courts:</p> <ul style="list-style-type: none"> • New subsection (c) could increase the workload of court-connected settlement service providers by requiring additional duties not currently performed. • Fiscal and workload impact - Requires separate sessions increasing the length and time of these sessions. • Workload impact - Requires safety planning which may or may not be the expertise of the providers. • Workload impact - Where the service provider is in the court facility, may impact court security requirements | <p>The task force and committee proposed the rule based on the work of the Elkins Family Law Task Force and the recognition that some courts are implementing non-child custody settlement services. Given the significant number of family cases involving domestic violence, and the dangers associated with negotiating between parties where violence is an issue, members agreed it was important that courts providing such services have consistent practices in place in both child custody mediation and non-custody settlement services.</p> <p>The task force and committee made several changes to rule 5.420 based on comments. The post-circulation changes to rule 5.420 were developed with specific input from members of the committee from the Superior Court of Los Angeles County who indicated that the changes addressed their concerns.</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

Chapter 15. Settlement Services (rule 5.420)

| Commentator | Comment | Committee Response |
|-------------|---|---|
| | <p>depending on local practice.</p> <ul style="list-style-type: none"> • Other impact – Because some courts do not have settlement programs, this rule could create the assumption that courts should have such programs. • Fiscal impact – This rule creates the expectation that it will be complied with, but there are no resources to do so. | <p>The redrafted rule would require that courts providing settlement services implement procedures for handling domestic violence cases but unlike the proposed rule circulated, the redrafted rule would allow each court to determine the procedures that are most responsive to the services provided. The rule has also been rewritten to recommend, but not require, training on the issue of domestic violence for those providing settlement services. Training materials and programs have been offered on this topic to courts during 2011. The task force and committee recommend the continuation of such training to help courts develop the procedures described in rule 5.420.</p> <p>While there may be some additional burden placed on those courts that are providing settlement services and do not have procedures in place for handling domestic violence matters, the task force and the committee recognize the importance of implementing procedures for safely handling these cases. Settlement services are a valuable tool for resolving cases. Given the number of family law cases involving domestic violence and potential lethality, it is important that parties be provided such services as safely and as effectively as possible.</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

Chapter 16. Limited Scope Representation (rule 5.425)

| Commentator | Comment | Committee Response |
|---|--|---|
| Association of Certified Family Law Specialists Diane Wasznicky, President San Rafael | Rule 5.425 This proposed rule deals with limited scope representation. Subdivision (d)(2) requires that once a limited scope is received, papers must be served on both the attorney providing the limited representation and the client. There is no reason to require service on both the attorney and the client. Such a requirement would increase the cost of litigation by requiring double service of documents. Limited scope counsel should not be served with documents outside the scope of his or her representation. There may be ethical issues involved in serving papers directly on a client who is represented by limited scope counsel. The proposed rule should be amended to require service on the attorney regarding papers which fall within the scope of the representation, or to the client when the papers fall outside that scope. | The task force and committee agree with the comment and recommend changing the rule to state as follows: (2) <u>After the notice in (1) is received and until either a substitution of attorney or an order to be relieved as attorney is filed and served,</u> (A) <u>The attorney must be served with all documents that relate only to the issues specified in the Notice of Limited Scope Representation (form FL-950); and</u> (B) <u>The party must be served with documents that relate to all other issues outside the scope of the attorney’s representation.</u> |
| Bay Area Legal Aid Jerel McCrary Family Law Regional Counsel Oakland | Rule 5.425 (d) (2) This proposed section provides for papers to be served on both the limited scope attorney and client following service and filing of a limited scope notice. It is not appropriate for counsel to have any direct contact with an opposing client once a notice of representation has been received, except in exceptional circumstances such as post-judgment motions and contempts. This section should be revised to read, “After the notice in (1) is received and until either a substitution of | See above response to Association of Certified Family Law Specialists. |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 16. Limited Scope Representation (rule 5.425) | | |
|---|--|--|
| Commentator | Comment | Committee Response |
| | <p>attorney or an order to be relieved as attorney is filed and served, papers regarding the services upon which the limited-scope attorney is representing as stated in the notice of representation must be served on the attorney providing the limited scope representation. Papers regarding other issues must be served on the opposing client and may also be served on the limited-scope attorney.</p> <p>Regarding (f)(2), this section is phrased as if it only applies to circumstances when the party seeking fees is always the litigant who has utilized undisclosed document preparation services. It should be rewritten to include circumstances when fees are sought against that party.</p> | <p>The limited purpose of rule 5.425(f)(2) is to indicate the information the litigant must disclose to the other party and the court for a proper determination of attorney’s fees. A party who seeks fees against that party should follow the procedures in the chapter relating to a request for orders.</p> |
| Christine N. Donovan, CFLS Sr. Staff Attorney Superior Court of Solano County | Agree with proposed changes. | No response required. |
| Executive Committee of the Family Law Section of the State Bar of California (FLEXCOM) Saul Bercovitch Legislative Counsel San Francisco | <p>Rule 5.425. This proposed rule deals with limited scope representation.</p> <p>FLEXCOM suggests the following modification to this rule:</p> <p>Subdivision (d)(2) requires that once a limited scope is received, papers must be served on both the attorney providing the limited representation and the client. There is no reason to</p> | See above response to Association of Certified Family Law Specialists. |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 16. Limited Scope Representation (rule 5.425) | | |
|--|---|--|
| Commentator | Comment | Committee Response |
| | require service on both the attorney and the client. Such a requirement would increase the cost of litigation by requiring double service of documents. Limited scope counsel should not be served with documents outside the scope of his or her representation. There may be ethical issues involved in serving papers directly on a client who is represented by limited scope counsel. The proposed rule should be amended to require service on the attorney regarding papers which fall within the scope of the representation, or to the client when the papers fall outside that scope. | |
| Virginia Johnson Staff Attorney Superior Court of San Diego County | Agree if modified: 5.427 - it would help the court to make the forms mandatory and delete the “or a comparable declaration....” language | Proposed rule 5.427 was included with this proposal only for context. The comment and the response will be included in the proposal titled “Family Law: Attorney’s Fees and Costs.” |
| Superior Court of Monterey County Minnie Monarque Director of Civil & Family Law Division | Proposed Rule 5.425: Limited scope representation; application of rules: At sub section (e) (3) raises the question that if there have been no objections, why would an updated FL-955 need to be filed? This requirement is redundant, and asks counsel to file paperwork that essentially would repeat paperwork that was previously filed with the court, noting that no objections have been received. The council may wish to consider requiring counsel to file additional papers only when an objection has been received. | Because the suggestion includes important substantive changes to the rule, the task force and committee believe that public comment should be sought before it is considered for adoption. They recommend that the suggestion be considered in a future rules cycle. |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

Chapter 16. Limited Scope Representation (rule 5.425)

| Commentator | Comment | Committee Response |
|--|---|--|
| Superior Court of Santa Clara County | <p>Rule 5.425 Limited scope representation. Capitalize "limited" in rule title.</p> <p>In subdivision (c) there should be some reference to single-hearing LSR. Subdivision (d)(2) should be amended to insert the following phrase at the beginning of the sentence, "Unless the limited scope agreement identifies single-hearing representation . . ." so that the attorney need not be required to file a substitution of attorney form or move to be relieved as counsel of record following the single-hearing appearance.</p> | <p>The task force and committee agree to include this change in the proposal they are recommending for adoption.</p> <p>The commentator states an important substantive change to the proposal which the task force and committee believe would require public comment before being considered for adoption. The task force and committee will consider this suggestion in a future rules cycle.</p> |
| Superior Court of Shasta County Stacy Larson, Family Law Facilitator, Redding | CRC 5.425(f)(2): The rule that attorneys who assist in document preparation need not disclose his/her involvement is troubling to me. Too often, it seems that if an attorney assists in preparation of documents, the litigants believe this creates an obligation on the part of the attorney to represent him/her. The litigant relies upon the attorney's language and advice without fully understanding what it means. The litigant is then even more disadvantaged in court when he/she is expected to explain, defend, and present the information in the documents. Facilitator's offices and self-help centers and document preparers are available to assist litigants with document preparation. Each of these services is rigidly schooled to not give legal advice and to educate the litigants to represent themselves. Allowing attorneys to assist in document | As stated in the Drafters' Notes in the invitation to comment, rule 5.425(f) is the renumbering of existing rule 5.71, with minor formatting changes. The rules do not limit any rights a party may have against an undisclosed attorney who fails to comply with the terms of their contract. |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 16. Limited Scope Representation (rule 5.425) | | |
|--|---|---|
| Commentator | Comment | Committee Response |
| | preparation without disclosure opens a door for attorneys to leave the customers hanging without any accountability for the attorney. | |
| Superior Court of Shasta County Stacy Larson, Family Law Facilitator. Redding | <p>CRC 5.425(d): This section was not readily provided in the “Attorney’s Fees” Invitation to Comment.</p> <p>I overall favor the unbundling of attorney services to make attorneys more accessible and affordable to self-represented litigants. However, I think it is important to clarify the boundaries of services provided and to ensure that litigants are informed of the pros/cons and limitations of these services. In this section, I think it is important to limit an attorney’s right to notice to the issues that fall within the attorney’s limited-scope representation.</p> <p>The limited-scope representation must be clearly stated on the substitution-of-counsel form, which must be filed with the court and served on all parties.</p> | <p>The task force and committee preferred to seek comment on SPR11-35 separately, as the proposal also included forms and rule 5.425 does not relate to rule 5.427.</p> <p>The task force and committee agree with this suggestion. See above response to Association of Certified Family Law Specialists.</p> <p>Rule 5.24(e) and item 4 on <i>Notice of Limited Scope Representation</i> (form FL-950) provide that a party has to sign <i>Substitution of Attorney—Civil</i> (form MC-050) at the completion of the representation. The task force and committee believe that this is sufficient to enable the court to relieve an attorney as counsel of record and they prefer not to impose additional requirements on the party or the attorney regarding the completion of this form.</p> |
| Hon. Sue M. Talia | As a national expert on limited scope representation, I agree | The Judicial Council adopted procedural rules and forms |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

Chapter 16. Limited Scope Representation (rule 5.425)

| Commentator | Comment | Committee Response |
|--|---|--|
| <p>Private family law judge Danville</p> | <p>with the simplification of the process to obtain relief in a family law action. I would prefer to see a Certificate of Completion of Limited Scope Representation rather than a procedure requiring court approval (and have successfully lobbied other states to adopt such a procedure). In my experience, the fear that the process will be abused and lawyers will withdraw before they have completed their agreed services has not been borne out in practice. I have received no complaints of abuse by lawyers, but many complaints by lawyers who say they would offer limited scope, but fear that the cumbersome nature of the process required to withdraw if the client doesn't sign a Substitution causes them to be reluctant to offer limited scope services. That being said, the current family law procedure is, in my opinion, terrible, and bringing it into line with the civil withdrawal model is at least a step in the right direction. Things happen fast in family law, and it is unfair to the limited scope lawyer to keep him or her chained to a rapidly developing case for things which are outside the scope of the limited service. Limited scope is an important service to litigants, the courts, and society, and current economic conditions argue that the need for effective limited scope legal assistance will only grow in future years. I continue to lament the fact that we draw our rules to protect against the small number of predatory practitioners, to the detriment of the vast majority of honest, dedicated attorneys who just want to do good quality work, get</p> | <p>regarding limited scope representation effective July 1, 2003, and January 1, 2007. In this proposal, the task force and committee recommend that the rules reflect civil rules 3.35 and 3.36 and provide a definition of "limited scope representation," an "application" section, identifying the types of limited scope representation, and include the procedures that relate to companion forms FL-950 and FL-955 used in family law proceedings.</p> <p>The commentator proposes substantive changes to existing procedural rules and forms relating to limited scope representation. The task force and committee believe that public comment should be sought before the suggestions are considered for adoption.</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Chapter 16. Limited Scope Representation (rule 5.425) | | |
|--|--|---------------------------|
| Commentator | Comment | Committee Response |
| | paid for it, and get out of a case when they are done. It seems unfair to adopt laws and rules which are so chilling that they punish the vast majority of competent professionals. Predators are better handled through the regulatory process than unduly cumbersome rules. I hope that some day in the not too distant future, California will re-think this philosophy and draft procedures to reward the good guys, and punish the bad guys some other way. However, in the meantime, I welcome any attempt, however feeble, to streamline the process for family lawyers to withdraw at the end of limited scope, to encourage them to continue to offer this important service. | |

| Chapter 17. Family Law Facilitator (rule 5.430) | | |
|---|------------------------------|---------------------------|
| Commentator | Comment | Committee Response |
| Christine N. Donovan, CFLS Sr. Staff Attorney Superior Court of Solano County | Agree with proposed changes. | No response required. |
| Virginia Johnson Staff Attorney Superior Court of San Diego County | Agree with proposed changes. | No response required. |

| Chapter 18. Court Coordination Rules (rules 5.440 and 5.445) |
|---|
|---|

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Commentator | Comment | Committee Response |
|---|---|---|
| Christine N. Donovan, CFLS Sr. Staff Attorney Superior Court of Solano County | Rule 5.440: Subpart (b) appropriately requires that information related to juvenile court cases be kept confidential. However, I suggest that subpart (b) be revised to recognize that exit orders from juvenile court cases are not confidential and are not appropriately subject to subpart (b). (See Welf. & Inst. Code § 362.4 [“The Judicial Council shall adopt forms for any custody or restraining order issued under this section. These form orders shall not be confidential.”]) | The task force and committee recommend that the rule be changed to state: (new language underlined): <u>(b) Other than forms providing custody and visitation orders to be filed in the family the court</u> , where the identification of a related case includes a disclosure of information relating to a juvenile dependency or delinquency matter involving the children of the parties in the pending family law case, the clerk must file that information in the confidential portion of the court file. |
| Virginia Johnson Staff Attorney Superior Court of San Diego County | Agree if modified: 5.440 - suggest including requirement that parties shall file a “Notice of Related Case” as soon as they become aware of any such case. This should be primarily the parties’ obligation. | The rule is intended to address the duties of the courts, if resources permit. The rule does not prevent courts from requiring parties to file a notice of related cases to assist with identifying related cases. |
| Trial Court Presiding Judges Advisory Committee (TCPJAC)/Court Executive Adisory Committee (CEAC) Joint Working Group | Proposed Rule 5.440 – Related Cases <input checked="" type="checkbox"/> Potential Fiscal Impact <input checked="" type="checkbox"/> Impact on Automated Systems <input checked="" type="checkbox"/> Increased Staff Workload This proposal will create the following impacts on the courts: <ul style="list-style-type: none"> • Increase in staff workload - Many courts currently do identify related cases. However, courts that do not currently identify related cases will experience a staff workload impact as this confers additional duties on staff. | Rule 5.440, <i>Related cases</i> , provides that where resources permit, courts should identify cases related to a pending family law case to avoid issuing conflicting orders and make effective use of court resources. The rule seeks to support implementation of approaches locally that could improve the efficient use of resources, including calendar time by avoiding duplication of efforts and issuance of conflicting orders that may increase the need for court resources and hearings. A court that identifies related cases could also avoid |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

Chapter 18. Court Coordination Rules (rules 5.440 and 5.445)

| Commentator | Comment | Committee Response |
|-------------|---|---|
| | <ul style="list-style-type: none"> Other impact - Not all case management systems collect minor children information. Modification to case management systems may be required to collect and search this data. | <p>conflicting appearances scheduled or multiple hearings on same issues. In addition, a related case search can identify critical information needed for a judicial officer to make comprehensive, fully informed decisions in a family law proceeding. Further, information gathered about risk through a related case search can result in increased safety for court staff and family members.</p> <p>The TCPJAC/CEAC raised concerns that rule 5.440 would have potential fiscal impacts on the courts, impact courts' automated systems, and increase staff workload. They stated that many courts currently do identify related cases. However, courts that do not currently identify related cases would experience a staff workload increase as this confers additional duties on staff. Further, not all case management systems collect information on minor children.</p> <p>While the proposed rule only requires searching for related cases where resources permit, many courts do complete these searches. Data from those courts indicate that it takes court staff an average of 15.57 minutes to open a new marital case and 19.58 minutes to open a domestic violence case. It only takes an average of 2.43 minutes to look for related cases. The range was</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

Chapter 18. Court Coordination Rules (rules 5.440 and 5.445)

| Commentator | Comment | Committee Response |
|-------------|---------|---|
| | | <p>between 1 – 5 minutes depending on the ability of the electronic case management system. Given the number of related cases in family law proceedings, this review can save significant resources in the time to open cases, in pulling multiple cases, or consolidating cases in the future.</p> <p>Further, as previously noted, the rule does not impact court workload because it does not require courts to identify related cases. The rule does not impose additional duties on court staff. Instead, the rule suggests that where resources permit, courts should identify related cases.</p> |

Division 2. Rules Applicable in Family and Juvenile Proceedings
Chapter 1. Contact and Coordination (rules 5.451 through 5.475)

| Commentator | Comment | Committee Response |
|---|-----------------------------|-----------------------|
| Christine N. Donovan, CFLS Sr. Staff Attorney Superior Court of Solano County | Agree with proposed changes | No response required. |

Chapter 2. Indian Child Welfare Act (rules 5.480 through 5.487)

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR11-36

Family Law: New, Restructured, and Amended Family Law Rules of Court (Adopt rules 5.2, 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.52, 5.60, 5.62, 5.63, 5.66, 5.68, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.170, 5.260, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, and 5.440; amend rules 5.35, 5.93, 5.146, 5.147, 5.148, 5.240, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal and renumber rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.119, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180)

All comments are verbatim unless indicated by an asterisk (*).

| Commentator | Comment | Committee Response |
|---|-----------------------------|---------------------------|
| Christine N. Donovan, CFLS Sr. Staff Attorney Superior Court of Solano County | Agree with proposed changes | No response required. |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

California Rules of Court
Title 5. Family and Juvenile Rules—Divisions 1& 2 (106 rules)

| No changes and Only technical changes to existing rules (58) | | Amended existing rules (18) | New rules (30) |
|---|-------|-----------------------------------|-------------------|
| 5.1 | 5.320 | 5.2 | 5.4 |
| 5.18 | 5.324 | 5.7 | 5.9 |
| 5.29 | 5.325 | 5.16 | 5.12 |
| 5.60 | 5.330 | 5.17 | 5.14 |
| 5.62 | 5.335 | 5.24 | 5.40 |
| 5.63 | 5.340 | 5.50 | 5.41 |
| 5.72 | 5.355 | 5.68 | 5.43 |
| 5.76 | 5.360 | 5.74 | 5.45 |
| 5.83 | 5.365 | 5.77 | 5.46 |
| 5.92 | 5.370 | 5.240(d)(4) | 5.52 |
| 5.111 | 5.375 | 5.260 | 5.66 |
| 5.113 | 5.380 | 5.390 | 5.68 |
| 5.146 | 5.381 | 5.401 | 5.90 |
| 5.147 | 5.386 | 5.402 | 5.94 |
| 5.148 | 5.392 | 5.411 | 5.96 |
| 5.210 | 5.427 | 5.413 | 5.98 |
| 5.215 | 5.430 | 5.415 | 5.112.1 |
| 5.220 | 5.445 | 5.425 | 5.115 |
| 5.225 | 5.451 | | 5.123 |
| 5.230 | 5.460 | | 5.125 |
| 5.235 | 5.475 | | 5.151 |
| 5.241 | 5.480 | | 5.165 |
| 5.242 | 5.481 | | 5.167 |
| 5.250 | 5.482 | | 5.169 |
| 5.300 | 5.483 | | 5.170 |
| 5.305 | 5.484 | | 5.260 |
| 5.310 | 5.485 | | 5.393 |
| 5.311 | 5.486 | | 5.394 |
| 5.315 | 5.487 | | 5.420 |
| | | | 5.440 |

California Rules of Court Reorganization
(From new number to former number)

Attachment B

Title 5. Family and Juvenile Rules—Divisions 1 & 2

| New Rule Number | Old Rule Number | Title |
|------------------------|--|---|
| | | Title 5. Family and Juvenile Rules |
| 5.1 | 5.1 | Title |
| | | Division 1. Family Rules |
| | | Chapter 1. General Provisions |
| | | <u>Article 1. General Provisions</u> |
| 5.2 | 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.140 | <u>Division title, application of rules and laws</u> |
| 5.4 | New | <u>Preemption; local rules and forms</u> |
| | | <u>Article 2. Use of Forms</u> |
| 5.7 | 5.25, 5.26, 5.27 | Use of forms |
| | | <u>Article 3. Appearance by Telephone</u> |
| 5.9 | New | <u>Appearance by telephone</u> |
| | | <u>Article 5. Discovery</u> |
| 5.12 | New | <u>Discovery motions</u> |
| | | <u>Article 6. Sanctions</u> |
| 5.14 | New | <u>Sanctions for violations of rules of court in family law cases</u> |
| | | <u>Chapter 2. Parties and Joinder of Parties</u> |
| | | <u>Article 1. Parties to Proceedings</u> |
| 5.16 | 5.100, 5.102 | Designation of parties |
| 5.17 | 5.104 | Other causes of action |
| 5.18 | 5.106 | Injunctive relief and reservation of jurisdiction |
| | | <u>Article 2. Joinder of Parties</u> |
| 5.24 | 5.150, 5.152, 5.154, 5.156, 5.158, 5.160 | Joinder of persons claiming interest |
| | | <u>Article 3. Joinder of Employee Pension Benefit Plan</u> |
| 5.29 | 5.162 | Joinder of employee pension benefit plan |
| | | <u>Chapter 3. Filing Fees and Fee Waivers</u> |
| | | <u>Article 1. Filing Fees and Fee Waivers</u> |
| 5.40 | New | <u>Filing Fees</u> |
| 5.41 | New | <u>Waiver of fees and costs</u> |
| | | <u>Article 2. Special Procedures</u> |
| 5.43 | New | <u>Fee Waiver denials; voided actions; dismissal</u> |
| 5.45 | New | <u>Repayment of waived court fees and costs in family law support actions</u> |
| 5.46 | New | <u>Waiver of fees and costs —Supreme Court or Court of Appeal</u> |

California Rules of Court Reorganization
(From new number to former number)

Attachment B

Title 5. Family and Juvenile Rules—Divisions 1 & 2

| | | |
|---------|--------------------------|--|
| | | <u>Chapter 4. Starting and Responding to a Family Law Case; Service of Papers</u> |
| | | <u>Article 1. Summonses, Notices, and Declarations</u> |
| 5.50 | 5.110 | <u>Papers issued by the court</u> |
| 5.52 | New | <u>Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)</u> |
| | | <u>Article 2. Initial Pleadings</u> |
| 5.60 | 5.114 and new provisions | <u>Petition or complaint; alternative relief</u> |
| 5.62 | 5.120 | <u>Appearance by respondent or defendant</u> |
| 5.63 | 5.121 | <u>Motion to quash proceeding or responsive relief</u> |
| | | <u>Article 3. Service of Papers</u> |
| 5.66 | New | <u>Proof of service</u> |
| | | <u>Article 4. Manner of Service</u> |
| 5.68 | 5.112 and new provisions | <u>Manner of service of summons and petition; response; jurisdiction</u> |
| 5.72 | New | <u>Court order for service of summons by publication or posting when respondent’s address is unknown</u> |
| | | <u>Article 5. Pleadings and Amended Pleadings</u> |
| 5.74 | 5.108 (b) and (c) | <u>Pleadings and amended pleadings</u> |
| | | <u>Article 6. Specific Proceedings</u> |
| 5.76 | 5.28 | <u>Domestic partnerships</u> |
| 5.77 | 5.130 | <u>Summary dissolution</u> |
| | | <u>Chapter 5. Family Centered Case Resolution Plans</u> |
| 5.83 | 5.83 | <u>Family centered case resolution</u> |
| | | <u>Chapter 6. Request for Court Orders</u> |
| | | <u>Article 1. General Provisions</u> |
| 5.90 | New | <u>Format of papers</u> |
| 5.91 | 5.110(c) | <u>Individual restraining order</u> |
| | | <u>Article 2. Filing and Service</u> |
| 5.92 | 5.92 | <u>Request for court order; response</u> |
| 5.94 | New | <u>Order shortening time; other filing requirements</u> |
| 5.96 | New | <u>Place and manner of filing</u> |
| | | <u>Article 3. Meet-and-Confer Conferences</u> |
| 5.98 | New | <u>Meet-and-confer requirements; document exchange</u> |
| | | <u>Article 4. Evidence at Hearing</u> |
| 5.111 | 5.118 | <u>Declarations supporting and responding to a request for court order</u> |
| 5.112.1 | New | <u>Declaration page limitation; exemptions</u> |
| 5.113 | 5.119 | <u>Live testimony</u> |
| 5.115 | New | <u>Judicial notice</u> |
| | | <u>Article 5. Reporting and Preparation of Order After Hearing</u> |

California Rules of Court Reorganization
(From new number to former number)

Title 5. Family and Juvenile Rules—Divisions 1& 2

| | | |
|-------|--------------------------|--|
| 5.123 | New | <u>Reporting of hearing proceedings</u> |
| 5.125 | New | <u>Preparation, service, and submission of order after hearing</u> |
| | | <u>Chapter 7. Request for Emergency Orders (Ex Parte Orders)</u> |
| | | <u>Article 1. Request for emergency orders</u> |
| 5.151 | New | <u>Request for emergency orders; application; required documents</u> |
| | | <u>Article 2. Notice, Service, Appearance</u> |
| 5.165 | New | <u>Requirements for notice</u> |
| 5.167 | New | <u>Service of application; temporary restraining orders</u> |
| 5.169 | New | <u>Personal appearance at hearing for temporary emergency orders</u> |
| | | <u>Article 3. Procedural matters not requiring notice (Non-Emergency Orders)</u> |
| 5.170 | New | <u>Matters not requiring notice to other parties</u> |
| | | <u>Chapter 8. Child Custody and Visitation (Parenting Time) Proceedings</u> |
| | | <u>Article 1. Child Custody Mediation</u> |
| 5.210 | 5.210 | Court-connected child custody mediation |
| 5.215 | 5.215 | Domestic violence protocol for Family Court Services |
| | | <u>Article 2. Child Custody Investigations and Evaluations</u> |
| 5.220 | 5.220 | Court-ordered child custody evaluations |
| 5.225 | 5.225 | Appointment requirements for child custody evaluators |
| 5.230 | 5.230 | Domestic violence training standards for court-appointed child custody investigators and evaluators |
| | | <u>Article 3. Ex Parte Communications</u> |
| 5.235 | 5.235 | Ex parte communication in child custody proceedings |
| | | <u>Article 4. Counsel Appointed to Represent A Child</u> |
| 5.240 | 5.240 | Appointment of counsel to represent a child in family law proceedings |
| 5.241 | 5.241 | Compensation of counsel appointed to represent a child in a family law proceeding |
| 5.242 | 5.242 | Qualifications, rights, and responsibilities of counsel appointed to represent a child in family law proceedings |
| | | <u>Article 5. Children’s Participation in Family Court</u> |
| 5.250 | 5.250 | <u>Children’s participation and testimony in family court proceedings</u> |
| | | <u>Chapter 9. Child, Spousal, and Domestic Partner Support</u> |
| | | <u>Article 1. General Provisions</u> |
| 5.260 | 5.128 and new provisions | <u>General provisions regarding support cases</u> |

California Rules of Court Reorganization
(From new number to former number)

Title 5. Family and Juvenile Rules—Divisions 1& 2

| | | |
|-------|-------|---|
| | | <u>Article 2. Certification of Statewide Uniform Guideline Support Calculators</u> |
| 5.275 | 5.275 | Standards for computer software to assist in determining support |
| | | <u>Chapter 10. Government Child Support Cases (Title IV-D Support Cases)</u> |
| 5.300 | 5.300 | Purpose, authority, and definitions |
| 5.305 | 5.305 | Hearing of matters by a judge under Family Code sections 4251(a) and 4252(b)(7) |
| 5.310 | 5.310 | Use of existing family law forms |
| 5.311 | 5.311 | Implementation of new and revised governmental forms by local child support agencies |
| 5.315 | 5.315 | Memorandum of points and authorities |
| 5.320 | 5.320 | Attorney of record in support actions under title IV-D of the Social Security Act |
| 5.324 | 5.324 | Telephone appearance in title IV-D hearings and conferences |
| 5.325 | 5.325 | Procedures for clerk's handling of combined summons and complaint |
| 5.330 | 5.330 | Procedures for child support case registry form |
| 5.335 | 5.335 | Procedures for hearings on interstate income withholding orders |
| 5.340 | 5.340 | Judicial education for child support commissioners |
| 5.350 | 5.350 | Procedures for hearings to set aside voluntary declarations of paternity when no previous action has been filed |
| 5.355 | 5.355 | Minimum standards of training for court clerk staff whose assignment includes title IV-D child support cases |
| 5.360 | 5.360 | Appearance by local child support agency |
| 5.365 | 5.365 | Procedure for consolidation of child support orders |
| 5.370 | 5.370 | Party designation in interstate and intrastate cases |
| 5.375 | 5.375 | Procedure for a support obligor to file a motion regarding mistaken identity |
| | | <u>Chapter 11. Domestic Violence Cases</u> |
| | | <u>Article 1. Domestic Violence Prevention Act Cases</u> |

California Rules of Court Reorganization
(From new number to former number)

Title 5. Family and Juvenile Rules—Divisions 1& 2

| | | |
|-------|-------------------------------|---|
| 5.380 | 5.380 | <u>Agreement and judgment of parentage in Domestic Violence Prevention Act cases</u> |
| 5.381 | 5.381 | <u>Modification of child custody, visitation, and support orders in Domestic Violence Prevention Act cases</u> |
| | | <u>Article 2. Tribal Court Protective Orders</u> |
| 5.386 | 5.386 | <u>Procedures for filing a tribal court protective order</u> |
| | | <u>Chapter 12. Separate Trials (Bifurcation) and Interlocutory Appeals</u> |
| | | <u>Article 1. Separate Trials</u> |
| 5.390 | 5.126 and 5.175 | <u>Bifurcation of issues</u> |
| | | <u>Article 2. Interlocutory Appeals</u> |
| 5.392 | 5.180 | <u>Interlocutory appeals</u> |
| | | <u>Chapter 13. Trials and Long-Cause Hearings</u> |
| 5.393 | New | <u>Setting trials and long-cause hearings</u> |
| 5.394 | New | <u>Trial or hearing brief</u> |
| | | <u>Chapter 14. Default and Judgments</u> |
| 5.401 | 5.122 | <u>Default</u> |
| 5.402 | 5.124 | <u>Request for default; forms</u> |
| 5.405 | 5.146 | <u>Judgment checklists</u> |
| 5.407 | 5.147 | <u>Review of default and uncontested judgment documents submitted on the basis of declarations under Family code section 2336</u> |
| 5.409 | 5.148 | <u>Default and uncontested hearings on judgments submitted on the basis of declarations under Family code section 2336</u> |
| 5.411 | 5.116 | <u>Stipulated judgments</u> |
| 5.413 | 5.134 | <u>Notice of entry of judgment</u> |
| 5.415 | 5.136 | <u>Completion of notice of entry of judgment</u> |
| | | <u>Chapter 15. Settlement Services</u> |
| 5.420 | New | <u>Domestic violence procedures for court-connected settlement services providers</u> |
| | | <u>Chapter 16. Limited Scope Representation; Attorney Fees and Costs</u> |
| | | <u>Article 1. Limited Scope Representation</u> |
| 5.425 | 5.70, 5.71 and new provisions | <u>Limited scope representation; application of rules</u> |
| | | <u>Article 2. Attorney’s Fees and Costs</u> |
| 5.427 | 5.93 | <u>Attorney’s fees and costs</u> |

California Rules of Court Reorganization
(From new number to former number)

Attachment B

Title 5. Family and Juvenile Rules—Divisions 1 & 2

| | | |
|-------|-------|--|
| | | <u>Chapter 17. Family Law Facilitator</u> |
| 5.430 | 5.35 | Minimum standards for the Office of the Family Law Facilitator |
| | | <u>Chapter 18. Court Coordination Rules</u> |
| 5.440 | New | <u>Related cases</u> |
| 5.445 | 5.450 | <u>Court communication protocol for domestic violence and child custody orders</u> |
| | | <u>Division 2. Rules Applicable in Family and Juvenile Proceedings</u> |
| | | <u>Chapter 1. Contact and Coordination</u> |
| 5.451 | 5.400 | Contact after adoption agreement |
| 5.460 | 5.410 | Request for sibling contact information under Family Code section 9205 |
| 5.475 | 5.475 | Custody and visitation orders following termination of a juvenile court proceeding or probate court guardianship proceeding (Fam. Code, § 3105; Welf. & Inst. Code, § 362.4; Prob. Code, § 1602) |
| | | <u>Chapter 2. Indian Child Welfare Act</u> |
| 5.480 | 5.480 | Application (Fam. Code, §§ 170, 177, 3041; Prob. Code, § 1459.5; Welf. & Inst. Code, §§ 224, 224.1) |
| 5.481 | 5.481 | Inquiry and notice (Fam. Code, §§ 177(a), 180; Prob. Code, §§ 1459.5(b), 1460.2; Welf. & Inst. Code, §§ 224.2, 224.3) |
| 5.482 | 5.482 | Proceedings after notice (Fam. Code, §§ 177(a), 180(d), (e); Prob. Code, §§ 1459.5(b), 1460.2(d), (e); Welf. & Inst. Code, §§ 224.2(e), (d); 25 U.S.C. § 1916(b)) |
| 5.483 | 5.483 | Transfer of case (Fam. Code, § 177(a); Prob. Code, § 1459.5(b); Welf. & Inst. Code, § 305.5; Guidelines for State Courts; Indian Child Custody Proceedings, 44 Fed.Reg. 67584 (Nov. 26, 1979) Bureau of Indian Affairs Guideline C) |
| 5.484 | 5.484 | Placement of an Indian child (Fam. Code, § 177(a); Prob. Code, § 1459.5(b); Welf. & Inst. Code, §§ 361, 361.31, 361.7(e)) |
| 5.485 | 5.485 | Termination of parental rights (Fam. Code, § 7892.5; Welf. & Inst. Code, §§ 361.7, 366.26(e)(2)(B)) |

California Rules of Court Reorganization
(From new number to former number)

Attachment B

Title 5. Family and Juvenile Rules—Divisions 1& 2

| | | |
|-------|-------|---|
| 5.486 | 5.486 | Petition to invalidate orders (Fam. Code, § 175(e); Prob. Code, § 1459(e); Welf. & Inst. Code, § 224(e)) |
| 5.487 | 5.487 | Rule 5.487. Adoption record keeping (Fam. Code, § 9208) |

California Rules of Court Reorganization
(From former rule number to new rule number)

Title 5. Family and Juvenile Rule—Divisions 1 &2

| Old Rule Number | New Rule Number | Title |
|------------------------|------------------------|--|
| | | Title 5. Family and Juvenile Rules |
| 5.1 | 5.1 | Title |
| | | Division 1. Family Rules |
| | | Chapter 1. General Provisions |
| 5.5 | 5.2(a) | Division title; <u>application of rules and laws</u> |
| 5.10 | 5.2(b) | Definitions and use of terms |
| 5.15 | 5.2(f) | Extensions of time |
| 5.20 | 5.2(c) | Application of rules |
| 5.21 | 5.2(d) | General law applicable |
| 5.22 | 5.2(e) | <u>Law applicable</u> to Other proceedings |
| 5.25 | 5.7(a) | Use of forms |
| 5.26 | 5.7(b) | Use of f Forms in nonfamily law proceedings |
| 5.27 | 5.7(c) | Use of i Interstate forms |
| 5.28 | 5.76 | Domestic partnerships |
| 5.35 | 5.430 | Minimum standards for the Office of the Family Law Facilitator |
| 5.70 | 5.425(f) | Nondisclosure of attorney assistance in preparation of court documents |
| 5.71 | 5.425(e) | Application <u>Procedures</u> to be relieved as counsel on completion of limited scope representation |
| 5.83 | 5.83 | Family centered case resolution |
| 5.92 | 5.92 | Request for court order; response |
| 5.93 | 5.427 | Attorney's fees and costs |
| | | Chapter 2. Procedural Rules |
| 5.100 | 5.16(a) | Designation of parties |
| 5.102 | 5.16(b) | Parties to proceeding |
| 5.104 | 5.17 | Other causes of action |
| 5.106 | 5.18 | Injunctive relief and reservation of jurisdiction |
| 5.108 | 5.74 | Pleadings <u>and amended pleadings</u> |
| 5.110 | 5.50 | Summons; restraining order <u>Papers issued by the court</u> |
| 5.112 | 5.68(c) | Continuing jurisdiction |
| 5.114 | 5.60(b) | <u>Request for a</u> Alternative relief |
| 5.116 | 5.411 | Stipulation for <u>Stipulated</u> judgments |

California Rules of Court Reorganization
(From former rule number to new rule number)

Title 5. Family and Juvenile Rule—Divisions 1 &2

| | | |
|-------|-----------------------------------|---|
| 5.118 | 5.111. | <u>Declarations supporting and responding to a request for court order</u> |
| 5.119 | 5.113 | Live testimony |
| 5.120 | 5.62 | Appearance <u>by respondent or defendant</u> |
| 5.121 | 5.63 | Motion to quash proceeding or responsive relief |
| 5.122 | 5.401 | Default |
| 5.124 | 5.402 | Request for default; <u>forms</u> |
| 5.126 | 5.390(c) | Alternate date of valuation |
| 5.128 | 5.260(a); 5.427(e)(2) | Financial declarations; |
| 5.130 | 5.77 | Summary dissolution |
| 5.134 | 5.413 | Notice of entry of judgment |
| 5.136 | 5.415 | Completion of notice of entry of judgment |
| 5.140 | 5.2(g) | Implied procedures |
| 5.146 | 5.405 | Judgment checklists (separate report) |
| 5.147 | 5.407 | Review of default and uncontested judgment documents submitted on the basis of declaration under Family code section 2336 (separate report) |
| 5.148 | 5.409 | Default and uncontested hearings on judgments submitted on the basis of declarations under Family code section 2336 (separate report) |
| | | Chapter 3. Joinder of Parties |
| 5.150 | 5.24, subparagraph and 5.24(a)(1) | Joinder of persons claiming interest |
| 5.152 | 5.24(b) | "Claimant" defined |
| 5.154 | 5.24(c) | Persons who may seek joinder |
| 5.156 | 5.24(d) | Form of joinder application |
| 5.158 | 5.24(e) | Determination <u>Court order</u> on joinder |
| 5.160 | 5.24(a)(2) | Pleading rules applicable |
| 5.162 | 5.29 | Joinder of employee pension benefit plan |
| | | Chapter 4. Bifurcation and Appeals |
| 5.175 | 5.390(a),(b),(d) | Bifurcation of issues |
| 5.180 | 5.392 | Interlocutory appeals |
| | | Chapter 5. Child Custody |
| 5.210 | 5.210 | Court-connected child custody mediation |
| 5.215 | 5.215 | Domestic violence protocol for Family Court Services |
| 5.220 | 5.220 | Court-ordered child custody evaluations |
| 5.225 | 5.225 | Appointment requirements for child custody evaluators |

California Rules of Court Reorganization
(From former rule number to new rule number)

Title 5. Family and Juvenile Rule—Divisions 1 &2

| | | |
|-------|-------|--|
| 5.230 | 5.230 | Domestic violence training standards for court-appointed child custody investigators and evaluators |
| 5.235 | 5.235 | Ex parte communication in child custody proceedings |
| 5.240 | 5.240 | Appointment of counsel to represent a child in family law proceedings |
| 5.241 | 5.241 | Compensation of counsel appointed to represent a child in a family law proceeding |
| 5.242 | 5.242 | Qualifications, rights, and responsibilities of counsel appointed to represent a child in family law proceedings |
| 5.250 | 5.250 | Children’s participation and testimony in family court proceedings |
| | | Chapter 6. Certification of Statewide Uniform Guideline Support Calculators |
| 5.275 | 5.275 | <u>Standards for computer software to assist in determining support</u> |
| | | Chapter 7. Rules for Title IV-D Support Actions |
| 5.300 | 5.300 | Purpose, authority, and definitions |
| 5.305 | 5.305 | Hearing of matters by a judge under Family Code sections 4251(a) and 4252(b)(7) |
| 5.310 | 5.310 | Use of existing family law forms |
| 5.311 | 5.311 | Implementation of new and revised governmental forms by local child support agencies |
| 5.315 | 5.315 | Memorandum of points and authorities |
| 5.320 | 5.320 | Attorney of record in support actions under title IV-D of the Social Security Act |
| 5.324 | 5.324 | Telephone appearance in title IV-D hearings and conferences |
| 5.325 | 5.325 | Procedures for clerk's handling of combined summons and complaint |
| 5.330 | 5.330 | Procedures for child support case registry form |
| 5.335 | 5.335 | Procedures for hearings on interstate income withholding orders |
| 5.340 | 5.340 | Judicial education for child support commissioners |
| 5.350 | 5.350 | Procedures for hearings to set aside voluntary declarations of paternity when no previous action has been filed |
| 5.355 | 5.355 | Minimum standards of training for court clerk staff whose assignment includes title IV-D child support cases |

California Rules of Court Reorganization
(From former rule number to new rule number)

Title 5. Family and Juvenile Rule—Divisions 1 &2

| | | |
|-------|-------|--|
| 5.360 | 5.360 | Appearance by local child support agency |
| 5.365 | 5.365 | Procedure for consolidation of child support orders |
| 5.370 | 5.370 | Party designation in interstate and intrastate cases |
| 5.375 | 5.375 | Procedure for a support obligor to file a motion regarding mistaken identity |
| | | Chapter 8. Chapter 11. Domestic Violence Cases |
| 5.380 | 5.380 | Agreement and judgment of parentage in Domestic Violence Prevention Act cases |
| 5.381 | 5.381 | Modification of child custody, visitation, and support orders in Domestic Violence Prevention Act cases |
| | | Division 2. Rules Applicable in Family and Juvenile Proceedings Chapter 1. Contact and Coordination |
| 5.400 | 5.451 | Contact after adoption agreement |
| 5.450 | 5.445 | Court communication protocol for domestic violence and child custody orders |
| 5.410 | 5.460 | Request for sibling contact information under Family Code section 9205 |
| 5.475 | 5.475 | Custody and visitation orders following termination of a juvenile court proceeding or probate court guardianship proceeding (Fam. Code, § 3105; Welf. & Inst. Code, § 362.4; Prob. Code, § 1602) |
| | | Chapter 2. Indian Child Welfare Act |
| 5.480 | 5.480 | Application (Fam. Code, §§ 170, 177, 3041; Prob. Code, § 1459.5; Welf. & Inst. Code, §§ 224, 224.1) |
| 5.481 | 5.481 | Inquiry and notice (Fam. Code, §§ 177(a), 180; Prob. Code, §§ 1459.5(b), 1460.2; Welf. & Inst. Code, §§ 224.2, 224.3) |
| 5.482 | 5.482 | Proceedings after notice (Fam. Code, §§ 177(a), 180(d), (e); Prob. Code, §§ 1459.5(b), 1460.2(d), (e); Welf. & Inst. Code, §§ 224.2(c), (d); 25 U.S.C. § 1916(b)) |
| 5.483 | 5.483 | Transfer of case (Fam. Code, § 177(a); Prob. Code, § 1459.5(b); Welf. & Inst. Code, § 305.5; Guidelines for State Courts; Indian Child Custody Proceedings, 44 Fed.Reg. 67584 (Nov. 26, 1979) Bureau of Indian Affairs Guideline C) |
| 5.484 | 5.484 | Placement of an Indian child (Fam. Code, § 177(a); Prob. |

California Rules of Court Reorganization
(From former rule number to new rule number)

Title 5. Family and Juvenile Rule—Divisions 1 & 2

| | | |
|-------|-------|---|
| | | Code, § 1459.5(b); Welf. & Inst. Code, §§ 361, 361.31, 361.7(e) |
| 5.485 | 5.485 | Termination of parental rights (Fam. Code, § 7892.5; Welf. & Inst. Code, §§ 361.7, 366.26(c)(2)(B)) |
| 5.486 | 5.486 | Petition to invalidate orders (Fam. Code, § 175(e); Prob. Code, § 1459(e); Welf. & Inst. Code, § 224(e)) |
| 5.487 | 5.487 | Rule 5.487. Adoption record keeping (Fam. Code, § 9208) |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44

Title 5. Family and Juvenile Rules

Division 1. Family Rules

Chapter 1. General Provisions

Rule 5.5. Division title

~~The rules in this division may be referred to as the Family Rules.~~

Drafters' Notes:

Existing rule 5.5 is repealed and renumbered as rule 5.2(a).

Rule 5.10. Definitions and use of terms

~~As used in this division, unless the context or subject matter otherwise requires, the following definitions apply:~~

~~(1) "Family Code" means that code enacted by chapter 162 of the Statutes of 1992 and any subsequent amendments to that code.~~

~~(2) "Proceeding" means a proceeding under the Family Code for dissolution of marriage, nullity of marriage, legal separation, custody and support of minor children, or actions under the Domestic Violence Prevention Act, the Uniform Parentage Act, the Uniform Child Custody Jurisdiction and Enforcement Act, or the Uniform Interstate Family Support Act; local child support agency actions under the Family Code; and contempt proceedings relating to family law or local child support agency actions.~~

~~(3) "Property" includes assets and obligations.~~

~~(4) "Best interest of the child" is described in Family Code section 3011.~~

Drafters' Notes:

Existing rule 5.10 is repealed and renumbered as rule 5.2(b).

Rule 5.15. Extensions of time

~~The time within which any act is permitted or required to be done by a party under these rules may be extended by the court upon such terms as may be just.~~

Drafters' Notes:

Existing rule 5.15 is repealed and renumbered as 5.2(f).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40

Rule 5.20. Application of rules

~~The rules in this division apply to every action and proceeding as to which the Family Code applies and, unless these rules elsewhere explicitly make them applicable, do not apply to any other action or proceeding.~~

Drafters' Notes:

Existing rule 5.20 is repealed and renumbered as rule 5.2(c).

Rule 5.21. General law applicable

~~Except as otherwise provided in these rules, all provisions of law applicable to civil actions generally apply to a proceeding under the Family Code if they would otherwise apply to such proceeding without reference to this rule. To the extent that these rules conflict with provisions in other statutes or rules, these rules prevail.~~

Drafters' Notes:

Existing rule 5.21 is repealed and renumbered as 5.2(d).

Rule 5.22. Other proceedings

~~In any action under the Family Code but not otherwise subject to these rules by virtue of rule 5.10(2), all provisions of law applicable to civil actions generally apply. Such an action must be commenced by filing an appropriate petition, and the respondent must file an appropriate response within 30 days after service of the summons and a copy of the petition.~~

Drafters' Notes:

Existing rule 5.22 is repealed and renumbered as 5.5(e), with minor changes to the title.

Rule 5.25. Status of family law and domestic violence forms

~~All forms adopted or approved by the Judicial Council for use in any proceeding under the Family Code, including any form in the FL, ADOPT, DV, and FJ series, are adopted as rules of court under the authority of Family Code section 211; article VI, section 6 of the California Constitution; and other applicable law.~~

Drafters' Notes:

Existing rule 5.25 is repealed and renumbered as 5.7(a).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43

Rule 5.26. Use of forms in nonfamily law proceedings

~~The forms specified by this division may be used, at the option of the party, in any proceeding involving a financial obligation growing out of the relationship of parent and child or husband and wife, to the extent they are appropriate to that proceeding.~~

Drafter's Notes:

Existing rule 5.26 is repealed and renumbered as rule 5.7(b).

Rule 5.27. Use of interstate forms

~~Notwithstanding any other provision of these rules, all Uniform Interstate Family Support Act forms approved by either the National Conference of Commissioners on Uniform State Laws or the U.S. Department of Health and Human Services are adopted for use in family law and other support actions in California.~~

Drafter's Notes:

Existing rule 5.27 is repealed and renumbered as rule 5.7(c).

Rule 5.28. Domestic partnerships

(a) — Procedures for obtaining a dissolution, a legal separation, or an annulment of a domestic partnership

~~(1) — *Petition Domestic Partnership (Family Law)* (form FL-103) must be filed to commence an action for dissolution, legal separation, or annulment of a domestic partnership. *Response Domestic Partnership (Family Law)* (form FL-123) must be filed in response to this petition.~~

~~(2) — All other forms and procedures used for the dissolution, legal separation, or annulment of a domestic partnership are the same as those used for the dissolution, legal separation, or annulment of a marriage, except that parties who qualify for a "Notice of Termination of Domestic Partnership" under Family Code section 299 must follow that procedure rather than file a summary dissolution proceeding with the superior court.~~

(b) — Terminology for rules and forms

~~For the purposes of family law rules and forms, the terms "spouse," "husband," and "wife" encompass "domestic partner." The terms "father" and "mother" encompass "parent." The terms "marriage" and "marital status" encompass "domestic partnership" and "domestic partnership status," respectively.~~

Drafter's Notes:

Existing rule 5.28(a) is repealed and renumbered as rule 5.76. Existing rule 5.28(b) is repealed, as the restructured rules include gender neutral terms or specifically state that the rules apply to spouses or domestic partners.

Rule 5.35. Minimum standards for the Office of the Family Law Facilitator

(a) — Authority

These standards are adopted under Family Code section 10010.

(b) — Family law facilitator qualifications

The Office of the Family Law Facilitator must be headed by at least one attorney, who is an active member of the State Bar of California, known as the family law facilitator. Each family law facilitator must possess the following qualifications:

- (1) — A minimum of five years experience in the practice of law, which must include substantial family law practice including litigation and/or mediation;
- (2) — Knowledge of family law procedures;
- (3) — Knowledge of the child support establishment and enforcement process under Title IV-D of the federal Social Security Act (42 U.S.C. § 651 et seq.);
- (4) — Knowledge of child support law and the operation of the uniform state child support guideline; and
- (5) — Basic understanding of law and psychological issues related to domestic violence.

(c) — Substituted experience

Courts may substitute additional experience, skills, or background appropriate to their community for the qualifications listed above.

(d) — Desirable experience

Additional desirable experience for a family law facilitator may include experience in working with low-income, semiliterate, self-represented, or non-English-speaking litigants.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40

~~(e) — Service provision~~

~~Services may be provided by other paid and volunteer members of the Office of the Family Law Facilitator under the supervision of the family law facilitator.~~

~~(f) — Protocol required~~

~~Each court must develop a written protocol to provide services when a facilitator deems himself or herself disqualified or biased.~~

~~(g) — Grievance procedure~~

~~Each court must develop a written protocol for a grievance procedure for processing and responding to any complaints against a family law facilitator.~~

~~(h) — Training requirements~~

~~Each family law facilitator should attend at least one training per year for family law facilitators provided by the Judicial Council.~~

Drafter’s Notes:

Existing rule 5.35 is renumbered as rule 5.430 without change to content.

Rule 5.70. Nondisclosure of attorney assistance in preparation of court documents

~~(a) — Nondisclosure~~

~~In a family law proceeding, an attorney who contracts with a client to draft or assist in drafting legal documents, but not to make an appearance in the case, is not required to disclose within the text of the document that he or she was involved in preparing the documents.~~

~~(b) — Attorney’s fees~~

~~If a litigant seeks a court order for attorney’s fees incurred as a result of document preparation, the litigant must disclose to the court information required for a proper determination of attorney’s fees including the name of the attorney who assisted in the preparation of the documents, the time involved or other basis for billing, the tasks performed, and the amount billed.~~

(e) — Applicability

This rule does not apply to an attorney who has made a general appearance or has contracted with his or her client to make an appearance on any issue that is the subject of the pleadings.

Drafter's Notes:

Existing rule 5.70 is repealed and renumbered as rule 5.425(f).

Rule 5.71. Application to be relieved as counsel on completion of limited scope representation**(a) — Applicability of this rule**

Notwithstanding rule 3.1362, an attorney who has completed the tasks specified in the *Notice of Limited Scope Representation* (form FL-950) may use the procedure in this rule to request that the attorney be relieved as counsel in cases in which the attorney has appeared before the court as attorney of record and the client has not signed a *Substitution of Attorney-Civil* (form MC-050).

(b) — Notice

An application to be relieved as counsel on completion of limited scope representation under Code of Civil Procedure section 284(2) must be directed to the client and made on the *Application to Be Relieved as Counsel Upon Completion of Limited Scope Representation* (form FL-955).

(c) — Service

The application must be filed with the court and served on the client and on all other parties and counsel who are of record in the case. The client must also be served with *Objection to Application to Be Relieved as Counsel Upon Completion of Limited Scope Representation* (form FL-956).

(d) — No objection

If no objection is filed within 15 days from the date that the *Application to Be Relieved as Counsel Upon Completion of Limited Scope Representation* (form FL-955) is served upon the client, the attorney making the application must file an updated form FL-955 indicating the lack of objection, along with a proposed *Order on Application to Be Relieved as Counsel Upon Completion of Limited Scope Representation* (form FL-958). The clerk will then forward the file with the proposed order for judicial signature.

(e) — Objection

If an objection is filed within 15 days, the clerk must set a hearing date on the Objection to Application to Be Relieved as Counsel Upon Completion of Limited Scope Representation (form FL-956). The hearing must be scheduled no later than 25 days from the date the objection is filed. The clerk must send the notice of the hearing to the parties and counsel.

(f) — Service of the order

After the order is signed, a copy of the signed order must be served by the attorney who has filed the *Application to Be Relieved as Counsel Upon Completion of Limited Scope Representation* (form FL-955) on the client and on all parties who have appeared in the case. The court may delay the effective date of the order relieving counsel until proof of service of a copy of the signed order on the client has been filed with the court.

Drafter's Notes:

Existing rule 5.71 is repealed and renumbered as rule 5.425(e).

Chapter 2. Procedural Rules**Rule 5.100. Designation of parties**

In proceedings filed under the Family Code, except for local child support agency actions, the party initiating the proceeding is the petitioner, and the other party is the respondent. In local child support agency actions, the responding party is the defendant and the parent who is not the defendant is referred to as the "Other Parent." Every other proceeding must be prosecuted and defended in the names of the real parties in interest.

Drafters' Notes:

Existing rule 5.100 is repealed and renumbered as rule 5.16(a).

Rule 5.102. Parties to proceeding

(a) — Except as provided in (c) or in rules 5.150 through 5.160, the only persons permitted to be parties to a proceeding for dissolution, legal separation, or nullity of marriage are the husband and wife.

(b) — Except as provided in (c) or in rules 5.150 through 5.160, the only persons permitted to be parties to a proceeding for dissolution, legal separation, or nullity of domestic partnership are the domestic partners.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40

~~(e) — In a nullity proceeding commenced by a person specified in Family Code section 2211, other than a proceeding commenced by or on behalf of the husband or wife in a marriage or one of the domestic partners in a domestic partnership, the person initiating the proceeding is a party and the caption on all papers must be suitably modified to reflect that fact.~~

Drafters' Notes:

Existing rule 5.102 is repealed and renumbered as rule 5.16(b).

Rule 5.104. Other causes of action

~~Neither party to the proceeding may assert against the other party or any other person any cause of action or claim for relief other than for the relief provided in these rules, Family Code sections 17400, 17402, and 17404, or other sections of the Family Code.~~

Drafters' Notes:

Existing rule 5.104 is repealed and renumbered as rule 5.17.

Rule 5.106. Injunctive relief and reservation of jurisdiction

~~(a) — Upon application as set out in rule 5.118, the court may grant injunctive or other relief against or for the following persons to protect the rights of either or both parties to the proceeding under the Family Code:~~

- ~~(1) — A person who has or claims an interest in the controversy;~~
- ~~(2) — A person who but for rule 5.102 would be a necessary party to a complete adjudication of the controversy; or~~
- ~~(3) — A person who is acting as a trustee, agent, custodian, or similar fiduciary with respect to any property subject to disposition by the court in the proceeding, or other matter subject to the jurisdiction of the court in the proceeding.~~

~~(b) — If the court is unable to resolve the issue in the proceeding under the Family Code, the court may reserve jurisdiction over the particular issue until such time as the rights of such person and the parties to the proceeding under the Family Code have been adjudicated in a separate action or proceeding.~~

Drafters' Notes:

Existing rule 5.106 is repealed and renumbered as rule 5.18.

Rule 5.108. Pleadings

~~(a) — The forms of pleading and the rules by which the sufficiency of pleadings is to be determined are solely those prescribed in these rules. Demurrers must not be used.~~

~~(b) — Amendments to pleadings, amended pleadings, and supplemental pleadings may be served and filed in conformity with the provisions of law applicable to such matters in civil actions generally, but the petitioner is not required to file a reply if the respondent has filed a response. If both parties have filed initial pleadings (petition and response), there may be no default entered on an amended pleading of either party.~~

Drafters' Notes:

Existing rule 5.108 is repealed and renumbered as rule 5.74 with a change to the title.

Rule 5.110. Summons; restraining order

~~(a) — Issuing the summons; form~~

~~Except for support proceedings initiated by a local child support agency, the procedure for issuance of summons in the proceeding is that applicable to civil actions generally. The clerk must not return the original summons, but must maintain it in the file.~~

~~(b) — Standard family law restraining order; handling by clerk~~

~~Notwithstanding Family Code section 233, a summons (form FL 110 or FL 210) with the standard family law restraining orders must be issued and filed in the same manner as a summons in a civil action and must be served and enforced in the manner prescribed for any other restraining order. If service is by publication, the publication need not include the restraining orders.~~

~~(c) — Individual restraining order~~

~~On application of a party and as provided in the Family Code, a court may issue any individual restraining order that appears to be reasonable or necessary, including those restraining orders included in the standard family law restraining orders. Individual orders supersede the standard family law restraining orders on the Family Law and Uniform Parentage Act summons.~~

Drafters' Notes:

Existing rule 5.110 is repealed and renumbered as rule 5.50 with a change to the title.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38

Rule 5.112. Continuing jurisdiction

~~The court has jurisdiction of the parties and control of all subsequent proceedings from the time of service of the summons and a copy of the petition. A general appearance of the respondent is equivalent to personal service within this state of the summons and a copy of the petition upon him or her.~~

Drafters' Notes:

Existing rule 5.112 is repealed and included in rule 5.68(c).

Rule 5.114. Alternative relief —

~~A party seeking alternative relief must so indicate in the petition or response.~~

Drafters' Notes:

Existing rule 5.114 is repealed and renumbered as rule 5.60(b) with a change to the title.

Rule 5.116. Stipulation for judgment

~~(a) — A stipulation for judgment (which must be attached to form FL-180 or form FL-250) may be submitted to the court for signature at the time of the hearing on the merits and must contain the exact terms of any judgment proposed to be entered in the case. At the end, immediately above the space reserved for the judge's signature, the stipulation for judgment must contain the following:~~

~~— The foregoing is agreed to by~~

| | |
|------------------------------------|------------------------------------|
| _____ (Petitioner) | _____ (Respondent) |
| _____ (Attorney for Petitioner) | _____ (Attorney for Respondent) |

~~(b) — A stipulation for judgment must include disposition of all matters subject to the court's jurisdiction for which a party seeks adjudication or an explicit reservation of jurisdiction over any matter not proposed for disposition at that time. A stipulation for judgment constitutes a written agreement between the parties as to all matters covered by the stipulation.~~

Drafters' Notes:

Existing rule 5.116 is repealed and renumbered as part of rule 5.411 with a change to the title.

1

2 **Rule 5.118. ~~Declarations supporting and responding to a request for court order~~**

3

4 **(a) ~~Length of declarations~~**

5

6 A declaration attached to a request for court order and responsive declaration must
7 not exceed 10 pages in length, and a reply declaration must not exceed 5 pages in
8 length, unless:

9

10 (1) ~~The declaration is of an expert witness, or~~

11

12 (2) ~~The court grants permission to extend the length of a declaration. A party
13 may apply to the court ex parte with written notice of the application to the
14 other parties, at least 24 hours before the papers are due, for permission to
15 file a longer declaration. The application must state reasons why the facts
16 cannot be set forth within the declaration page limit.~~

17

18 **(b) ~~Objections to declarations~~**

19

20 (1) ~~A declaration must be based on personal knowledge and explain how the
21 person has acquired that knowledge. The statements in the declaration must
22 be admissible in evidence.~~

23

24 (2) ~~If a party thinks that a declaration does not meet the requirements of (A), the
25 party must object to the declaration at the time of the hearing, or any
26 objection will be considered waived, and the declaration may be considered
27 as evidence.~~

28

29 (3) ~~If the court does not specifically rule on the objection raised by a party, the
30 objection is presumed overruled. If an appeal is filed, any presumed
31 overrulings can be challenged.~~

32

33 **Drafters' Notes:**

34 Existing rule 5.118 is repealed and renumbered as 5.111 with changes to format and
35 content.

36

37 **Rule 5.119. ~~Live testimony~~**

38

39 **(a) ~~Purpose~~**

40

41 Under Family Code section 217, at a hearing on any order to show cause or
42 notice of motion brought under the Family Code, absent a stipulation of the
43 parties or a finding of good cause under (b), the court must receive any live,

1 competent, and admissible testimony that is relevant and within the scope of
2 the hearing.

3
4

(b) Factors

5 A court must consider the following factors in making a finding of good cause
6 to refuse to receive live testimony under Family Code section 217:

7 (1) Whether a substantive matter is at issue—such as child custody,
8 visitation (parenting time), parentage, child support, spousal support,
9 requests for restraining orders, or the characterization, division, or
10 temporary use and control of the property or debt of the parties;

11
12

(2) Whether material facts are in controversy;

13
14

(3) Whether live testimony is necessary for the court to assess the
15 credibility of the parties or other witnesses;

16
17

(4) The right of the parties to question anyone submitting reports or other
18 information to the court;

19
20

(5) In testimony from persons other than the parties, whether there has
21 been compliance with Family Code section 217(e); and

22
23

(6) Any other factor that is just and equitable.

24
25

(c) Findings

26
27

If the court makes a finding of good cause to exclude live testimony, it must
28 state its reasons on the record or in writing. The court is required to state
29 only those factors on which the finding of good cause is based.

30
31

(d) Minor children

32
33

When receiving or excluding testimony from minor children, in addition to
34 fulfilling the requirements of Evidence Code section 765, the court must
35 follow the procedures in Family Code section 3042 and the California Rules
36 of Court governing children’s testimony.

37
38

(e) Witness lists

39
40

Witness lists required by Family Code section 217(e) must be served along
41 with the order to show cause, notice of motion, or responsive papers in the

1 manner required for the service of those documents. If no witness list has
 2 been served, the court may require an offer of proof before allowing any
 3 nonparty witness to testify.

4
 5 **(f) — Continuance**

6
 7 The court must consider whether or not a brief continuance is necessary to
 8 allow a litigant adequate opportunity to prepare for questioning any witness
 9 for the other parties. When a brief continuance is granted to allow time to
 10 prepare for questioning witnesses, the court should make appropriate
 11 temporary orders.

12
 13 **(g) — Questioning by court**

14
 15 Whenever the court receives live testimony from a party or any witness it
 16 may elicit testimony by directing questions to the parties and other witnesses.

17
 18 **Drafters' Notes:**

19 Existing rule 5.119 was adopted by the Judicial Council, effective July 1, 2011. The rule
 20 is repealed and renumbered as rule 5.113 with technical changes.

21
 22 **Rule 5.120. Appearance**

23
 24 **(a) —** Except as provided in Code of Civil Procedure section 418.10, a respondent or
 25 defendant is deemed to have appeared in a proceeding when he or she files:

26
 27 (1) — A response or answer;

28
 29 (2) — A notice of motion to strike, under section 435 of the Code of Civil
 30 Procedure;

31
 32 (3) — A notice of motion to transfer the proceeding under section 395 of the Code
 33 of Civil Procedure; or

34
 35 (4) — A written notice of his or her appearance.

36
 37 **(b) —** After appearance, the respondent or defendant or his or her attorney is entitled to
 38 notice of all subsequent proceedings of which notice is required to be given by
 39 these rules or in civil actions generally.

40 **(c) —** Where a respondent or defendant has not appeared, notice of subsequent
 41 proceedings need not be given to the respondent or defendant except as provided in
 42 these rules.

Drafters' Notes:

Existing rule 5.120 is repealed and renumbered as rule 5.62 with a change to the title.

Rule 5.121. Motion to quash proceeding or responsive relief

(a) ~~—Within the time permitted to file a response, the respondent may move to quash the proceeding, in whole or in part, for any of the following reasons:~~

~~(1) —Lack of legal capacity to sue;~~

~~(2) —Prior judgment or another action pending between the same parties for the same cause;~~

~~(3) —Failure to meet the residence requirement of Family Code section 2320; or~~

~~(4) —Statute of limitations in Family Code section 2211.~~

~~(b) —The motion to quash must be served in compliance with Code of Civil Procedure section 1005(b). If the respondent files a notice of motion to quash, no default may be entered, and the time to file a response will be extended until 15 days after service of the court's order.~~

~~(c) —Within 15 days after the filing of the response, the petitioner may move to quash, in whole or in part, any request for affirmative relief in the response for the grounds set forth in (a).~~

~~(d) —The parties are deemed to have waived the grounds set forth in (a) if they do not file a motion to quash within the time frame set forth.~~

~~(e) —When a motion to quash is granted, the court may grant leave to amend the petition or response and set a date for filing the amended pleadings. The court may also dismiss the action without leave to amend. The action may also be dismissed if the motion has been sustained with leave to amend and the amendment is not made within the time permitted by the court.~~

Drafters' Notes:

Existing rule 5.121 is repealed and renumbered as rule 5.63.

Rule 5.122. Default

(a) ~~—Upon proper application of the petitioner, the clerk must enter the respondent's default if the respondent or defendant fails within the time permitted to:~~

1 ~~(1) Make an appearance as stated in rule 5.120;~~

2
3 ~~(2) File a notice of motion to quash service of summons under section 418.10 of~~
4 ~~the Code of Civil Procedure; or~~

5
6 ~~(3) File a petition for writ of mandate under section 418.10 of the Code of Civil~~
7 ~~Procedure.~~

8
9 ~~(b) The petitioner may apply to the court for the relief sought in the petition at the time~~
10 ~~default is entered. The court must require proof to be made of the facts stated in the~~
11 ~~petition and may enter its judgment accordingly. The court may permit the use of a~~
12 ~~completed *Income and Expense Declaration* (form FL 150) or *Financial Statement*~~
13 ~~(*Simplified*) (form FL 155) and *Property Declaration* (form FL 160) as to all or~~
14 ~~any part of the proof required or permitted to be offered on any issue as to which~~
15 ~~they are relevant.~~

16
17 **Drafters' Notes:**

18 Existing rule 5.122 is repealed and renumbered as rule 5.401.

19
20 **Rule 5.124. Request for default**

21
22 ~~(a) No default may be entered in any proceeding unless a request has been completed~~
23 ~~in full on a *Request to Enter Default* (form FL 165) and filed by the petitioner.~~
24 ~~However, an *Income and Expense Declaration* (form FL 150) or *Financial*~~
25 ~~*Statement (Simplified)* (form FL 155) are not required if the petition contains no~~
26 ~~demand for support, costs, or attorney's fees. A *Property Declaration* (form FL~~
27 ~~160) is not required if the petition contains no demand for property.~~

28
29 ~~(b) For the purpose of completing the declaration of mailing, unless service was by~~
30 ~~publication and the address of respondent is unknown, it is not sufficient to state~~
31 ~~that the address of the party to whom notice is given is unknown or unavailable.~~

32
33 **Drafters' Notes:**

34 Existing rule 5.124 is repealed and renumbered as rule 5.402 with a change to the title.

35
36 **Rule 5.126. Alternate date of valuation**

37
38 ~~(a) Notice of motion~~

39
40 ~~An *Application for Separate Trial* (form FL 315) must be used to provide the~~
41 ~~notice required by Family Code section 2552(b).~~

42
43 ~~(b) Declaration accompanying notice~~

1
2 Form FL 315 must be accompanied by a declaration stating the following:

3
4 (1) ~~—The proposed alternate valuation date;~~

5
6 (2) ~~—Whether the proposed alternate valuation date applies to all or only a portion~~
7 ~~of the assets and, if the motion is directed to only a portion of the assets, the~~
8 ~~declaration must separately identify each such asset; and~~

9
10 (3) ~~—The reasons supporting the alternate valuation date.~~

11
12 **Drafters' Notes:**

13 Existing rule 5.126 is repealed and renumbered as part of rule 5.390(c).

14
15 **Rule 5.128. Financial declaration**

16
17 (a) ~~—A current *Income and Expense Declaration* (form FL 150) or a current *Financial*~~
18 ~~*Statement (Simplified)* (form FL 155), when such form is appropriate, and a current~~
19 ~~*Property Declaration* (form FL 160) must be served and filed by any party~~
20 ~~appearing at any hearing at which the court is to determine an issue as to which~~
21 ~~such declarations would be relevant. "Current" is defined as being completed~~
22 ~~within the past three months providing no facts have changed. Those forms must be~~
23 ~~sufficiently completed to allow determination of the issue.~~

24
25 (b) ~~—When a party is represented by counsel and attorney's fees are requested by either~~
26 ~~party, the section on the *Income and Expense Declaration* pertaining to the amount~~
27 ~~in savings, credit union, certificates of deposit, and money market accounts must be~~
28 ~~fully completed, as well as the section pertaining to the amount of attorney's fees~~
29 ~~incurred, currently owed, and the source of money used to pay such fees.~~

30
31 (c) ~~—A *Financial Statement (Simplified)* is not appropriate for use in proceedings to~~
32 ~~determine or modify spousal support or to determine attorney's fees.~~

33
34 **Drafters' Notes:**

35 Existing rule 5.128 is repealed and renumbered as rule 5.260(a) with changes to reflect
36 requirements for support hearings. Existing rule 5.128(b) is renumbered as 5.427(e)(2).

37
38 **Rule 5.130. Summary dissolution**

39
40 (a) ~~—Declaration of disclosure~~

41
42 ~~For the purposes of a proceeding for summary dissolution under chapter 5~~
43 ~~(beginning with section 2400) of part 3 of division 6 of the Family Code,~~

1 attachment to the petition of completed worksheet pages listing separate and
2 community property and obligations as well as an *Income and Expense Declaration*
3 (form FL 150) or *Financial Statement (Simplified)* (form FL 155) constitutes
4 compliance with the disclosure requirements of chapter 9 (beginning with section
5 2100) of part 1 of division 6 of the Family Code.
6

7 **(b) — Fee for filing**

8
9 The fee for filing a *Joint Petition for Summary Dissolution of Marriage* (form FL-
10 800) is the same as that charged for filing a *Petition Marriage* (form FL 100). No
11 additional fee may be charged for the filing of any form prescribed for use in a
12 summary dissolution proceeding, except as required by Government Code section
13 26859.
14

15 **Drafters' Notes:**

16 Existing rule 5.130 is repealed and renumbered as rule 5.77.
17

18 **Rule 5.134. Notice of entry of judgment**

19
20 **(a) —** Notwithstanding Code of Civil Procedure section 664.5, the clerk must give notice
21 of entry of judgment, using Notice of Entry of Judgment (form FL 190), to the
22 attorney for each party or to the party if self-represented, of the following:
23

24 (1) — A judgment of legal separation;

25
26 (2) — A judgment of dissolution;

27
28 (3) — A judgment of nullity;

29
30 (4) — A judgment establishing parental relationship (on form FL 190); or

31
32 (5) — A judgment regarding custody or support.
33

34 **(b) —** This rule applies to local child support agency proceedings except that the notice of
35 entry of judgment must be on *Notice of Entry of Judgment and Proof of Service by*
36 *Mail* (form FL 635).
37

38 **Drafters' Notes:**

39 Existing rule 5.134 is repealed and renumbered as part of rule 5.413.
40

41 **Rule 5.136. Completion of notice of entry of judgment**

42
43 **(a) — Required attachments**

1
2 Every person who submits a judgment for signature by the court must submit:

3
4 (1) ~~— Stamped envelopes addressed to the parties; and~~

5
6 (2) ~~— An original and at least two additional copies of the *Notice of Entry of*~~
7 ~~*Judgment* (form FL 190).~~

8
9 **~~(b) Fully completed~~**

10
11 Form FL 190 must be fully completed except for the designation of the date
12 entered, the date of mailing, and signatures. It must specify in the certificate of
13 mailing the place where notices have been given to the other party.

14
15 **~~(c) Address of respondent or defendant~~**

16
17 If there has been no appearance by the other party, the address stated in the
18 affidavit of mailing in part 3 of the *Request to Enter Default* (form FL 165) must be
19 the party's last known address and must be used for mailing form FL 190 to that
20 party. In support proceedings initiated by the local child support agency, an
21 envelope addressed to the child support agency need not be submitted. If service
22 was by publication and the address of respondent or defendant is unknown, those
23 facts must be stated in place of the required address.

24
25 **~~(d) Consequences of failure to comply~~**

26
27 Failure to complete the form or to submit the envelopes is cause for refusal to sign
28 the judgment until compliance with the requirements of this rule.

29
30 **~~(e) Application to local child support agencies~~**

31 This rule applies to local child support agency proceedings filed under the Family
32 Code except that:

33
34 (1) ~~— The local child support agency must use form *Notice of Entry of Judgment*~~
35 ~~*and Proof of Service by Mail* (form FL 635);~~

36
37 (2) ~~— The local child support agency may specify in the certificate of mailing that~~
38 ~~the address where the *Notice of Entry of Judgment* (form FL 190) was mailed~~
39 ~~is on file with the local child support agency; and~~

40
41 (3) ~~— An envelope addressed to the local child support agency need not be~~
42 ~~submitted.~~

1 **Drafters' Notes:**
2 Existing rule 5.136 is repealed and renumbered as rule 5.415.

3
4 **Rule 5.140. Implied procedures**

5
6 ~~In the exercise of the court's jurisdiction under the Family Code, if the course of~~
7 ~~proceeding is not specifically indicated by statute or these rules, any suitable process or~~
8 ~~mode of proceeding may be adopted by the court that is consistent with the spirit of the~~
9 ~~Family Code and these rules.~~

10
11 **Drafters' Notes:**
12 Existing rule 5.140 is repealed and renumbered as rule 5.1(g).

13
14
15 **Chapter 3. Joinder of Parties**

16
17 **Rule 5.150. Joinder of persons claiming interest**

18
19 ~~Notwithstanding any other rule in this division, a person who claims or controls an~~
20 ~~interest subject to disposition in the proceeding may be joined as a party to the~~
21 ~~proceeding only as provided in this chapter. Except as otherwise provided in this chapter,~~
22 ~~all provisions of law relating to joinder of parties in civil actions generally apply to the~~
23 ~~joinder of a person as a party to the proceeding.~~

24
25 **Drafters' Notes:**
26 Existing rule 5.150 is repealed and renumbered as rule 5.24 (first subparagraph) and
27 5.24(a)(1).

28
29 **Rule 5.152. "Claimant" defined**

30
31 ~~As used in this chapter, "claimant" means a person joined or sought or seeking to be~~
32 ~~joined as a party to the proceeding.~~

33
34 **Drafters' Notes:**
35 Existing rule 5.152 is renumbered as 5.24(b).

36
37 **Rule 5.154. Persons who may seek joinder**

38
39 ~~(a) — The petitioner or the respondent may apply to the court for an order joining a~~
40 ~~person as a party to the proceeding who has or claims custody or physical control~~
41 ~~of any of the minor children subject to the action, or visitation rights with respect to~~
42 ~~such children, or who has in his or her possession or control or claims to own any~~
43 ~~property subject to the jurisdiction of the court in the proceeding.~~

1 ~~(b) — A person who has or claims custody or physical control of any of the minor~~
2 ~~children subject to the action, or visitation rights with respect to such children, may~~
3 ~~apply to the court for an order joining himself or herself as a party to the~~
4 ~~proceeding.~~

5
6 ~~(c) — A person served with an order temporarily restraining the use of property that is in~~
7 ~~his or her possession or control or that he or she claims to own, or affecting the~~
8 ~~custody of minor children subject to the action, or visitation rights with respect to~~
9 ~~such children, may apply to the court for an order joining himself or herself as a~~
10 ~~party to the proceeding.~~

11
12 **Drafters' Notes:**
13 Existing rule 5.154 is renumbered as 5.24(c).

14
15 **Rule 5.156. Form of joinder application**

16
17 ~~(a) — All applications for joinder other than for an employee pension benefit plan must~~
18 ~~be made by serving and filing form a *Notice of Motion and Declaration for Joinder*~~
19 ~~(form FL-371). The hearing date must be less than 30 days from the date of filing~~
20 ~~the notice. The completed form must state with particularity the claimant's interest~~
21 ~~in the proceeding and the relief sought by the applicant, and it must be~~
22 ~~accompanied by an appropriate pleading setting forth the claim as if it were~~
23 ~~asserted in a separate action or proceeding.~~

24
25 ~~(b) — A blank copy of *Responsive Declaration to Motion for Joinder and Consent Order*~~
26 ~~for Joinder (form FL-373) must be served with the *Notice of Motion and*~~
27 ~~accompanying pleading.~~

28
29 **Drafters' Notes:**
30 Existing rule 5.156 is amended and renumbered as rule 5.24(d).

31
32 **Rule 5.158. Determination on joinder**

33
34 **(a) — Mandatory joinder**

35
36 ~~The court must order joined as a party to the proceeding any person the court~~
37 ~~discovers has physical custody or claims custody or visitation rights with respect to~~
38 ~~any minor child of the marriage.~~

39
40 **(b) — Permissive joinder**

41
42 ~~The court may order that a person be joined as a party to the proceeding if the court~~
43 ~~finds that it would be appropriate to determine the particular issue in the proceeding~~

1 and that the person to be joined as a party is either indispensable to a determination
2 of that issue or necessary to the enforcement of any judgment rendered on that
3 issue.

4
5 In determining whether it is appropriate to determine the particular issue in the
6 proceeding, the court must consider its effect upon the proceeding, including:

7
8 (1) ~~Whether the determination of that issue will unduly delay the disposition of~~
9 ~~the proceeding;~~

10
11 (2) ~~Whether other parties would need to be joined to render an effective~~
12 ~~judgment between the parties;~~

13
14 (3) ~~Whether the determination of that issue will confuse other issues in the~~
15 ~~proceeding; and~~

16
17 (4) ~~Whether the joinder of a party to determine the particular issue will~~
18 ~~complicate, delay, or otherwise interfere with the effective disposition of the~~
19 ~~proceeding.~~

20
21 **(e) — Procedure upon joinder**

22
23 If the court orders that a person be joined as a party to the proceeding under
24 subdivision (a) of rule 5.154, the court must direct that a summons be issued on
25 *Summons (Joinder)* (form FL-375) and that the claimant be served with a copy of
26 *Notice of Motion and Declaration for Joinder* (form FL-371), the pleading attached
27 thereto, the order of joinder, and the summons. The claimant has 30 days after
28 service within which to file an appropriate response.

29
30 **Drafters' Notes:**
31 Existing rule 5.158 is renumbered as rule 5.24(e) with a minor change to the title.

32
33 **Rule 5.160. Pleading rules applicable**

34
35 Except as otherwise provided in this chapter or by the court in which the proceeding is
36 pending, the law applicable to civil actions generally governs all pleadings, motions, and
37 other matters pertaining to that portion of the proceeding as to which a claimant has been
38 joined as a party to the proceeding in the same manner as if a separate action or
39 proceeding not subject to these rules had been filed.

40
41 **Drafters' Notes:**
42 Existing rule 5.160 is amended and renumbered as rule 5.24(a)(2).

1
2 **Rule 5.162. Joinder of employee pension benefit plan**

3
4 (a) — Every request for joinder of employee pension benefit plan and order and every
5 pleading on joinder must be submitted on *Request for Joinder of Employee Benefit*
6 *Plan and Order* (form FL 372) and *Pleading on Joinder Employee Benefit Plan*
7 (form FL 370).

8
9 (b) — Every summons issued on the joinder of employee pension benefit plan must be on
10 *Summons (Joinder)* (form FL 375).

11
12 (c) — Every notice of appearance of employee pension benefit plan and responsive
13 pleading file under Family Code section 2063(b) must be given on *Notice of*
14 *Appearance and Response of Employee Benefit Plan* (form FL 374).

15
16 **Drafters' Notes:**

17 Existing rule 5.162 is repealed and renumbered as rule 5.29.

18
19 **Chapter 4. Bifurcation and Appeals**

20
21 **Rule 5.175. Bifurcation of issues**

22
23 (a) — **Bifurcation of issues**

24
25 On noticed motion of a party, the stipulation of the parties, or its own motion, the
26 court may bifurcate one or more issues to be tried separately before other issues are
27 tried. The motion must be heard not later than the trial setting conference.

28
29 (b) — **Notice by clerk**

30
31 The clerk must mail copies of the order deciding the bifurcated issue and any
32 statement of decision under rule 3.1591 to the parties within 10 days of their filing
33 and must file a certificate of mailing.

34
35 (c) — **When to bifurcate**

36
37 The court may try separately one or more issues before trial of the other issues if
38 resolution of the bifurcated issue is likely to simplify the determination of the other
39 issues. Issues that may be appropriate to try separately in advance include:

40
41 (1) — Validity of a postnuptial or premarital agreement;

42
43 (2) — Date of separation;

1
2 ~~(3)– Date to use for valuation of assets;~~

3
4 ~~(4)– Whether property is separate or community;~~

5
6 ~~(5)– How to apportion increase in value of a business; or~~

7
8 ~~(6)– Existence or value of business or professional goodwill.~~

9
10 **Drafters' Notes:**

11 Existing rule 5.175 is repealed and renumbered as part of rule 5.390(a), (b), and (d).

12
13 **Rule 5.180. Interlocutory appeals**

14
15 **~~(a)– Applicability~~**

16
17 ~~This rule does not apply to appeals from the court's termination of marital status as~~
18 ~~a separate issue, or to appeals from other orders that are separately appealable.~~

19
20 **~~(b)– Certificate of probable cause for appeal~~**

21
22 ~~(1)– The order deciding the bifurcated issue may include an order certifying that~~
23 ~~there is probable cause for immediate appellate review of the issue.~~

24
25 ~~(2)– If it was not in the order, within 10 days after the clerk mails the order~~
26 ~~deciding the bifurcated issue, a party may notice a motion asking the court to~~
27 ~~certify that there is probable cause for immediate appellate review of the~~
28 ~~order. The motion must be heard within 30 days after the order deciding the~~
29 ~~bifurcated issue is mailed.~~

30
31 ~~(3)– The clerk must promptly mail notice of the decision on the motion to the~~
32 ~~parties. If the motion is not determined within 40 days after mailing of the~~
33 ~~order on the bifurcated issue, it is deemed granted on the grounds stated in~~
34 ~~the motion.~~

35
36 **~~(c)– Content and effect of certificate~~**

37
38 ~~(1)– A certificate of probable cause must state, in general terms, the reason~~
39 ~~immediate appellate review is desirable, such as a statement that final~~
40 ~~resolution of the issue:~~

41
42 ~~(A)– Is likely to lead to settlement of the entire case;~~

43

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43

- ~~(B)– Will simplify remaining issues;~~
- ~~(C)– Will conserve the courts' resources; or~~
- ~~(D)– Will benefit the well being of a child of the marriage or the parties.~~

~~(2)– If a certificate is granted, trial of the remaining issues may be stayed. If trial of the remaining issues is stayed, unless otherwise ordered by the trial court on noticed motion, further discovery must be stayed while the certification is pending. These stays terminate upon the expiration of time for filing a motion to appeal if none is filed, or upon the Court of Appeal denying all motions to appeal, or upon the Court of Appeal decision becoming final.~~

~~(d)– Motion to appeal~~

~~(1)– If the certificate is granted, a party may, within 15 days after the mailing of the notice of the order granting it, serve and file in the Court of Appeal a motion to appeal the decision on the bifurcated issue. On ex parte application served and filed within 15 days, the Court of Appeal or the trial court may extend the time for filing the motion to appeal by not more than an additional 20 days.~~

~~(2)– The motion must contain:~~

- ~~(A)– A brief statement of the facts necessary to an understanding of the issue;~~
- ~~(B)– A statement of the issue; and~~
- ~~(C)– A statement of why, in the context of the case, an immediate appeal is desirable.~~

~~(3)– The motion must include or have attached:~~

- ~~(A)– A copy of the decision of the trial court on the bifurcated issue;~~
- ~~(B)– Any statement of decision;~~
- ~~(C)– The certification of the appeal; and~~
- ~~(D)– A sufficient partial record to enable the Court of Appeal to determine whether to grant the motion.~~

1 (4) ~~—A summary of evidence and oral proceedings, if relevant, supported by a~~
2 ~~declaration of counsel may be used when a transcript is not available.~~

3
4 (5) ~~—The motion must be accompanied by the filing fee for an appeal under rule~~
5 ~~8.100(c) and Government Code sections 68926 and 68926.1.~~

6
7 (6) ~~—A copy of the motion must be served on the trial court.~~

8
9 ~~(c) **Proceedings to determine motion**~~

10
11 (1) ~~—Within 10 days after service of the motion, an adverse party may serve and~~
12 ~~file an opposition to it.~~

13
14 (2) ~~—The motion to appeal and any opposition will be submitted without oral~~
15 ~~argument, unless otherwise ordered.~~

16
17 (3) ~~—The motion to appeal is deemed granted unless it is denied within 30 days~~
18 ~~from the date of filing the opposition or the last document requested by the~~
19 ~~court, whichever is later.~~

20
21 (4) ~~—Denial of a motion to appeal is final forthwith and is not subject to rehearing.~~
22 ~~A party aggrieved by the denial of the motion may petition for review by the~~
23 ~~Supreme Court.~~

24
25 ~~(f) **Proceedings if motion to appeal is granted**~~

26
27 (1) ~~—If the motion to appeal is granted, the moving party is deemed an appellant,~~
28 ~~and the rules governing other civil appeals apply except as provided in this~~
29 ~~rule.~~

30
31 (2) ~~—The partial record filed with the motion will be considered the record for the~~
32 ~~appeal unless, within 10 days from the date notice of the grant of the motion~~
33 ~~is mailed, a party notifies the Court of Appeal of additional portions of the~~
34 ~~record that are needed for a full consideration of the appeal.~~

35
36 (3) ~~—If a party notifies the court of the need for an additional record, the additional~~
37 ~~material must be secured from the trial court by augmentation under rule~~
38 ~~8.155, unless it appears to the Court of Appeal that some of the material is~~
39 ~~not needed.~~

40
41 (4) ~~—Briefs must be filed under a schedule set for the matter by the Court of~~
42 ~~Appeal.~~

1 ~~(g) — Review by writ or appeal~~

2

3 ~~The trial court's denial of a certification motion under (b) does not preclude review~~
4 ~~of the decision on the bifurcated issue by extraordinary writ.~~

5

6 ~~(h) — Review by appeal~~

7

8 ~~None of the following precludes review of the decision on the bifurcated issue upon~~
9 ~~appeal of the final judgment:~~

10

11 ~~(1) — A party's failure to move for certification under (b) for immediate appeal;~~

12

13 ~~(2) — The trial court's denial of a certification motion under (b) for immediate~~
14 ~~appeal;~~

15

16 ~~(3) — A party's failure to move to appeal under (d); and~~

17

18 ~~(4) — The Court of Appeals denial of a motion to appeal under (d).~~

19

20 **Drafters' Notes:**

21 Existing rule 5.180 is repealed and renumbered as rule 5.392 without change to content.

22