TULARE COUNTY SUPERIOR COURT
LOCAL RULES

VISALIA
County Civic Center
221 South Mooney Boulevard
Visalia, CA 93291
559-733-6348

DINUBA
640 South Alta Avenue
Dinuba, CA 93618
559-591-5815

PORTERVILLE
87 East Morton Avenue
Porterville, CA 93257
559-782-4710

TULARE
425 East Kern Street
Tulare, CA 93274
559-685-2550

JUVENILE JUSTICE CENTER
11200 Avenue 368
Visalia, CA 93291
559-713-3157

TULARE COUNTY SUPERIOR COURT

It is hereby ordered that the attached Local Rules of the Tulare County Superior Court are formally adopted and supersede all other local rules heretofore in effect; and

It is further ordered that the effective date of the Local Rules of the Tulare County Superior Court will be January 1, 2007.

Date: 12/01/06

Honorable Paul A. Vortmann
Presiding Judge
Tulare County Superior Court

I concur:

Ronn M. Couillard, Judge

Patrick J. O'Hara, Judge

Melinda M. Reed, Judge

Walter Gorelick, Judge

Stephen Drew, Judge

Elisabeth Krant, Judge

Gary L. Paden, Judge

James Hollman, Judge

Joseph A. Kalashian, Judge

Gerald F. Sevier, Judge

Hoyt L. Hicks, Judge

Darryl B. Ferguson, Judge

Glade Roper, Judge

Juliet L. Boccone, Judge

Valeriano Saucedo, Judge

(Revised 01/01/07)

TULARE COUNTY SUPERIOR COURT
LOCAL RULES OF COURT

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LIST OF CURRENTLY EFFECTIVE RULES
EFFECTIVE JANUARY 1, 2007

		EFFECTIVE DATE	REVISED DATE
CHAPTER 1 – GENERAL ADMINISTRATION OF THE COURT			
Rule 100	Hours of Operation; Coin Will Not Be Accepted For Payment	7/1/00	1/1/07
Rule 101	Objectives and Availability of Local Rules	1/1/03	1/1/07
Rule 102	Amendment of Rules	7/1/00	1/1/07
Rule 103	Sanctions	7/1/97	1/1/07
Rule 104	Weapons and *Oleoresin capsicum*	7/1/97	1/1/07
Rule 105	Gang-Related Clothing and Personal Property	1/1/03	1/1/07
Rule 106	Cellular Telephones and Other Electronic Devices	7/1/97	1/1/07
Rule 107	Smoking, Food, Drinks	7/1/00	1/1/07
Rule 108	CourtCall Telephonic Appearance of Counsel/Parties	1/1/03	1/1/07
Rule 109	Appointment of Counsel	7/1/97	1/1/07
Rule 110	Court Order to Deposit Money with Clerk of Superior Court	1/1/03	1/1/07
Rule 111	Jurors	1/1/03	1/1/07
Rule 112	Proposed Jury Instructions	7/1/00	1/1/07
Rule 113	Reimbursement of Waived Fees	7/1/00	1/1/07
Rule 114	Fax Filing	1/1/03	1/1/07
Rule 115	Court Reporter Policy	1/1/07	
Rule 116	Copying and Reproducing Official Court Records	1/1/07	
CHAPTER 2 – ORGANIZATION OF COURT			
Rule 200	Presiding Judge	1/1/03	1/1/07
Rule 201	Departments of the Court	1/1/03	1/1/07
Rule 202	Superior Court Executive Officer/ Jury Commissioner	1/1/03	1/1/07
Rule 203	Superior Court Commissioners and Referees	1/1/03	1/1/07
Rule 204	Attorneys Volunteering to Sit as Judge Pro Tem	1/1/07	

Rule 205	Grand Jury Selection	1/1/03	1/1/07

CHAPTER 3 – DISTRIBUTION OF BUSINESS

Rule 300	Court Calendar	7/1/00	1/1/07
Rule 301	Setting the Calendar for Hearings And Trials	7/1/97	1/1/07
Rule 302	Assignment to Departments	7/1/97	1/1/07

CHAPTER 4 – APPELLATE DEPARTMENT

Rule 400	Appeal Hearings	1/1/03	1/1/07
Rule 401	Notice of Appeal	7/1/07	
Rule 402	Settled Statement or Reporter's Transcript	7/1/00	1/1/07
Rule 403	Briefs on Appeal	1/1/07	
Rule 404	Proof of Service	7/1/89	1/1/07
Rule 405	Orders Extending or Shortening Time	7/1/00	1/1/07
Rule 406	Oral Argument	6/1/83	1/1/07
Rule 407	Decisions	7/1/00	1/1/07
Rule 408	Writs and/or Need for Exparte Hearing	7/1/07	

CHAPTER 5 – PRESENTATION, FILING, AND SERVICE OF COURT PAPERS

Rule 500	Statements of Decision, Orders, Judgments and Decrees	7/1/00	1/1/07
Rule 501	Submission of Written Orders	7/1/00	1/1/07
Rule 502	Presentation of Documents and Service Of Orders	7/1/00	1/1/07
Rule 503	Entry of Court Orders in Minutes	7/1/00	1/1/07
Rule 504	Guardian ad Litem Forms	1/1/03	1/1/07
Rule 505	Self-Adressed Stamped Envelope For Conformed Copies	7/1/00	1/1/07
Rule 506	Filing of Form With Writing on Each Side	7/1/00	1/1/07

CHAPTER 6 – MANAGING CIVIL CASES

Rule 600	Case Management Conference	1/1/03	1/1/07
Rule 601	Policy	1/1/03	1/1/07
Rule 602	Reduction of Unnecessary Paperwork And Avoidance of Unnecessary Court Appearances	1/1/03	1/1/07
Rule 603	Case Designation	1/1/03	1/1/07
Rule 604	Service of Complaint	7/1/97	1/1/07
Rule 605	Arbitration	7/1/97	1/1/07
Rule 606	Settlement Conference	7/1/97	1/1/07

Rule 607	Continuances; Taking a Matter off Calendar	7/1/97	1/1/07
Rule 608	Pretrial Motions – In Limine	7/1/97	1/1/07
Rule 609	Uninsured Motorist Cases	1/1/03	1/1/07
Rule 610	Bankruptcy	7/1/97	1/1/07

CHAPTER 7 – CIVIL LAW AND MOTION

Rule 700	Preemption	7/1/00	1/1/07
Rule 701	Adoption of Tentative Ruling System	7/1/97	1/1/07
Rule 702	Once Tentative Ruling Has Issued a Party Cannot Take a Matter off Calendar	7/1/00	1/1/07
Rule 703	Courtesy Copy to Research Attorney	1/1/03	1/1/07
Rule 704	Scheduling of Civil Exparte Hearings	1/1/03	1/1/07
Rule 705	Judicial Notice Request	7/1/00	1/1/07
Rule 706	Guardian Ad Litem Appointments and Compromise of Minors' Claim	1/1/03	1/1/07
Rule 707	Affirmative Duty to Explore Annuity for Minors' Compromise	1/1/03	1/1/07
Rule 708	Attorney Fees on a Default Action on Note Or Contract	1/1/03	1/1/07
Rule 709	Actions Arising Under the California Environmental Quality Act	1/1/03	1/1/07

CHAPTER 8 – CRIMINAL TRIALS AND PRETRIAL MATTERS

Rule 800	Placing of Matters on Calendar	7/1/97	1/1/07
Rule 801	Copy of Pleadings to be Delivered to Trial Judge	1/1/03	1/1/07
Rule 802	Setting for Trial and Pretrial Motions in Felony Cases	1/1/07	
Rule 803	Criminal Law and Motion	1/1/07	
Rule 804	Pretrial Motions	7/1/97	1/1/07
Rule 805	Presentation, Filing and Motion Requests	7/1/00	1/1/07
Rule 806	Exparte Hearing for Order Shortening Time	1/1/07	
Rule 807	Application for Modification of Sentence Or Probation Terms	7/1/97	1/1/07
Rule 808	Pretrial Conferences in Felony Cases	7/1/97	1/1/07
Rule 809	Extended Hearing	7/1/97	1/1/07
Rule 810	Criminal Trials	7/1/00	1/1/07
Rule 811	Continuances on Criminal Matters	7/1/97	1/1/07
Rule 812	Attorney's Appearance, Representation And Withdrawal	7/1/97	1/1/07
Rule 813	Domestic Violence Coordination Rules	1/1/07	

CHAPTER 9 – FAMILY LAW MATTERS

Rule 900	Enforcement	7/1/97	1/1/07
Rule 901	Setting Matters for Hearing	7/1/97	1/1/07
Rule 902	Presentation of Documents	7/1/97	1/1/07
Rule 903	Matters off Calendar	7/1/97	1/1/07
Rule 904	Continuances	7/1/97	1/1/07
Rule 905	Hearings Estimated to Take More Than 20 Minutes	7/1/97	1/1/07
Rule 906	Case Management Conference	1/1/07	
Rule 907	Emergency Short Notice Hearings	7/1/97	1/1/07
Rule 908	Family Law Temporary Orders	7/1/97	1/1/07
Rule 909	Family Law Orders to Show Cause Issued by the Clerk	7/1/97	1/1/07
Rule 910	Applications for Family Law Court Orders	7/1/97	1/1/07
Rule 911	Pending Judgment (“Pendente Lite”) Attorney Fees	7/1/97	1/1/07
Rule 912	Meet & Confer Requirement/Settlement Efforts	7/1/00	1/1/07
Rule 913	Stipulations in Open Court	7/1/97	1/1/07
Rule 914	Failure to Appear/Tardiness	7/1/89	1/1/07
Rule 915	Preparation of Order After Hearing	7/1/97	1/1/07
Rule 916	Adoption of Schedule for Temporary Spousal Support Awards	7/1/00	1/1/07
Rule 917	Income and Expense Declaration/ Financial Statement	1/1/03	1/1/07
Rule 918	Child Support and the Tulare County Department of Child Support Services	1/1/03	1/1/07
Rule 919	Mandatory Mediation in Child Custody and/or Visitation Matters	7/1/97	1/1/07
Rule 920	Custody Evaluations	1/1/03	1/1/07
Rule 921	Custody Orders and Agreements	1/1/03	1/1/07
Rule 922	Settlement Conference Statement	7/1/97	1/1/07
Rule 923	Court’s Dismissal Pursuant to Delay Reduction Guidelines	7/1/97	1/1/07
Rule 924	Entry of Default	7/1/00	1/1/07
Rule 925	Stipulation or Objection to Family Law Commissioner(s)	1/1/07	
Rule 926	Parties Not Represented	7/1/97	1/1/07
Rule 927	Early Disposition Conferences	7/1/97	1/1/07
Rule 928	Procedures for Entry of Judgment and Common Child Support Orders	1/1/03	1/1/07
Rule 929	Family and Juvenile Court Management of Child Abuse Cases	7/1/00	1/1/07
Rule 930	Family Law Facilitator – Resource for People Who Represent Themselves	1/1/03	1/1/07

Rule 931	Domestic Violence Coordination Rules	1/1/07	

CHAPTER 10 – PROBATE AND GUARDIANSHIP RULES

Rule 1000	Calendar and Procedural Matters	7/1/97	1/1/07
Rule 1001	Hearing Procedures	7/1/00	1/1/07
Rule 1002	Contested Matters	7/1/00	1/1/07
Rule 1003	Exparte Matters	7/1/00	1/1/07
Rule 1004	Probate Referee Procedures	7/1/97	1/1/07
Rule 1005	Accountings and Final Distributions	7/1/97	1/1/07
Rule 1006	Family Allowance	7/1/97	1/1/07
Rule 1007	Procedures for Temporary and General Guardianships	7/1/00	1/1/07
Rule 1008	Procedures for Temporary and General Probate Conservatorships	1/1/03	1/1/07
Rule 1009	Orientation Program	1/1/03	1/1/07
Rule 1010	Exparte Motions for Temporary Conservatorships	1/1/03	1/1/07
Rule 1011	Providing Information	1/1/03	1/1/07
Rule 1012	Out of State Conservators	1/1/03	1/1/07
Rule 1013	Care Plans	1/1/03	1/1/07
Rule 1014	Independent Exercise of Powers	7/1/97	1/1/07
Rule 1015	Surety Bonds	1/1/03	1/1/07
Rule 1016	Sanctions	1/1/03	1/1/07
Rule 1017	Termination	1/1/03	1/1/07
Rule 1018	Accountings for Conservatorship and Guardianships	7/1/97	1/1/07
Rule 1019	Conflict of Interest	1/1/03	1/1/07
Rule 1020	Final Distribution in Conservatorships and Guardianships	7/1/97	1/1/07
Rule 1021	Limited Conservatorships	7/1/00	1/1/07
Rule 1022	Individualized Treatment Plan	1/1/07	
Rule 1023	Venue	11/8/01	1/1/07
Rule 1024	Change of Venue	11/8/01	1/1/07
Rule 1025	Orders	11/8/01	1/1/07
Rule 1026	Definitions	11/8/01	1/1/07
Rule 1027	Services Subject to Compensation	11/8/01	1/1/07
Rule 1028	Costs Subject to Reimbursement	11/8/01	1/1/07
Rule 1029	Appointment of Counsel/Prosecuting Agency	11/8/01	1/1/07
Rule 1030	Appointment of Hearing Officers	11/8/01	1/1/07
Rule 1031	Calendars	11/8/01	1/1/07
Rule 1032	Calendaring Hearings	11/8/01	1/1/07
Rule 1033	Date of Hearings	11/8/01	1/1/07
Rule 1034	Filing Petitions, Schedule for Certification Review Hearings, Original *Riese* Medication	11/8/01	1/1/07

	Capacity Hearings, Writs of Habeas Corpus & *Riese* Medication Capacity Writs/Appeal Hearings		
Rule 1035	Applications for Writ Seeking Release or Modification of Custody	11/8/01	1/1/07
Rule 1036	Writ of Habeas Corpus & *Riese* Medication Capacity Writ/Appearance	1/1/07	
Rule 1037	Burden	11/8/01	1/1/07
Rule 1038	Compliance with Welfare & Institutions Code	11/8/01	1/1/07
Rule 1039	Burden	11/8/01	1/1/07
Rule 1040	Procedures	11/8/01	1/1/07
Rule 1041	Certification Review Hearing Finding Contested by Write of Habeas Corpus	11/8/01	1/1/07
Rule 1042	Scope and Purpose	11/8/01	1/1/07
Rule 1043	Petition	11/8/01	1/1/07
Rule 1044	Documents	11/8/01	1/1/07
Rule 1045	Calendaring Hearings	11/8/01	1/1/07
Rule 1046	Interpreter Services	11/8/01	1/1/07
Rule 1047	Attorney Duties	11/8/01	1/1/07
Rule 1048	Patient Representation	11/8/01	1/1/07
Rule 1049	Treating Physician/Facility Counsel	11/8/01	1/1/07
Rule 1050	Surroundings of Hearing	11/8/01	1/1/07
Rule 1051	Burden	11/8/01	1/1/07
Rule 1052	Determination of Capacity	11/8/01	1/1/07
Rule 1053	Patient Presence	11/8/01	1/1/07
Rule 1054	Access to Records	11/8/01	1/1/07
Rule 1055	Continuance of Hearings	11/8/01	1/1/07
Rule 1056	Determination	11/8/01	1/1/07
Rule 1057	Confidentiality	11/8/01	1/1/07
Rule 1058	*Riese* Medication Capacity Appeals	11/8/01	1/1/07
Rule 1059	Compensation of Fiduciaries and Attorneys	7/1/97	1/1/07
Rule 1060	Bonds	7/1/97	1/1/07
Rule 1061	Sales of Real Property	7/1/97	1/1/07
Rule 1062	Claims of Personal Representative and Attorneys of Record	7/1/97	1/1/07
Rule 1063	Adoption Proceedings	7/1/00	1/1/07

CHAPTER 11 – JUVENILE COURT

Rule 1100	Presiding Judge and Hearing Officers	7/1/00	1/1/07
Rule 1101	Juvenile Court Commissioners and Referees	7/1/00	1/1/07
Rule 1102	Location and Schedule of Juvenile Court	7/1/00	1/1/07
Rule 1103	Filing of Documents	1/1/03	1/1/07
Rule 1104	Motion Requirements	7/1/00	1/1/07
Rule 1105	Documenting Notice of Hearings	7/1/00	1/1/07
Rule 1106	Exparte Orders In Dependency Cases	1/1/03	1/1/07

Rule 1107	Appointment of Child Advocates (CASA)	1/1/03	1/1/07
Rule 1108	Authorization for Use of Psychotropic Drugs	7/1/00	1/1/07
Rule 1109	Medical, Surgical, Dental Care	1/1/03	1/1/07
Rule 1110	Discovery	7/1/00	1/1/07
Rule 1111	Confidentiality of Juvenile Court Records	1/1/03	1/1/07
Rule 1112	Access to Courtroom by Non-Parties	1/1/03	1/1/07
Rule 1113	Media Requests for Observing, Interviewing, Photographing, Videotaping Or Voice Recording of Minors or their Families, in a Non-Courtroom Setting and Requests for Access to Certain Facilities	7/1/00	1/1/07
Rule 1114	Inspection and Disclosure of Juvenile Court Records	7/1/00	1/1/07
Rule 1115	Exparte Restraining Orders – Juvenile Dependency	7/1/00	1/1/07
Rule 1116	Dependency – Designation of Permanent Mailing Address	1/1/07	
Rule 1117	Motion to Challenge Legal Sufficiency Of Petition	1/1/03	1/1/07
Rule 1118	Presentation of Evidence – Dependency Cases Only	1/1/03	1/1/07
Rule 1119	Modifications of Orders	1/1/03	1/1/07
Rule 1120	Representation of Parties Relating to Dependency	7/1/00	1/1/07
Rule 1121	Appointment of Children	1/1/03	1/1/07
Rule 1122	Family and Juvenile Court Management Of Child Abuse Cases	7/1/00	1/1/07
Rule 1123	Juvenile Dependency, Juvenile Delinquency Family, and Probate Courts Exchange of Information	7/1/00	1/1/07
Rule 1124	Exchange of Information Among CWS, Service Providers, and Schools in Juvenile Dependency Cases	7/1/00	1/1/07
Rule 1125	Domestic Violence Coordination Rules	1/1/07	

CHAPTER 12 – PROCEEDINGS FOR COMMITMENT OF PERSONS WITH DEVELOPMENTAL DISABILITIES; HABEAS CORPUS PROCEEDINGS PURSUANT TO WELFARE AND INSTITUTIONS CODE SECTIONS 4800 AND 7250; PROCEEDINGS PURSUANT TO *IN RE HOP (*1981) 29 Cal.3d 82

Rule 1200	Commitment of Persons with Developmental Disabilities	1/1/03	1/1/07
Rule 1201	Requirements Prior to Hearing	1/1/03	1/1/07
Rule 1202	Filing of Individual Program Plan	1/1/03	1/1/07

CHAPTER 1 - GENERAL ADMINISTRATION OF THE COURT

Rule 100 - Hours of Operation; Coin Will Not Be Accepted For Payment

The clerks' offices will remain open from 8:00 a.m. to 5:00 p.m. daily, excluding weekends and holidays. However, the public windows of each of the clerks' offices close at 4:00 p.m. in order to facilitate daily accounting closeout procedures. Telephone lines will remain open and operational until 5:00 p.m. daily to serve the public. Drop boxes will be installed in each court location to facilitate deposit of papers and fines after 4:00 p.m. and before 5:00 p.m. The documents placed in the drop box before 5:00 p.m. will be file stamped on the date deposited in the drop box.

The court will not accept coin for payment. It is recognized that payment of coin to the court negatively impacts efficiency and cost-effectiveness. The court executive officer is the clerk of the court and a duly authorized officer of the court, and in accordance with the provisions of Government Code section 24353, a court officer, together with his/her deputies, is not required to accept any payment tendered by coin. (01/01/07)

Rule 101 - Objectives and Availability of Local Rules

The Tulare County Superior Court Local Rules are adopted pursuant to Code of Civil Procedure section 575.1. These rules set forth specific local policies and procedures and are intended to promote the efficient disposition of the business of the court. The rules are intended to augment, not restate or summarize, statutory or case law. The rules, although binding on attorneys and support personnel, may be departed from in the sound discretion of the court. Any judge may dispense with strict compliance with any provision of these rules in the interest of justice and upon a showing of good cause.

A loose-leaf version of these rules is available for purchase from the superior court clerk's office at the price of $10.00. They are also available on the court's website at www.tularesuperiorcourt.ca.gov. (01/01/07)

Rule 102 - Amendment of Rules

The judges may make an amendment to the rules only if it relates to the internal management of the court. Any other amendment must comply with California Rules of Court, rule 10.613.

Any proposed changes in the rules must be in the form of a noticed agenda item. Both the present rule as well as the proposed change must be submitted in writing. (01/01/07)

Rule 103 - Sanctions

Failure to comply with these rules may result in one or more of the following actions:

(a) An order dropping the matter from the calendar;

(b) An order continuing the matter;

(c) An order based solely on the pleadings properly before the court;

(d) A noticed motion by the court or any party to strike all or part of the pleading, to dismiss all or part of the action, to enter default judgment, to impose any lesser penalties provided by law, and/or to award reasonable costs, including attorney fees pursuant to Code of Civil Procedure sections 128.7, 177.5, or 575.2; Government Code section 68608(b); or California Rules of Court, rules 2.30 and 5.546.

(e) Other orders as the court deems appropriate under the circumstances. (01/01/07))

Rule 104 - Weapons and *Oleoresin capsicum* (Pepper Spray)

No firearms, explosives, weapons, or pepper spray will be permitted within any of the courthouses. This provision relating to firearms specifically includes parties who are holders of a concealed weapons permit but does not include peace officers or judicial officers who are in the performance of their official duties. (01/01/07)

Rule 105 - Gang-Related Clothing and Personal Property

No person will wear gang clothing or possess gang-related personal property while on the premises of any courthouse. This will include gang insignias, monikers, color patterns, bandannas, hats, jewelry, clothing, belts, or any other clothing or personal property with any gang significance. Any person identified by courthouse security personnel or law enforcement as wearing or possessing any item of property in violation of this rule will be asked to remove the property or themselves from the courthouse. Any such property is also subject to confiscation as contraband.

Violation of this order is punishable as contempt pursuant to Penal Code section 166 (maximum penalty of six months in county jail, a $500 fine, or both). Any person who resists any courthouse security or law enforcement request to comply with this rule can be punished pursuant to Penal Code section 148 (maximum penalty of one year in county jail, $1,000 fine, or both). (01/01/07)

Rule 106 - Cellular Telephones and Other Electronic Devices

All cellular telephones, pagers, laptop computers, and any other device capable of distracting or disturbing the court proceedings must be turned off in all courtrooms. If laptop computers or other electronic aid is necessary for a matter at issue, it must not make any noise or be disruptive to the proceedings. Enforcement of this rule is in the sole discretion of the sitting judge. (01/01/07)

Rule 107 - Smoking, Food, Drinks

Smoking, food, and drinks are prohibited in all public hallways and public waiting areas of any of the courthouses. (01/01/07)

Rule 108 - CourtCall Telephonic Appearance of Counsel/Parties

Contact CourtCall at 888-882-6878, no later than five court days prior to the hearing, and give notice to the court and other parties of your plans to appear telephonically.

(a) General Information - The CourtCall Telephonic Appearance Program ("CourtCall") organizes a procedure for telephonic appearance by attorneys and/or parties as a reasonable alternative to personal appearance in appropriate cases and situations. CourtCall is fully voluntary, and no attorney is required to utilize CourtCall if he/she would rather make a personal appearance. CourtCall is available at a reasonable fixed fee to use when circumstances are appropriate. The party wishing to appear telephonically must check with the clerk of the department to see if the judicial officer in charge of that department allows a telephonic appearance.

(b) Request for Permission and Notice - As stated above, the request to appear telephonically must be made directly to CourtCall at 888-882-6878, no later than five court days prior to the hearing. The party must give notice to the court and other parties of their plans to appear telephonically. All participants in CourtCall agree to abide by the rules of CourtCall, which they may obtain from CourtCall, and to pay in advance as required by CourtCall, directly to CourtCall. No cellular telephone may be used. The participant must call from a quiet place in order to hear, and be heard, without disruption to the court.

(c) The court reserves the right, at any time, to reject any request for CourtCall appearance. When the court rejects a request, it will order a refund of deposited telephonic appearance fees and notify CourtCall. (01/01/07)

Rule 109 - Appointment of Counsel

In all criminal, juvenile, and conservatorship cases where the defendant or party is without funds to employ counsel, the court will, in each instance, appoint the office of the public defender. When the public defender is unable to represent the defendant or party, the court will appoint counsel. All such appointments will be made, when possible, in accord with any existing county contract for the processing of alternative defense counsel. (01/01/07)

Rule 110 - Court Order to Deposit Money with Clerk of Superior Court

In any civil matter in which either party is required by statute or court order to deposit money with the clerk of the superior court pending the outcome of the matter, the party will be responsible for keeping the clerk of the superior court advised of his/her current address. If a

party fails to maintain a current address with the court, the party may not receive notice that the deposit is considered abandoned by the clerk of the superior court. (01/01/07)

Rule 111 - Jurors

When a jury trial is held in a superior courthouse, other than one located in the county seat, the names for the master jury list and the qualified jury list for that trial may be selected from the area in which the trial is held. Nothing in this section precludes the court, in its discretion, from ordering a countywide venire in the interest of justice.

Seated jurors will be issued a badge or other insignia identifying them as members of a trial jury. Jurors are to wear these badges at all times while present in the courthouse.

As far as is practicable, jurors are to spend their recesses in the jury room or jury assembly room. A juror should not visit other courtrooms while a member of a trial jury.

If the jury is taken to lunch or dinner during deliberations, the bailiff will be responsible for the conduct of the jury. Jurors must not consume any alcoholic beverage during deliberations. Jurors are to comply with all instructions given by the trial judge. (01/01/07)

Rule 112 - Proposed Jury Instructions

All requests for jury instructions and copies of proposed instructions will be provided by counsel. Requests for special instructions not contained in CACI and CALCRIM must be accompanied with appropriate citations of cases supporting the request. A list of proposed instructions must be filed with the clerk before the taking of evidence. (01/01/07)

Rule 113 - Reimbursement of Waived Fees

Pursuant to Government Code section 68511.3 and California Rules of Court, rules 3.50 through 3.63), there will be a standing order of this court that a lien exists on any money recovered by an applicant in any civil case who has had the court fees waived, except family law. If any money is received by the applicant by means of settlement or judgment, all waived fees and costs must be reimbursed to the court before the case will be dismissed. It will be the responsibility of the litigant proceeding with a fee waiver, or the attorneys if any party is represented, to notify the court within five days of any settlement or monetary consideration received in settlement or judgment by the litigant. The applicant, or his/her attorney, must see that the court's fees and costs are reimbursed prior to any disbursement to the attorney, or the client, based upon the court's lien. The amount of the lien can be obtained upon demand from the clerk of the court. The court may exercise any of the remedies as outlined in Government Code section 68511.3 to collect these fees. (01/01/07)

Rule 114 - Fax Filing

The Tulare County Superior Court will accept documents filed by a fax filing agency in accordance with the provisions of California Rules of Court, rule 2.303. The court does not have

a system in place for direct fax filing, and therefore documents may not be directly faxed filed. (01/01/07)

Rule 115 - Court Reporter Policy

It is the policy of this court that an official court reporter will normally be available in all departments with the exception of small claims, traffic, trials de novo, and judgment debtor examinations (Cal. Rules of Court, rule 2.956). If any party wants a record made in these types of cases, they must provide their own qualified court reporter.

Fees to report all civil matters for each half day and each full day are posted in the Office of the Clerk of the Superior Court, Room 201, for cases in the Visalia Courthouse, and in the clerk's filing room in each other court location where the case is being heard, as well as on the court's website. Fees are subject to 10% surcharge (Gov. Code, § 68087).

A half-day fee shall be charged for any matter which lasts more than one hour.

A full-day fee shall be charged for any matter which lasts more than four hours (Cal. Rules of Court, rule 2.958).

Fees shall be paid in advance at the clerk's legal filings public counter in each court location where the case is being heard. The clerk's legal filings is in Room 201 of the Visalia Courthouse (Gov. Code, § 68086).

Rule 116 - Copying and Reproducing Official Court Records

Only judicial officers and authorized court personnel may photocopy or otherwise reproduce original, official, court case records or exhibits. Any such copying or reproduction for public distribution shall be done only by or under the direct supervision of such authorized personnel, subject to any established court charge for these services. Personal photographing or other reproduction of original court records by the public is not permitted. This rule does not apply to the printing or reproduction of documents that may be posted or otherwise made available in electronic form on the court's website.

CHAPTER 2 - ORGANIZATION OF COURT

Rule 200 - Presiding Judge

The court will select a presiding judge for a term of two years in accordance with the provisions of California Rules of Court, rule 10.602. The presiding judge is responsible for leading the court, establishing policies and allocating resources in a manner that promotes access to justice for all members of the public, providing a forum for the fair and expeditious resolution of disputes, maximizing the use of judicial and other resources, increasing efficiency in court operations, and enhancing service to the public in accordance with the provisions of California Rules of Court, rule 10.603. (01/01/07)

Rule 201 - Departments of the Court

There will be as many departments of this court as there are judicial officers of the court. The presiding judge will designate specific departments to hear juvenile matters, probate matters, criminal matters, and family law matters. All matters will be assigned to the appropriate department based upon the nature of such matters unless the presiding judge, or his designee, causes a matter to be otherwise assigned. Trials will be assigned to available departments regardless of the designation of the department and the civil or criminal nature of the case. Prior to assuming office on January 1, the incoming presiding judge will designate the categories of business to be assigned to each department of the court for the ensuing year which will be issued as a general order of the court designating the Distribution of Business.

The presiding judge will appoint one judge to be the presiding judge of the juvenile court, who, to the extent possible, will remain in that position for at least 3 years. (01/01/07)

Rule 202 - Superior Court Executive Officer/Jury Commissioner

The court executive officer/jury commissioner is appointed to hold office at the pleasure of the court (Code Civ. Proc., § 195). Under the direction of the presiding judge, the court executive officer is responsible for overseeing the management and administration of the non-judicial operations of the court and allocating resources in a manner that promotes access to justice for all members of the public, providing a forum for the fair and expeditious resolution of disputes, maximizing the use of judicial and other resources, increasing efficiency in court operations, and enhancing service to the public (Cal. Rules of Court, rule 10.610). (01/01/07)

Rule 203 - Superior Court Commissioners and Referees

(a) Any superior court commissioner or referee will act in the capacity of judge pro tem if so appointed by a majority of the superior court judges and stipulated to by the parties. The stipulation may be expressed, oral, and/or implied by the conduct of a party, or a party's attorney, by not objecting to the commissioner acting as a temporary judge upon the first appearance, or within the time specified in a local rule when the local rule gives notice that a commissioner routinely acts as a temporary judge and specifies how an objection must be made. Commissioners and referees will have been members of the State Bar of California for

a period of not less than 10 years. Commissioners and referees will serve at the pleasure of the judges.

(b) Complaints against any court commissioner or referee must be presented in writing to the presiding judge and must be signed by the maker of the complaint. The written complaint will be handled by the presiding judge in accordance with California Rules of Court, rules 10.603 and 10.703. (01/01/07)

Rule 204 - Attorneys Volunteering to Sit as Judge Pro Tem

Any attorney wanting to sit as a judge pro tem must comply with California Rules of Court, rules 2.810-2.815. The state has imposed mandatory educational requirements before the court can approve an attorney to act as a judge pro tem. (See the court's website at www.tularesuperiorcourt.ca.gov and related links to obtain the necessary training regarding a judge pro tem; and the application necessary for prior court approval to be able to qualify as a judge pro tem.) (01/01/07)

Rule 205 - Grand Jury Selection

A grand jury will be drawn and impaneled by the presiding judge of the superior court once each fiscal year commencing July 1, pursuant to the procedures set forth in Penal Code sections 888 et seq. (01/01/07)

CHAPTER 3 - DISTRIBUTION OF BUSINESS

Rule 300 - Court Calendar

The business of the court will be distributed in accordance with the Distribution of Business which will be ordered by the court in June of each year to be effective for the twelve months beginning July 1 of each year. This calendar may be changed from time to time by order of the presiding judge.

The clerk, at the beginning of each court day, will post a daily court calendar outside of each courtroom showing the matters assigned to that department that day. The names of parties in adoption, juvenile, and mental competency matters will not be shown and will be kept confidential. (01/01/07)

Rule 301 - Setting the Calendar for Hearings and Trials

Prior to setting any matter for hearing, the moving party must make a reasonable and good faith attempt to resolve the matter. If resolution is not possible, the moving party must attempt to coordinate hearing dates with the opposing parties prior to contacting the court.

(a) Under the general supervision of the presiding judge, hearings will be set as follows:

(1) All civil matters and appeals, whether contested or uncontested, will be set by the appropriate calendar clerk. Before filing or serving notice of a motion and/or hearing, the moving party must clear and reserve a hearing date with the appropriate calendar clerk. If for any reason a matter is removed from the calendar, the moving party must promptly notify the calendar clerk with whom the hearing date was set.

(2) All case management conferences will be set by the civil calendar clerk.

(3) All criminal law and motion matters will be handled pursuant to California Rules of Court, rules 4.111 and 4.112 as set forth in the Criminal Rules. Matters which are appropriate for motions in limine will be heard by the trial judge at the time set by the trial judge.

(4) All juvenile matters will be set by the juvenile court clerk, under the authority of the juvenile court judge or referee, and in accordance with the general calendar of the court.

(b) Attorneys should avoid scheduling more than two hearings at the same time on the same day (not including ex parte hearings). While the court will reasonably trail matters to accommodate the necessary scheduling of more than one matter on the same day, a pattern of routine or unreasonable delay in matters being heard caused by a violation of this rule may result in the imposition of attorney fees or other sanctions. (01/01/07)

Rule 302 - Assignment to Departments

All matters will be assigned to specific departments as set out in the Distribution of Business, subject to change by the presiding judge and court executive and/or his/her designee. In making such assignments, the court executive officer and/or his/her designee will be guided by the general calendar of the court. If it should appear, however, that a particular matter may be handled more expeditiously by a department other than the one provided for in the annual Distribution of Business, the presiding judge and court executive officer and/or his/her designee may transfer such matters to such department. (01/01/07)

CHAPTER 4 - APPELLATE DIVISION

Rule 400 - Appeal Hearings

Each January, the Chief Justice of the California Supreme Court appoints three judges of the court to sit as an Appellate Panel of the Superior Court, pursuant to California Rules of Court, rule 8.701. The Chief Justice also designates the presiding judge of the appellate division.

Appeals from the limited civil cases, misdemeanors, and traffic infractions will be heard at 8:15 a.m. on the last Thursday of each month, unless otherwise ordered by the appellate division, in a courtroom in the Visalia courthouse that will be assigned at the time of the hearing. Pursuant to Code of Civil Procedure section 77(h), one judge of the appellate division may hear traffic infractions. (01/01/07)

Rule 401 - Notice of Appeal

A timely Notice of Appeal is a jurisdictional requirement to a valid appeal (Cal. Rules of Court, rules 8.751 and 8.752 [civil appeals], and rule 8.782 [criminal appeals]). The Notice of Appeal must be filed with the court (Cal. Rules of Court, rules 8.751 and 8.782). Failure to timely file a Notice of Appeal constitutes a ground for dismissal of the appeal. (01/01/07)

Rule 402 - Settled Statement or Reporter's Transcript

Except where the appeal is on the judgment roll, no appeal will be set for hearing unless and until the reporter's transcript of the proceedings or a settled statement has been filed. It is the responsibility of appellant to see that the clerk and judge of the lower court perform their duty and forward a settled statement, or in the alternative, obtain a transcript of the proceedings and lodge it in a timely fashion with the clerk. Appellant must comply with all applicable statutes, codes, and rules including but not limited to, California Rules of Court, rules 8.700-8.792 for appeals; rules 121-144 for civil cases; and rules 180-190 for criminal cases.

In the event such statement or transcript has not been filed, and appellant has not commenced appropriate proceedings to mandate compliance with this requirement, the appellate division of this court may dismiss the appeal, after the court clerk has set and noticed a hearing date and issued an Order to Show Cause why the appeal should not be dismissed pursuant to California Rules of Court, rule 8.762 for civil cases and/or rule 190 for criminal cases.

If appellant fails to perform any act necessary to procure the preparation or filing of the record on appeal or shall otherwise fail to prosecute his appeal with diligence, the appeal may be dismissed by the appellate division on its own motion and/or on respondent's motion (Cal. Rules of Court, rules 8.762 and 8.792). (01/01/07)

Rule 403 - Briefs on Appeal

As soon as the record on appeal in any case is filed, the clerk will mail to the attorney appearing of record for each party, or if any party has appeared without an attorney, then to such party

personally, at the address of such attorney, or party appearing in the record, a notice stating that said record has been filed and giving the time, date, and department in which the appeal will be heard, and the dates when each party must file briefs, as provided in the California Rules of Court. (See Cal. Rules of Court, rule 8.706 for the allowed time for opening, responding, and replying briefs.) Failure of the clerk to mail any such notice shall not affect the jurisdiction of the appellate division (Cal. Rules of Court, rule 8.704).

Briefs must comply in form with California Rules of Court, rule 8.706. The original brief submitted for filing must be accompanied by three copies. No brief shall exceed 15 pages in length, except by permission of the presiding judge of the appellate division (Cal. Rules of Court, rules 8.766 and 8.706).

Failure to file an appellant's opening brief constitutes a ground for dismissal of the appeal (Cal. Rules of Court, rule 8.762 and 8.792). (01/01/07)

Rule 404 - Proof of Service

No appellate brief will be accepted for filing by the clerk unless accompanied by proof of service upon the parties entitled to service under California Rules of Court, rule 8.706. (01/01/07)

Rule 405 - Orders Extending or Shortening Time

Any request for routine matters such as an order extending or shortening time must be presented in writing to the clerk for the clerk to present to the presiding judge of the appellate division. The document shall not exceed five pages in length, and shall include a declaration under penalty of perjury (Cal. Rules of Court, rules 8.703, 8.766, and 8.787). (01/01/07)

Rule 406 - Oral Argument

Unless good cause is shown, counsel's oral argument will be limited to 10 minutes per side.

A party who is not present at calendar call is deemed to have waived oral argument unless the party has advised the clerk in advance of a delay.

Continuances will not be granted without a showing of good cause. Continuances by stipulation are subject to approval of the presiding judge of the appellate division.

Supplemental briefing shall not be permitted unless, after oral argument, the court intends to decide a case upon the basis of an issue not briefed or proposed by any party (Gov. Code § 68081). (01/01/07)

Rule 407 - Decisions

Unless the decision of the court is announced orally from the bench, a written decision will be issued within 90 days of the hearing and will be mailed to all parties and to each department of the Tulare County Superior Court. (01/01/07)

Rule 408 - Writs and/or Need for Ex Parte Hearing

All matters, including writs that require emergency action by the appellate division, must be submitted to the court administrator in Room 201 of the Visalia courthouse with proof of service, informing the court staff that it requires immediate attention. The court staff will immediately contact the presiding judge of the appellate division. The presiding judge will determine what action should be taken, and the parties will be notified by court staff. Parties are never to directly contact an appellate judge and/or his personal staff. (01/01/07)

CHAPTER 5 - PRESENTATION, FILING, AND SERVICE OF COURT PAPERS

Rule 500 - Statements of Decision, Orders, Judgments, and Decrees

Statements of decision, orders, judgments, or decrees must bear a standard caption and must be submitted to the judge at the time of the hearing or to the judge's clerk after the hearing. All documents submitted for a judge's endorsement must also bear opposing counsel's or party's approval as to form, or a declaration of the one seeking the judge's endorsement that he or she has complied with California Rules of Court, rule 3.1312. No proposed orders will be accepted for filing prior to the hearing of the matter. Proposed orders may be lodged in the file. If a department requires proposed orders prior to hearings, the orders must be presented to the departmental clerk and not to the clerk's office. (01/01/07)

Rule 501 - Submission of Written Orders

All orders must be on a separate document, for entry on the docket upon the judge's signature. If the document has at the end of the request, "It is so Ordered," a second copy of the document must be submitted to be the order. This allows for a different file stamp date at the top of the document on the order when it is signed. It also provides a correct date for entry of the order on the docket and provides a court order which can be found chronologically in the file. (01/01/07)

Rule 502 - Presentation of Documents and Service of Orders

Papers that do not comply with these rules, the Code of Civil Procedure, and the California Rules of Court may not be considered by the court.

All written orders signed by a judge, including orders to show cause, temporary restraining orders, and injunctions, must be filed forthwith; and an endorsed copy must be served upon the parties to be notified thereof. (01/01/07)

Rule 503 - Entry of Court Orders in Minutes

The clerk will keep minutes of court orders and will place a copy of each minute order in the court's file of actions in chronological order in lieu of a minute book, pursuant to Government Code sections 69844 et seq. (01/01/07)

Rule 504 - Guardian ad Litem Forms

The Judicial Council has issued forms to petition for appointment of a guardian ad litem and has made their use mandatory in almost all matters. These forms are available in the clerk's office in Room 201 of the Visalia courthouse and/or on the Web at www.courtinfo.ca.gov/forms. (01/01/07)

Rule 505 - Self-Addressed Stamped Envelope for Conformed Copies

Conformed copies, by mail, will be returned to the parties requesting them only when the request is accompanied by a self-addressed stamped envelope. (01/01/07)

Rule 506 - Filing Of Form With Writing On Each Side

All pleadings and other documents, whether official forms or not, which have writing on both sides must be tumbled, so the document may be read from top to bottom without removing the sheets from the two-prong clasp holding the sheets in the file. (01/01/07)

CHAPTER 6 - MANAGING CIVIL CASES

Rule 600 - Case Management Conference

(a) The Judicial Council has implemented state rules for the management of civil cases (Cal. Rules of Court, Chapter 2, Civil Trial Court Management Rules, rules 204.1 et seq.).

In recognition of the state rules requiring the court to implement a case management plan, the court elects to follow California Rules of Court, rule 3.714. In adopting this plan, the court requires the appearance of all parties in all civil cases to attend the case management conference unless notified otherwise. The court will set and notice the date for the conference. The conference must be held within 180 days of the filing of the case. The court will provide 45 days' notice by mail of the case management hearing. Plaintiff must serve any new parties with notice of any pending case management conference, settlement conference, and trial date. No later than 15 calendar days before the date set for case management conference, each party must file a case management statement and serve it on all other parties in the case. Parties must use the mandatory Case Management Statement (Judicial Council form CM-110).

(b) Presence Required - Counsel and unrepresented parties are required to be present, either in person or by telephonic appearance pursuant to The Superior Court of Tulare County, Local Rules, rule 108, and must have: (1) sufficient information and understanding of the case to evaluate it accurately, and (2) sufficient authority to enter into binding agreements such as the diversion of the case to arbitration, including binding arbitration, the setting of a trial date and mandatory settlement conference date, the dismissal of doe defendants or other parties, and the setting of a further case management conference.

(c) Compliance - Failure to attend the case management conference will result in the court making whatever orders and imposing whatever sanctions as may be necessary and appropriate to obtain compliance with these rules, including but not limited to, a waiver of the right to a jury trial and a waiver of the right to object to a referral to arbitration or other alternate dispute resolution procedure.

(d) Waiver of Notice - When all parties are present at the case management conference and a trial date and settlement conference dates are agreed to by the parties or ordered by the court, such presence is an effective waiver of a separate or formal notice of settlement conference and trial date. (01/01/07)

Rule 601 - Policy

(a) Hearing on Order to Show Cause - At an order to show cause hearing, the court may make whatever orders and impose whatever sanctions as may be necessary or appropriate to obtain compliance with these rules. Such orders may include requiring the filing of documents or the carrying out of other acts required to proceed with the case. Such sanctions may include imposition of monetary fines or other consequences as set forth in The Superior Court of Tulare County, Local Rules, rule 103.

The failure of counsel, or an unrepresented party, to appear at a hearing on an order to show cause will be an unqualified waiver of any objection to any order or sanction made or imposed by the court at such hearing.

(b) Final Disposition of Case - No case will be removed from the civil active list except by order of court. The civil calendar clerk must be notified in writing immediately upon settlement of a case. A dismissal, judgment, or a statement of conditional settlement must be filed within 10 days of such action (Cal. Rules of Court, rule 3.1385).

No case will be removed from the civil active list except by court order. No time standard or deadline specified in this chapter nor any schedule, dates, time limitations or other requirements imposed by any order made pursuant to this chapter may be modified, extended or voided by any stipulation or agreement of the parties unless a written order approving the same is first obtained from the presiding judge. Such order may be obtained only upon a showing of good cause. (01/01/07)

Rule 602 - Reduction of Unnecessary Paperwork and Avoidance of Unnecessary Court Appearances

To reduce the public's costs in money, time, and resources in the conduct of civil litigation, it is the policy of this court to reduce the preparation, mailing, and filing of documents whenever possible. To this end, these rules have eliminated the filing of an at-issue memorandum or a counter at-issue memorandum.

To further implement this policy, unnecessary court appearances are avoided by the elimination of a separate trial setting conference and by allowing telephone appearances at the case management conference pursuant to The Superior Court of Tulare County, Local Rules, rule 108.

Counsel and the parties are urged to manage each case in such a manner as to avoid the issuance of orders to show cause. (01/01/07)

Rule 603 - Case Designation

All civil cases must be classified by the court pursuant to California Rules of Court, rule 3.714, with the court presuming that the case can be completed within one year. For a case to come under any other designation, the parties must make a motion to the court to have the case

designated as protracted. Protracted cases are those which comply with California Rules of Court, rule 3.400. (01/01/07)

Rule 604 - Service of Complaint

(a) Timing - Pursuant to the delay reduction rules, within 60 calendar days of filing, the complaint must be served and a proof of service as to each named defendant filed with the court, unless a "Request for Extension of Time" is filed with the court stating facts establishing good cause as to why service has not been made, or should not be made, upon all parties within the time as provided in this rule. The request and order to obtain an extension of time must be in the form as set forth in Appendix 9.

Upon filing the "Request for Extension of Time," the court may, (1) grant an extension of time to a specified date, (2) deny the request, or (3) conduct a hearing to determine the setting of the date for compliance with these rules.

(b) Compliance - Upon failure to serve the complaint and file proof of service or dismissal as to each named defendant, or to file a "Request for Extension of Time" as required by these rules, the court will issue an "Order to Show Cause" as to why the party or counsel should not be sanctioned. Service of the complaint and filing the proof of service after the "Order to Show Cause" has been issued will not relieve the party from the imposition of the sanction. For administrative tracking purposes, the filing of an answer or other responsive pleading by a defendant does not obviate the need to file a proof of service. (01/01/07)

Rule 605 - Arbitration

The provisions of Code of Civil Procedure section 1141.10 et seq., and California Rules of Court, rules 3.810 et seq., are augmented or emphasized as follows:

(a) The amount in controversy in each case will be determined at the case management conference. The court may also order an increase to the limit on the amount the arbitrator is otherwise authorized to award. All cases to which Code of Civil Procedure section 1141.11 applies will be submitted to arbitration by the case management judge if the case is appropriate for arbitration pursuant to the code.

(b) If a case is ordered to arbitration, a back-up trial date will be selected so that the case will proceed expeditiously to trial if the case is not resolved by arbitration. The court will also set the time limit for conducting the arbitration hearing in order to afford the parties a reasonable opportunity to conduct discovery. If no time is set, the arbitration hearing must be held within 120 days of the order.

(c) With the consent of the arbitrator and the court, the parties may stipulate to continuances.

(d) Whenever parties fail to appear at a scheduled arbitration hearing without having previously notified the arbitrator, the case must be certified to the presiding judge who will order the parties and their counsel to appear to show cause why they failed to appear.

Without a showing of good cause, appropriate sanctions will be imposed.

(e) If a party requests a trial de novo after arbitration, the request may not be withdrawn except by a written stipulation, signed by counsel for all parties appearing in the case, expressly agreeing that a non-appealable judgment may be entered on the arbitration award. If a request for a trial de novo is not timely filed, the clerk will, upon the expiration of the time for filing, forthwith enter the award as a judgment, and will vacate the back-up trial date.

(f) If the parties consent to binding arbitration, the consent must be stipulated to in writing and must be signed by the client or clients whose rights are affected by such consent. (01/01/07)

Rule 606 - Settlement Conference

Settlement conferences are mandatory in every case except trials de novo in small claims cases. Counsel for each party must comply with California Rules of Court, rule 3.1380, and deliver to the civil calendar clerk and all other counsel, no later than 10 days prior to the conference, a written statement including:

(a) Contentions as to what counsel believes are the specific material facts. In a personal injury case, copies of the official accident report, all relevant medical reports, and a summary of expected medical testimony with identification of each witness must be attached;

(b) Legal and factual contentions set forth with particularity;

(c) Citation of authority for all legal contentions;

(d) An itemized list of special damages claimed. If earnings loss is claimed, a copy of Employer's Wage Loss Statement must be attached. If a wage loss statement is not available, a method of computation of claimed loss of earnings, earning capacity, or loss of profits must be attached; and,

(e) Any other information that counsel feels may be helpful to the court in familiarizing the court with the case.

Counsel should be prepared to respond to the "Settlement Conference Check List" in Appendix 1 of these rules. A statement that the information required is unknown will be cause for imposition of sanctions unless good cause is shown for failure to respond. Since these statements are to be used by the court and counsel solely for the purpose of the settlement conference, they will not be filed in the action. Therefore, counsel should feel entirely free to set forth all matters they deem necessary to facilitate the conference. A specific settlement amount may be included. Nothing contained in any pre-trial statement or any statement made by any party at the settlement conference will be received in evidence in the proceeding.

Since any settlement requires the consent of all the interested parties, all interested parties or their representatives with authority to bind the parties must be present in the courtroom. In those

cases which require consent of an insurance carrier to arrive at a settlement, an authorized claims or insurance representative of the carrier, who is fully familiar with the case and who has full authority to settle the case, must also be present in the courtroom. The insurance carrier's attendance will be excused only if, (1) the carrier has no California claims office or representative, and (2) the carrier has an authorized claims or insurance representative with full authority to settle available by telephone during the settlement conference.

Counsel attending the conference must be completely familiar with the facts of the case and the law applicable thereto. It is the intent of the court to explore the case in depth; therefore, counsel will be expected to be fully prepared on all aspects of the litigation. Compliance with these requirements and complete cooperation between counsel and the court are essential to make the settlement conference productive. (01/01/07)

Rule 607 - Continuances; Taking a Matter Off Calendar

(a) Matters Set for Hearing - Matters set for hearing may be continued with agreement from opposing parties or counsel and permission from the calendar clerk. A written stipulation by the parties or counsel must be sent to the calendar clerk. No such matter will be continued more than two times or within 24 hours of the time set for hearing without a specific order of the court.

If the parties do not agree, the party seeking a continuance can do so on a noticed motion or by a motion made at the time of hearing which the court may grant for good cause shown and upon such terms as the court in its discretion may impose. Only the moving party will be allowed to take a matter off calendar. The request must be in writing. No matter will be taken off calendar by any party once a tentative ruling has been issued.

(b) Matters Set for Trial - Continuances of all matters set for trial, including short cause matters, will be granted by the judge assigned to hear the case only upon an affirmative showing of good cause within the meaning of California Rules of Court, rule 3.1332. If necessary and justified, the moving party on a motion to continue may seek an order shortening time by stipulation of the parties or by an ex parte hearing under California Rules of Court, rule 375.

Appearances are required on all motions and requests to continue trial dates so that a new trial date can be established if the motion or request is granted. It is the policy of the court to be extremely strict in granting continuances. No continuance will be granted in any event unless there is a factual showing of good cause for such continuance.

(c) Designation of Trial Counsel - Where there is more than one attorney in a firm, the unavailability of the particular attorney who intends to try the case will not be considered good cause for a continuance unless, (1) trial counsel is designated by giving notice to the court and to all parties within 30 days of the case management conference, or (2) all trial attorneys in the firm are in trial on the assigned trial date.

(d) Notice of Case Disposition - All parties must strictly comply with California Rules of Court, rule 225 to notify the court of settlement or stay of any pending cases. The parties must also notify the court if there is a dismissal or any other event or circumstance that would vacate the trial date. (01/01/07)

Rule 608 - Pretrial Motions - In Limine

In cases estimated for five or more days of trial, counsel must file and serve at least five days prior to trial date, all motions expected to be made prior to trial or during trial. The document must be properly captioned, must succinctly state the nature of the motion or evidence question with a citation to appropriate code or case law, and must set forth the specific trial court action requested and the facts relied upon to justify the request. An estimate of the time necessary for the hearing of such motions must be set forth on the caption page covering the motions. All documents filed pursuant to these requirements must be filed with the superior court clerk. Failure to file and serve these motions at least five days before trial may be deemed a waiver of the moving party's right to make such motions. (01/01/07)

Rule 609 - Uninsured Motorist Cases

An action for personal injury or property damage against an uninsured defendant may be designated an "uninsured motorist case" upon application of the plaintiff filed within 30 days of the commencement of the action. California Rules of Court, rule 3.712, and Government Code section 68609.5 apply to uninsured motorist cases. Upon the filing of such an application, the court will set a hearing date six months from the date of the designation. At the hearing, the action will be dismissed (without prejudice) unless the court, for good cause, extends the time for resolution of the case. (01/01/07)

Rule 610 - Bankruptcy

The court must be notified in writing immediately by any defendant filing a bankruptcy petition. The case will be stayed only as to the defendant filing for bankruptcy. In a multi-party case, the action will proceed against the remaining defendants unless the court is petitioned to stay the entire action, and the court issues an order staying the entire action. Any stayed matter will be set for review of its status in 12 months. (01/01/07)

CHAPTER 7 - CIVIL LAW AND MOTION

Rule 700 - Preemption

The Judicial Council preempted local court rules pursuant to California Rules of Court, rule 10.613 in all civil law and motion proceedings (California Rules of Court, rules 3.1100 et seq., for requirements in format and filing of papers and evidence in all motion practice). (01/01/07)

Rule 701 - Adoption of Tentative Ruling System

The court offers a tentative ruling system, and pursuant to California Rules of Court, rule 3.1308, follows the procedure in California Rules of Court, rule 3.1308, as follows:

3.1308 - "[*Notice of intent to appear required]* The court will make its tentative ruling available by telephone and also, at the option of the court, by any other method designated by the court, by no later than 3:00 p.m. the court day before the scheduled hearing. If the court desires oral argument, the tentative ruling will so direct. The tentative ruling may also note any issues on which the court wishes the parties to provide further argument. If the court has not directed argument, oral argument will be permitted only if a party notifies all other parties, and the court, by 4:00 p.m. on the court day prior to the hearing of the party's intention to appear. A party must notify all other parties by telephone or in person. The court will accept notice by telephone and, at its discretion, may also designate alternative methods by which a party may notify the court of the party's intention to appear. The tentative ruling will become the ruling of the court if the court has not directed oral argument by its tentative ruling and notice of intent to appear has not been given*."* [emphasis added]

Tentative Rulings, available by 3:00 p.m., at the following locations designated as official sites to obtain tentative ruling: telephone Number: 559-737-4339 and court's website at www.tularesuperiorcourt.ca.gov.

Alternate internet site for tentative rulings: www.tularesuperiorcourt.ca.gov, then click on link "Tentative Rulings," then click on the link for "Civil Tentative Rulings." It is sometimes necessary to click on your "refresh" or "reload" button if the current day's ruling is not displayed.

Notice to the court of request for oral argument must be made by 4:00 p.m. by facsimile to the following number: fax number 559-733-6774. This number only must be used. (01/01/07)

Rule 702 – Once Tentative Ruling Has Issued, Party Cannot Take a Matter Off Calendar

A request to take a matter off calendar requires 24-hour notice, or a court order (Super. Ct. Tulare County, Local Rules, rule 607(a)). No matter will be taken off calendar by any party after the tentative ruling has issued. (01/01/07)

Rule 703 - Courtesy Copy to Research Attorney

A courtesy copy of all law and motion documents must be delivered to the research attorney upon filing. (01/01/07)

Rule 704 - Scheduling Civil Ex Parte Hearings

Ex parte civil matters may be heard any day of the week, pursuant to the judge's schedule at a time designated by the judge assigned to hear the case. It is the responsibility of the attorney wishing to set a matter for ex parte consideration to contact the judge's clerk and to conform to the rules the judge has developed regarding ex parte matters, in addition to compliance with California Rules of Court, rules 3.1200 through 3.1207.

In the event the regularly assigned judge is not available, the moving party is directed to contact the Court's Administrative Office to determine the assigned judge. The moving party will then contact the clerk of the assigned judge to determine any rules that individual judge may have regarding ex parte matters, in addition to compliance with California Rules of Court, rules 3.1200 through 3.1207. (01/01/07)

Rule 705 - Judicial Notice Request

The California Rule of Court regarding Judicial Notice is set forth in rule 323(b). Even though the rule only requires the party to have the court's file available at the hearing if the material is part of a file in the court in which the matter is being heard, the court requests you also copy and attach this material. Many times the case has become voluminous, and the documents are in multiple files. It is much more efficient for counsel to make the documents available by copies attached than for the clerk to deliver multiple files to the hearing. Since this court has adopted a tentative ruling system, failure to attach a copy may preclude the court from considering the material if the file is only provided at the actual hearing. (01/01/07)

Rule 706 - Guardian Ad Litem Appointments and Compromise of Minors' Claims

Petitions for Appointment of a "Guardian ad Litem" must use the Judicial Council mandatory forms. The forms are available in the clerk's office in Room 201 of the Visalia courthouse and on the Web at www.courtinfo.ca.gov/forms.

Minors' compromises must be submitted on the Judicial Council mandatory forms and must include the proposed order on the Judicial Council form (also see Super. Ct. Tulare County, Local Rules, rule 707).

Without good cause shown, it will be counsel's responsibility to file an acknowledgment of receipt on the Judicial Council form within two weeks after the "Order Approving Minor's Compromise" has been entered.

Upon presentation by the minor's attorney (not the attorney for the insurance company), the court will accept minor's compromise cases on an ex parte basis with no court appearance

necessary in cases with adequate documentation in which the gross proceeds are not more than $5,000.00.

Attorney fees in minor's compromise cases must follow California Rules of Court, rule 7.955.

Except as set forth above, hearings on approval of compromises of minors, conservatees, and incompetent persons will be held in open court. After hearing, if the court orders the proceeds deposited in a bank, trust company, or savings and loan association, the order approving the compromise will provide as follows: "A certified copy of this order will be delivered to the manager of the bank, trust company, or savings and loan association together with the sum to be deposited therein, and a written receipt of said bank, trust company, or savings and loan association acknowledging receipt of said sum will forthwith be filed with the superior court clerk." In cases involving minors, the order must contain the date when the minor will attain the age of 18 years and a direction to the bank, trust company, or savings and loan association to release on such date all funds to the minor without further order of the court.

Withdrawals from a minor's blocked account will only be permitted for specific and limited purposes for which a parent/guardian is not financially capable and obligated to pay (for example, orthodontic work and tuition above the high school level). However, if both parents are too ill to work or both have been unemployed and there are no funds other than those of the minor, the court may permit the use of some of the monies, but only for necessities of the child. Any request for an order to withdraw funds from a blocked account will be carefully scrutinized by the court. Within 15 days from the date of an order to withdraw funds, the parent/guardian must file with the court a "Certificate Accounting for Funds Withdrawn From Minor's Account." A court-approved form for this certificate will be attached to a copy of the authorizing order to aid the parent/guardian in complying with this requirement. Failure to file a certificate can result in the court's refusal to allow future withdrawals of funds, as well as possible contempt proceedings against the parent/guardian for failure to comply with the court order. (01/01/07)

Rule 707 - Affirmative Duty to Explore Annuity for Minor's Compromise

The party seeking a minor's compromise has an affirmative duty to the child, and must consider an annuity for the child. Any party not obtaining an annuity for the child's proceeds must explain to the court why an annuity has not been considered, or if considered, why an annuity was not in the child's best interest. (01/01/07)

Rule 708 - Attorney Fees on a Default Action on Note or Contract

The schedule for attorney fees on a default action on a note or contract is set forth in Appendix 8. Any request for attorney fees on default to be issued by the clerk must be accompanied by a declaration from the attorney that he will accept the amount as set forth in the schedule in Appendix 8. If no declaration is attached, no fees will be awarded unless the attorney sets a hearing before a judge. (01/01/07)

Rule 709 - Actions Arising Under The California Environmental Quality Act
(Mandate actions under Public Resources Code sections 21000 et seq. [CEQA)])

(a) Where Filed - Mandamus actions challenging an agency decision under the California Environmental Quality Act (Pub. Resources Code, §§ 21000 et seq.) must be filed in the civil clerk's office of the Visalia Superior Court. Each action must be accompanied by an initial filing form utilized by the court and must designate the action as Environmental Law-CEQA (Pub. Resources Code, §§ 21167.1 et seq.), and must be assigned to the designated CEQA department for all purposes.

(b) Ordering the Administrative Record - In accordance with Public Resources Code section 21167.6, within 10 business days after the action is filed, petitioners must personally serve on the appropriate public agency their request for preparation of the administrative record or their notice of election to prepare the record themselves.

(c) Mediation - In accordance with Government Code section 66031, within five days after the deadline for respondent or defendant to file a response to the action, plaintiff or petitioner must prepare and lodge with the designated CEQA department a notice form for the court's signature inviting mediation. The clerk will then mail the notice of invitation to the parties.

(d) Preparing the Administrative Record

(1) Preparation by the Public Agency - Within 20 calendar days after receipt of a request to prepare the administrative record, the public agency responsible for such preparation must personally serve on petitioners a preliminary notification of the estimated cost of preparation, setting forth the agency's normal costs per page, other reasonable costs, if any, the agency anticipates, and the likely range of pages. This notice must also state, to the extent then known, the location(s) of the documents anticipated to be incorporated into the administrative record, must designate the contact person(s) responsible for identifying the agency personnel or other person(s) having custody of those documents, and must provide a listing of dates and times when those documents will be made available to petitioners, or any party, for inspection during normal business hours as the record is being prepared. This notice must be supplemented by the agency from time to time as additional documents are located or determined appropriate to be included in the record.

Upon receipt of this preliminary notification, petitioners may elect to prepare the record themselves, provided they notify the agency within five calendar days of such receipt. If petitioners so elect, then within 40 calendar days of service of the initial notice to prepare the administrative record, petitioner must prepare and serve on all parties a detailed index listing the documents proposed by petitioners to constitute the record. Within seven calendar days of this notification, the agency and/or other parties must prepare and serve the petitioners and all parties with a document notifying them of any document(s) or item(s) that such parties contend should be added to, or deleted from, the record. The agency must promptly notify petitioners of any required photocopying

procedures and/or conditions with which petitioners must comply in their preparation of the record.

If petitioners do not so elect, then within 40 calendar days after service of the request to prepare the administrative record, the agency must prepare and serve on the parties a detailed index listing the documents proposed by the agency to constitute the record and provide a supplemental estimated cost of preparation.

Within seven calendar days of receipt of this notification, petitioners and/or any other parties must prepare and serve the agency and all parties with a document notifying the agency of any document(s) or item(s) that such parties contend should be added to, or deleted from, the record.

(2) Preparation by Petitioners - Within 20 calendar days after receipt of petitioners' notice of election to prepare the record themselves, the public agency responsible for certification of the record must personally serve on petitioners a preliminary notification designating, to the extent then known, the location(s) of the documents anticipated to be incorporated into the administrative record, the contact person(s) responsible for identifying the agency personnel or other person(s) having custody of those documents, and the dates and times when those documents will be made available to petitioners, or any party, for their inspection and copying. This notice must also state any required photocopying procedures and/or conditions with which petitioners must comply in their preparation of the record. This notice must be supplemented by the agency as additional documents are located or determined appropriate to be included in the record.

Within 40 calendar days after service of petitioner's notice of election, petitioners must prepare and serve on all parties a detailed index listing the documents proposed by petitioners to constitute the record. Within seven calendar days of this notification, the agency and/or other parties must prepare and serve the petitioners and all parties with a document notifying them of any document(s) or item(s) that such parties contend should be added to, or deleted from, the record.

(3) Format of Administrative Record

(A) Type of Paper - The Administrative Record (Record) must be prepared on paper, white or unbleached, of not less than 13-pound weight, 8 1/2 by 11 inches, using a photocopying process that will produce clear and permanent legible copies. Only one side of the paper will be used and the margin must be not less than 1 1/4 inches on the left side of the page. Alternatively, original copies of the environmental documents may be lodged as part of the Record, provided that original copies are also provided to all parties in the lawsuit. The pages of the Record must be numbered consecutively and bound on the left margin. The use of recycled paper is encouraged.

(B) Volume Designation - The Record must be provided in one or more volumes of not more than 300 pages per volume, separately bound. The cover of each volume of the

Record must be the same size as its pages and contain the same material as the cover of a brief, but must be prominently entitled "ADMINISTRATIVE RECORD." The first volume of the Record must have at the beginning an index of each paper or record in the order presented in the Record, and refer to each paper or record by title or description and the volume and page at which it first appears.

(C) Detailed Index - The detailed index listing of the documents agreed to by the parties as the records to be included in the Administrative Record must be prominently entitled "Detailed Index of Administrative Record" and filed with the civil filing clerk at the court location in which the action is pending. A second, courtesy copy of the Detailed Index of Administrative Record must be separately lodged in the designated CEQA department.

(D) Organization - The Record should be organized with the following documents (as applicable) at the front of the Record, in the following order:

(1) The Notice of Determination;

(2) The resolution(s) or ordinance(s) adopted by the lead agency approving the project, including any resolution(s) or ordinance(s) adopted in compliance with Public Resources Code sections 21081 and 21081.6;

(3) The Draft or revised Draft Environmental Impact Report and initial study;

(4) The comments received on and the responses to those comments prepared for the Draft Environmental Impact Report or Negative Declaration, including any modifications to the environmental documents and project made after the comment period;

(5) The remainder of the Final Environmental Impact Report (e.g., the Technical Appendices and other technical materials);

(6) The staff reports prepared for the approving bodies of the lead agency;

(7) Transcripts and/or minutes of hearings; and

(8) The remainder of the Administrative Record, preferably in chronological order. This listing of documents is not intended to dictate the content of the Record, but instead is intended to describe a uniform order for documents typically contained in a Record. The lead agency is encouraged to use tabs to separately identify each of these portions of the Record. The parties are referred to Public Resources Code section 21167.6(e) as to what the Record should contain.

(e) Certifying and Lodging the Record - Upon completion of preparation of the record, it must be certified by the agency before it is filed with the court. If the agency has prepared the record, it must make such certification and must personally serve and lodge the record in the

designated CEQA department no later than 60 days after the request. If the petitioners have elected to prepare the record, petitioners must transmit it to the agency for certification.

After such certification, petitioners must prepare and file a Notice of Lodgment of Administrative Record with the civil filing clerk at the Visalia courthouse, and personally serve and lodge the record and Notice of Lodgment in the designated CEQA department no later than 60 days after service of the notice of election to prepare. If the agency refuses to make a complete certification, it must make a partial certification, specifying any alleged defects in the record. Any extension of the 60-day time period may be obtained by filing a stipulation of the parties and obtaining court approval of the extensions prior to the expiration of the 60-day period. Also, an extension may be obtained from the court upon a properly noticed hearing scheduled prior to the expiration of the 60-day period.

(f) Disputes Regarding the Contents of the Administrative Record - Once the Record has been filed, any disputes about its accuracy or scope should be resolved by appropriate noticed motion. For example, if the agency has prepared the Record, petitioners may contend that it omits important documents or that it contains inappropriate documents; if the petitioners have prepared the record, the agency may have similar contentions. A motion to supplement the certified Record with additional documents and/or to exclude certain documents from the record may be noticed by any party and should normally be filed as soon as possible after the record is lodged. All motions objecting to and/or wanting to augment the Record must be heard prior to the court issuing a briefing schedule and setting a hearing date. The parties are strongly urged to meet and confer in order to resolve disputes regarding the content of the Record.

(g) Notice of Hearing - The petitioner must notice a hearing date on the petition for writ of mandate, consistent with Public Resources Code section 21167.4. The hearing must be noticed for not later than 160 days from the date of filing the petition.

(h) Briefing Schedule and Length of Memoranda - Petitioner must file in the civil clerk's office of the Visalia courthouse and serve personally, by overnight mail or, if previously agreed, by fax, an opening memorandum of points and authorities in support of the petitioner within 30 days from the date the Record is served, unless there is a dispute as to the content of the Record. If there is a dispute, then the opening brief will be due 30 days from the date the ruling, regarding the motion objecting to and/or augmenting the Record, is issued.

Respondent and real party in interest will file and serve personally, by overnight mail or, if previously agreed, by fax, opposition points and authorities, if any, within 30 days following service of petitioner's memoranda of points and authorities.

Petitioner will have 20 days from service of the opposition's points and authorities to file and serve personally, by overnight mail or, if previously agreed, by fax, a reply memorandum of points and authorities.

The parties may agree upon a shorter time frame for briefing by written stipulation filed with the court.

Any request for permission to file a memorandum in excess of the 15-page limit must be made pursuant to California Rules of Court, rule 3.1113.

(i) Settlement Meeting - The initial notice required by Public Resources Code section 21167.8 will provide that, if the parties agree, the first meeting will be continued so as to take place no later than 35 days after the administrative record is served. If the parties do not agree to this continued first meeting date, then the first meeting will take place in accordance with Public Resources Code section 21167.8, and a second meeting is ordered to take place within five days after the Record is served. The parties must agree as to the time and place of any meeting pursuant to Public Resources Code section 21167.8. Other meetings may be scheduled by the parties. The statement of issues required by 21167.8(f) must identify those portions of the Administrative Record that are directly related to the contentions and issues remaining in controversy. The court will utilize these statements in focusing on the legal and factual contentions and issues to be resolved. However, such contentions and issues must be consistent with the pleadings to be properly resolved by the court.

(j) Trial Notebook - Petitioner must prepare two trial notebooks (one for the judge and one for the research attorney), which must be filed with the designated CEQA department 14 days before the date of the hearing. The trial notebooks must consist of the petition, the answer(s), the briefs, the statement of issues, and any other document(s) agreed upon by the parties. Additionally, each party must file an exhibit notebook which must contain only the pages of the administrative record to which they referred in their briefs. (01/01/07)

CHAPTER 8 - CRIMINAL TRIALS AND PRETRIAL MATTERS

Rule 800 - Placing of Matters on Calendar

No arraignments on original or amended information or indictments, and/or misdemeanor complaints will be placed on calendar with less than two days prior notice to the court administrator or calendar clerk. (01/01/07)

Rule 801 - Copy of Pleadings to be Delivered to Trial Judge

In any pre-assigned criminal case, counsel must submit two days before the hearing a copy of all pleadings to the assigned judge by delivering a copy to room 303 at the Visalia courthouse, and to the clerk of the court in the other court locations. (01/01/07)

Rule 802 - Setting for Trial and Pretrial Motions in Felony Cases

Upon the taking of a defendant's plea of not guilty in felony cases, the judge will set the date for trial. The judge will also set a date for a pretrial conference and will announce the last date for hearing further pretrial motions. Except for motions of a constitutional dimension and 1538.5 motions, motions made after that date will not be heard. No special motions will be set or heard after the pretrial conference date except upon an affirmative showing of good cause in a written declaration. The court may impose sanctions against any attorney unreasonably delaying the bringing of any pretrial motion including 1538.5 motions and motions of a constitutional dimension. (01/01/07)

Rule 803 - Criminal Law and Motion

Except those matters specifically assigned pursuant to the Distribution of Business, criminal law and motion matters will be heard at 8:30 a.m. on those days designated by the department to which the case has been assigned unless otherwise scheduled by the assigned judge. (01/01/07)

Rule 804 - Pretrial Motions

All pretrial motions, including motions for defense attorney fees and costs, will be heard in the department to which the case was assigned pursuant to the direct calendar plan. (01/01/07)

Rule 805 - Presentation, Filing, and Motion Requirements

All motions must be in writing and must comply with California Rules of Court as to motion practice (Cal. Rules of Court, rule 4.111 under rules for criminal cases in superior court). Motions to set aside an indictment or information must set forth with particularity the claimed deficiencies in the transcript or the irregularities in the proceedings. Any motions made after the date set for the bringing of motions must be presumed to be unreasonably delayed, and the party bringing the same will have the burden of showing good cause for such delay. (01/01/07)

Rule 806 - Ex Parte Hearing for Order Shortening Time

If a hearing on a motion is needed sooner than the 10 days prescribed by California Rules of Court, rule 4.111 under rules for criminal cases in superior court, counsel should apply ex parte to the department where the case is assigned for an order shortening time. If possible, counsel should obtain opposing counsel's stipulation and attach that to the application. The application may be typed at the end of the notice of motion or on a separate sheet attached to and served with the moving papers. The application should be accompanied by a declaration (Cal. Rules of Court, rule 3.1300 for civil motions). Because applications for orders shortening time are made ex parte, counsel must notice opposing counsel of the ex parte hearing, and serve him or her with the papers when possible, and provide proof of that notice and/or service in their declaration (Cal. Rules of Court, rules 3.1200 through 3.1207). (01/01/07)

Rule 807 - Application for Modification of Sentence or Probation Terms

Modification motions must be in writing and directed to the judge to whom the case was assigned pursuant to the direct calendar plan, or to the sentencing judge if the case predates the adoption of the direct calendar plan. No person will be transported to court for consideration of any such application unless the judge has ordered the defendant's appearance prior to the hearing. Such an application may be rejected without hearing if the judge finds that it fails to show good cause for any such modification. Notice of such application must be given to the opposing counsel at least 10 days prior to the hearing date. Such motions may also be granted ex parte (Super. Ct. Tulare County, Local Rules, rule 806 and Cal. Rules of Court, rules 3.1200 through 3.1207) by the court upon a showing of good cause. (01/01/07)

Rule 808 - Pretrial Conferences in Felony Cases

The assigned judge will schedule pretrial readiness conferences in compliance with California Rules of Court, rule 4.112. (01/01/07)

Rule 809 - Extended Hearing

When a criminal law and motion matter is expected to take more than 30 minutes the court may schedule the motion on a date convenient to all parties. The matter will be handled in accordance with the direct calendar plan. (01/01/07)

Rule 810 - Criminal Trials

(a) Voir Dire - Voir dire examination will be conducted in accordance with the provisions of the Code of Civil Procedure section 223.

(b) Alternate Jurors - Alternate jurors will be selected in compliance with Code of Civil Procedure section 234.

(c) Exhibits - Maps and diagrams should be prepared in advance. A lay person should not be asked to draw a map or diagram in court. Lay witnesses may place markings on maps and diagrams.

(d) Witnesses - Each attorney is responsible for having all witnesses available at the time their testimony is required. No trial will be delayed because of incorrect scheduling of witnesses unless counsel can show the court that (1) due diligence was exercised in attempting to secure the witness's presence, and (2) the witness's presence is necessary to ensure a fair trial. If a problem arises because of incorrect scheduling of witnesses, the court will usually permit the calling of witnesses out of order.

(e) Transcription of Recorded Documents - Prior to the commencement of any trial, a typed transcription of any sound recording which counsel expects to offer into evidence must be prepared and must be certified by the preparer as containing a true transcription of such recorded statement. Failure to prepare such transcription will be presumptive cause for exclusion of such statement from evidence. (01/01/07)

Rule 811 - Continuances of Criminal Matters

(a) All applications for orders continuing a noticed motion must be addressed to the judge of the department to which the case was assigned pursuant to the direct calendar plan and must be considered in light of the requirements of this chapter.

(b) Continuances of criminal pretrial conferences will not be granted except upon affirmative proof in open court that the ends of justice require a continuance within the meaning of Penal Code section 1050.

(c) Continuances of criminal trials are governed by the provisions of Penal Code section 1050 and California Rules of Court, rule 4.113. It is the policy of this court that all felony criminal cases will be brought to trial within 60 days of the filing of the indictment or filing of the information. Time waivers are discouraged and will not be accepted, except in unusual and extreme circumstances.

(d) All motions to continue trials, whether noticed and set for hearing or made the day of trial, must only be made and considered by the judge to whom the case was assigned. Failure to comply with Penal Code section 1050 regarding criminal trial continuances may subject counsel to sanctions under Penal Code section 1050. (01/01/07)

Rule 812 - Attorney's Appearance, Representation, and Withdrawal

Any appearance at any proceeding in the superior court will be considered a general appearance obligating the attorney to represent the defendant throughout the proceedings, except as may be otherwise provided by law.

The procedure for discharge, withdrawal, and substitution of retained counsel in criminal proceedings shall be the same as that for civil proceedings (*People* v. *Bouchard* (1957) 49 Cal. 2d 438, 441). California Rules of Court, rule 3.1362 sets forth the requirements for withdrawal and requires that the notice of motion, motion, declaration, and order be made on Judicial

Council forms. The forms may be obtained from the Web at www.courtinfo.ca.gov/forms. (01/01/07)

Rule 813 - Domestic Violence Coordination Rules

Domestic Violence Coordination Rules

Court Communication

It is this court's goal to coordinate domestic violence orders. It is the clerk's responsibility, prior to any hearing requesting protective orders and/or child custody and/or visitation orders, to determine if any such orders have already been issued as to the same parties or children in any other department by accessing the court's case management system. The court's criminal, family, and juvenile law departments shall use all reasonable efforts to communicate and exchange information with each other in regards to any domestic violence orders.

Avoiding Conflicting Orders

No department of the family or juvenile court shall knowingly issue a protective order or custody order in conflict with an order of the criminal court. If such an order is issued inadvertently, the orders of the criminal law proceeding shall have priority.

Modification of Criminal Orders

A court issuing a criminal protective order may, after review of any existing family or juvenile court orders, modify the criminal protective order to allow or restrict contact between the restrained person and his or her children, spouse, or other protected person.

Coexisting Criminal and Family or Juvenile Orders

A family or juvenile court order may coexist with a criminal court protective order, subject to the following:

(a) Any order that permits contact between the restrained person and his or her children shall provide for the safe exchange of the children and shall not contain language either printed or handwritten that violates a "No Contact Order" issued by a criminal court.

(b) Safety of all parties shall be the court's paramount concern. The family or juvenile court order shall specify the time, day, place, and manner of transfer of the child, as provided in Family Code section 3100.

Issuance and Enforcement of Restraining Order

Upon granting of relief (through initial petition, modification, or termination), the clerk shall convey within 24 hours a file endorsed copy of the order to the Tulare County Sheriff's Department for input into CLETS (a statewide computerized registration system for restraining

orders), or to the court CLETS administrator when that program becomes operational. (01/01/07)

CHAPTER 9 - FAMILY LAW MATTERS

Rule 900 - Enforcement

Failure to comply with these rules may result in an award of attorney fees and costs pursuant to Family Code section 271 and/or any of the sanctions set forth in the Superior Court of Tulare County, Local Rules, rule 103. (01/01/07)

Rule 901 - Setting Matters for Hearing

All family law matters must be set pursuant to The Superior Court of Tulare County, Local Rules, rule 301. When any matter involves child custody or visitation, all parties must arrive promptly at 8:00 a.m. Failure to be in the courtroom on time may result in a continuance and appropriate sanctions. (01/01/07)

Rule 902 - Presentation of Documents

All documents submitted in family law matters must comply with California Rules of Court as to motion practice, as well as the following:

(a) Without prior approval, the court will not consider more than 15 typewritten, double-spaced pages of declarations including attachments but excluding financial, medical, psychological, and educational documentation. No reply or closing declaration shall exceed 10 pages. No foundation will be required for medical, psychological, or school reports unless there is an issue as to the authenticity of the documents.

(b) Photocopies of forms adopted by the Judicial Council and used in family law matters must be legible and tumbled if two sided. (01/01/07)

Rule 903 - Matters Off Calendar

After service of the moving papers, but before responsive pleadings are served, no matter will be taken off calendar without notice to the responding party or attorney. If responsive pleadings have been served, the responding party or attorney must consent before the matter may be taken off calendar. (01/01/07)

Rule 904 - Continuances

Continuances must comply with The Superior Court of Tulare County, Local Rules, rule 607, except that no family law matter will be continued more than once without court approval. Any request for more than one continuance of the same matter must be supported by a declaration stating good cause with acknowledgment that the request is pursuant to this rule. (01/01/07)

Rule 905 - Hearings Estimated to Take More Than 20 Minutes

If it is apparent to the presiding family law judge or commissioner, after consulting with counsel for the parties or self represented party, that a matter will take more than 20 minutes, such matter will be set for hearing on the earliest available date. (01/01/07)

Rule 906 - Case Management Conference

All dissolution of marriage, legal separation, nullity of marriage, and uniform parentage actions shall be set for a judicially supervised case management hearing. All cases will be ordered into court 60 days following the proper filing of a response, at which time discovery plans will be discussed and mandatory settlement conference and trial dates will be assigned. Unless a case is extraordinarily complex, as determined by the presiding judicial officer, trial will be set to commence no later than one calendar year from the date of the filing of the petition. (01/01/07)

Rule 907 - Emergency Short Notice Hearings

(a) Procedure and Notice - The procedure and notice of an emergency short notice hearing must be pursuant to the California Rules of Court, rules 3.1200 through 3.1207. Any application under this section must make an affirmative factual showing in a declaration containing competent testimony based on personal knowledge of irreparable harm, immediate danger, or any other statutory basis for granting relief on short notice.

(1) An order requested at an emergency short notice hearing will be issued only upon a factual showing that great or irreparable injury will result to the applicant before the matter can be heard upon a regularly noticed motion (Fam. Code, § 241).

(2) All parties requesting an emergency short notice hearing must contact the family law ex parte calendar clerk in Room 201 of the Tulare County Superior Court in Visalia to schedule an emergency hearing. Hearings will not be set by individual department courtroom clerks. The ex parte calendar clerk will set the matter for hearing before an available judicial officer on a date not to exceed two court days from the date of the request and at a time established by the judicial officer hearing the matter.

(3) Emergency short notice hearing applications shall be in writing and include all of the following: (1) an application containing the case caption and stating the relief requested; (2) a competent declaration based upon personal knowledge in support of the application; (3) the name, address, and telephone number of any attorney known to the applicant to be an attorney for any party, or, if no such attorney is known, the name, address, and telephone number of any other parties; (4) a full disclosure of any previous applications and the court's actions; (5) a declaration that notice was given to other parties, including the date, time, manner, and name of the party informed, the response of the other parties, or reasons why notice should not be required (Cal. Rules of Court, rules 3.1200 through 3.1207).

(4) Emergency short notice hearing applications shall be filed with the ex parte calendar clerk no later than 10:00 a.m. the court day before the ex parte hearing. Failure to do so shall cause the short notice hearing to be taken off calendar by the judicial officer hearing the matter.

(5) A party seeking an emergency short notice order shall notify all other parties no later than 10:00 a.m. the court day before the short notice appearance, unless there is a showing of exceptional circumstances (Cal. Rules of Court, rules 3.1200 through 3.1207).

(6) Parties appearing at the short notice hearing shall serve their application and/or any written opposition on other parties at the first reasonable opportunity. Unless there are exceptional circumstances, no hearing shall be conducted unless such service has been made (Cal. Rules of Court, rules 3.1200 through 3.1207).

(7) The courtroom clerk will prepare a minute order following the short notice hearing. However, the short notice hearing applicant shall file proposed written orders after hearing at the clerk's office, located in Room 201 of the Visalia courthouse, or present the proposed written orders to the hearing officer at the conclusion of the hearing. The short notice hearing applicant shall also serve other parties with a copy of the proposed written order(s) (Cal. Rules of Court, rule 3.1312).

(b) Declaration - Any declaration in support of a short notice hearing order requesting to change the status quo, as opposed to preserving the peace or maintaining the status quo, must reveal this fact, describe the existing situation, and set forth facts justifying the change. There is an absolute duty to disclose the fact that there is an existing court order or that a requested short notice hearing order will result in a change of status quo.

(c) Child Custody - No order granting temporary custody of a minor child will be granted without a supportive declaration stating the following:

(1) The date of separation, or if a custody order has previously been issued, a copy of that order, a summary of the custody/visitation practices of the parties in the past, and if there is an existing juvenile court order regarding custody, a copy of that order;

(2) The name of the custodial parent since the foregoing date, and whether or not the applicant obtained custody by mutual agreement or order of the court; and

(3) If a short notice change in status quo is requested, clear and specific facts demonstrating that the health and welfare (including flight from the area) of the child/ren will be in danger without a change of custody.

A temporary order for child custody will not issue without an accompanying order restricting all parties from removing the child/ren from California except for good cause shown.

(d) Exclusive Use of Vehicle - A short notice order granting exclusive use of a vehicle will not be granted unless the declaration demonstrates that the opposing party has suitable transportation available, or requires no such transportation, or such order is necessary for the immediate best interests of the child/ren.

(e) Removal from Residence - A short notice order removing a party from a residence will not issue without facts demonstrating violence, and the date or dates thereof, and that physical harm would result, unless the declaration clearly states that the excluded party has previously voluntarily vacated the residence.

(f) Payment of Obligations - A short notice order requiring the payment of obligations will not issue without financial facts justifying the order, plus an attached completed Income and Expense Declaration with at least an estimate of opposing party's gross income. Only in unusual circumstances will a payment of an obligation order be issued.

(g) Modified Orders - If the court modifies any requested orders, it is the responsibility of the applicant, or attorney, to conform all copies with the changes before filing and service.

(h) Set Aside of Ex Parte or Emergency Short Notice Orders - If a responding party requests an ex parte or emergency short notice order to be set aside prior to the date set for hearing, notice must be given to the moving party. The court may order an earlier hearing date, or modify the orders, on a proper showing in lieu of setting aside the orders.

(i) Special Procedures for Restraining Orders and Injunctive Relief Pertaining to Domestic Violence - To obtain enforcement of temporary restraining orders, applicants, or their attorney, should deliver a copy of such orders to the Tulare County Sheriff's Office for entry into the CLETS system. The order must have a file-endorsed stamp by the clerk of the court on the upper right-hand corner. Applicants for domestic violence restraining orders must prepare and submit with their application a declaration regarding any previous domestic violence applications. (See item five, page two of the Judicial Council Form DV100, entitled "Request for Order - Domestic Violence Prevention." These forms are available on the Internet at www.courtinfo.ca.gov or in Room 201 of the Visalia courthouse.) (01/01/07)

Rule 908 - Family Law Temporary Restraining Orders at Initial Filing

(a) Pursuant to Family Code section 2040, upon service of summons in actions for dissolution, annulment, legal separation, or under the Uniform Parentage Act, certain temporary restraining orders issue automatically (Automatic Temporary Restraining Orders [ATROs]). These orders are mutual and bind both the petitioner and respondent. They include:

(1) Removing the minor child/ren of the parties from the state without the prior written consent of the other party or an order of the court;

(2) Cashing, borrowing against, canceling, transferring, disposing of, or changing the beneficiaries of any insurance or other coverage including life, health, automobile, and disability held for the benefit of the parties and their minor child/ren; and

(3) Transferring, encumbering, hypothecating, concealing, or in any way disposing of any property, real or personal, whether community, quasi-community, or separate, without the written consent of the other party or an order of the court, except in the usual course of business or for the necessities of life.

(b) Extraordinary Expenditures. Notice must be made between the parties of any proposed extraordinary expenditures made after these ATROs are effective. However, nothing in the ATROs will preclude the use of community property to pay reasonable attorney fees in order to retain legal counsel in the action. The ATROs remain in effect until modified or entry of the final decree or dismissal of the petition. (01/01/07)

Rule 909 - Family Law Orders to Show Cause Issued by the Clerk

(a) For the convenience of counsel and litigants who are self represented, the clerk's office has been authorized to issue Orders to Show Cause for Modification not requesting temporary restraining orders, and to set a hearing date provided that an Order Shortening Time for hearing, or service, has not been requested. The clerk will also issue Orders to Show Cause when the Order to Show Cause face page, in Item 3(c), states: "Five days before the scheduled hearing, both parties are ordered to comply with The Superior Court of Tulare County, Local Rules, rule 917, a copy of which is attached." (See Judicial Council Form FL150, entitled "Income and Expense Declaration." These forms are available on the Internet at www.tularesuperiorcourt.ca.gov or in Room 201 of the Visalia courthouse.) Sanctions for failure to comply with such an order will only be available if the moving party serves a copy of the relevant sections of The Superior Court of Tulare County Local Rules on the other party and includes the following additional language: "Willful failure to provide the requested information as required by The Superior Court of Tulare County Local Rules will result in sanctions."

(b) The clerk may also reissue Orders to Show Cause, provided that an Order Shortening Time has not been requested. (01/01/07)

Rule 910 - Applications for Family Law Court Orders

Any request to deviate from California Rules of Court, rule 5.118, which provides that the court may grant or deny relief solely on the basis of pleadings without the presentation of oral testimony, must be made subject to the restrictions on oral testimony set forth in California Rules of Court, rule 3.1306. Any such request must also be supported by an explanation of why a declaration would be insufficient and/or why cross-examination is necessary. (01/01/07)

Rule 911 - Pending Judgment (Pendente Lite) Attorney Fees

(a) Except as provided in The Superior Court of Tulare County, Local Rules, rules 103 and 900, or as otherwise allowed by statute, pendente lite attorney fees and costs will not be awarded unless an Income and Expense Declaration is filed, with Item 19 fully and accurately completed.

(b) If pendente lite attorney fees and/or costs of litigation (including fees for experts) are requested in a combined amount in excess of $2,500.00, the request must be supported by a separate declaration signed by the attorney, describing services performed, time expended, hourly rate, and all reasonably anticipated fees and/or costs. In the absence of such declaration, no award in excess of $2,500.00 for fees and costs will be granted.

(c) There will be no award of pendente lite attorney fees in excess of $10,000.00 in any case, unless an early disposition conference is held pursuant to The Superior Court of Tulare County, Local Rules, rule 927.

(d) Without compliance with The Superior Court of Tulare County, Local Rules, rule 912, no attorney fees under Family Code section 271 will be awarded at any hearing. (01/01/07)

Rule 912 - Meet and Confer Requirement/Settlement Efforts

(a) Except for proceedings under the Domestic Violence Prevention Act and the Tulare County Department of Child Support Services Calendar, counsel must meet and confer prior to the beginning of a contested hearing to resolve or limit the disputed issues. Failure to conduct such settlement discussions in good faith will have a bearing on attorney fees to be awarded and may result in a court-ordered continuance.

(b) All parties are required to provide copies of documentary evidence to opposing parties and not wait until the time of the hearing to “surprise” the opposing party with proffered documentary evidence except where a document clearly and substantially impeaches the veracity of a party or witness, and the document is used primarily for that purpose. This document exchange must occur prior to or at the meeting, required by this rule.

(c) No case on the family law Order to Show Cause calendar will be heard unless counsel, with their respective clients either physically present or immediately physically available, have met and conferred in good faith and attempted to resolve all disputed issues.

(d) When counsel cannot reasonably or economically meet prior to the hearing date due to geographical distances, counsel may meet on the day of the hearing prior to the call of the calendar, or in the discretion of the court, after the calendar is called but prior to the matter being heard. Counsel and clients within the same geographic area (e.g., Tulare and Visalia are one geographic area) must meet before the scheduled hearing date.

(e) When counsel is appearing at a mandatory settlement conference on behalf of clients who cannot be present at the hearing, counsel must arrange for the absent client to be on telephone standby. (01/01/07)

Rule 913 - Stipulations in Open Court

The settlement of matters resulting in stipulations is favored and will take precedence over contested matters. Without permission from the court, the use of a written stipulation is required rather than “stating the agreement on the record.” (01/01/07)

Rule 914 - Failure to Appear/Tardiness

(a) Failure of the moving party or attorney to be present at the calendar call, or failure to have informed the bailiff or clerk of his or her location, will result in the matter being removed from the calendar; and if the responding party has appeared, attorney fees and costs may be awarded to the appearing party.

(b) In the event the responding party or attorney fails to appear or to have informed the bailiff or clerk of his or her location, the court may continue the matter, award attorney fees, or enter an order on the pleadings and testimony of the moving party. (01/01/07)

Rule 915 - Preparation of Order After Hearing

(a) Unless otherwise permitted by the court, the moving party must prepare a written order following any hearing on the family law calendar before leaving the courtroom.

(b) Whenever the court makes a ruling but permits preparation of the order at a later time, the party preparing the order must mail the proposed order to opposing counsel or self represented party for approval within five calendar days of the hearing. The attorney who receives the proposed order must either: (1) return the order signed as approved within five calendar days of the date the proposed order was mailed by the preparing attorney or party, or (2) set an early disposition conference (telephonic or otherwise) to resolve the dispute. If the preparing attorney does not receive a response within 10 calendar days of having mailed the proposed order to the opposing attorney, the preparing party may submit the order directly to the court with correspondence advising the court of the situation. Without prior approval by the preparing party, no modifications will be made on the proposed order by another party. (01/01/07)

Rule 916 - Adoption of Schedule for Temporary Spousal Support Awards

It is the policy of this court that parties be treated fairly and uniformly in determining their temporary spousal support obligations. Accordingly, the temporary spousal support guidelines used by the court will be those known as “Kings County Superior Court Guidelines” as calculated by a certified software program designated in the California Rules of Court. These schedules are subject to change. (01/01/07)

Rule 917 - Income and Expense Declaration/Financial Statement

(a) An Income and Expense Declaration (Judicial Council Form FL150) must be filed, attached to, and served with the moving and responsive papers in all matters when child support, spousal support, attorney fees, or payment of obligations is at issue (except in contempt proceedings).

(b) The failure to complete the Income and Expense Declaration fully, or attach the required pay stubs or income information, may result in sanctions as set forth in The Superior Court of Tulare County, Local Rules, rules 103 and 900.

(c) If an Income and Expense Declaration is more than 90 days old, the party must file a current Income and Expense Declaration. If there has been no change within the previous 90 days, a declaration under penalty of perjury to that effect must be filed with the court. In either case, current verification of earnings or income must be attached as set forth in subdivision (d) below.

(d) For wage earners, pay stubs for the immediately preceding three months, or one pay stub showing year-to-date information, must be attached to all Income and Expense Declarations.

(e) If production of documents under this rule is requested, both parties must comply with this rule and the order must state, "Both parties are ordered to comply with Local Rule 917, a copy of which is attached. Willful failure to comply with this rule may result in sanctions, if requested."

(f) Other discoverable items not to be filed with the court, but to be timely served on the other party include:

(1) Copies of tax returns for the immediately preceding year (state and federal).

(2) Copies of all records reflecting income (whether the income has been received or not) since the last tax return.

(3) Copies of partnership Schedule K-1's filed within the last three years by any partnership in which either party has any interest.

(4) Copies of financial statements received by either party regarding any legal entity in which either party had an interest during the last three years.

(5) Copies of all loan applications or financial statements submitted to financial institution(s) within the last three years, whether or not a loan was obtained.

(g) If documents are not available (i.e., they are in the possession and control of the other party), a declaration under penalty of perjury must state that fact.

(h) The Financial Statement (Simplified) - Judicial Council Form 1285.52 may be substituted for an Income and Expense Declaration - Judicial Council Form FL-150 (available on the Internet at www.courtinfo.ca.gov/forms) if child support is the only financial issue before the court and the filing party has no source of income other than wages accompanied by a detailed pay stub. In all cases, the court reserves discretion to later order the party to file and serve a completed Income and Expense Declaration. (01/01/07)

Rule 918 - Child Support and the Tulare County Department of Child Support Services

The following language must appear in all orders or judgments, or as ordered by the court in any proceeding where child support, child support arrearages, or enforcement of child support is at issue in these circumstances:

(a) If a party is awarded custody of minor child/ren and is receiving, or is likely to receive, Temporary Assistance to Needy Families for the benefit of the child/ren;

(b) If the Department of Child Support Services has an open case and is either establishing or enforcing an order of support for the minor child/ren;

(c) If the issue of child support has not yet been addressed at the time the judgment is submitted for the court's review and filing; or

(d) If it is requested by either party that the Department of Child Support Services establish and enforce an order of support.

"The issue of child support is referred to the Department of Child Support Services for an investigation and report. This report is to be mailed to the parties or attorneys within 120 days from the referral. The parties must have 15 days after the mailing of this report to object in writing to the calendar clerk, with a copy of the objection to the Department of Child Support Services. In the absence of such objection, the recommendation will be adopted as an order of this court."

The Department of Child Support Services will enforce payment of support as ordered above. All child support payments must be made to the Tulare County Department of Child Support Services, P. O. Box 45383, San Francisco, CA 94145-0383. Parties must notify the Department of Child Support Services in writing within 10 days of any change of residence, income, or employment. (01/01/07)

Rule 919 - Mandatory Mediation in Child Custody and/or Visitation Matters

Provided that a written response has been timely filed and served in all matters involving disputed custody and visitation of minors, the parties will be referred to Family Court Services, room 203, county courthouse in Visalia, for mediation. A mediator will work to assist the parties in settling the issues by agreement. If an agreement is reached, the family court mediator will prepare a stipulation, which will be submitted to the court for endorsement after the parents and their attorneys, if applicable, have reviewed and signed the document. If no agreement is reached, the mediator will so inform the court and the matter will be set for a contested hearing. No later than five court days prior to the contested hearing, the mediator will lodge a contested mediation report with the court, with copies available to the parties. The report may, or may not, contain a recommendation to the court with respect to the matter at issue.

(a) Confidentiality - Mediation proceedings will be held in private, and all written and verbal communication will be deemed "official information" (Evid. Code, §1040). Any information may, however, be disclosed to the court.

(b) Orientation - Parties must attend an orientation presented by Family Court Services at times provided by Family Court Services.

(c) Appointments - Voluntary mediation appointments are encouraged and may be scheduled through Family Court Services.

(d) Complaint Procedure - Any objections that may arise in conjunction with a court-ordered mediation must be presented to the director of Family Court Services. If the director or the director's designee is not available, the matter may be presented to the court for resolution.

(e) Participation of Children - Children should not be present for court hearings or mediation unless ordered by the court; the court and/or Family Court Services will determine whether and under what conditions a minor will be interviewed, and the terms and conditions under which counsel will be appointed for the child/ren.

(f) Domestic Violence Procedures - If the matter is referred to Family Court Services for mediation, the party holding the restraining order or who has made allegations in moving papers shall be interviewed separately while the other party remains in the courtroom. After assessment is completed, the other party will then be sent to Family Court Services to participate in the mediation process. This court follows procedures outlined in California Rules of Court, rule 5.215.

(g) Presence in Family Court Services - Only the parties involved in the mediation process are to be present in the offices of Family Court Services. With the exception of a support person in a domestic violence matter or any attorney for a party, friends and relatives of the parties shall not be in the waiting room or in the area outside Room 203 of the Visalia Courthouse while the parties are in mediation. (01/01/07)

Rule 920 - Custody Evaluations

The following rules are in accordance with California Rules of Court, rule 5.220, Court-Ordered Child Custody Evaluations. The goal of this court is to promote the best interests of the family and its children while protecting the privacy of the parties involved. The term "custody evaluator" defines an independent psychiatrist, psychologist, L.C.S.W., L.M.F.T., or court-connected family court mediator completing either a comprehensive or partial custody evaluation or limited investigation.

(a) Matters of custody and visitation will not be referred for investigation and report unless determined necessary by the court. Family Court Services can provide a limited investigation of specific issues by order of the court, and the court may permit examination and cross examination of the mediator.

(b) Whether a referral is to an independent professional for a custody evaluation, or to a Family Court Services mediator for a limited investigation, the court will appoint a professional whose skills, training, and background are best suited to the particular needs of the family with qualifications as outlined in California Rules of Court, rules 5.225 and 5.230.

(c) In all cases referred for evaluation or limited investigation for which there is no previous stipulation as to the evaluator, the parties will nominate three qualified professionals, and the court will choose from that list. No preemptory challenge will be allowed once the name of the evaluator is so chosen.

(d) Ex parte communication - No party, or attorney for a party, shall initiate contact with an evaluator to discuss the merits of the case without notice to the other party and an opportunity to be present; a copy of any written communication must be served upon the other party or his/her attorney. The evaluator will have the discretion to conduct ex parte communications with either party, witness, attorney, mediator, counselor, therapist, physician, teacher, law enforcement officer, or any other person that the evaluator determines is necessary to complete the evaluation process.

(e) When an evaluator is interviewing children, the evaluator will state to the child in language appropriate to the child, that the evaluator may need to tell the judge what was discussed during their conversations so that the child/ren are aware that their communications are not confidential.

(f) An evaluation may not be considered complete if based on an interview with only one parent.

(g) When ordering an evaluation, the court will state the date upon which the report is due. If any fees or costs will be charged for the evaluation, the court will make an order allocating the payment of the evaluator's fees and costs between the parties.

(h) The report shall be submitted to the court through the offices of Family Court Services. The court shall determine dissemination of the report after the Family Court Services director or the director's designee has reviewed the report and submitted it to the family law judge.

(1) No written report shall be discussed by the parties or counsel with the minor child/ren at issue.

(2) Without a court order to the contrary, no person with access to such written report will use the report or information contained therein in any manner outside the custody proceeding for which the report was ordered. A violation of this rule will result in the imposition of monetary sanctions.

(3) All reports to the court will remain confidential, and their duplication and dissemination may be subject to appropriate protective orders as determined by the court. In no event will any such reports be shown to any individual not a party to the proceeding, or to their attorneys, except by order of the court. The evaluation report will be placed in the court file in an envelope marked CONFIDENTIAL.

(i) The court will accept written complaints through Family Court Services regarding the custody evaluation or limited investigation. The court will determine whether the complaint is procedural or content in nature and, if necessary in matters of content, will set the matter on a noticed motion to address any allegations.

(j) An evaluator may petition the court to withdraw by addressing the court in written form through Family Court Services with notice to all parties. The court will attempt to resolve the matter to its best ability prior to relieving the evaluator of the case. (01/01/07)

Rule 921 - Custody Orders and Agreements

As allowed by Family Code section 3024, all custody agreements and orders must contain language that is in substantial conformity to the following:

> "If either parent plans to change the residence of a child, subject to this order, for more than thirty (30) days, and that change will affect the ability of either parent to fulfill this parenting plan, the parent contemplating the move shall notify the other parent of said move by mail, return receipt requested and postage prepaid, to the last known address of the parent to be notified. A copy of the notice shall also be sent to that parent's attorney of record. To the extent feasible, the notice shall be provided within a minimum of 45 days prior to the proposed change of residence so as to allow time for mediation of a new agreement concerning custody and visitation. It is the policy of this court that the parent contemplating the move is responsible for obtaining a modified parenting plan by either written agreement or order of the court."

Compliance with this notice requirement is not sufficient to change an existing order of custody and visitation. (01/01/07)

Rule 922 - Settlement Conference Statement

All parties and attorneys must attend a mandatory settlement conference prior to trial on a date designated by the court, unless exempted from compliance with this rule. An exemption will be granted only upon a showing of good cause and leave granted by the court. A motion for leave to dispense with any mandatory settlement conference requirement must be filed, calendared, and heard on or before the date of the settlement conference.

At least five days before the settlement conference, each party must file with the court and serve on the opposing party a Settlement Conference Statement that must contain the following:

(a) A list of all community assets and encumbrances, including the date of acquisition, purchase price, and present fair market value. If there is a dispute as to whether the asset is, in fact, community property, a tracing of the funds should be included.

(b) A list of all property that the party claims is separate property, including the date and method of acquisition. The fair market value of separate assets should also be included.

(c) Factual data upon which the parties rely in support of (or in opposition to) a claim for child support, and/or spousal support, and attorney fees. Any request for spousal support must be supported by a statement addressing all relevant facts as listed in Family Code section 4320.

(d) Where the parties possess real property, the same must have been appraised before the date of the settlement conference, and a copy of the appraisal must be attached to the statement.

(e) Where the furniture has not been divided, a complete inventory of the furniture must be attached along with the appraisal.

(f) Motor vehicles listed must be accompanied by the Kelly Blue Book valuations.

(g) When the asset is a pension or retirement plan, unless the parties have agreed regarding the pension division, or anticipate it will be an in-kind division, an appraisal of the same must be attached to the statement; provided however, that if a party is willing to accept the "vested cash value," such party may furnish a certified statement by the holder of the pension giving the "vested cash value" of the pension.

(h) A list of the community obligations existing at time of separation. If a spouse is claiming credit for payment after separation, an itemized list, with proof of payment, must be attached.

(i) Any party contending that community property or quasi-community property of the parties should be valued at a date after separation and before the trial must comply strictly with the provisions of Family Code sections 2550-2552 with respect to notice to the other party. Such motion must have been made and heard before the date of the settlement conference.

(j) A statement that the value of an asset or liability is unknown (without a showing that a good faith appraisal thereof could not be made), or that a valuation of the asset is not made because a party seeks a sale, a deferred sale of home order, or equal division of the asset, will be deemed a material failure to comply with these rules.

(k) Where it is urged that the family home be retained pursuant to Family Code section 3800, all facts relevant to this issue must be included in the statement. (01/01/07)

Rule 923 - Court's Dismissal Pursuant to Delay Reduction Guidelines

In dissolution of marriage or legal separation matters, the court will issue an order to show cause why the matter should not be dismissed if no judgment has been entered to dispose of all of the issues in dispute within 12 months of the filing of a petition. The case will be dismissed unless:

(a) Either party opposes the dismissal, and the court determines such opposition to have merit;

(b) A child support order has been previously entered in the matter and is still in effect; or

(c) The court determines the case should remain active.

If the case is not dismissed, the court will set time standards and a further Order to Show Cause hearing regarding the pending dismissal in order to insure the timely disposition of the case. (01/01/07)

Rule 924 - Entry of Default

Envelopes provided to the superior court clerk for mailing to parties in default in a dissolution matter must contain the return address of the superior court clerk, not the address of the moving party. The court's address is: Clerk of the Superior Court, County Civic Center, Room 201, Visalia, CA 93291, Case No.: _____ (01/01/07)

Rule 925 - Stipulation or Objection to Family Law Commissioner(s)

Family law cases, uniform parentage actions, civil harassment actions, guardianships and domestic violence cases are routinely assigned to the family law commissioner in department 8. Failure to object to the family law commissioner upon filing of the initial pleading is deemed a stipulation to the family law commissioner hearing the case. If the responding party does not consent to the family law commissioner hearing the case, the responding party must file a written objection within 15 days after service of the initial pleading, or within 48 hours before the scheduled hearing date (whichever date provides more notice). The responding party's failure to file a timely objection is deemed a stipulation to the family law commissioner. (01/01/07)

Rule 926 - Parties Not Represented

(a) Any proposed Marital Settlement Agreement in which only one party has legal counsel should contain language which is in substantial conformity with the following:

> "Petitioner/Respondent acknowledges by the initials at the end of this paragraph that she/he has been advised to obtain independent legal counsel and that she/he has voluntarily chosen not to do so; that she/he has read and understands the contents and legal effect of this agreement and has entered into it and signed it freely and voluntarily." (initials of party)

(b) If an unrepresented party pays a fee for preparation of a document, the document must include the name of the preparer and the capacity of the party for which it was prepared (e.g., Prepared by ABC Typing Service for Petitioner; Typed by 123 Divorce Service for Respondent; Prepared by XYZ Legal Services, etc.). (01/01/07)

Rule 927 - Early Disposition Conferences

The purpose of an early disposition conference (EDC) is to expedite and simplify family law litigation. Participation in an EDC is not in lieu of a mandatory settlement conference and will not relieve either party of the duty to participate in a regularly scheduled settlement conference. The EDC calendar will be set in the annual Distribution of Business Order pursuant to The Superior Court of Tulare County, Local Rules, rule 300.

Early disposition conferences are set on Wednesday afternoons of each week. Parties and counsel must mutually agree on an EDC date and must contact the clerk of Department 8 with the requested date. No EDC will be held without proof of proper filing with the court clerk's office in Room 201 of the Visalia courthouse.

No disputed Order After Hearing shall be submitted to the family law commissioner for signing and filing, pursuant to California Rules of Court, rule 3.1312, and The Superior Court of Tulare County, Local Rules, rule 915, without first participating in an EDC.

Participation by the family law commissioner in the EDC will not preclude the commissioner from being the trial judge. (01/01/07)

Rule 928 - Procedures for Entry of Judgment and Common Child Support Orders

(a) All proposed judgments or findings and orders after hearings where child support is ordered shall contain the following language:

(1) "Pursuant to Family Code section 4062, each parent is responsible for one-half of all medically necessary uninsured or un-reimbursed medical costs, including but not limited to medical, dental, orthodontia, and vision expenses." All judgments or findings and orders after hearings wherein a child support order is included shall so indicate and shall include a copy of the Judicial Council Form FL 192 entitled "Notice of Rights and Remedies - Health Care Costs and Reimbursement Procedures" (the form is available on the Internet at www.courtinfo.ca.gov/forms); and

(2) "Pursuant to Family Code section 4062, each parent is responsible for one-half of day care costs incurred to allow a parent to work or to be educated or trained for purposes of employment. All expenses for child care shall be documented, including, but not limited to, name of care provider, facility license, contract for services, and monthly billing; and this document shall be provided to the obligor parent in a timely manner."

(b) All stipulations waiving guideline child support shall include the following language:

"The parties are agreeing to an amount that is not pursuant to current guideline formula. The parties agree that, pursuant to Family Code section 4065(a):

(1) They are fully informed of their rights concerning child support.
(2) The order is being made without coercion or duress.
(3) The agreement is in the best interest of the child/ren involved.
(4) The needs of the child/ren will be adequately met by the stipulated amount.
(5) The right of support has not been assigned to the county pursuant to Welfare and Institutions Code section 11477, and no public assistance application is pending."

(c) Proof of any underlying child or spousal support order(s) must be submitted with all requested notice(s) to withhold wages.

(d) All judgments or findings and orders after hearings where a child support order is contained and whereupon Tulare County Department of Child Support Services (TCDCSS) is enforcing the order shall have attached to it Form FS01, "Standard Orders Attachment." A supply of forms as mentioned above in this rule shall be maintained and distributed by the courtroom clerks as well as be available on the court's web site (www.tularesuperiorcourt.ca.gov) and for purchase at Room 201 of the Visalia courthouse and the remote TCDCSS offices in Visalia and Porterville. (01/01/07)

Rule 929 - Family and Juvenile Court Management of Child Abuse Cases
(This rule is repeated in the Juvenile Court rules as rule 1161.)

It is the policy of the superior court to identify and coordinate custody proceedings involving the same child, which may appear in multiple legal settings. It is further the policy of the superior court to coordinate the efforts of the different court systems so that the child/ren's and family's needs are served and the resources of the family and the court are not wasted. To these ends the superior court and the agencies serving the court must cooperate to increase the exchange of information and to determine the most appropriate forum for the resolution of the issues relating to the child/ren.

(a) Report Pursuant to Penal Code section 11166 - If, during the pendency of a family law proceeding, a child abuse allegation against one of the child's parents comes to the attention of a Family Court Services staff member or other mediator or evaluator, that person must first determine whether the allegation must be reported to a child protection agency, pursuant to Penal Code section 11166. If that person determines the allegation does not fall within the description of section 11166, he/she need not make a report. However, any other person may report the allegation to a child protection agency.

(b) Child Abuse Investigation - When the Health and Human Services Agency, Child Welfare Services Branch (CWS), receives a report of suspected child abuse during the pendency of a family law proceeding, it must investigate the matter immediately, or within 10 days, unless the judicial officer from family court requests an earlier investigation. CWS, and the law enforcement agency having jurisdiction, must coordinate their investigative efforts. If CWS becomes aware that a family law case is ongoing concerning a child who is the subject of a suspected child abuse investigation, CWS must inform Family Court Services of the pending investigation and any decisions it makes concerning the child abuse investigation. If CWS, or the law enforcement agency having jurisdiction, determines that further investigation is necessary, the agency making that determination must contact the other agency immediately so that all investigative efforts may be coordinated.

(c) Welfare and Institutions Code section 329 Application - If CWS decides not to intervene, or fails to report to the reporting party within 10 days, any person may apply to the social worker pursuant to Welfare and Institutions Code section 329. In that application, the affiant must give notice and identifying information of any pending family law proceeding. A copy of the application must be sent to Family Court Services by the moving party. The social worker must respond to the application as soon as possible, or within three weeks after

submission of the application (Welf. & Inst. Code, § 329). (See Appendix 4 for application and order form.)

(d) Suspension of Family Court Proceedings Pursuant To Welfare and Institutions Code section 300 Petition Filed In Juvenile Court - Upon the filing of a petition pursuant to Welfare and Institutions Code section 300 in the juvenile court, all custody and visitation proceedings in the family court are suspended. The juvenile court clerk will determine whether there is a family law court file concerning the child/ren named in the petition. If there is a family law court file, the juvenile clerk will send a copy of the notice required under Welfare and Institutions Code section 335 to the family law court. Upon receipt of such notice, the family law clerk will place such notice in the family law file. Thereafter, custody and visitation issues will be determined by the juvenile court. The family court will resume jurisdiction over custody and visitation issues only after termination of jurisdiction of the juvenile court. Upon termination of jurisdiction of the juvenile court, the clerk of the juvenile court will lodge a copy of the order terminating jurisdiction and any juvenile court custody order in the family court file.

(e) Review of Dependency Decision - If CWS decides to initiate dependency proceedings after reviewing the application under Welfare and Institutions Code section 329, any person may apply to the juvenile court to review that decision pursuant to Welfare and Institutions Code section 331. The application for court review must include a copy of the application made pursuant to Welfare and Institutions Code section 329. The juvenile court will rule on the application as soon as possible, and in no event later than 30 days after receipt of the application.

(f) Informal Supervision Agreement - If, during the CWS worker's investigation, one or both parents reach an informal supervision agreement pursuant to Welfare and Institutions Code section 331, a copy of that agreement must be sent immediately to CWS, to Family Court Services, to family court, and to each parent.

(g) Family Code section 3150 Appointment of Counsel - During family court proceedings in which allegations of child abuse have been made, the family court judge may appoint counsel for the child/ren (Fam. Code, § 3150) to protect the child/ren's interests and/or to expedite the policy stated herein and carry out the terms of this protocol.

(h) Coordination of Cases - At any time during the process described herein, the supervising judges and bench officers of the family and juvenile courts are encouraged to discuss, generally, problems relating to the coordination of cases involving child abuse allegations. Nothing in this section will be construed to permit judicial officers to discuss the specific facts of any certain case. (01/01/07)

Rule 930 - Family Law Facilitator - Resource for People Who Represent Themselves

The office of the family law facilitator is a resource for self-represented litigants who need assistance with child support and other family law related issues. Classes are held regularly to help parents with paperwork and obtaining orders. Please call (559) 737-4422.

The family law facilitator will perform the duties outlined in Family Code section 10004, and any additional duties as directed by the supervising family law judge, or presiding judge of the court, pursuant to Family Code section 10005. Additional self-help information and links to state self-help information is located on the court's web site at www.tularesuperiorcourt.ca.gov. (01/01/07)

Rule 931 – Domestic Violence Coordination Rules

Domestic Violence Coordination Rules

Court Communication

It is this court's goal to coordinate domestic violence orders. It is the clerk's responsibility, prior to any hearing requesting protective orders and/or child custody and/or visitation orders, to determine if any such orders have already been issued as to the same parties or children in any other department by accessing the court's case management system. The court's criminal, family, and juvenile law departments shall use all reasonable efforts to communicate and exchange information with each other regarding any domestic violence orders.

Avoiding Conflicting Orders

No department of the family or juvenile court shall knowingly issue a protective order or custody order in conflict with an order of the criminal court. If such an order issues inadvertently, the orders of the criminal law proceeding shall have priority.

Modification Of Criminal Orders

A court issuing a criminal protective order may, after review of any existing family or juvenile court orders, modify the criminal protective order to allow or restrict contact between the restrained person and his or her children, spouse, or other protected person.

Coexisting Criminal and Family or Juvenile Orders

A family or juvenile court order may coexist with a criminal court protective order, subject to the following:

(a) Any order that permits contact between the restrained person and his or her children shall provide for the safe exchange of the children and shall not contain language either printed or handwritten that violates a "no contact order" issued by a criminal court.
(b) Safety of all parties shall be the courts' paramount concern. The family or juvenile court order shall specify the time, day, place, and manner of transfer of the child, as provided in Family Code section 3100.

Issuance and Enforcement of Restraining Order

Upon granting of relief (through initial petition, modification, or termination), the clerk shall convey within 24 hours a file-endorsed copy of the order to the Tulare County Sheriff's Department (TCSO) for input into CLETS (a statewide computerized registration system for restraining orders), or to the court CLETS administrator upon that program becoming operational. (01/01/07)

CHAPTER 10 - PROBATE AND GUARDIANSHIP MATTERS

Rule 1000 - Calendar and Procedural Matters

(a) Probate Calendar - All probate matters and adoptions will be assigned as set forth in the annual order of the court pursuant to The Superior Court of Tulare County, Local Rules, rule 300. Conservatorships under the Lanterman-Petris-Short Act (hereinafter "LPS"; Welf. & Inst. Code, § 5150 et seq.) will be set only on Tuesdays, and adoption proceedings only on Fridays.

(b) Filing Deadlines - All required moving pleadings in probate matters must be filed with the superior court clerk at least 15 days prior to the hearing date. All Probate Code and court-ordered due dates for filing will be strictly observed (e.g., inventory and appraisements, accountings, status reports, receipts on blocked accounts, and receipts from personal representatives on deceased conservatees). Failure to comply with statutory or court requirements may result in imposition of surcharges, or other sanctions, without a showing of good cause.

(c) Filing of Documents and Proposed Orders - All probate documents in decedent's estate must be captioned as required by California Rules of Court, rules 2.100 through 2.119, and other applicable codes, except that the hearing date and time must be all in upper case.

(1) Supporting Papers - Supporting papers must be filed at least 10 days in advance of the scheduled hearing date. Proofs of publication may be filed within two days of the scheduled hearing date.

(2) Orders - Except in the case of confirmation of sales and contested matters, proposed orders should be lodged in the court case file at least five days in advance of the scheduled hearing date unless authorized by the court.

(3) Continuance on Untimely Filing - For failure to file supporting papers or other documents necessary to allow the court to rule on the particular matter, the court will automatically continue the matter for two weeks, without a showing of good cause for such failure.

(4) Duties and Liabilities of Personal Representative - As authorized by Probate Code section 8404(b), these rules require the personal representative's birth date and driver's license number on the Acknowledgment of Receipt of the Statement of Duties and Liabilities of Personal Representative.

(5) Inventory Form - All inventory and appraisals must be filed with the Judicial Council form caption page printed on pink paper and attachments on white paper.

(d) Disposition Requirements - In probate matters involving a decedent's estate where a personal representative has been appointed, the court will issue an Order to Show Cause (OSC) regarding the status of the case if a Judgment of Final Distribution, or a Report of Status of

Administration, has not been filed within 12 months after probate letters issued in cases where a federal estate tax return is not required. In an estate for which a federal estate tax return is required, the Judgment of Final Distribution or Report of Status of Administration is to be filed within 18 months from the issuance of letters. At the OSC hearing, the court will establish appropriate time limits to accomplish a prompt disposition of the matter.

(e) Special Notice Situations

(1) Special Letters - Except in unusual cases, a party seeking special letters of administration, or temporary letters of guardianship or conservatorship, must give notice of the application to the surviving spouse, proposed ward, domestic partner, conservatee, or other persons who seek or might be expected to seek letters, and any other person who appears to be equitably entitled to notice. This notice must be given as required for other ex parte orders. (See California Rules of Court, rules 3.1200 through 3.1207.)

(2) Publication of Notice of Death - The published notice of death is sufficient to include only those instruments that are offered for probate and specifically referred to in the petition for which the notice is given. Any other will or codicil not specifically mentioned in such petition must be presented to the court in an amended petition or a second petition, and notice of that hearing must also be published.

(3) Mailing of Notice of Administration/Notice to Creditors - Notice to known creditors, apart from that published as otherwise prescribed by law, is required under Probate Code section 9050, and proof of said mailing must be filed with the court prior to the filing of any petition for final distribution. “Notice to Creditors” is a Judicial Council form bearing a proof of service on the reverse for completion and filing with the court. (01/01/07)

Rule 1001 - Hearing Procedures

(a) Approval of Matters without Hearing - If, after reviewing the file, a matter is unopposed and approved by the court or approved by the court with modification accepted by counsel, no appearance of counsel will be necessary on the hearing date if written verification of agreement is filed by counsel. If, at the time set for hearing on any such pre-approved matter, any opposition to requested relief is offered in writing, the matter will automatically be continued two weeks and written notice will be given by the clerk to petitioner’s counsel of record, unless otherwise directed by the court. If the court refuses to approve the request without hearing due to the petitioner’s failure to satisfy statutory or local rules requirements, the matter will be continued for two weeks, without a showing of good cause.

All matters will be posted on the court’s web site at www.tularesuperiorcourt.ca.gov and on the appropriate links for the probate department the day before each hearing date.

(b) Continuances - Continuances requested by counsel may be made only in court, or through the probate judge’s clerk. A continuance will not be granted if there is opposing counsel unless a request is made in open court, or by written stipulation of all counsel, to a date arranged by the probate clerk. If the matter has been specially set, it may not be continued without the

written stipulation of all counsel and the approval of the court scheduled to hear the matter. Without a showing of good cause, no more than three continuances will be granted before the matter is dropped from the calendar.

If a petition for probate of a will is called for a hearing, and an attorney or party appears and orally objects, the court will continue the hearing for a reasonable length of time, not exceeding four weeks, if the party objecting declares that a written contest will be filed. If such written contest is not actually filed prior to the continued date, the hearing will proceed as if no objection had been made. (01/01/07)

Rule 1002 - Contested Matters

(a) Meet and Confer Requirement - If any probate petition is contested or opposed, the parties or attorneys must make a reasonable and good faith attempt to informally resolve the controversy, at a face-to-face conference, before any hearing of the contested petition. If there is no resolution, each party must file a Statement of Issues identifying every unresolved issue with references to any supporting evidence and memorandum of points and authorities on file, and an estimate of the time required for the hearing. Each party must also prepare and file, by declaration, an offer of proof listing the witnesses to be called and the nature and the general subject matter of their testimony. At least two court days before the hearing date, each party must either (1) notify the calendar clerk in the court administrator's office that the controversy has been resolved, or (2) file and serve the Statement of Issues. This rule will not apply to contested LPS conservatorship matters not involving jury trials and for which estimated time for hearing is 30 minutes or less.

(b) Transfer to Trial Calendar - If the hearing on a contested matter is estimated to be 20 minutes or less, the hearing will usually be held before the probate judge on the regular probate calendar. If a hearing on a contested matter is estimated to be more than 20 minutes, and counsel appear at the probate calendar, the matter will be set by the probate judge on the trial calendar.

(c) Objections - Any opponent to a petition, accounting, or other matter scheduled for hearing, except contested LPS conservatorship petitions, must file verified, written objections stating the grounds for such objections prior to the hearing. Notice of any opposition and/or any intention to appear must be given to the attorney for petitioner at least two court days before the scheduled hearing date, unless good cause is shown. (01/01/07)

Rule 1003 - Ex Parte Matters

Ex parte petitions will be heard in the court probate department according to the assigned probate judge's determination on any court day, subject to the probate judge's availability. In the probate judge's absence, ex parte matters will be heard by another judge. Appointments for ex parte hearings must be made through the clerk of the court (Room 201 of the Visalia courthouse), and the court investigator's office must have 24-hour notice of an ex parte hearing on a temporary or general conservatorship for review of the documents and preparation of the

Document Examiner's Checklist, if appropriate, before the ex parte conservatorship or guardianship matter will be heard.

No application for an ex parte order, or a temporary restraining order which has been previously rejected by a judge of this court, shall be presented to any other judge of this court without the judge to whom it is being presented being expressly informed of the circumstances of the previous application and the reasons for its denial.

(a) Contents of Petition - All petitions for an ex parte order must be verified by the petitioner and must contain sufficient evidentiary facts of the emergency nature of the petition to justify issuing the order. Conclusions or statements of ultimate facts are not sufficient, and a foundation must be shown for the petitioner's personal knowledge.

(b) Special Notice Allegation - All petitions for ex parte orders submitted after the initial appointment of the personal representative must contain a statement on special notices. The statement must either recite that no request for special notice is on file and in effect, or it must list the parties requesting special notice and have attached the specific waivers of notice by such parties or proof of service on such parties.

(c) Notice to Counsel or Opposing Party - Where the emergency nature of the application is apparent and the court elects to consider the matter ex parte, but the need for an opportunity to be heard is also apparent, moving counsel must give at least six business hours' notice of the nature of the application and the time and place of the hearing to counsel for other interested parties or to unrepresented interested parties. Before the court will proceed with the hearing, moving counsel must submit a declaration to the court factually setting forth efforts to give such notice, or facts supporting the conclusion that it was impossible to give such notice.

(d) Separate Order Must Accompany Petition - Except where a Judicial Council form is used, a petition for an ex parte order must be accompanied by a separate order complete in itself. It is not sufficient for such order to merely provide that the application has been granted, or that the sale of property or security set forth in the petition has been approved.

(e) Sale of Personal Property: Ex parte petitions for approval of sale of depreciating or perishable personal property pursuant to Probate Code section 10000 et seq. must set forth the appraised value of such property. Ex parte petitions for the sale of securities must set forth the established stock or bond exchange applicable to the sale, or if there is no such exchange, then the amount of the minimum sales price must be stated. (01/01/07)

Rule 1004 - Probate Referee Procedures

(a) Appointment of Probate Referee – The State Controller's office maintains a list of approved probate referees in each county. Applications for appointment of one of the approved probate referees for Tulare County may be filed with original petitions or moving papers. If a referee is not appointed on the order for probate, an original and one copy of an application for appointment of a referee must be filed with the clerk. Such application should not be

made earlier than the time at which the order of appointment of executor, administrator, guardian, or conservator is submitted.

(b) Submission of Inventory - All inventories and appraisals for sales (whether initial or subsequent) must be received from the appointed referee and filed with the clerk of the court at least two weeks prior to any court appearance involving a sale or distribution of any assets contained in such inventory and appraisal.

(c) Statement Regarding Bond - Items 5 through 8 of the "Inventory and Appraisal Form" (DE-160) must be fully completed as to the particulars of the bond, or assurance to the estate, in all matters requiring the filing of an inventory and appraisal except for Spousal Property Petitions and Summary Administration proceedings under Probate Code section 13100 et seq. (01/01/07)

Rule 1005 - Accountings and Final Distributions

(a) General Requirements - The format for all accountings filed in probate proceedings, including guardianship, conservatorship, and decedent's estates and trust accounts, must be in conformance with Probate Code section 10900 et seq. and the materials set forth in the following continuing education of the bar publications: *California Decedent Estates Practices, California Conservatorships,* and *California Trust Administration*. All accountings must set forth the beginning and ending dates of the accounting period, contain a summary or recapitulation of all charges and credits to the fiduciary, and be presented in a standard financial statement format entitled, "Summary of Account." (See Prob. Code, § 10900 for proper format.) The "Summary of Account" must be included in the body of the petition, or incorporated by reference, and charges and credits must balance.

(b) Supplemental and Amended Accounts - A supplemental accounting in a decedent's estate must include only receipts and disbursements occurring since the ending date of the last filed accounting. A supplemental account is not to be used to amend or correct the last filed account. An "Amended Accounting" must be filed to change the last accounting filed. Any supplemental or amended accounting must be noticed for hearing, unless the court by order dispenses with notice.

(c) Waiver of Accounting - Even though an accounting has been waived, the report that is made in lieu thereof must state how much is to be paid to the attorney and the representative and set forth the manner in which such compensation is calculated. The report must also clearly identify the assets in the estate on hand at the end of the accounting period. "Waivers of Accounting on Final Distribution" must comply with Probate Code section 10954. Applications for "Waiver of Accounting" must be included in the caption of the Petition and in the Notice of Hearing.

(d) Preliminary and/or Final Distribution Requests - In any request for distribution, sufficient facts must be set forth as to known creditors' claims, contingent claims, administration expenses, taxes, projected fees and commissions, and other necessary information, in order for the court to determine that the estate is solvent and that the distribution may be made as

prayed. It is not sufficient to merely state that all claims have been paid. The claims presented must be listed, showing the claimant, the amount claimed, and the disposition of each claim. If any claim has been rejected, the date of service of the notice of rejection of the claim must be stated. The allegations regarding disposition of all claims must appear in the petition for final distribution even though such allegations may have appeared in whole or in part in prior petitions. A request for preliminary distribution must also indicate why the estate is not in a condition to be closed.

(e) Distribution Petitions and Orders - A petition for distribution must describe in detail all property to be distributed either in the body of the petition, in the prayer, or by an Account Summary incorporated in the petition by reference. An order of distribution must be drafted so that it is complete without reference to the petition, and without reference to any documents which are not part of the order. Complete legal descriptions of all assets and the full names of all distributees must be set forth in the order, not attached thereto. Nothing shall follow the signature of the judge. (01/01/07)

Rule 1006 - Family Allowance

Before an inventory is filed, the court may order a family allowance, as provided in Probate Code sections 6540, 6541, and 6542. If a petition for a family allowance order is filed more than six months after the personal representative has been appointed, or after the inventory has been filed, or is a petition for a second or increased allowance, it must be noticed and placed on the calendar. Such orders will be limited to a definite period, usually not to exceed 12 months. It is the court's policy not to make orders for family allowance for an unlimited period.

If any estate is being administered under the Independent Administration of Estates Act, the personal representative may pay a family allowance without prior court order by following the Notice of Proposed Action procedure as set forth in the Probate Code. (01/01/07)

Rule 1007 - Procedures for Temporary and General Guardianships

All persons petitioning the court for a general guardianship must do the following:

(a) Purchase the guardianship packet from the clerk of the court.

(b) Attend the court's guardianship orientation and receive a certificate of completion.

(c) All self-represented petitioners must make an appointment with the self help attorney at (559) 737-4422 to have the court documents reviewed. More than one appointment may be necessary to ensure the documents are complete and correct before filing with the clerk of the court.

(d) File the petition and all supporting documents, including the "Certificate of Completion of the Guardianship Orientation and Guardianship Checklist."

(e) If the court refers the petition to Family Court Services for investigation, the court, prior to the commencement of the investigation, must sign an order appointing the investigator.

(f) An order appointing a general guardian must not be issued before each of the petitioners has completed all of the following:

(1) Attended the guardianship orientation;
(2) Filed the "Certificate of Completion of the Guardianship Orientation";
(3) Signed the "Authorization to Release Department of Justice Information" to the court;
(4) Paid $32.00 in check or money order for the Department of Justice record check; and
(5) Completed the LiveScan fingerprinting process

(g) An order appointing a general guardian must not be issued until a fingerprint clearance has been received from the Department of Justice and the FBI.

(h) An order appointing a general guardian must not be issued before every person over the age of 18 residing in the proposed guardian's home has completed the fingerprint process and clearance has been received.

(i) An order appointing guardian will not be issued before the petitioner(s) has signed and filed all of the following documents with the clerk of the court:

(1) "Consent to Serve as Guardian";
(2) "Duties of Guardian";
(3) "Guardianship Questionnaire";
(4) "Proper Notice of Hearing/Citation," if appropriate;
(5) "Uniform Child Custody Jurisdiction and Enforcement Act" form (UCCJEA);
(6) "Confidential Guardianship Screening" form; and
(7) "Orders Appointing Guardian and Letters of Guardianship" (lodged with the clerk of the court).

(j) If the court refers a guardianship petition to a Family Court Services court investigator for report and recommendation, the petitioner(s) must provide conformed copies of all documents which have been filed with the clerk of the court to the investigator, including a copy of the original petition and all supporting documents. The documents must be delivered to Family Court Services, court investigator.

(k) If the court refers a guardianship petition to the court investigator, the investigator must interview the proposed guardian(s) and ward(s), and complete and file a report prior to the general hearing for guardianship. The court investigator has discretion regarding collateral contacts and review of records at the direction of the court for each case.

(l) These additional documents must be provided to the court investigator:

(1) Birth certificate of the proposed ward(s);
(2) Original social security card of proposed guardian(s) and ward(s);

(3) Current driver's license of each proposed guardian;
(4) Proof of motor vehicle insurance for any vehicle used to transport wards;
(5) Income verification of each proposed guardian;
(6) Marriage certificates/divorce decrees of proposed guardian(s);
(7) Citizenship documents; and
(8) Bankruptcy discharge documents, if applicable

(m) All parties seeking an ex parte temporary guardianship must do the following:

(1) Set an appointment with the probate judge's clerk at least 24 hours prior to the hearing;
(2) Comply with all statutory notice requirements;
(3) File the petition for temporary and general guardianship and all supporting documents, including the guardianship checklist; and
(4) Secure a hearing date from the clerk of the court for the general hearing, and enter the hearing date on the proposed temporary order as the date of expiration of the temporary orders. No temporary orders will be signed without an expiration date.

(n) If a referral is made by the court for an investigation, the court will calendar the hearing for no less than 60 days from the date the investigation was ordered.

(o) If the temporary letters of guardianship expire prior to the hearing for general guardianship, the letters must be renewed. This may be done by submitting an order and "Temporary Letters of Guardianship" to the clerk of the court. The clerk of the court will send the documents to the judge for approval.

(p) All confidential documents will be maintained in a confidential envelope in the court case file and will not be released for viewing by the public.

(q) Unless otherwise notified by the court, appearance of counsel and/or parties is required at the time of hearing in the following matters:

(1) Appointment of guardian;
(2) Termination of guardianship other than by death of a ward or by the ward attaining majority;
(3) Confirmation of sale of real or personal property; and
(4) All contested matters

(r) All guardians of the estate must either (1) Petition the court for waiver of accountings if the estate meets the requirements of the Probate Code, or (2) file an annual accounting within 60 days after the anniversary date of the issuance of Letters of Guardianship. The court investigator must be served conformed copies of any accounting documents on the day it is filed. (01/01/07)

Rule 1008 - Procedures for Temporary and General Probate Conservatorships

All persons petitioning the court for a general conservatorship must do the following:

(a) File the petition and all supporting documents, and at least two additional copies, with the clerk of the court. A signed order by the court appointing the court investigator and an order appointing counsel for the conservatee, if requesting dementia powers, must be submitted with the petition. (This can be obtained by an ex parte hearing pursuant to California Rules of Court, rules 3.1200 through 3.1207.) A conformed copy of the petition and all supporting documents must be served on the court investigator's office on the day of filing.

(b) In all cases where dementia or limited powers are requested, counsel must be appointed. If the proposed conservatee qualifies for the services of the public defender, the order appointing counsel may provide for the appointment of the public defender. Otherwise, private counsel must be retained and appointed. If the order appointing counsel has been filed, the petitioner must prepare one additional copy of the petition and all supporting documents for the appointed attorney.

(c) Obtain a hearing date upon filing of all the necessary documents. No hearing date will be issued without an order appointing the court investigator and an order appointing counsel for the conservatee, if appropriate.

(d) All confidential documents shall be placed in a confidential envelope by the clerk of the court. The general public will not have access to these documents.

(e) Each document shall be filed and registered separately in the court's case management system. (01/01/07)

Rule 1009 - Orientation Program

No order appointing a permanent conservator, except the public guardian and previously qualified private professional conservators, will be issued before the petitioner(s) has signed and filed with the clerk of the court, and the petitioner(s) has provided a conformed copy of each filed document to the court investigator's office, all of the following:

(a) Petitioner's receipt for the purchase of *The Conservatorship Handbook* shall be filed in the court file and a copy of the receipt shall be provided to the court investigator.

The Conservatorship Handbook is available for sale in the office of the clerk of the court for $25.00. A proposed conservator must purchase *The Conservatorship Handbook* prior to orientation.

(b) Each proposed conservator shall sign a "Statement of Duties of Conservator" (form GC-348, provided in packet) which shall be filed with the clerk of the court. All proposed conservators may sign and date on the same original document.

(c) Petitioner's "Certificate of Attendance at the Orientation Program for Proposed Conservators." The Orientation Program includes (1) Viewing the video "With Heart: Understanding Conservatorship," and (2) a review of selected portions of *The Conservatorship Handbook*.

(d) The "Certificate of Attendance to the Orientation Program for Proposed Conservators" must be filed with the clerk of the court no later than five court days before the scheduled hearing on the petition for appointment of a general conservator. Failure to meet this requirement will result in the petition for appointment being continued for further hearing.

(e) If a temporary conservator fails to attend the orientation program for proposed conservators, the temporary conservator and counsel must attend the hearing on the petition for appointment of general conservator. The orders for appointing the temporary conservatorship may be immediately suspended or terminated unless good cause can be shown as to why the temporary conservator failed to comply with this rule.

(f) Attendance at the hearing for the petition for general conservatorship is not required providing the orientation program has been completed and fingerprint clearance has been received and all necessary documents have been completed and filed. (01/01/07)

Rule 1010 - Ex Parte Motions for Temporary Conservatorships

All persons seeking temporary appointment as a probate conservator must complete the following:

(a) Set an appointment with the clerk of the judge acting as the probate judge at least 24 hours prior to the hearing;

(b) Comply with all statutory notice requirements;

(1) File the petition for temporary conservatorship and general conservatorship and all the supporting documents;

(2) Secure a hearing date from the clerk's office, Room 201, for the petition to appoint a temporary probate conservator and enter the hearing date on the proposed temporary order as the date for expiration of the temporary order and letters;

(3) Deliver to the document examiner/court investigator (room 203), at least 24 hours prior to the hearing, the following:

(A) The "Petition for Appointment of Probate Conservator" and "Petition for Appointment of Temporary Probate Conservator";

(B) All supporting documents (capacity declaration, confidential supplemental, conservator screening form, etc.);

(C) A copy of the "Order Appointing the Court Investigator";

(D) A copy of the "Order Appointing Counsel for the Conservatee," if dementia powers are requested;

(E) The proposed "Temporary Order" and "Temporary Letters";

(1) The Temporary Order and Letters must have an ending or expiration date which is 30 days or less from the date the temporary letters were issued;

(2) A reconsideration hearing must be held within 30 days of the issuance of Temporary Letters to extend the Temporary Order; and

(F) The proposed general order and "Letters Appointing Conservator."

(4) Temporary orders appointing a conservator will not be signed by the court without prior review by the document examiner/court investigator.

(c) The document examiner/court investigator will review the documents and provide the court with a checklist indicating the completeness of the documents prior to the hearing.

(d) Once a hearing date has been issued on the petition for general conservatorship, it may not be removed from the calendar except by written stipulation and order of the court. (01/01/07)

Rule 1011 - Providing Information

(a) All proposed conservators, except the public guardian and previously qualified private professional conservators, must complete and file, with the petition for temporary and general conservatorship, a "Conservatorship Questionnaire" utilizing the form provided by the court (available at the office of the clerk of the court) and signed under penalty of perjury.

(b) All proposed conservators filing initial petitions for probate conservator, except the public guardian and any previously qualified private professional conservators, shall provide the appropriate information for, and be subject to, the LiveScan fingerprints in order that a CLETS record check can be done on the correct person.

(c) No "Letters of Conservatorship" shall be issued without proof of fingerprint clearance.

(d) Information obtained by the court investigator shall remain in the file which is maintained by Family Court Services. This information shall not be released to any person unless reviewed in camera by a bench officer and an order is made for its release. (01/01/07)

Rule 1012 - Out of State Conservators

Generally, no out of state conservator will be appointed unless good cause is shown. (01/01/07)

Rule 1013 - Care Plans

All conservators must file a "Conservatorship Care Plan" prior to issuance of general letters. Care plans may be submitted on the "Conservatorship Care Plan" form or any other format providing all the information requested on the Conservatorship Care Plan is included.

(a) An original and two copies of the care plans must be filed with the clerk of the court at least five court days prior to the hearing date for appointment of general conservator.

(b) The copy of the care plan filed with the clerk of the court must be served on the court investigator/document examiner's office on the day of filing.

(c) Care plans must be approved by the court prior to issuance of general "Letters of Conservatorship."

(d) The care plan must include the frequency of visitation to the conservatee by the conservator.

(e) If the conservatee is placed out of county, the conservator may use designated agents to monitor the conservatee's needs, and may consult with the conservatee by telephone, as necessary.

(f) The court expects a conservator to visit a conservatee with sufficient frequency to assure that the conservatee's needs are being met. The frequency of visitation will vary depending on the conservatee's living situation and needs. The following guidelines for visitation must be observed:

(1) If a conservatee is living in a state developmental center, skilled nursing facility, sub-acute hospital, or hospital setting, the court expects the conservator to visit at least once per month.

(2) If the conservatee is living in a board and care facility, private residence, or has another living arrangement, the court expects the conservator to visit at least twice per month.

(3) All plans for visitation should include an explanation of why the proposed frequency of visitation is appropriate.

(4) Exception may be made by showing good cause or if a substitute or surrogate for the conservator (e.g., senior companions, advocates, etc.) makes regular, face-to-face visits with the conservatee as outlined above.

(g) In cases where care plans are not approved by the court, the court will calendar the case for hearing and the conservator and/or his representative must appear in court to discuss the changes necessary to gain court approval of the care plan.

(h) All care plans must be updated and filed at least five court days prior to the hearing of the annual or biennial review under The Superior Court of Tulare County, Local Rules, rule 1013. (01/01/07)

Rule 1014 - Independent Exercise of Powers

The conservator or guardian has broad powers to act for the conservatee's or ward's benefit under Probate Code sections 2400 through 2586. If necessity requires a grant of independent powers under Probate Code sections 2590 through 2595, the court will generally limit such grant to specific factual situations. The following rules will apply to all cases involving such independent powers:

(a) Temporary Conservatorship/Guardianship - Independent powers will be granted to a temporary conservator or guardian only in unusual situations upon a showing of good cause.

(b) Factual Showing - The court will require a factual showing, by verified petition, affidavit, or declaration by the petitioner that (1) the power requested is needed to administer the estate or protect the conservatee/ward; and (2) the granting of such power would be to the advantage, benefit, and in the best interests of the estate and/or the conservatee/ward.

(c) Specific Enumeration of Powers - Each power must be described in detail by quoting the specific language of the subsection enumerating the requested power. It is not sufficient to incorporate by reference Probate Code section 2591 in the petition.

(d) Real Property Description - Where the power to sell real property is requested, and the property which may be sold includes the conservatee's home or former home, this fact must be specifically disclosed to the court in the petition.

(e) Court Confirmation of Real Property Sales - Where the power to sell real property is granted, the court will require the sale to be returned to the court for confirmation. This requirement may be waived by the court upon showing of good cause.

(f) Enumerated Special Powers in Order and Letters - Any special powers granted must be specifically set forth in the Order and the "Letters of Guardianship or Conservatorship" (Prob. Code, § 2594). (01/01/07)

Rule 1015 - Surety Bonds

A minimum bond of $10,000 is required in all conservatorships/guardianships of the estate. The court must make a finding of good cause for the bond to be waived.

A copy of the bond shall be filed in the court file each time a bond is renewed. (01/01/07)

Rule 1016 - Sanctions

Sanctions or surcharges may be imposed by the court for incorrect or incomplete filing of probate conservatorship or guardianship documents. (01/01/07)

Rule 1017 – Termination

(a) When a petition seeks termination of a conservatorship for a reason other than the death of the conservatee, the court will require the appearance of the conservatee at the hearing on the petition. A copy of such petition must be provided to the court investigator's office on the date of filing. The petition must include an updated Capacity Declaration completed by a qualified physician who has regular contact with the conservatee.

(b) Within 30 days of the death of the conservatee, the conservator must notify the court and the court investigator by providing a certified copy of the death certificate. (01/01/07)

Rule 1018 - Accountings for Conservatorships and Guardianships

Accountings of conservators and guardians must follow the format prescribed in these rules for decedents' estates and in Probate Code section 2620. Reports of conservators and guardians must contain the current address and phone number of the conservatee or ward, as well as of the conservator or guardian. Any change of address should also be noted in the petition, or in any separate pleading, at the time the change is made.

(a) Adequacy of Bond - Reports of conservators and guardians, at the annual and biannual reviews, must state the amount of the current bond (or bonds in the event two or more bonds are on file) and state whether any additional bonds are necessary to protect unblocked personal property plus one year's estimated income. Each report should also show any blocked bank accounts or assets impounded with a depository. Any significant changes in the value of assets should be reported, together with the effect on the adequacy of the bond. The conservator must consider the possible need for reappraisal and inform the court of any such need.

(b) Accounting Deadlines - A final accounting should be filed within 120 days, consistent with Probate Code section 2620, subdivision (a). In any accounting in which either the court investigator or the document examiner has reviewed the accounting and submitted comments to the court, the review/comments shall be provided to the public guardian by the court investigator or document examiner no later than five days prior to the scheduled or continued hearing date. If an accounting is not filed as required, the court will issue and serve an Order to Show Cause why the accounting has not been filed.

(c) Waiver of Accountings - Except as expressly provided in the Probate Code, the probate court will not approve any request or petition for waiver of any accounting or of a final accounting upon the death of the conservatee or ward. Waiver of final guardianship accountings on termination is not encouraged (Prob. Code, §§ 2627 and 262631), and the court may require the ward to be present at the hearing. An accounting waiver in conservatorships and

guardianships for small estates may be approved at the court's discretion under the provisions of Probate Code section 2628, provided that (1) such waiver was previously approved in an initial filing; or (2) a verified petition in support of the waiver is filed and noticed for hearing. (01/01/07)

Rule 1019 - Conflict of Interest

Attorneys who are appointed by the court to represent conservatees/wards or proposed conservatees/wards, pursuant to Probate Code sections 1470 and 1471, are deemed to stipulate to the court, by accepting such appointment, that they will not subsequently represent the conservator/guardian in the same conservatorship/guardianship. (01/01/07)

Rule 1020 - Final Distribution in Conservatorships and Guardianships

(a) Death of Conservatee or Ward - A petition for final distribution upon the death of a conservatee or ward will be approved only after appointment of a personal representative of the conservatee's or ward's estate, or under other provisions for disposition pursuant to Probate Code section 2631(b) (regarding small estates). The petition must identify the personal representative and the court and case number of the probate proceeding for the decedent. If disposition of assets under Probate Code section 2631 is requested, the petition must contain factual statements required under that section and under the applicable chapter of the Probate Code (Prob. Code, §§ 13000 et seq.).

(b) Investigator's Assessment - Prior to the filing of a Petition for Termination of a conservatorship, counsel must determine that the court investigator's assessment for services rendered to the conservatorship estate has been paid. (01/01/07)

Rule 1021 - Limited Conservatorships

The involvement of a developmentally disabled conservatee must be clearly set forth in all conservatorship and guardianship petitions and accountings. Any conservatorship proceeding requiring a regional center report must be set at least 30 days after mailing notice of the proceeding to the regional center, to allow the regional center report to be filed prior to the hearing. The form attached as Appendix 6 may be photocopied and utilized to facilitate ordering the regional center report and appointment of the public defender to represent the conservatee.

(a) Review of General Conservatorships - In existing general conservatorships involving a developmentally disabled conservatee, the court may direct that a new petition for conservatorship be filed under the limited conservatorship code provisions.

(b) Accountings - Any accounting required in LPS or limited conservatorship matters must comply with the accounting requirements in other Tulare County conservatorship estate matters unless otherwise directed by the department designated to hear the LPS calendar. A copy of limited conservatorship accountings (but not LPS accountings) must be furnished to the office of the court investigator at the date of filing.

If the conservatee's assets meet the criteria for waiver of accounting as set forth in the Probate Code, a conservatorship shall be of the person only and any income shall be handled through a representative payee, if appropriate.

(c) Closed Status Reports - Reports by a regional center and the court investigator, and other documents or materials containing sensitive information filed in conservatorship files, must be maintained in a confidential envelope in the court case file with disclosure only to those persons authorized to receive such reports, as specified under Probate Code section 1826(n), or to authorized persons pursuant to court order. (01/01/07)

Lanterman-Petris-Short Act (LPS) Conservatorships

(Welf. & Inst. Code, § 5150 et seq.)

Rule 1022 - Individualized Treatment Plan

(a) A copy of the individualized treatment plan required by Welfare and Institutions Code section 5352.6 must be filed with the court within 10 days of the establishment of the conservatorship. At the time of the establishment of the conservatorship, the court will set a review hearing within 20 days thereafter to review the amendments to the proposed treatment and service plan. Any party who objects to the plan as filed, may, after attempting to resolve the matter informally, calendar the case for a hearing on the individualized treatment plan.

(b) The individualized treatment plan must fully comply with Welfare and Institutions Code section 5352.6, and particularly in the following respects: (a) the person responsible for developing the treatment plan must encourage the participation of the conservatee and the conservatee's family members, when appropriate, in the development, implementation, revision, and review of the treatment plan; (b) the plan must specify goals for the individual's treatment, the criteria by which accomplishment of the goals can be judged, and a plan for review of the progress of the treatment; and (c) the goals of the treatment plan must be the equivalent of goals to reduce or eliminate the behavioral manifestations of grave disability. All of the foregoing must be evidenced on the face of, or by attachment to, the plan.

In connection with the plan for review of the progress of the treatment, an individualized treatment plan must specify (a) the planned frequency of review of the conservatee's progress under the plan, including review of the use of prescribed medication and its effects on the conservatee, and by what professional persons such review must be undertaken; and (b) the planned frequency of physical contact with and observation of the conservatee in placement by the conservator.

Each individualized treatment plan must be approved by a professional person who has knowledge, training, professional qualifications and skill necessary to make the determinations mandated by Welfare and Institutions Code section 5352.6. The professional qualifications must be evidenced by a specific recitation thereof attached to the plan.

Each individualized treatment plan must be subscribed by the approving professional person under penalty of perjury attesting that (a) the professional person approving the plan has read

the plan; (b) the professional person approving the plan has reviewed the medical/psychiatric/social history of the conservatee; and (c) the treatment plan is medically and psychiatrically appropriate to the conservatee's needs and history.

(c) The court will set for hearing and review the progress of the LPS conservatee and the conservator in implementing the treatment plan and the conservatee's progress in treatment. This must be set forth in a written report to be filed with the court at least two weeks prior to the hearing with copies to be furnished to counsel for the conservator, the conservatee, and the county patient's rights advocate. Such report must be reviewed with the conservatee. The conservatee's response to such review, and any request for amendment to the treatment plan, must be reported to the court. The written review report must also incorporate the views of any family members interested in the conservatee's welfare as to whether the treatment services specified in the plan have in fact been provided and whether progress has been made in achieving the treatment plan goals.

Notice of such hearing must be given to the conservatee, conservatee's counsel, and interested relatives who must be advised of their right to be personally present at such hearing. The conservator must provide for the conservatee's personal presence at the review hearing unless personally waived in writing by the conservatee and the conservatee's counsel, and approved by the court.

(d) The individualized treatment plan filed with the court must also be provided to counsel for the conservator, the conservatee, and the county patient's rights advocate, and must contain proof that they have been so provided. All treatment plans and review reports must prominently advise the conservatee of the name, address, telephone, and fax number to the patient's rights advocate. If the patient's rights advocate has provided services to the conservatee, the conservatee's request to the advocate and the services provided must be set forth in the review report. (01/01/07)

Rule 1023 - Venue

Tulare County jurisdiction is composed of one division, namely Tulare County. Original petitions must show the proper venue and be filed in the Tulare County Superior Court. (01/01/07)

Rule 1024 - Change of Venue

Requests for change of venue must be directed to the judge assigned to LPS proceedings. The request should take the form of a declaration stating the reasons why a change of venue is required and be supported by reference to appropriate points and authorities. The judge may waive the declaration in cases of emergency. (01/01/07)

Rule 1025 - Orders

Orders at variance with rules may be granted by the judge assigned to LPS proceedings on the showing of good cause. (01/01/07)

Rule 1026 - Definitions

(a) "Hearing Officer" means persons appointed to conduct capacity and certification hearings (Welf. & Inst. Code, §§ 5334(c) and 5256.1);

(b) "Facility" means any public or private facility under contract to provide services paid by county mental health, or any hospital licensed to provide acute care inpatient psychiatric treatment. (The only facility presently licensed in Tulare County is Kaweah Delta Mental Health Hospital.);

(c) "Patients' Rights Advocate" means the designated Title IX patients' rights advocate who will assure that patients are informed of their right to pre-admission hearings and assure that patients who waive the right to a hearing have done so freely, voluntarily, and intelligently;

(d) "Public facility" means any facility owned or operated by the State of California or the County of Tulare;

(e) "Professional person" means a psychiatrist, psychologist, social worker with a master's degree, licensed marriage and family therapist, or registered nurse. (01/01/07)

LPS Hearing Officers, Attorneys, and Attorney Fees and Costs

Rule 1027 - Services Subject to Compensation

The public defender is appointed to represent indigent patients in LPS proceedings. If the court finds that an LPS patient is not indigent, the court shall appoint private counsel to represent the patient. However, in any case where counsel has been appointed to represent persons coming under the LPS Act, or other related mental health law proceedings, and where payment of attorney fees will be made by the County of Tulare through the Office of Alternate Defense Counsel, the determination of which attorney services are to be compensated by the client will be made by the court. (01/01/07)

Rule 1028 - Costs Subject to Reimbursement

In those cases where the patient has sufficient funds to reimburse the attorney for costs incurred relative to the case, the determination of which costs are to be reimbursed will be made by the court upon a timely request by counsel. (01/01/07)

Rule 1029 - Appointment of Counsel/Prosecuting Agency

The public defender or the alternate defense counsel is appointed to represent all patients in mental health matters, unless the court authorizes a substitution of attorney. The Tulare County District Attorney's Office will prosecute the writs of habeas corpus until such further notice (*St. Joseph Hospital v. Kuyper* (1983) Cal.App.3d 1086). Counsel for Kaweah Delta Mental Health Hospital will represent the physician in *Riese* hearings and *Riese* appeals. A patient may decline

appointed counsel in which case the hearing officer or court will obtain an oral waiver on the record or a written waiver. (01/01/07)

Rule 1030 - Appointment of Hearing Officers

Hearing officers must be attorneys and appointed as described in Welfare and Institutions Code sections 5256.1 and 5334(c). (01/01/07)

LPS Calendared Hearings

Rule 1031- Calendars

(a) All proceedings in LPS conservatorships, LPS writs of habeas corpus, and *Riese* medication capacity writs/appeals will be heard at the Tulare County Superior Court, Visalia Division, by the judge assigned to handle such matters. Proceedings related to LPS conservatorships will be heard on Tuesdays from 8:30 a.m.-10:00 a.m. Proceedings related to LPS writs of habeas corpus and *Riese* medication capacity writs/appeals will be heard within two court days of the filing of the petition as set forth in California Rules of Court, rule 1034.

(b) Certification review hearings under Welfare and Institutions Code sections 5250 (14-day hold) and 5270.15 (additional intensive treatment 30-day hold) will be heard at the facility where the person is receiving treatment by the mental health hearing officer appointed to administer certification review hearings as set forth in Superior Court of Tulare County, Local Rules, rules 1034 and 1041.

(c) Original *Riese* medication capacity hearings will be heard at the facility where the person is receiving treatment by the mental health hearing officer appointed to hear such matters as set forth in The Superior Court of Tulare County, Local Rules, rules 1034 and 1051.

(d) Proceedings pursuant to Welfare and Institutions Code section 6500 and *In Re Hop* will be heard at the Tulare County Superior Court, Visalia Division, by the judge assigned to handle such matters on Thursdays from 8:30a.m. -10:00 a.m. (See Chapter 12, rules 1200 et seq. for full requirements on these proceedings.)

(e) The place and time for conducting the regular calendars may be changed by order of the judge assigned to hear mental health matters. (01/01/07)

Rule 1032 - Calendaring Hearings

Jury trials will be set by the judge assigned to hear LPS matters in his/her department. (01/01/07)

Rule 1033 - Date of Hearings

All petitions in mental health matters which require a hearing, except hearings which may be heard ex parte, will whenever possible, upon being filed with the court, be set by the legal filings clerk, in the Legal Filings Division of the superior court, on the customary hearing date for such matters. (01/01/07)

LPS Writ of Habeas Corpus
(Welf. & Inst. Code, § 5275)

Rule 1034 - Filing Petitions, Schedule for certification review Hearings, Original *Riese* Medication Capacity Hearings, Writs of Habeas Corpus, and *Riese* Medication Capacity Writs/Appeals Hearings

(a) The mental health hearing officer will perform certification review hearings on Tuesdays and Fridays at Kaweah Delta Mental Health Hospital unless approved otherwise by the hearing officer.

(b) The mental health hearing officer will perform original *Riese* medication capacity hearings on Mondays, Wednesdays, and Fridays at Kaweah Delta Mental Health Hospital at 4:00 p.m. unless otherwise approved by the hearing officer.

(c) Hearings on writs of habeas corpus and *Riese* medication capacity writs/appeals will be conducted at the Tulare County Superior Court, Visalia Division, within two court days of the filing of the writ or appeal as follows:

Petitions filed on Mondays will be heard on Wednesdays at 8:30 a.m.

Petitions filed on Tuesdays will be heard on Thursdays at 8:30 a.m.

Petitions filed on Wednesdays and Thursdays will be heard on Fridays at 8:30 a.m.

Petitions filed on Fridays will be heard on Mondays at 8:30 a.m.

Any hearing date that falls on a judicial holiday will be heard on the next court day.

(d) Petitions for a writ of habeas corpus or *Riese* medication capacity writ/appeal must be filed with the clerk of the court assigned to mental health matters. The *Riese* medication capacity writ/appeal must be filed with a proposed order. Petitions will be accepted for filing and file stamped immediately upon presentation to the clerk. The clerk will give notice of the hearing date, time, and place by facsimile service to those parties requiring such notice.

(e) Hearings on petitions for writs of habeas corpus and *Riese* medication capacity writs/appeals shall have priority over any other matter set on the court's calendar and shall be heard promptly at 8:30 a.m. The clerk of the court shall calendar the matter so that the writ

or appeal is the first case called and heard by the judge assigned to hear the matter. (01/01/07)

Rule 1035 - Applications For Writ Seeking Release or Modification of Custody

A petition for a writ of habeas corpus, or for any other writ, seeking the release from or modification of the conditions of custody of one who is confined under the process of any court of this state or local penal institution, hospital, narcotics treatment facility, or other institution must be on a form approved by the Judicial Council. (See Judicial Council Form MC-265, attached hereto as Exhibit 1, entitled "Petition for a Writ of Habeas Corpus.") (01/01/07)

Rule 1036 - Writ of Habeas Corpus and *Riese* Medication Capacity Writ/Appearance

A hearing on a writ or *Riese* medication capacity writ/appearance must be scheduled at the time the writ or *Riese* appeal is filed. The mental health clerk will notify the facility, counsel for the facility, the public defender, and district attorney (writs only) of the scheduled date, time and place for the hearing. The petitioner on writs and real parties in interest must be present at the time, and place set for hearing unless their appearances are waived or as otherwise agreed upon by all parties. The court will permit attendance of witnesses and the LPS petitioner by court call upon the consent of all parties. The hearing will be held within two court days of filing as noted in California Rules of Court, rule 1034. Notice of Hearing must be pursuant to attached Exhibit 1-A, a mandatory court form entitled "Medication Capacity Appeal." (01/01/07)

Rule 1037 - Burden

An evidentiary hearing may be held, and the county will bear the burden of justifying the detention. Preponderance of the evidence is the standard of proof for writs of habeas corpus (*In re Azzarella* (1989) 207 Cal.App3d 1240)." The court will utilize the forms entitled "Medication Capacity Hearing Record Orders" (See Exhibit 1-B, a mandatory court form) and "Orders After Hearing, Writs of Habeas Corpus" (See Exhibit 1-C, a mandatory court form) for orders after the medication capacity hearings or writs of habeas corpus. (01/01/07)

LPS Certification Review Hearings
(Doe v. Gallinot (1981) 657 F 2D 1017, 9th Cir.)
(Welf. & Inst. Code, § 5256)

Rule 1038 - Compliance with Welfare and Institutions Code

Certification review hearings must be held in compliance with Welfare and Institutions Code sections 5256 et seq.

- Section 5250 pertains to a 14-day hold, and
- Section 5270.15 pertains to additional intensive treatment, 30-day hold[1]

[1] This section requires approval by the Tulare County Board of Supervisors, which as of the date of this revision, has not been approved.

Under Welfare and Institutions Code section 5260, additional 14-day holds for suicidal persons will require the affidavits of two physicians. No certification review hearing is required. The patient must be informed of the right to file a writ of habeas corpus by the facility or patient rights advocate. (01/01/07)

Rule 1039 - Burden

Certification review hearings require probable cause which means "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant his or her belief or suspicion" that the person is mentally disordered and as a result thereof is a danger to others, and/or self, or is gravely disabled (*People v. Triplett* (1983) 144 Cal.App.3d 283, 288; Welf. & Inst. Code, § 5256.6; *Heater v. Southwood* (1996) 42 Cal.App.4th 1068). (01/01/07)

Rule 1040 - Procedures

The mental health hearing officer is appointed to administer/or conduct certification review hearings in compliance with Welfare and Institutions Code sections 5256 et seq. All persons involuntarily detained in psychiatric hospitals (private and public) in Tulare County must have a certification review hearing in the following cases under Welfare and Institutions Code sections:

- Section 5250 (regarding a 14-day hold), and
- Section 5270.15 (regarding additional intensive treatment, 30-day hold[1])

Hearings will be held for all persons regardless of the basis for certification. Hearings will be held within four days of the date on which the person was certified for intensive treatment, unless postponed by request of the person, or his or her attorney, or patient's rights advocate. Hearings may be postponed for 48 hours.

The following will apply to certification review hearings held in Tulare County:

(a) Certification review hearings will be conducted at the facility where the person is receiving treatment. The location of the certification review hearing must be compatible with, and least disruptive of the treatment being provided to, the person certified (Welf. & Inst. Code, § 5256.1).

(b) Certification review hearings must be conducted in an impartial and informal manner in order to encourage free and open discussion by participants (Welf. & Inst. Code, § 5256.4(b)).

(c) At the certification review hearing, the evidence and support of the certification decision must be presented by a person designated by the director of the facility. (Welf. & Inst. Code § 5256.2).

[1] This section requires approval by the Tulare County Board of Supervisors, which as of the date of this revision, has not been approved.

(d) Certification review hearings will be scheduled on Tuesdays and Fridays at the facility in order to comply with Welfare and Institutions Code section 5256.

(e) At the certification review hearing, the person certified must have the right to the assistance of an attorney or advocate. Further, the person certified must have the right to present evidence on his or her own behalf and to question persons presenting evidence in support of the certification decision. Other persons will be admitted to the hearing at the discretion of the judge or mental health hearing officer by standing order of the court (Welf. & Inst. Code, § 5256.4 (a)(1)(2)(3)).

(f) Reasonable attempts must be made by the mental health facility to notify family members, or any other person designated by the person certified, of the time and place of the certification review hearing, unless the person certified requests that this information not be provided. The person certified must be advised by the facility that is treating the person certified that he or she has the right to request that this information not be provided (Welf. & Inst. Code, § 5256.4(c)).

(g) Certification review hearings are not bound by rules of procedure or evidence applicable to judicial proceedings. All evidence which is relevant to establishing that the person is, or is not, as a result of a mental disorder, a danger to themselves or others, or gravely disabled must be admitted at the hearing and considered by the mental health hearing officer (Welf. & Inst. Code, § 5256.4(b)(d)).

(h) As soon after hearing as practicable, an attorney or patients' rights advocate must meet with the person certified to discuss the commitment process and to assist the person in preparing for the certification review hearing, or to answer questions or otherwise assist the person as is appropriate (Welf. & Inst. Code, § 5255).

(i) The person certified must have the right to make reasonable requests for the attendance of facility employees who have knowledge of, or participated in, the certification decision (Welf. & Inst. Code, § 5256.4(a)(4)).

(j) A certification review hearing will not be held where a writ of habeas corpus hearing has been requested (Welf. & Inst. Code, §§ 5254 and 5256).

(k) The person certified must be given oral notification of the decision at the conclusion of the certification review hearing by the mental health hearing officer. As soon thereafter as is practicable, copies of the decision must be provided to the attorney or patient rights advocate for the person certified, and to the director of the facility. The decision must be written and must include a statement of the evidence relied upon and the reasons for the decision. (See Exhibit 2, a mandatory court form entitled "Application for 72-Hour Detention;" Exhibit 3, a mandatory court form entitled "Notification of Certification Intensive Treatment;" and Exhibit 1-B, a mandatory court form entitled "Medication Capacity Hearing Record Orders.") (Welf. & Inst. Code, § 5256.7)

(1) The attorney or patients' rights advocate must notify the person certified of the certification review decision, and of his or her rights to file a request for release and to have a hearing on the request before the superior court in the form of a writ of habeas corpus. A copy of the decision by the mental health hearing officer must be filed with the mental health desk (Welf. & Inst. Code, § 5256.7). (01/01/07)

Rule 1041 - Certification Review Hearing Finding Contested by writ of habeas corpus

Contesting the mental health hearing officer's certification review hearing findings or physician findings under Welfare and Institutions Code sections 5250 or 5270.15 must be performed using the Judicial Council Form for writ of habeas corpus. (See Exhibit 1, a mandatory court form entitled "Petition for a Writ of Habeas Corpus.") The clerk will assign a case number, open an LPS file, and notify all persons entitled to notice of the hearing. (01/01/07)

Hearings will be conducted within two court days of the filing of the writ at the Tulare County Superior Court, Visalia Division, as stated in The Superior Court of Tulare County, Local Rules, rule 1034.

LPS Determination of Capacity of Mental Health Patients to Give or Withhold Informed Consent to Administration of Anti-Psychotic Medication (Riese Hearing)

Rule 1042 - Scope and Purpose

The following procedures are intended to implement the requirements of *Riese v. St.Mary's Hospital* (1987) 209 Cal.App.3d 1303, and Welfare and Institutions Code sections 5332 et seq. They apply to patients, both adults and minors, who are being treated in public or private hospitals, and who are being detained pursuant to Welfare and Institutions Code sections 5150 (72-hour hold); 5250 (14-day hold); 5260; 5270.15 (30-day hold); 5350; or 5353 et seq. (temporary conservatorship). In those cases in which a temporary conservator has been given authority to consent to medication, a review of that grant of authority may be made under these procedures or through a writ of habeas corpus. (01/01/07)

Rule 1043 - Petition

When the treating physician has determined that treatment of the patient's condition requires the administration of anti-psychotic medication, and the patient has refused to consent to the medication, the treating physician may petition the court for a legal determination as to whether the patient is capable of giving or withholding informed consent. (01/01/07)

Rule 1044 - Documents

To obtain determination of the patient's capacity to give or withhold informed consent to treatment by anti-psychotic medication, the treating physician must complete, sign, and date the "Petition of Treating Physician Regarding Capacity to Consent or Refuse Anti-psychotic Medication." The petition must include a section called "Treating Physician's Declaration

Regarding Capacity to Consent to or Refuse Anti-psychotic Medication." These forms must be delivered to, or faxed to, the court clerk assigned to mental health matters in order to calendar a hearing. A patient may waive his or her right to counsel. The hearing officer will take a written waiver. (See Exhibit 4, a mandatory court form entitled "Waiver of PD for Representation at Medication Capacity Hearing.") (01/01/07)

Rule 1045 - Calendaring Hearings

It is assumed that time is of the essence in each *Riese* hearing. The physician or treating facility must deliver or fax the forms to the court clerk assigned to mental health matters in order to calendar a hearing. The clerk will calendar all hearings upon receipt of the requisite forms. Whenever possible, the hearing will be set within two court days. Notice is to be given to the approved hearing officer by the clerk. The physician or treating facility must notify counsel for the facility of the need for an interpreter when one is needed at the hearing *(Riese v. St. Mary's Hospital and Medical Center* (1987) 209 Cal. App. 3d 1303). (01/01/07)

Rule 1046 - Interpreter Services

All hearings in which interpreters are required must be conducted through court certified interpreters and arranged by the facility unless not available, in which case the court or hearing officer may use a competent interpreter. (01/01/07)

Rule 1047 - Attorney Duties

The patient's attorney, or patient's rights advocate (if a waiver is obtained), must meet with the patient as far in advance of the hearing as possible to determine the patient's position with respect to the proposed anti-psychotic medication. If the patient consents to the administration of anti-psychotic medication prior to the hearing, it will be the responsibility of the patient's attorney, or the patient's rights advocate, to notify the mental health hearing officer promptly, so the hearing may be canceled and unnecessary travel and expense may be avoided. (01/01/07)

Rule 1048 - Patient Representation

Patients will be represented by the public defender, or the patient's rights advocate, unless private counsel is retained by the patient. (01/01/07)

Rule 1049 - Treating Physician/Facility Counsel

The physician, or counsel for the facility, must present the petition and declaration as well as any oral or documentary evidence at the time of the hearing. (01/01/07)

Rule 1050 - Surroundings of Hearing

Hearings must be held in surroundings which allow for quietness and a reasonable degree of confidentiality. Whenever possible, the hearings will be held at the facility where the patient is

located. In any event, the hearing will be held as close to that facility as is practicable under the circumstances. (01/01/07)

Rule 1051 - Burden

The burden must be on the physician or treating facility to establish by clear and convincing evidence that the patient is incapable of giving or withholding informed consent to the administration of anti-psychotic medication *(Riese v. St. Mary's Hospital and Medical Center* (1987) 209 Cal. App. 3d 1303). (01/01/07)

Rule 1052 - Determination of Capacity

In determining the patient's capacity to give or withhold informed consent, the hearing officer will consider (1) whether the patient is aware of their mental condition, (2) whether the patient has been informed of and is able to understand the benefits and the risks of, as well as the alternatives to, the proposed medication, and (3) whether the patient is able to understand and to knowingly and intelligently evaluate the information required to be given patients whose informed consent is sought (Welf. & Inst. Code, § 5326.2) and otherwise participate in the treatment decision by means of rational thought processes. Documentation by the hearing officer will be made on the mandatory court form entitled "Medication Capacity Hearing Record Orders." (Exhibit 1-B).

Documentation by the court will be made on the mandatory court form entitled "Medication Capacity Hearing Record Orders" (Exhibit 1-B, a mandatory court form). (01/01/07)

Rule 1053 - Patient Presence

The patient must have the right to be present at the hearing, and through counsel (or the patient's rights advocate), to present evidence and to cross examine witnesses at the hearing. However, the patient may choose not to attend the hearing. (01/01/07)

Rule 1054 - Access to Records

The hearing officer must have access to, and may consider, the relevant medical records of the patient as well as the petition and declaration of the physician in reaching the legal determination of the patient's capacity to give or withhold informed consent. (01/01/07)

Rule 1055 - Continuance of Hearings

Upon a showing of good cause and at the discretion of the hearing officer, a hearing may be continued pursuant to Welfare and Institutions Code section 5334(a). (01/01/07)

Rule 1056 - Determination

At the conclusion of the hearing, the mental health hearing officer will make a legal determination whether the patient is capable of giving or withholding informed consent to the

administration of anti-psychotic medication. A copy of the decision by the mental health hearing officer must be filed with the court clerk assigned to mental health matters on the mandatory court form entitled "Medication Capacity Hearing Record Orders" (Exhibit 1-B). (01/01/07)

Rule 1057 - Confidentiality

The proceedings under these rules, and all records of these proceedings, will be confidential as provided in Welfare and Institutions Code section 5328. (01/01/07)

Rule 1058 - *Riese* Medication Capacity Appeals

Appeals of *Riese* hearings must be filed in superior court using the mandatory court forms entitled "Patient Appeal Re Medication Capacity," or "Physician Appeal Re Medication Capacity Decision of Facility." (See Exhibits 5 and 6.) The clerk will assign a case number, open an LPS file, and notify all persons entitled to notice of the hearing.

Hearings will be conducted within two days of the filing of the appeal.

- Petitions filed on Mondays and Tuesdays will be heard on Wednesdays.
- Petitions filed on Wednesdays and Thursdays will be heard on Fridays.
- Petitions filed on Fridays will be heard on Mondays. (01/01/07)

Rule 1059 - Compensation of Fiduciaries and Attorneys

Other than statutory fees and commissions in decedent estate proceedings, the Probate Code provides generally that fees, commissions, and compensation to fiduciaries and their attorney must be "just and reasonable" in amount. The court will make a determination of what is just and reasonable based on the information supplied to the court in the petition requesting allowance of fees or commissions. The petition must be properly captioned, including a reference to the fee request, and it must include an explanation of how the fees or commissions were calculated. Information must be provided in detailed, but brief and organized form, including (1) date(s) of service, (2) nature of service rendered, (3) hours, and fractions of hours, of service rendered, (4) identity of person rendering services, and (5) the hourly rate charged for each person rendering services. Copies of a computerized billing statement will not fulfill the requirements hereunder unless such statement contains all such information and is legible.

(a) Compliance - All requests for fees and commissions in decedents' estates and in guardianship, conservatorship, and trust proceedings must be submitted in strict compliance with these rules. Requests that do not comply will be automatically continued one time for a minimum period of two weeks to permit the filing of supplemental or amended pleadings.

Caution: Oral testimony or representations will not be accepted on uncontested fee matters, except as may be allowed by the court upon showing of good cause.

(b) Payment of Fees by Assignment of Property - Petitions for assignment of property to fiduciaries or their attorneys in place of fees or commissions will not ordinarily be approved.

(c) Paralegal Compensation - Compensation for services performed by a paralegal under an attorney's direction and supervision may be allowed by the court in appropriate cases. No paralegal compensation will be paid from a decedent's guardianship or conservatorship estate without prior court approval. Any petition requesting allowance of paralegal compensation must set forth the hours expended and nature of services performed, and the paralegal's hourly rate as well as the name and brief summary of the qualifications of the paralegal.

(d) Prior Court Approval Required for all Fiduciary and Attorney Compensation - There must be no payment of any commissions or attorney fees from decedent's estate, guardianships, or conservatorships in advance of an authorizing court order. The probate court may, in its discretion, impose sanctions, order return of the fee or commission, or surcharge representatives or attorneys interest from the date of payment to the date of the order authorizing the same at the rate prescribed by Code of Civil Procedure section 685.010 for judgments, unless the written consents of all residuary devisees of a decedent's estate are filed with the court, and the court finds the amounts paid are reasonable and proper. Fees of trustees and their attorneys must be paid only after the services have been performed to which they relate.

(e) Periodic Payments - Periodic payment of fees or commissions may be made with prior court authority pursuant to the rules set forth in Probate Code sections 2640 to 2642.

(f) Statutory Fees and Commissions in Decedents' Estates - Allowances on account of statutory fees or commissions will be granted by the court only in proportion to the work actually completed. Usually, the last 25 per cent of statutory fees or commissions will not be allowed before the approval of the final accounting and the decree of distribution, unless it can be shown that payment of a greater amount will benefit the estate. All or substantially all of the statutory fee or commission may be allowed when it is shown that all services have been performed, but that the estate has not closed because of reasons beyond the control of the petitioning party.

(1) Waiver of Accounting - If an accounting is waived, the statutory fee will ordinarily be based only upon the stated inventory, with no fees allowed on gains on sales or on receipts by the estate.

(2) Compensation for Ordinary Duties of Personal Representative - The personal representative may hire an attorney or other agent to perform duties of the representative, and separately compensate the attorney or agent from his or her own funds. If such contract is entered into with an attorney, the attorney must comply with rule 5-101 of the California Rules of Professional Conduct and enter into a written agreement setting forth the basis of compensation and the consent of the representative. The agreement will be subject to court approval, and must be filed with the court at the time the first petition for fees is filed.

(g) Fees for Extraordinary Services in Decedents' Estates - Extraordinary fees may be allowed to the personal representative or attorney for their services relating to such matters as sales,

leases, borrowing, litigation (including contested probate matters), tax matters (including preparation of returns, audits, and tax litigation), operating a business, heirship proceedings, and the performance of any other act resulting in extraordinary benefit to the estate requiring an extraordinary expenditure of time or other special services as may be necessary for the personal representative or attorney to perform. The court will consider the following facts, among others, in exercising its discretion to grant fees for extraordinary services:

(1) Time Devoted to the Matter - The request for fees must indicate the time devoted to a matter, broken down between attorney and paralegal, indicating the hourly rate customarily charged for such services. The court must be provided with sufficient information in order to analyze the reasonableness of the rate and the amount of time devoted to the matter; however, the time and rate will not be the sole criteria, or considered as a minimum or maximum value, in determining extraordinary fees.

(2) Benefits Inured to the Estate - It is recognized that the representative or his or her attorney may occasionally be under a duty to pursue certain matters which do not enjoy a successful conclusion. Such services may nevertheless be compensable, but a successful conclusion is relevant.

(3) Amount of Money or Value of Property Involved in the Transaction - This is relevant to the degree of responsibility assumed and the care that will be given to the matter.

(4) Nature and Complexity - The court will consider whether the matter was routine or involved a unique matter of substantial legal or practical difficulty. The court will also consider whether the character of the services rendered (legal versus ministerial; special skills required), as well as the knowledge and experience of the personal representative or attorney. For example, if a real property sale involves dealing with numerous buyers, evaluation of exchanges, clearing title, or exposure to potential litigation, these facts should be listed in detail. Similarly, if the preparation of a Federal Estate Tax Return involves such other matters as elections under sections 303, 2032A, 6166, or 2056 of the Federal Estate and Gift Tax Code, each service should be separately described.

(5) Duration of the Probate Administration - Although it is the policy of the law to close an estate as promptly as possible, it occasionally is necessary for estates to remain open for lengthy periods of time. In that event, delay in compensation and the time value of money is relevant.

(6) Consideration of Statutory Fee - In requests for extraordinary fees, the amount of the statutory fee and the time required to administer all matters pertaining to the estate may, in certain cases, be considered as a factor in determining reasonable compensation for extraordinary services, if any. In all cases where statutory fees are considered, the normal services required to close an estate, subsequent to the date on which extraordinary fees or commissions are requested, will be considered.

(7) Copies of Petition to Beneficiaries - Copies of petitions for allowance of fees for extraordinary services and commissions in decedents' estates in excess of 25 percent of

statutory fees must be mailed to all persons entitled to receive notice of the hearing on the petition (except beneficiaries of specific gifts).

(h) Compensation of Conservators, Guardians, and Their Legal Counsel - No compensation for any conservator or guardian, or their legal counsel, will be paid without court approval. Requests for allowance of attorney fees in conservatorships and guardianships must comply with the requirements set forth above in subsection (g) of this rule and will be similarly considered by the court.

(1) Conservator and Guardian Fees - Any application for fees must be accompanied by a complete statement of facts upon which such application is based. This application must specify the amount requested, not merely "reasonable fees." The court will consider (1) relative value and gross income of the estate, (2) benefit or loss due to administration by the fiduciary, (3) any skill or experience required of the fiduciary, (4) the quality and extent of services performed by the fiduciary for the benefit of the conservatee or ward, (5) the amount of responsibility assumed and exercised, (6) time spent by the fiduciary for services benefiting conservatee or ward, or estate, (7) customary hourly charges for similar services of other private or professional fiduciaries, (8) character of work performed (i.e., whether routine or involving special skill or judgment), and (9) in the case of a final accounting, a reasonable estimate of work and time to complete estate affairs and distribution. Any application for fees made by the public guardian should be based upon the standing order for fees in effect at the time of the application.

(2) Attorney Representing Conservatee or Ward - Upon written, verified application of the attorney at the conclusion of the hearing, compensation may be ordered to an attorney representing the conservatee or ward, unless the court requires a noticed petition.

(3) Conservatorship/Guardianship Review of Legal Fees - If only attorney fees are requested, the petition must show that the conservator or guardian has been notified, and must reflect the fiduciary's approval or disapproval of the requested fees. (01/01/07)

Rule 1060 - Bonds

In estates where a bond is not waived, the court encourages the use of blocked accounts with bank or savings association depositories for liquid assets. Normally in conservatorships and guardianships, only liquid assets necessary to meet the anticipated day-to-day expenses of the conservatee or ward and estate should be available to the conservator or guardian.

(a) Waiver of Bond in Conservatorships and Guardianships - The court will not usually waive a bond for conservatorships or guardianships except (1) where the conservator is the spouse of conservatee, all or most of the property is shown to be community property, and the community property may be excluded from estate administration, (2) in small estates under Probate Code section 2628, or (3) where the conservatee is present in court, is a competent person (as affirmatively shown by a physician's declaration), and gives informed consent to the bond waiver. In no event will a bond be waived in cases in which the proposed conservator is not the petitioner on the petition to establish the conservatorship.

(b) Reducing Bond Through Use of Depository

(1) Before Issuance of Letters - Unless otherwise ordered by the court, when assets are to be placed in a blocked account or depository, the receipt and agreement of the depository required by Probate Code sections 2328, 8401, 8483, and 9700 through 9705 must be filed prior to the issuance of letters. Proposed orders pertaining to blocked accounts at depositories should contain appropriate language to allow deposits in conformance with the foregoing code sections and Financial Code sections 764, 765, and 775.

(2) After Appointment - Bonds may be reduced at any time after appointment by an ex parte petition and order reducing bond, together with a receipt of a depository showing that assets in the amount of the requested reduction have been so deposited. Such a petition must set forth the assets remaining in the estate after excluding those held by depository, and it must appear that the reduced bond adequately covers the amount to be protected.

(3) Direct Transmittal to Depository - If the assets to be deposited are in the possession of a bank, savings and loan association, or trust company other than the named depository, the order should direct the entity in possession to deliver such assets directly to the named depository, and further direct the depository, on receiving such assets, to issue its receipt and agreement to the fiduciary (Fin. Code, §§ 764 and 765).

(4) Withdrawals or Releases from Depository - An order authorizing release of assets from a blocked account may be had ex parte. The petition should set forth the approximate value of the assets on hand, the approximate value of all assets under impound, the amount of the existing bond, and the purpose for which the withdrawal is being made. Where assets will be coming into or passing through the hands of the fiduciary so as to require an increase of bond, the fiduciary must set forth the information necessary to enable the court to determine the amount of the increase. The order may provide for funds to be paid directly to a taxing authority, or beneficiary, or other person entitled thereto.

(c) Bond Modification - It is the duty of the fiduciary upon becoming aware that the bond is insufficient (e.g., on filing of an inventory or submitting an accounting), to apply immediately for an order increasing the bond. Such applications may be made ex parte. When the bond of a fiduciary must be increased, the court favors filing an additional bond rather than a substitute bond. When the fiduciary's bond must be decreased, the court favors using an order decreasing the liability on the existing bond, rather than a substitute bond. (01/01/07)

Rule 1061 - Sales of Real Property

When there is a successful overbid in open court on a sale of real property, counsel must complete, and the successful bidder must sign, an "Increased Bid in Open Court" form and file same before an order will be signed. (The form in Appendix 7 may be photocopied and used.)

(a) No Commission; Special Situations - Except upon showing of good cause, no real estate commission will be allowed or credited to, or for the benefit of, a purchaser who is a licensed real estate broker or salesperson in any probate sale of real property, directly or indirectly. No real estate commission will be allowed or credited to, or for the benefit of, a personal representative or fiduciary in the subject probate proceedings who is a licensed real estate broker or salesperson in any probate sale of real property in the proceeding, directly or indirectly. The petition for confirmation of sale must state any known claim of the personal representative, fiduciary, or purchaser to all or any part of the proposed real estate commission, directly or indirectly.

(b) Disputes Between Agents or Brokers Regarding Compensation - Should a dispute arise between agents or brokers seeking compensation upon the sale of real property under Probate Code section 10161 and/or sections 10162.5 through 10166, there will be a separate evidentiary hearing to resolve the dispute. Before the hearing, the agents or brokers, or their respective attorneys, must meet and confer (face-to-face) in a reasonable and good faith attempt to informally resolve the dispute. The court must be notified of the results of such attempt at least two court days before the hearing. The sale of real property may be confirmed at the hearing on the sale and need not be delayed by virtue of any dispute for compensation by or between real estate agents or brokers. (01/01/07)

Rule 1062 - Claims of Personal Representative and Attorneys of Record

For any creditor's claim brought by the personal representative or his/her attorney of record, noticed petition for approval must be filed and served on all persons whose interest might be affected by approval of the creditor's claim at least 15 days before the hearing, except as provided below. The creditor's claim must be complete with approval signed by all personal representatives in the proceeding. The petition must contain a factual statement relating to the solvency of the estate, including a summary of the nature and the amount of assets and all known indebtedness and taxes of the estate, whether absolute or contingent.

The requirement of a noticed hearing and petition will not be required when (1) the claim is for reimbursement of funeral and last illness expense not exceeding $5,000.00, and proof of payment is attached to the claim, (2) the claim, together with all other claims of that personal representative or attorney (except for funeral and last illness expenses) is less than $1,000.00, (3) a written approval signed by all persons whose interest might be affected by the approval is attached to the claim, (4) the personal representative has complied with the provisions of the Independent Administration of Estates Act with respect to the proposed payment of said claim, or (5) a claim is for a definite amount and is based upon a prior court order, which is attached to the creditor's claim. (01/01/07)

Rule 1063 - Adoption Proceedings

(a) All adoption hearings will be set by the calendar clerk of the court located in Room 201 of the Visalia Superior Court, County of Tulare. No hearings will be set unless there has been previously filed with the court all consents required by Family Code section 8604. No consents are required if (1) the parent is deceased; (2) the parental rights of the parent have

terminated by a final court decision terminating parental rights; (3) there is a judicial determination that consent is not required pursuant to Family Code section 7662; or (4) there is a judicial determination that consent is not required pursuant to Family Code section 8606.

If it is alleged by the petitioner that consent of a parent is not required pursuant to Family Code sections 7662 or 8604, a judicial determination that consent is not required will be made at a judicial proceeding held prior to the adoption hearing. That judicial determination will be in the court's file prior to the adoption hearing. No judicial determination will be made that consent is not required pursuant to Family Code sections 7662 or 8604 without strict compliance with the notice requirements of Family Code sections 7662 or 8604(b). In cases falling within Family Code section 7662, the court will not issue an order dispensing with notice under Family Code section 7666(b) without a factual showing made by declaration under penalty of perjury that good faith attempts have been made to locate and give notice to the person to be noticed and that despite such efforts the petitioner has been unable to locate such person to give notice.

If it is judicially determined that a petition to terminate parental rights must be completed and granted before a petition for adoption can be granted, there must be an investigation and a report completed for the court. In the case of stepparent adoptions, the investigation and report are prepared by Family Court Services, room 203. In all other cases, the investigation and report are completed by the Adoptions Division of the Tulare County Health and Human Services Agency.

Forms that may be utilized to petition the court to determine necessity of consent in stepparent adoptions are available in the office of the clerk of the court, Room 201 of the Visalia Courthouse. (01/01/07)

(b) Except in the case of stepparent adoptions, no adoption will be set for hearing unless there has been previously filed with the court an accounting report as required by Family Code section 8610.

(c) In cases in which the child(ren) to be adopted is twelve years of age or older, no adoption will be set for hearing unless there is lodged with the clerk a proposed consent form to be signed by the child in the court's presence.

(d) The acknowledgment in writing that must be executed by the adopting parent or parents pursuant to Family Code section 8612(b) must be lodged with the clerk prior to the setting of any adoption hearing.

(e) The proposed adoption decree must be lodged with the clerk prior to the granting of a hearing date. (01/01/07)

CHAPTER 11 - JUVENILE COURT

Rule 1100 - Presiding Judge and Hearing Officers

Juvenile court matters may be heard before any judge, commissioner or referee of the superior court. The presiding judge of the superior court shall assign a presiding judge of the juvenile court to manage the business of the juvenile delinquency and dependency court. All juvenile proceedings under Welfare and Institutions Code sections 300 and 601 et seq. shall be assigned by the presiding judge of the juvenile court. If the presiding judge of the juvenile court is not available, the presiding judge of the superior court shall designate another judge to manage the business of the juvenile court.

In addition to juvenile matters under Welfare and Institutions Code sections 300 et seq. and 601 et seq., guardianship petitions for minors who are dependents of the juvenile court must be presented either to the juvenile court judge or commissioner unless they are disqualified from hearing such application.

Juvenile dependency matters under Welfare and Institutions Code section 300 will be heard by judges, commissioners, or referees who have complied with the training recommendations and requirements under Welfare and Institutions Code section 304.7. (01/01/07)

Rule 1101 - Juvenile Court Commissioners and Referees

In addition to the provisions of The Superior Court of Tulare County, Local Rules, rule 203, juvenile court commissioners and referees and their official acts will be governed as follows:

(a) All orders made by a commissioner or referee will be final as set forth in Welfare and Institutions Code section 250.

(b) Rehearing on any order made by a juvenile court commissioner or referee will be heard in accordance with the procedures set forth in Welfare and Institutions Code section 252.

(c) Where the parties have stipulated that the commissioner or referee sits as a temporary judge, his/her orders will be final in the same manner as an order by a judge. (01/01/07)

Rule 1102 - Location and Schedule of Juvenile Court

All juvenile delinquency and dependency court sessions are held at the Juvenile Justice Center located at 11200 Avenue 368, Visalia, CA 93291. The calendar of the juvenile court shall be as set forth in the Tulare County Superior Court Distribution of Business Order. (01/01/07)

All papers involving proceedings under Welfare and Institutions Code sections 300 and 602 shall be filed and maintained in the clerk's office of the Juvenile Justice Court located at 11200 Avenue 368, Visalia, CA 93291. (01/01/07)

Rule 1103 - Filing of Documents

No document except original petitions filed pursuant to Welfare and Institutions Code sections 300 and 601 will be accepted by the court clerk for filing unless it sets forth on its face the case caption and is accompanied by a proof of service reflecting service on all counsel of record and parties not represented by counsel. (01/01/07)

Rule 1104 - Motion Requirements

(a) No noticed motion will be accepted by the county clerk unless it is accompanied by a proof of service.

(b) All motions calendared in the juvenile court must comply with the requirements of the Code of Civil Procedure sections 1010 et seq. and California Rules of Court, rules 3.1110, 3.1113, 3.1115, 3.1320, and 5.544, except that written notice to opposing counsel and the court may be reduced to five court days, and any opposition must be filed and served two court days before the scheduled hearing. Prior to giving notice, the moving party must reserve the hearing date with the calendar clerk for the juvenile court.

Ex parte requests for relief from compliance with this rule may be granted only upon written application to the juvenile court judge or bench officer assigned to hear the matter, supported by affidavit showing good cause, and with at least four hours personal or telephonic notice of the time set for such ex parte application to all counsel appearing in the proceeding. Any request for such ex parte relief must also include an affidavit by requesting counsel that notice was given as required.

All documents must be typed or printed and must be punched with two holes at the top of each page.

Notwithstanding the foregoing requirements, motions to continue a hearing, brought under Welfare and Institutions Code section 352, are subject to the time limits set forth therein. Additionally, counsel for all parties to a proceeding may stipulate to a continuance, provided that such stipulations are submitted and approved by the court regularly hearing the matter at least two court days prior to the hearing. Such stipulations must establish the existence of good cause for continuance.

Papers that do not comply with these rules, the Code of Civil Procedure, and the California Rules of Court will not be considered by the court unless good cause is otherwise shown. (01/01/07)

Rule 1105 - Documenting Notice of Hearings

In all juvenile dependency matters, Child Welfare Services (CWS) must file a single “Proof of Service Declaration” to show compliance with the legal notice requirements for each hearing. Judicial Council forms must be used by the agency internally to meet notice and Title 14 requirements. (Forms are available on the Internet at www.courtinfo.ca.gov/forms.) A “Proof of

Service Declaration" (see Appendix 2) must be signed, under penalty of perjury, indicating the following:

(a) That a notice of hearing (e.g., Judicial Council Form JV-280 or JV-300) has been sent to each of the parties, any court appointed special advocate (CASA), the attorneys, and any Indian tribe, informing them of the nature of the proceeding;

(b) The date, time, place, and manner in which notice was given;

(c) The parties, attorneys, CASAs (if any), and Indian tribes (if any) noticed, including addresses;

(d) Whether reports accompanied the notice;

(e) Names of parties who were not noticed due to unknown addresses.

The "Proof of Service Declaration" must include documentation of CWS's due diligence in attempting to locate missing parents whenever required by law. (01/01/07)

Rule 1106 - Ex Parte Orders In Dependency Cases

(a) Before submitting ex parte orders to a judicial officer for approval, the applicant must give notice to all counsel, social workers, and parents who are not represented by counsel or explain the reason notice has not been given.

(b) The party requesting ex parte orders must inform the judicial officer that notice has been given by completing a "Declaration Re Notice of Ex Parte Application" form (Appendix 11). The original declaration and accompanying "Application for Order" must be submitted to the juvenile court clerk of the juvenile division.

(c) Upon receipt of the application and declaration of notice, the clerk will note the date and time received in the upper right corner of the declaration. In order to give opposing parties ample time to respond to the ex parte application, the clerk will hold the application for four hours prior to submission to the judicial officer for their decision.

(d) An opposing party must present any written opposition to a request for ex parte orders to the court clerk of the juvenile division within four hours of receipt of notice. The court may render its decision on the ex parte application or set the matter for hearing. The applicant is responsible for serving all noticed parties with copies of the court's decision, or notice that the court has calendared the matter, and the applicant must notify all parties of any hearing date and time set by the court.

(e) Whenever possible, the moving and responding papers and declaration regarding notice must be served on the attorney for each parent, attorney for the child, county counsel, CASA, supervising social worker, and parents who are not represented by counsel.

(f) Notice may be excused if the giving of such notice would frustrate the purpose of the order and cause the child to suffer immediate and irreparable injury.

(g) Notice may also be excused if, following a good faith attempt, the giving of notice is not possible. (01/01/07)

Rule 1107 - Appointment of Child Advocates (CASA)

(a) At any time during a dependency proceeding pursuant to Welfare and Institutions Code section 300 et seq. or at any time following a declaration of wardship at a disposition hearing during delinquency proceedings pursuant to Welfare and Institutions Code section 601, et seq. a trained volunteer court appointed special advocate (CASA) may be appointed by the court to provide all the services contemplated by Welfare and Institutions Code sections 102(c) and 104, and to represent the best interests of children in juvenile court proceedings.

In order to qualify for appointment, the child advocate must be trained and function under the auspices of a Court Appointed Special Advocate Program, formed and operating under the guidelines established by the Judicial Council of California (Welf. & Inst. Code, §§ 100 and 103(a)).

(b) A CASA volunteer is a sworn officer of the court having taken an oath which describes the duties and responsibilities of the volunteer. CASA volunteers serve at the pleasure of the court and are bound by all court rules.

(c) The Tulare County CASA Program will function under and pursuant to the program guidelines of CASA Programs as from time to time may be adopted or amended by the Judicial Council of the State of California, pursuant to Welfare and Institutions Code section 100, and will comply generally with the provisions of Welfare and Institutions Code sections 100-109, and California Rules of Court, rule 5.655.

(d) CASA volunteers are appointed only on behalf of children, and only in such proceedings as authorized by Welfare and Institutions Code sections 100-109 and the program guidelines established pursuant to these sections.

(e) CASA volunteers must have access to all documents, case files, and other documents which relate to the child before the court as authorized by Welfare and Institutions Code section 107.

(f) A CASA volunteer's personnel file is confidential. No one will have access to the volunteer's personnel file with the exception of the volunteer, the CASA program director or their designee, and the presiding judge of the juvenile court.

(g) CASA shall receive notice of all court proceedings for whom they have been appointed.

(h) CASA shall have reasonable access to the children for whom they have been appointed.

(i) CASA shall be served with a copy of all documents filed with the court as to a child for whom they have been appointed. The party filing said document is responsible for service on CASA.

(j) There must be ongoing, regular communication concerning the child's best interests, current status, and significant case developments maintained among the advocates, case manager, child's attorney, attorney(s) for parents, social worker, county counsel, relatives, foster parents, and any therapist for the child.

(k) A child advocate may petition the court to set the child's case for hearing. (See Appendix 10, "Petition and Order re Hearing to Review Case.") (01/01/07)

(l) All court reports submitted by CASA shall be submitted and served on all parties through their counsel, Child Welfare Services, and Probation in a timely fashion, at least 10 court days prior to the scheduled hearing unless otherwise ordered by the court. (01/01/07)

Rule 1108 - Authorization for Use of Psychotropic Drugs

Dependent Children

(a) Psychotropic medication must not be administered to children who are dependents of the court and in out-of-home placement until an "Application for Order for Psychotropic Medication – Juvenile" (Judicial Council Form JV-220, available on the Internet at www.courtinfo.ca.gov/forms) has been submitted and approved by the court.

(1) Where more than one medication is requested, the application must specify whether the prescribing physician intends the medications to be combined, or is making the request in the alternative. Where said request is in the alternative, the application must set forth the intended plan of treatment.

(2) Information regarding the child's wishes must be included in the application.

(3) The physician prescribing the medication(s) must have evaluated the child within 30 days immediately preceding submission of the application.

(b) Wards of the Court - If a ward has been placed in out-of-home placement, consent to psychotropic medication by the parent/guardian may still be appropriate. If the court has made a prior determination that the parent/guardian is unable to make an informed decision on behalf of the ward, or if the whereabouts of the parent/guardian are unknown, an application for "Order for Psychotropic Medication – Juvenile" (Judicial Council Form JV-220) must be submitted by Probation and approved by the court prior to the administration of any psychotropic medication.

(1) Where more than one medication is requested, the application must specify whether the prescribing physician intends the medications to be combined or is making the request in

the alternative. Where said request is in the alternative, the application must set forth the intended plan of treatment.

(2) Information regarding the child's wishes must be included in the application.

(3) The physician prescribing the medication(s) must have evaluated the child within 30 days immediately preceding submission of the application. (01/01/07)

Rules 1109 - Medical, Surgical, Dental Care

All parties must comply with Welfare and Institutions Code section 369 regarding medical treatment of a dependent child in out-of-home placement.

The social worker must notify the parents, all counsel, CASA, and the court of any child's hospitalization, and the reasons therefore, within two (2) court days of said hospitalization. (01/01/07)

Rule 1110 - Discovery

The rules set forth herein will apply to juvenile court cases arising under Welfare and Institutions Code sections 300 or 601, as indicated below, and will equally apply to all parties and their counsel. This rule is intended to expand upon, rather than limit, California Rules of Court, rule 5.546.

(a) Timely Disclosure of Informal Discovery - Pre-hearing discovery must be initially conducted informally in cases arising under Welfare and Institutions Code sections 300 or 601. Except as protected by privilege, all relevant material must be disclosed in a timely fashion to all parties to the litigation (Cal. Rules of Court, rule 5.546).

(b) Motion to Compel Discovery - In cases arising under Welfare and Institutions Code sections 300 or 601, a party may bring a motion to compel discovery only after all informal means have been exhausted. A motion to compel discovery must be noticed and served in accordance with the requirements of The Superior Court of Tulare County, Local Rules, rule 1104. The motion must state the relevancy and materiality of the information sought and the reasons why informal discovery was not adequate to secure the information.

(c) No Civil Discovery Methods - Civil discovery methods, such as those set forth in the Code of Civil Procedure, do not apply in juvenile cases arising under Welfare and Institutions Code sections 300 or 601, without prior authorization from a bench officer.

(d) Dependency Proceedings -

(1) For pretrial hearings, where the parties have entered a time waiver and a pretrial hearing is calendared, the jurisdictional/disposition report must be filed and served at least five court days prior to the pretrial hearing.

(2) For adjudication within the statutory time, the jurisdiction/disposition report must be filed and served at least three court days prior to the hearing.

(3) For all other hearings, the social worker's report must be served at least 10 court days prior to the hearing.

(4) All social worker reports may be mailed to counsel, delivered by personal service, or delivered by other means as agreed upon by counsel.

(5) In contested proceedings, the name of any experts to be called by any party, and copies of their reports, must be made available to all parties at least five court days before the hearing, except where there has been no time waiver and the need for an expert is not known, in which case the parties must exchange expert information at the earliest possible time.

(6) Except as provided elsewhere in these rules, mutual discovery, including names of witnesses and their addresses and telephone numbers, must be exchanged at least five court days before the hearing, except where there has been no time waiver, in which case the parties must exchange mutual discovery at the earliest possible time.

(7) Failure to provide timely exchange of information as required by this local rule will be grounds for any of the sanctions warranted under California Rules of Court, rule 5.546.

(e) Delinquency Proceedings:

The court rules regarding discovery as set forth in Penal Code sections 1054 - 1054.8 will apply to all delinquency proceedings. (01/01/07)

Rule 1111 - Confidentiality of Juvenile Court Records

The confidentiality of juvenile court records, and exceptions to confidentiality, are governed by Welfare and Institutions Code sections 825-830.1 and California Rules of Court, rule 5.552. All court personnel, attorneys appearing before the court, and court officers must be familiar with and observe these code and rule requirements. Only the presiding judge of the juvenile court, or a judicial officer designated by the presiding judge of the juvenile court, may order the release of information contained in a juvenile case file. Records in the possession of the Probation Department, the Child Welfare Services Agency, or contained in a juvenile court file, may not be obtained using a civil or criminal subpoena. Any party seeking access to such records with the intent to use them in connection with any civil or criminal proceeding must file a petition under Welfare and Institutions Code section 827 so as to protect the privacy interests involved in the juvenile records while complying with the discovery requirements of the civil or criminal proceeding. (01/01/07)

Rule 1112 - Access to the Courtroom by Non-parties.

Except as set forth in Welfare and Institutions Code sections 346, 676, and 676.5, members of the public and media will not be admitted to dependency or delinquency proceedings. Media access to the courtroom, where allowed, will be governed by California Rules of Court, rule 1.150 et seq. (01/01/07)

Rule 1113 - Media Requests for Observing, Interviewing, Photographing, Videotaping, or Voice Recording of Minors or their Families, in a Non-Courtroom Setting and Requests for Access to Certain Facilities.

The media representative must initiate contact with the presiding judge of the juvenile court by submitting a request, at least five days prior to the requested access date, containing the following:

(a) A general description of the media proposal and its purpose;

(b) The exact location, date, and time of the proposed project;

(c) Specification of the type of coverage requested (i.e., observation, filming, videotaping, interviewing, photographing, or voice recording);

(d) A statement of the nature and extent of expected involvement with the minor or facility;

(e) A description of the general subject areas to be covered, where individual minors or family members are to be interviewed or questioned;

(f) The names and ages of individual minors, if available;

(g) A statement as to whether or not petitioner seeks a waiver of the minor's confidentiality and the specific reasons for such a request;

(h) An explanation of how information obtained is to be used, including airing or publication dates;

(i) Any other information which could be useful to the court in evaluating petitioner's request; and

(j) A statement of whether the petitioner fully understands and accepts the provisions of Welfare and Institutions Code sections 825-830 and California Rules of Court, rule 5.552, regarding confidentiality.

A copy of the form must be provided to the Chief Probation Officer and/or Deputy Director of Child Welfare Services. Any objection by either Probation or Child Welfare Services must be communicated in writing to the presiding judge of the juvenile court within two court days of receipt of the form. The presiding judge of the juvenile court, or other bench officer as

designated by the presiding judge, will review the request and any objection. The bench officer may grant the request and, if granted, will provide the media representative with the media order. The media order may specifically define the media contact. The media representative must review the order and must sign the designated order, agreeing to comply with the provisions of the order, prior to media access. Failure by the media representative to comply with the provisions of the order may subject the representative to contempt proceedings. (7/1/00)

Rule 1114 - Inspection and Disclosure of Juvenile Court Records.

Only those persons specified in Welfare and Institutions Code sections 827 and 828 may inspect juvenile court records without authorization from the court. Any other person seeking authorization to inspect, obtain, or copy juvenile court records must comply with Welfare and Institutions Code section 827 and California Rules of Court, rule 5.552. If any person authorized to inspect juvenile court records under Welfare and Institutions Code section 827(a)(1)(A)-(J) sees or becomes aware of information contained in the juvenile court records which is privileged or confidential pursuant to any other state law or federal law or regulation, that person must not further examine the file until a proper petition under Welfare and Institutions Code section 827 has been filed and the juvenile court has granted access to the entire file or made appropriate protective orders. (01/01/07)

Rule 1115 - Ex Parte Restraining Orders - Juvenile Dependency

Pursuant to Welfare and Institutions Code section 213.5 and in accordance with its provisions, the juvenile court may issue ex parte orders and other orders necessary for protection of the minor. Hearings pursuant to this section may be held simultaneously with regularly scheduled hearings in dependency hearings. (01/01/07)

Rule 1116 - Dependency - Designation of Permanent Mailing Address

Child Welfare Services must have each parent whose whereabouts is known execute a "Notification of Mailing Address" (JV-140) prior to the completion of the initial hearing or detention hearing. Said "Notification of Mailing Address" must be filed with the court clerk of the juvenile division. A new "Notification of Mailing Address" (JV-140 – available on the Internet at www.courtinfo.ca.gov/forms) must be completed by the parent and filed with the court clerk of the juvenile division whenever the parent wishes to change the permanent mailing address on file with the court. (01/01/07)

Rule 1117 - Motion to Challenge Legal Sufficiency of Petition

In any dependency proceeding, the court may entertain a pre-hearing challenge to the petition's sufficiency by a motion akin to a demurrer. Such a motion may be made in writing or orally, but it must be made as early as possible in the proceedings. The court may rule on the motion at the hearing, or it may continue the hearing on the motion to another date in order to receive points and authorities from counsel. (01/01/07)

Rule 1118 - Presentation of Evidence - Dependency Cases Only

(a) Offers of Proof: The party presenting evidence may utilize, or the court may require, an offer of proof with regard to any witness. Where one party presents an offer of proof in lieu of testimony, the witness must nevertheless testify unless all parties stipulate to receiving evidence via an offer of proof.

(b) Hearsay Objections to Social Worker's Report: Any hearsay objections to the social worker's report must be in writing, served and filed at least two court days before the hearing, except that in cases where the social worker's report is not filed at least five court days prior to the hearing, the objecting party must file and serve his/her objections in writing at least one day prior to the hearing. (01/01/07)

Rule 1119 - Modifications of Orders (Welf. & Inst. Code, §§ 386, 387, and 288, and Cal. Rules of Court, rules 1430 and 1432)

(a) More Restrictive Placement - Any motion by petitioner to modify an existing order to a more restrictive placement will be implemented pursuant to Welfare and Institutions Code section 387 and California Rules of Court, rules 5.560 and 5.565. The court deems a move from foster care to a group home setting to be a more restrictive placement.

(b) Less Restrictive Placement - Any motion by an interested party to modify the court's orders to a less restrictive placement will follow the procedures outlined in Welfare and Institutions Code section 388 and California Rules of Court, rules 5.560 and 5.570.

(c) New Service Plan Requirements - Any significant changes or additions to the service plan for parents/guardians must be submitted to them for approval before implementation. A parent who disagrees with the new requirements may request a hearing before the court on the matter after filing appropriate noticed motion.

(d) Notice re Change in Placement - In order to ensure that proper notice is received by attorneys for parents and children of any change in a child's placement after the original dispositional hearing:

(1) In non-emergency situations, the department must give notice at least five court days prior to the change in placement.

(2) In non-emergency situations, prior to removal of a child from one county to another, the department must provide notice at 10 court days prior to the change in placement. Where the child is being returned to Tulare County from an out-of-county placement, the notice required is five court days.

(3) In emergency circumstances, the department must give notice immediately, and in no case later than 48 hours (two working days) following the child's change in placement.

(4) Notice may be given in writing and/or orally by telephone. (01/01/07)

Rule 1120 - Representation of Parties Relating to Dependency

(a) Experience, Training, and Education of Attorneys

(1) General Competency Requirement - All court-appointed attorneys appearing in juvenile dependency proceedings must meet the minimum standards of competence herein set forth.

(2) Standards of Education and Training - Each court-appointed attorney appearing in a dependency matter before the juvenile court must complete either of the following minimum training and educational requirements:

(A) Participated in at least eight hours of training or education in juvenile dependency law, which training must have included information on the applicable case law and statutes, the Rules of Court, Judicial Council forms, motions, writs, mediation, child development, child abuse and neglect, family reunification and preservation, restraining orders, rights of de facto parents, and reasonable efforts; or

(B) At least six months experience in dependency proceedings in which the attorney has had primary responsibility for representation of his or her clients in said proceedings. In determining whether the attorney had demonstrated competence, the court will consider whether the attorney's performance has substantially complied with the requirements of these rules.

(C) Each court-appointed attorney who practices before the juvenile dependency court must complete within every three-year period at least eight hours of continuing education related to dependency proceedings. Evidence of completion of the required number of hours of training or education must be retained by the attorney and may include a copy of a certificate of attendance issued by a California Mandatory Continuing Legal Education (MCLE) provider; a certificate of attendance issued by a professional organization which provides training and/or education for its members, whether or not it is an MCLE provider.

Attendance at a court sponsored or approved program will also fulfill this requirement.

(D) The attorney's continuing training or education must be in the areas set forth in paragraph (a)(2) above, or in other areas related to juvenile dependency practice.

(E) To enhance the practice of law before the juvenile dependency court of this county, and to recognize the unique qualities of juvenile dependency law, a standing committee of the juvenile court will review and recommend modifications to these rules in the area of training, education, and standards of representation.

(F) Each court-appointed counsel, including those employed by county offices, must annually complete and file a "Certificate of Competency" (Appendix 3), and file it with the presiding judge of the juvenile court. (01/01/07)

(3) Standards of Representation

(A) To resolve disputed aspects of a case without a hearing, attorneys are expected to meet regularly with clients, including clients who are children, as well as to contact social workers (within the ethical confines of contact with a represented party) and other professionals associated with the client's case, and to work with other counsel.

(B) An attorney representing a child must have contact with the client prior to each hearing. The attorney, or attorney's agent, must interview all children four years of age or older in person unless it is impracticable. Whenever possible, the child must be interviewed at the child's placement. The attorney or attorney's agent should also interview the child's caretaker (unless said caretaker is a party represented by counsel), particularly when the child is under four years of age. If the child's attorney becomes aware of an interest or right of the child to be protected or pursued in other judicial or administrative forums, counsel must notify the court immediately and seek instructions from the court. This includes, but is not limited to, pursuit of any tort claims available to the child (Cal. Rules of Court, rule 5.660).

(C) Attorneys representing any party other than a child must interview the client at least once prior to the day of the jurisdictional hearing unless the client is unavailable. Thereafter, the attorney or the attorney's agent must contact the client at least once prior to the day of each hearing unless that client is unavailable.

(b) Complaints

(1) Any party to a juvenile proceeding may lodge a written complaint with the court concerning the performance of his/her appointed attorney in a juvenile court proceeding as follows:

(A) Complaints or questions must initially be referred to that attorney's supervisor within the agency, association, or law firm appointed to represent the client.

(B) If the issue remains unresolved, or if there is no designated agency, association, or law firm appointed to represent the client, the party may submit a written complaint to the court in which the matter is pending. The court will, within 10 days, conduct its own review of the complaint or question which may include a hearing in chambers. The court may take any appropriate action required, including relieving counsel and appointing new counsel and/or holding a formal hearing on the matter. (01/01/07)

Rule 1121 - Appointment for Children

The Tulare County Superior Court may enter into a contractual agreement with a qualified attorney or attorneys for the representation of dependent children. The agreement may provide that the attorney(s) so employed represent all children, unless the juvenile court determines the child would not benefit from the appointment of counsel as provided by Welfare and Institutions Code section 317(c). (01/01/07)

Rule 1122 - Family and Juvenile Court Management of Child Abuse Cases (This rule is repeated in Family Law, rule 956)

It is the policy of the superior court to identify and coordinate custody proceedings involving the same child, which may appear in multiple legal settings. It is further the policy of the superior court to coordinate the efforts of the different court systems so that the child/ren's and family's needs are served and the resources of the family and the court are not wasted. To these ends, the superior court and the agencies serving the court must cooperate to increase the exchange of information and to determine the most appropriate forum for the resolution of the issues relating to the child/ren.

(a) Report Pursuant to Penal Code section 11166 - If, during the pendency of a family law proceeding, a child abuse allegation against one of the child's parents comes to the attention of a Family Court Services staff member or other mediator or evaluator, that person must first determine whether the allegation must be reported to a child protection agency, pursuant to Penal Code section 11166. If that person determines the allegation does not fall within the description of section 11166, he/she need not make a report. However, any other person may report the allegation to a child protection agency.

(b) Child Abuse Investigation - When the Health and Human Services Agency, Child Welfare Services Branch (CWS), receives a report of suspected child abuse during the pendency of a family law proceeding, it must investigate the matter immediately, or within 10 days, unless the judicial officer from family court requests an earlier investigation. CWS, and the law enforcement agency having jurisdiction, must coordinate their investigative efforts. If CWS becomes aware that a family law case is ongoing concerning a child who is the subject of a suspected child abuse investigation, CWS must inform Family Court Services of the pending investigation and any decisions it makes concerning the child abuse investigation. If CWS, or the law enforcement agency having jurisdiction, determines that further investigation is necessary, the agency making that determination must contact the other agency immediately so that all investigative efforts may be coordinated.

(c) Welfare and Institutions Code section 329 Application - If CWS decides not to intervene, or fails to report to the reporting party within 10 days, any person may apply to the social worker pursuant to Welfare and Institutions Code section 329. In that application, the affiant must give notice and identifying information of any pending family law proceeding. A copy of the application must be sent to Family Court Services by the moving party. The social worker must respond to the application as soon as possible, or within three weeks after

submission of the application (Welf. & Inst. Code, § 329). (See Appendix 4 for application and order form.)

(d) Suspension of Family Court Proceedings Pursuant To Welfare and Institutions Code section 300 Petition Filed In Juvenile Court - Upon the filing of a petition pursuant to Welfare and Institutions Code section 300 in the juvenile court, all custody and visitation proceedings in the family court are suspended. The juvenile court clerk will determine whether there is a family law court file concerning the child/ren named in the petition. If there is a family law court file, the juvenile clerk will send a copy of the notice required under Welfare and Institutions Code section 335 to the family law court. Upon receipt of such notice, the family law clerk will place such notice in the family law file. Thereafter, custody and visitation issues will be determined by the juvenile court. The family court will resume jurisdiction over custody and visitation issues only after termination of jurisdiction of the juvenile court. Upon termination of jurisdiction of the juvenile court, the clerk of the juvenile court will lodge a copy of the order terminating jurisdiction and any juvenile court custody order in the family court file.

(e) Review of Dependency Decision - If CWS decides to initiate dependency proceedings after reviewing the application under Welfare and Institutions Code section 329, any person may apply to the juvenile court to review that decision pursuant to Welfare and Institutions Code section 331. The application for court review must include a copy of the application made pursuant to Welfare and Institutions Code section 329. The juvenile court will rule on the application as soon as possible, and in no event later than 30 days after receipt of the application.

(f) Informal Supervision Agreement - If, during the CWS worker's investigation, one or both parents reach an informal supervision agreement pursuant to Welfare and Institutions Code section 331, a copy of that agreement must be sent immediately to CWS, to Family Court Services, to family court, and to each parent.

(g) Family Code section 3150, Appointment of Counsel - During family court proceedings in which allegations of child abuse have been made, the family court judge may appoint counsel for the child/ren (Fam. Code, § 3150) to protect the child/ren's interests and/or to expedite the policy stated herein and carry out the terms of this protocol.

(h) Coordination of Cases - At any time during the process described herein, the supervising judges and bench officers of the family and juvenile courts are encouraged to discuss, generally, problems relating to the coordination of cases involving child abuse allegations. Nothing in this section will be construed to permit judicial officers to discuss the specific facts of any certain case. (01/01/07)

Rule 1123 - Juvenile Dependency, Juvenile Delinquency, Family, and Probate Courts Exchange of Information

This rule addresses the exchange of information between Family Court Services staff (FCS), Juvenile Probation Department staff (JPD), and the Child Welfare Services staff (CWS). The

disclosure of information concerning children and their parents and caretakers by any of these agencies to each other is generally prohibited by law, unless specifically authorized by court rule or order. Nevertheless, a limited exchange of information about children or their parents or caretakers will serve the best interests of the child who is before the court and the administration of justice.

The court hereby finds that the best interest of children appearing before the juvenile and family courts, the public interest in avoiding duplication of effort by the courts and by the investigative agencies serving the juvenile and family courts, and the value of having relevant information gathered by a court or court-serving agency outweighs the confidentiality interests reflected in Penal Code sections 11167 and 11167.5, Welfare and Institutions Code sections 827 and 10850, Family Code section 1818, and therefore good cause exists for the following rule:

(a) Abuse/Neglect - FCS and JPD staff may orally and in limited written form disclose to CWS staff who are investigating a suspected child abuse or neglect case the following information:

(1) Whether the child, his/her parents, guardians, or caretakers are or have been the subject of a custody, delinquency, or probate investigation, the findings and status of that investigation, the recommendations made or anticipated to be made to the court by FCS or JPD, and any court orders in existence with respect to the child, parents, guardians, or caretakers.

(2) Any statement made by the child or the child's parents, guardians, or caretakers which might bear upon the issue of the child's best interests in the pending child abuse or neglect case. In addition, FCS or JPD staff may give to CWS staff who are investigating or supervising a suspected child abuse case a copy of any court orders.

(3) CWS may include this information in court reports and keep such information in their case files.

(b) Custody Disputes - JPD or CWS staff may orally (or in limited written form) disclose to FCS staff who are mediating or investigating a child custody dispute the following information:

(1) Whether the child, or his/her parents or caretaker, are or have been the subject of a child abuse, neglect, probate, or delinquency investigation, the findings and status of that investigation, the recommendations made or anticipated to be made to the court by CWS or JPD, and any court orders in existence with respect to the child, parents, guardian, or caretaker.

(2) Any statements made by the child or the child's parents, guardians, or caretakers which might bear upon the issue of the child's best interests in the pending family court matter. In addition, JPD or CWS may give to FCS staff who are investigating a child custody dispute a copy of any court orders.

(3) FCS may include this information in court reports and keep such information in their case files.

(c) Delinquency - FCS or CWS staff may orally (or in limited written form) disclose to JPD staff who are investigating a delinquency case the following information:

(1) Whether the child, or his/her parents or caretaker, are or have been the subject of a child abuse, neglect, custody, or probate investigation, the findings and status of that investigation, the recommendations made or anticipated to be made to the court by CWS or FCS staff, and any court orders in existence with respect to the child, parent, guardian, or caretaker.

(2) Any statements made by the child or the child's parents, guardians, or caretakers which might bear upon the issue of the proceeding. In addition, FCS and CWS staff may give to JPD staff who are investigating or supervising a delinquency matter a copy of any court orders.

(3) JPD may include this information in court reports and keep such information in their case files. (01/01/07)

Rule 1124 - Exchange of Information Among CWS, Service Providers, and Schools in Juvenile - Dependency Cases

This rule addresses the exchange of information among Child Welfare Services staff (CWS), any persons who are providing or have provided mental health, counseling, or medical treatment services to a parent, guardian, or child as a part of a child welfare services case plan ("Service Providers"), and schools where any dependent child in the case is attending or has attended ("Schools"). The disclosure of confidential information among CWS, Service Providers, and Schools is generally prohibited by law, unless specifically authorized by written consent or by court rule or order. Nevertheless, an exchange of information about children and their parents or guardians as needed to implement, develop, and monitor the child welfare services case plan will serve the best interests of the child who is before the court and the administration of justice.

The court hereby finds that the best interest of children appearing before the juvenile courts and the value of having relevant information gathered by a court or court-serving agency outweighs the confidentiality interests reflected in Civil Code sections 56 et. seq., Welfare and Institutions Code sections 827, 4514, and 10850, 42 Code of Federal Regulations, part 2, and provisions providing for confidentiality of school records, including Education Code section 49602, and therefore good causes exists for the following rule:

> With respect to each juvenile dependency case, CWS, all Service Providers, and all Schools holding records concerning any of the children in the case must mutually exchange information verbally and in writing as needed to assist in implementing, rendering, and monitoring the services identified in the case plan. All Service Providers and Schools at which the children attend, or have attended, are ordered to prepare and release to the social worker, all progress reports concerning the parent/guardian(s) and child(ren) in connection with services for education, counseling, training, mental health treatment, substance abuse, alcohol treatment, or medical treatment provided in

connection with the service plan in the case. Any party who objects to the exchange of information as provided under this rule may seek a protective order by oral motion at any hearing or by bringing a formal motion. (01/01/07)

Rule 1125 - Domestic Violence Coordination Rules

Domestic Violence Coordination Rules

Court Communication

It is this court's goal to coordinate domestic violence orders. It is the clerk's responsibility, prior to any hearing requesting protective orders and/or child custody and/or visitation orders, to determine if any such orders have already been issued as to the same parties or children in any other department by accessing the court's case management system. The court's criminal, family, and juvenile law departments shall use all reasonable efforts to communicate and exchange information with each other in regards to any domestic violence orders.

Avoiding Conflicting Orders

No department of the family or juvenile court shall knowingly issue a protective order or custody order in conflict with an order of the criminal court. In the event such an order issues inadvertently, the orders of the criminal law proceeding shall have priority.

Modification of Criminal Orders

A court issuing a criminal protective order may, after review of any existing family or juvenile court orders, modify the criminal protective order to allow or restrict contact between the restrained person and his or her children, spouse, or other protected person.

Coexisting Criminal and Family or Juvenile Orders

A family or juvenile court order may coexist with a criminal court protective order, subject to the following:

(a) Any order that permits contact between the restrained person and his or her children shall provide for the safe exchange of the children and shall not contain language either printed or handwritten that violates a "No Contact Order" issued by a criminal court.

(b) Safety of all parties shall be the courts' paramount concern. The family or juvenile court order shall specify the time, day, place, and manner of transfer of the child, as provided in Family Code section 3100.

Issuance and Enforcement of Restraining Order

Upon granting of relief (through initial petition, modification, or termination), the clerk shall convey within 24 hours a file-endorsed copy of the order to the Tulare County Sheriff's Department (TCSO) for input into CLETS, a statewide computerized registration system for restraining orders, or to the court CLETS administrator upon that program becoming operational.

CHAPTER 12 - PROCEEDINGS FOR COMMITMENT OF PERSONS WITH DEVELOPMENTAL DISABILITIES; HABEAS CORPUS PROCEEDINGS PURSUANT TO WELFARE AND INSTITUTIONS CODE SECTIONS 4800 AND 7250; PROCEEDINGS PURSUANT TO *IN RE HOP* (1981) 29 Cal.3d 82

Rule 1200 - Commitment of Persons with Developmental Disabilities

All proceedings for the commitment of persons with developmental disabilities, habeas corpus proceedings pursuant to Welfare and Institutions Code sections 4800 and 7250, and proceedings undertaken pursuant to *In Re Hop* (1981) 29 Cal.3d 82, will be assigned as set forth in the distribution of business order of the court pursuant to The Superior Court of Tulare County, Local Rules, rule 300 and will be heard only on Thursdays except for contested matters in which hearing time will exceed 30 minutes. Any contested matter expected to exceed 30 minutes will be set for hearing by the judge assigned to hear the case at the time a contested hearing is requested. (01/01/07)

Rule 1201 - Requirements Prior to Hearing

No hearings will proceed for the commitment or re-commitment of persons with developmental disabilities without the submission of a report of examination made pursuant to section 6504.5 of the Welfare and Institutions Code. There must also be filed with such report two certifications of mental retardation and recommendations by persons having the qualifications set forth in Welfare and Institutions Code section 6507. (01/01/07)

Rule 1202 - Filing of Individual Program Plan

At the same time petitions for re-commitment pursuant to Welfare and Institutions Code section 6500 are filed, the following must also be filed:

(a) The individual program plan developed and utilized for the proceeding year on behalf of the person for whom re-commitment is sought;

(b) The report and recommendation required by Welfare and Institutions Code section 6504.5; and

(c) A record of the dates of when the services were provided for in the individual program plan and a record of such person's cooperation in the receipt of such services. (01/01/07)

APPENDIX 1: SETTLEMENT CONFERENCE CHECK LIST

(Counsel Should be Prepared to Respond to Questions by the Court as to Matters Referred to in this "Settlement Conference Check List.")

1. Prior to the settlement conference hearing, recheck:
   a. California Rules of Court,
      (1) Rule 222 - Mandatory Settlement Conferences,
      (2) Rule 225 - Duty to Notify Court of Settlement or Stay,
      (3) Rule 227 – Sanctions, and
   b. Local Rule 606.

2. Review and evaluate liability (what a jury is likely to do):
   a. Consider and itemize strong liability points;
   b. Consider and itemize weak liability points;
   c. Consider facts which depend on conflicting testimony;
   d. Consider facts which depend on testimony of witnesses weak on credibility;
   e. Are there factual contentions on your side which will be difficult to prove?
   f. Are there factual contentions of your opponent which will be difficult to prove?
   g. Have you discussed your factual contentions with opposing counsel and considered his/hers?
   h. Consider law applicable to liability;
      (1) Is there a dispute as to liability based upon the law?
      (2) Have you discussed your legal contentions with opposing counsel and considered his/hers?
   i. Rate liability on a scale of 0% liability to 100%.

3. Review and evaluate damages (what a jury is likely to do):
   a. Have current medical reports on all claims of injury and all medical reports prepared by any doctor;
   b. Itemize special damages and total damages (attach copies of each bill or originals);
   c. Itemize possible future special damages and total damages (attach report of other data showing basis of claim of future special damages as to dollar amount).
   d. Supply opposing counsel with copies of all medical reports and your itemization of special damages to date and future special damages at least ten days before settlement conference.

APPENDIX 1 (cont'd)

e. Itemize claimed injuries and evaluate the extent of each injury:
   a. Temporary or permanent,
   b. Disabling or non-disabling,
   c. Disfiguring or not;
f. Consider whether future medical care or time will improve physical condition;
g. Estimate the verdict range, assuming liability;
h. Reduce verdict range for:
   a. Comparative negligence,
   b. Problems of proof of injuries claimed, and
   c. Estimate of percentage of liability;
i. Have you discussed your settlement figure with opposing counsel and considered his/hers?
j. Have you discussed your settlement figure with your client within one (1) week of the settlement conference? (07/15/89)

APPENDIX 2: PROOF OF SERVICE DECLARATION

Case No. _____

I declare that I am employed in the County of Tulare, California. I am over 18 years of age, and not a party to the within entitled action. I am employed at, and my business address is: _____ (include zip code). On the date(s) stated, I served the Notice of Hearing and Proof of Service (Judicial Council Forms JV-280 and JV-510) to the following parties and attorneys (include addresses):

_____
_____

☐ Report(s)were attached to the Notice served by (method of service) Proof of Service Date_____

_____
_____

☐ Report(s)were attached to the Notice served by (method of service) Proof of Service Date_____

_____
_____

☐ Report(s)were attached to the Notice served by (method of service) Proof of Service Date_____

_____
_____

☐ Report(s)were attached to the Notice served by (method of service) Proof of Service Date_____

_____
_____

☐ Report(s)were attached to the Notice served by (method of service) Proof of Service Date_____

_____
_____

☐ Report(s)were attached to the Notice served by (method of service) Proof of Service Date_____

_____
_____

☐ Report(s)were attached to the Notice served by (method of service) Proof of Service Date_____

APPENDIX 2: PROOF OF SERVICE DECLARATION (cont'd)

_____ ☐ Report(s)were attached to the Notice served by
_____ (method of service) Proof of Service Date_____

_____ ☐ Report(s)were attached to the Notice served by
_____ (method of service) Proof of Service Date_____

_____ ☐ Report(s)were attached to the Notice served by
_____ (method of service) Proof of Service Date_____

The proceeding was noticed for _____, at _____ a.m./p.m. in Dept. ___.
The name(s) of the party(ies) not noticed due to unknown addresses are:

_____ ☐ Due diligence attached _____ ☐ Due diligence attached

_____ ☐ Due diligence attached _____ ☐ Due diligence attached

_____ ☐ Due diligence attached _____ ☐ Due diligence attached

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: _____, 20__ _____
(Signature)

APPENDIX 3: CERTIFICATE OF COMPETENCY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF TULARE
JUVENILE DIVISION

I, _____
(NAME) (OFFICE ADDRESS) (TELEPHONE NUMBER)
am an attorney at Law licensed to practice in the State of California. My state bar number is _____. I hereby certify that I meet the minimum standards for practice before a juvenile court as set forth in California Rules of Court, rule 5.660, and rule 1120 of Local Rules of The Superior Court of Tulare County, and that I have completed the minimum requirements for training, education and/or experience as set forth below.

Training and Education: (Attach copies of MCLE certificates or other documentation of attendance.)

Course Title	Date Completed	Hours Provided

Juvenile Dependency Experience:

Case #	# Contested Hearings	Date of Last Appearance	Party Represented

Dated: _____, 20__ _____
(Signature of Attorney)

APPENDIX 4: APPLICATION re ORDER and FACTS

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF TULARE

In the Matter of:	)	Case No.
	)	
(Name of Child)	)	**Application for Order and Facts in Support**
	)	**Thereof**
a Minor. (DOB)	)	(Welf. & Inst. Code, §§ 329 and 331)
_____	)	

I, (Affiant), do hereby declare that:

1. (Information about the affiant, including relation, if any, to the child.)

2. The child resides (or is) in Tulare County.

3. The child is a person who comes within the provisions of Welfare and Institutions Code section 300 (state specific subsection). I request that a petition be filed under Welfare and Institutions Code section 325 on the child's behalf (and, if appropriate, that the child be detained out of home pending disposition on said petition or other further order of the court).

4. I offer the following facts in support of this request: (State the specific factual allegations which bring the child within Welf. & Inst. Code, §300.)

5. I respectfully submit this request so that the child may be protected from a dangerous situation, and then receive services to provide for his/her well being.

6. I applied to Health and Human Services Agency, Child Welfare Services (CWS) pursuant to Welfare and Institutions Code section 329 on _____. The social worker has (check appropriate sentence/s):

   _____(a) not filed a petition within three weeks of my application.

   _____(b) indicated to me that no petition will be filed by the agency without a court order.

   I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct, except as to those matters stated upon information and belief, and as to those matters, I believe them to be true. If called as a witness to testify, I could and would testify to the truth of the foregoing.

Dated: _____ Respectfully submitted,

_____.
(Signature of Attorney)

APPENDIX 4 (cont'd)

COURT ORDER

This matter came before me upon an *ex parte* application. Good cause having been show, IT IS HEREBY ORDERED that :

9 The decision of Child Welfare Services not to file a petition is affirmed.

9 Child Welfare Services must forthwith prepare and file a petition alleging that the subject minor is within the jurisdiction of the court pursuant to Welfare and Institutions Code section 300 (state applicable subsection).

Dated: _____ _____

Judge/Commissioner/Referee of the Superior Court

APPENDIX 5: NOTIFICATION OF ADDRESS

Name, address and
telephone number of attorney(s)

Attorney(s) for (insert name of party represented and title)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF TULARE

[ ] Guardianship of [ ] Conservatorship of _____ [ ] Guardian [ ] Conservator _____	)))))))))	Case Number: **NOTIFICATION OF ADDRESS**

To be completed by petitioner and filed with the clerk and the court investigator with the "Petition for Appointment of Conservator/Guardian" and upon the filing of each accounting thereafter, and whenever the conservatee/ward changes his or her address.

1. **Conservatee or Ward:**

   Name: _____

   Social Security Number: _____

   Veterans ID Number: _____

   Address: _____

   Telephone: _____

2. **Conservator or Guardian:**

   Name: _____

   Address: _____

   Telephone: _____

3. **Special circumstances and/or problems of which Court Investigator should be aware:**

   _____

Dated: _____

_____
(Signature)

_____
Typed Name of Petitioner/Attorney

APPENDIX 6: ORDER APPOINTING REGIONAL CENTER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF TULARE

( ) CONSERVATORSHIP ( ) GUARDIANSHIP OF THE ( ) PERSON ( ) ESTATE OF: AN ALLEGED DEVELOPMENTALLY DISABLED PERSON.	Case No. _____ **ORDER APPOINTING REGIONAL CENTER TO EVALUATE PROPOSED WARD OR CONSERVATEE; ORDER APPOINTING PUBLIC DEFENDER; ORDER DIRECTING NOTICE**

A petition, being filed with this court alleging that the proposed ward or conservatee is a developmentally disabled person:

NOW THEREFORE, IT IS ORDERED THAT _____REGIONAL CENTER PREPARE, SERVE, AND FILE A WRITTEN REPORT PURSUANT TO:

( ) Probate Code section 1827.5 (petition for appointment of limited conservator).

( ) Probate Code section 1461.4 (petition for appointment of guardian, conservator, or limited conservator where proposed guardian or conservator is not the parent of the ward or conservatee and is a provider of services to the ward or conservatee).

( ) Probate Code section 1955 (sterilization of developmentally disabled adult).

IT IS FURTHER ORDERED THAT:

( ) The public defender is ordered to represent the proposed limited conservatee pursuant to Probate Code section 1471(c).

( ) Counsel for petitioner provide such notice as required by Probate Code section 1822 and set the matter for hearing no earlier than 30 days from the date of this order.

Dated: _____

_____
JUDGE OF THE SUPERIOR COURT

APPENDIX 7: INCREASED BID IN OPEN COURT

SUPERIOR COURT OF CALIFORNIA, COUNTY OF TULARE

(Title of Case)	)	No.
	)	
	)	**INCREASED BID IN OPEN COURT**
	)	
	)	
_____	)	

The undersigned, representing _____
(himself/herself/themselves)
to be financially responsible, hereby bid(s) the sum of $ _____ for the property of the above entitled estate, the confirmation of sale of which is pending this day before this court. This bid exceeds the amount stated in the return of sale by at least 10 percent of the first $10,000 of the original bid and by at least 5 percent on any balance. Submitted with this bid is

_____ for _____
[cash/a certified check] [e.g., 10 percent]

of the bid.

The terms of sale must be as follows:_____

_____
[Set forth terms as stated in return of sale.] [If space insufficient, attach terms as an Exhibit.]

Real estate agent procuring this bid: _____
(Name)

Title to be taken by _____
(Name(s))
as _____[specify, e.g., separate property/joint tenants/husband and wife as their community property/tenants in common].

Dated:_____ _____
Signature

_____
[printed name of bidder]

APPENDIX 8: COUNSEL SERVICES AND FEES

DEFAULT ACTION ON NOTE OR CONTRACT

Exclusive of costs, the following counsel fees will be awarded under normal circumstances in a default action on a promissory note or contract providing for the payment of counsel fees:

25% of the first $5,000 with a minimum fee of $250

10% of the amount over $5,000

APPENDIX 9: REQUEST FOR EXTENSION OF TIME TO FILE

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF TULARE

)	Case No.
)	
)	**REQUEST FOR EXTENSION OF**
)	**TIME TO FILE**
)	
)	( ) Proof of Service
)	( ) File Entry of Default
)	( ) File Default Judgment
_____)	( ) Other _____

I certify that I am counsel for _____.

I represent to the court that the date by which the above entitled document is to be filed pursuant to Local Rules of the Superior Court of Tulare County is _____.

Request is hereby made to extend the time to:_____.

The facts in support of this request are:

I certify that the original complaint was filed on:_____.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: _____ _____
(Signature of Attorney)

ORDER

GOOD CAUSE APPEARING the request for extension of time is:

( ) Granted. Date for filing is extended to:_____.
( ) Denied:
( ) Hearing. The matter is set for hearing:

Date:_____ Time:_____ Dept.: _____

Dated: _____ _____
Judge of the Superior Court

APPENDIX 10

ATTORNEY OR PARTY WITHOUT ATTORNEY (NAME AND ADDRESS): TELEPHONE NO.: ATTORNEY FOR (Name):	*FOR COURT USE ONLY*
SUPERIOR COURT OF CALIFORNIA, COUNTY OF TULARE County Civic Center Main & Mooney Visalia, California 93291	
In the Matter of: (Name of Child), a Minor. [D.O.B. _____]	
PETITION AND ORDER RE HEARING TO REVIEW CASE	Case No.:

Petitioner is the Court Appointed Child Advocate with respect to the minor. Petitioner requests that the case be set for:

Check one:

_____ An *ex parte* review (minor and parents **are not** required to attend.)

_____ A *parte* review (minor and parents **are** required to attend.)

Reason(s) for request:

Dated: _____ Signature: _____

Type / print name:

COURT ORDER

_____ The petition is granted.

The case is set for hearing on_____ ,
Petitioner must give ten days notice of hearing date to:

_____ County Counsel _____ Attorney for Parent(s)

_____ District Attorney _____ Attorney for Child

_____ Parent(s) or Guardian(s) _____ Probation Department

_____ Child _____ Child Welfare Services

_____ Other: _____

_____ The petition is denied.

Additional Orders:

Dated: _____ _____
Judicial Officer

APPENDIX 11

ATTORNEY OR PARTY WITHOUT ATTORNEY (NAME AND ADDRESS): TELEPHONE NO.: ATTORNEY FOR (Name):	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF TULARE County Civic Center Main & Mooney Visalia, California 93291	
In the Matter of: (Name of Child), a Minor. [D.O.B. _____]	
DECLARATION RE NOTICE OF EX PARTE APPLICATION: Juvenile	Case No.: Dept. No.:

I, the undersigned, declare:

I am ☐ counsel ☐ social worker ☐ mother ☐ father ☐ minor ☐ Department of Family and Children's Services or ☐ other (explain) in this dependency action.

1. Pursuant to Juvenile Court Local Rules of the Superior Court of Tulare County, I have given notice of, and a copy of this application for ex parte orders, to the following persons:

_____

Notice to the above named persons was given in the following manner:

☐ a. by telephone at _____ (a.m.) (p.m.) _____ , 20_____

☐ b. by letter mailed or hand delivered to (insert name and address)

_____

2. I have received the following Response:

_____

3. I have not given notice of this application for ex parte orders for the following reason(s):

☐ a. would frustrate the purpose of the orders requested.

☐ b. minor child would suffer immediate and irreparable harm before the orders could issue.

☐ c. no significant burden or inconvenience to the responding party will result from the orders requested.

☐ d. I made reasonable, good faith efforts to give notice, as follows: _____

_____

☐ e. Other: _____

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct, at _____, California this day of _____ 20__ , at (a.m.) (p.m.).

_____
Signature of declarant

ATTORNEY OR PETITIONER WITHOUT ATTORNEY *(Name and Address)*: TELEPHONE NO.:	*FOR COURT USE ONLY*
PETITIONER'S BIRTH DATE:	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF	
IN THE MATTER OF *(NAME)*: Petitioner	CASE NUMBER:
PETITION FOR WRIT OF HABEAS CORPUS — LPS Act	

1. Petitioner is being unlawfully restrained of liberty at *(specify name of treatment facility)*:
   by *(specify name of agency and treating psychiatrist)*:

2. Petitioner was admitted to the treatment facility on *(date)*: and is currently being held pursuant to
   ☐ W & I § 5150 (72-hour hold) ☐ W & I § 5250 (14-day certification) ☐ W & I § 5260 (2d 14-day certification)
   ☐ W & I § 5270.15 (30-day cert.) ☐ W & I § 5300 (180-day post-certification) ☐ W & I § 5352.1 (temporary conservatorship)
   ☐ W & I § 5350 (conservatorship) ☐ Other *(specify)*:

3. **Check at least one box:**
   a. ☐ Petitioner is illegally confined for the following reason:

   b. ☐ Petitioner has been denied the following rights without good cause (Welfare and Institutions Code sections 5325, 5325.1, and 5326):

4. Petitioner requests that this court *(check all that apply)*:
   a. ☐ Issue a Writ of Habeas Corpus to the director of the facility named in item 1, commanding that the petitioner be brought before this court at a specified time and place.
   b. ☐ Order the facility to release petitioner from restraint.
   c. ☐ Order that all rights to which petitioner is entitled as a patient be observed.
   d. ☐ Grant such other relief as this court deems appropriate.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

. . . . . .
(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF PETITIONER OR PERSON REQUESTING WRIT ON PETITIONER'S BEHALF)

File Stamp:

SUPERIOR COURT OF CALIFORNIA, COUNTY OF TULARE

In the Matter of:	Case No.
a Patient at	☐ Order Medication Capacity Appeal W.I.C §5334(e)1
Kaweah Delta Mental Health Hospital	☐ Order on Petition for Writ of Habeas Corpus

MEDICATION CAPACITY APPEAL

Patient ☐ **OR** Physician ☐ Appeal Medication Capacity (W.I.C. § 5334 (e)1.) The Clerk is directed to issue an order calendaring the matter for hearing and requiring the presence of the patient and treating physician at the time and place specified in the order. The Public Defender is appointed to represent the patient.

ORDER FOR HEARING

TO KAWEAH DELTA MENTAL HEALTH HOSPITAL and TREATING PHYSICIAN:
YOU ARE ORDERED to appear at Kaweah Delta Mental Health Hospital located at 1100 South Akers Road, Visalia, California, before the Honorable Melinda Reed, Judge of the Superior Court for the State of California, on the _____ YOU ARE FURTHER ORDERED to have _____, a patient in your custody, together with the treatment records relating to said patient's treatment. Given under my hand, with the Seal of Said Court, this _____.

LARAYNE CLEEK, CLERK OF THE SUPERIOR
COURT OF CALIFORNIA, COUNTY OF TULARE

By _____, Deputy

WRIT OF HABEAS CORPUS

THE PEOPLE OF THE STATE OF CALIFORNIA AND TO KAWEAH DELTA MENTAL HEALTH HOSPITAL:
WE COMMAND YOU, to have the body of _____, a person in your custody, power or restraint, as it is said, together with the time and cause of such custody, power or restraint, as it is said, together with the time and cause of such custody, power or restraint and ***all treatment records*** pertaining to said person, before the Honorable _____, Judge of the Superior Court for the County of Tulare, State of California, at Kaweah Delta Mental Health Hospital located at 1100 South Akers Road, Visalia, California on the _____day of _____ to do and receive what shall then and there be considered concerning the said person; and have you then and there with this writ. The hearing is timely pursuant to W.I 5276. Given under my hand with the Seal of Said Court, this _____day of _____.

LARAYNE CLEEK, CLERK OF THE SUPERIOR
COURT OF CALIFORNIA, COUNTY OF TULARE

By _____, Deputy

CERTIFICATE OF SERVICE

I hereby certify that I received and served the above Writ on the _____day of _____ by delivering said writ or appeal to the following persons by facsimile. I caused each document to be sent via facsimile to the following numbers:

- ☒ TULARE COUNTY PUBLIC DEFENDER (559)733-6113
- ☒ TULARE COUNTY DISTRICT ATTORNEY (559)730-2658
- ☒ KAWEAH DELTA MENTAL HEALTH HOSPITAL, Physician and Administrator (559)738-5051
- ☒ LAW OFFICES OF RICHARD D. SIGMUND (559)636-0289

LARAYNE CLEEK, CLERK OF THE SUPERIOR
COURT OF CALIFORNIA, COUNTY OF TULARE

By _____, Deputy

FILE STAMP

SUPERIOR COURT OF CALIFORNIA, COUNTY OF TULARE
MEDICATION CAPACITY HEARING RECORD ORDERS

In re the matter of: _____, a Patient at Kaweah Delta Health Care District dba Kaweah Delta Mental Health Hospital	Case No. _____

1. Treating Physician: _____ Telephone Number: (559) 624-3300
2. Advocate's Name: _____ Telephone Number: (559) 737-4660, x2441
3. Patient's Attorney's Name: _____ ☐ TCPD Deputy: (559) 733-6693 ☐ Private Attorney (___) ___-____
4. Advocate/Attorney notified Patient of: ☐ Patient Rights ☐ Right to Counsel ☐ Rights at Hearing ☐ Right to Appeal.
5. KDMHH's Attorney's Name: Richard D. Sigmund Telephone Number: (559) 636-2653
6. Patient is currently involuntarily committed to KAWEAH DELTA HEALTH CARE DISTRICT dba KAWEAH DELTA MENTAL HEALTH HOSPITAL under California Welfare and Institutions Code:
   ☐ § 5150 (72 hour hold) ☐ § 5260 (additional 14 day hold)
   ☐ § 5250 (14 day hold) ☐ § 5270.15 (additional 30 day hold)
7. Date and time of certification & confinement: _____ Date and time of any recertification(s): _____
8. The Patient, after talking with his/her Advocate/Attorney, has decided to:
   ☐ Be present at the Medication Capacity Hearing; or
   ☐ Waive his/her presence at the hearing, realizing that it will still be held in his/her absence.
   ☐ Hearing was not held. Reason: _____.

AFTER CONSIDERING ALL RELEVANT EVIDENCE PRESENTED, THE JUDGE/HEARING OFFICER FINDS THAT (*initial findings*):

1. _____ The doctor is ☐, or is not ☐, the Patient's current treating physician.
2. _____ The doctor did ☐, or did not ☐, comply with the requirements of California Welfare and Institutions Code § 5152(c) regarding explanation of medication(s).
3. _____ The doctor did ☐, or did not ☐, explain sufficiently, or make reasonable efforts to explain the benefits and risks of, and the alternatives to, the recommended medication(s).
4. _____ The Patient is ☐, or is not ☐, showing symptoms of a mental disorder.
5. _____ The Patient would ☐, or would not ☐, appear to benefit from the recommended medication(s).
6. _____ The Patient has ☐, or has not ☐, refused the recommended medication(s).
7. _____ The Patient is ☐, or is not ☐, aware of his/her mental disorder.
8. _____ The Patient is ☐, or is not ☐, able to understand the benefits/risks of the recommended medication(s) or the availability of alternative treatment(s).
9. _____ The Patient is ☐, or is not ☐, able to understand and evaluate information regarding medications in a rational manner and otherwise participate in the treatment decision.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF TULARE
MEDICATION CAPACITY HEARING RECORD ORDERS

In re the matter of:	
_____, a Patient at Kaweah Delta Health Care District dba Kaweah Delta Mental Health Hospital	Case No.: _____

UPON HEARING THE TESTIMONY AND READING THE EVIDENCE IN THE ABOVE-ENTITLED MATTER, AND GOOD CAUSE APPEARING THEREFOR, IT IS HEREBY ADJUDGED, ORDERED AND DECREED as follows (*initial all that apply*):

1. _____ The Patient does not have the capacity to give informed consent as to his/her psychiatric condition and medication(s) which address said condition; therefore, PETITION GRANTED.
2. _____ Treating Physician or his/her designee(s) is/are given authority to treat the Patient and administer psychotropic/psychiatric medication(s) as necessary for as long as Patient is involuntarily committed at KAWEAH DELTA MENTAL HEALTH HOSPITAL.
3. _____ The Patient does have the capacity to give informed consent as to his/her psychiatric condition and medication(s) which address said condition; therefore, PETITION DENIED.
4. _____ The Patient is capable of giving informed consent as to all other medical conditions (non-psychiatric in nature).
5. _____ The Patient's attorney and/or Significant Others (_____) is/are to be notified regarding all psychotropic/psychiatric medication(s) administered, any changes with respect to such medication(s) and any change in Patient's physical location or health status.

   _____ This case shall be referred to the appropriate county's Department of Mental Health or equivalent agency for an assessment as to the conservatorship needs of the Patient.
6. _____ The reasons for the foregoing determination and the evidence relied upon at the hearing are as follows:

_____

_____

_____

_____

7. _____ Other Orders: _____

This determination and all orders in connection therewith shall remain in full force and effect until the earlier of (i) the expiration of the present or involuntary hold, (ii) such capacity is restored or (iii) subsequent Court determination.

DATED:_____

_____
Judge/Hearing Officer of the Superior Court, County of Tulare

---

CERTIFICATE OF SERVICE

I hereby certify that on *(DATE)*: _____ I received the foregoing Medication Capacity Hearing Record Orders and caused said document to be served by delivering a true and correct copy thereof to the following persons by hand or facsimile on said date:

☐ **TCSC, MENTAL HEALTH DESK**, (559) 737-4547 ☐ **PATIENT**

☐ **TULARE COUNTY PUBLIC DEFENDER**, (559) 733-6113 OR ☐ **PATIENT RIGHTS ADVOCATE**

☐ **KAWEAH DELTA MENTAL HEALTH HOSPITAL**, Physician and Administrator (559) 738-5051

☐ **MEDIATION & LAW OFFICES OF RICHARD D. SIGMUND**, (559) 636-0289

_____
Judge/Hearing Officer of the Superior Court, County of Tulare

FILE STAMP:

SUPERIOR COURT OF CALIFORNIA, COUNTY OF TULARE
ORDERS AFTER HEARING, WRIT OF HABEAS CORPUS

In re the matter of: _____, a Patient at Kaweah Delta Health Care District dba Kaweah Delta Mental Health Hospital	Case No._____ ☐ Order Medication Capacity Appeal W.I.C.§5334(e)1 ☐ Order on Petition for Writ of Habeas Corpus

WRIT OF HABEAS CORPUS ORDERS AFTER HEARING

IT IS HEREBY ORDERED AND ADJUDGED (initial all that apply):

1._____Patient's Writ of Habeas Corpus is denied due to patient's: ☐Grave disability ☐Danger to self ☐Danger to others

2._____Patient's Writ of Habeas Corpus is granted and patient is to be immediately discharged.

3._____Refer patient to Central Valley Regional Center for assistance/coordination with Discharge Planning needs.

4._____Other Orders (see W&I Code Sections 5325 and 5325.1, California Judges Bench Guide Section 120.83.): _____

_____

_____

_____.

DATE: _____ JUDGE OF THE SUPERIOR COURT: _____

CERTIFICATE OF SERVICE

I hereby certify that I received and served the above Writ on the above date by delivering said writ or appeal to the following persons by hand or facsimile. I caused each document to be served on:

☐ **TULARE COUNTY PUBLIC DEFENDER**, (559) 733-6113

☐ **TULARE COUNTY DISTRICT ATTORNEY**, (559) 730-2658

☐ **KAWEAH DELTA MENTAL HEALTH HOSPITAL**, Physician and Administrator (559) 738-5051

☐ **LAW OFFICES OF RICHARD D. SIGMUND**, (559) 636-0289

_____

JUDGE OF THE SUPERIOR COURT
STATE OF CALIFORNIA, COUNTY OF TULARE

APPLICATION FOR 72-HOUR DETENTION FOR EVALUATION AND TREATMENT

Confidential Client/Patient Information
See California W & / Code Section 5328

W & I Code, Section 5157, requires that each person when first detained for psychiatric evaluation be given certain specific information orally, and a record be kept of the advisement by the evaluating facility.

☐ Advisement Complete ☐ Advisement Incomplete

Good Cause for Incomplete Advisement:

Advisement Completed By:

DETAINMENT ADVISEMENT

My name is _____. I am a (Peace Officer, etc.) with (Name of Agency). You are not under criminal arrest, but I am taking you for examination by mental health professionals at Kaweah Delta District Hospital/Kaweah Delta Mental Health Hospital. You will be told your rights by the mental health staff.

If taken into custody at his or her residence, the person shall also be told the following information, in substantially the following form:

You may bring a few personal items with you which I will have to approve. You can make a phone call and/or leave a note to tell your friends and/or family where you have been taken.

Position: | Date:

To Kaweah Delta District Hospital/Kaweah Delta Mental Health Hospital: Application is hereby made for the admission of _____ _____, residing at _____, California, for 72-hour treatment and evaluation pursuant to Welfare and Institutions Code §5150 (adult) et seq. or §5585 (minor) et seq. If a minor or conservatee, to the best of my knowledge, the legally responsible party appears to be:

☐ Parent ☐ Legal Guardian ☐ Juvenile Court WIC §300 ☐ Juvenile Court WIC §§601/602 ☐ Conservator

Provide Name/Address/Telephone number: _____

The Personal Property of the person apprehended, described generally as _____, was preserved and safeguarded by _____ (name of person taking patient into custody, responsible relative, guardian or conservator). Property is now located at _____.

The above person's condition was called to my attention under the following circumstances:

The following informationhas been established: (please give sufficiently detailed information to support the probable cause finding that the person for whom evaluation and treatment is sought is in fact a danger to others, a danger to himself/herself and/or gravely disabled).

Based on the above information it appears that there is probable cause to believe that said person is, as a result of mental disorder:
☐ A danger to himself/herself ☐ A danger to others ☐ Gravely disabled adult ☐ Gravely disabled minor

Signature, title, and badge number of peace officer, member or attending staff of evaluation facility or person designated by county:

Date:

Time:

Telephone:

Name of Law Enforcement Agency or KDMHH person:

Fax/Address of Law Enforcement Agency:

☐ A Firearm/Dangerous Weapon was confiscated. Detained person notified of procedure for return of weapon pursuant to WIC §8102.

Describe: _____

Officer/I.D.#: _____ Unit: _____ Telephone Number: _____

☐ Notification to be provided to Law Enforcement Agency, pursuant to WIC 5152.1, by facsimile is requested as the patient is referred under circumstances in which criminal charges might be filed.

EXHIBIT 2

COPIES: Emergency Dept. – Law Enfor Agency - CMHC Chart – Patient – CMHC File CMHC020 – 11/04

Kaweah Delta Mental Health Hospital
1100 S. Akers Road • Visalia, CA 93277 • 559 624 3300
A division of Kaweah Delta Health Care District

NOTICE OF CERTIFICATION FOR INTENSIVE TREATMENT

PURSUANT TO WELFARE AND INSTITUTIONS CODE § 5250/5250.17 *(strike out inapplicable section)*

The authorized agency providing evaluation services in the County of Tulare has evaluated the condition of:

Name:_____ Age:_____ Sex:_____ Marital Status:_____

Address:_____

We, the undersigned, allege that the above-named person is, as a result of a mental disorder or impairment by chronic alcoholism *(strike out all inapplicable classifications)*:

1. A danger to others,
2. A danger to himself or herself, or
3. Gravely disabled as defined in Welfare and Institutions Code § 5250(d)(1)-(2), 5008(h)(1)(A).

The specific facts which form the basis for our opinion that the above-named person meets one or more of the classifications indicated above are as follows *(certifying persons to detail facts)*:_____

_____

_____

The above-named person has been informed of this evaluation, and has been advised of, but has not been able or willing to accept referral to, the following services:_____

_____

Therefore we certify the above-named person to receive intensive treatment related to the mental disorder or impairment by chronic alcoholism beginning this _____ day of *(month)* _____, 20_____, in the intensive treatment facility named:

KAWEAH DELTA MENTAL HEALTH HOSPITAL
1100 South Akers Road
Visalia, CA 93277

We hereby state that we delivered a copy of this notice this day to the above-named person and that we informed him or her that a certification review hearing will be held within four days of the date on which the person is certified for a period of intensive treatment and that an attorney or advocate will visit him or her to provide assistance in preparing for the hearing or to answer questions regarding his or her commitment or to provide other assistance. The court has been notified of this certification date.

Also, on this day the above-named person has been informed of his/her legal right to a judicial review by Habeas Corpus, and the term "Habeas Corpus" has been explained to him/her, and that he/she has been informed of his/her right to counsel, including court-appointed counsel pursuant to Welfare and Institutions Code § 5276.

Date:_____ Time:_____ a.m./p.m.

Signature:_____
(physician/staff member of facility)

Signature:_____
(representing intensive treatment facility)

Signature:_____
(countersignature)

EXHIBIT 3

NOTICE OF CERTIFICATION FOR INTENSIVE TREATMENT

COPIES: Court – Patient – Hearing Officer – PRA – Chart

5155

TULARE COUNTY SUPERIOR COURT
County Civic Center
Main and Burrel Streets
Visalia, CA 93291

733-6374 ext. 199

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF TULARE

In re the matter of:	)	Case No.
_____,	)	WAIVER OF PUBLIC DEFENDER FOR REPRESENTATION AT MEDICATION CAPACITY HEARING (Riese Hearing)
Patient at KAWEAH DELTA MENTAL HEALTH HOSPITAL	)	DATE:
	)	TIME:
	)	LOCATION:
_____	)	

The above patient acknowledges his/her right to be represented by an attorney including a court appointed attorney, at no cost, if the patient is unable to retain counsel. Patient hereby elects to be represented at hearing by (check one):

- ☐ Self
- ☐ Patients Rights Advocate
- ☐ Patient's own private attorney, at patient's sole cost and expense.

Dated: _____ _____
PATIENT

_____
Signature of Advising Staff Member

_____
Signature of Hearing Officer

_____
Waiver of Representation of Patient by Public Defender at Riese Hearing

EXHIBIT 4

TULARE COUNTY PUBLIC DEFENDER
County Civic Center
Main and Burrel Streets
Visalia, CA 93291

Telephone Number (559) 733-6693
Facsimile Number (559) 733-6113

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF TULARE

In re the matter of:	)	
_____,	)	Case No. _____
Patient at KAWEAH DELTA MENTAL HEALTH HOSPITAL	)	PATIENT APPEAL RE MEDICATION CAPACITY;
FOR APPEAL OF CAPACITY DECISION	)	W&I SECTION 5334(e)1
_____	)	

TO THE TULARE COUNTY SUPERIOR COURT:

YOUR Appellant respectfully alleges as follows:

That I am _____; that a Medication Capacity Hearing was held at _____. That the decision of the Hearing Officer that I lack capacity to give an informed refusal and may be medicated against my will is erroneous. I state that there is not clear and convincing evidence that I lack the capacity to give an informed refusal and therefore should not be medicated against my will.

WHEREFORE, your Appellant respectfully prays that this Court:

Issue an Order to:_____ Commanding that I be brought before this Court at a specific time and place and that my treating physician be present and demonstrate by clear and convincing evidence that I lack capacity to give an informed refusal to medications.

DATE_____ _____
Appellant

DATE_____ _____
Deputy Public Defender

EXHIBIT 5

RICHARD D. SIGMUND
Mediation & Law Offices of
Richard D. Sigmund
1001 N. Demaree Ste. 6
Visalia, CA 93291

Telephone Number (559) 636-2653

Attorney for KAWEAH DELTA MENTAL HEALTH HOSPITAL

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF TULARE

In re the matter of: _____, Patient at KAWEAH DELTA MENTAL HEALTH HOSPITAL FOR APPEAL OF CAPACITY DECISION _____	Case No. _____ PHYSICIAN APPEAL RE MEDICATION CAPACITY DECISION OF FACILITY; W&I SECTION 5334(e)2

TO THE TULARE COUNTY SUPERIOR COURT

A Medication Capacity Hearing was held for _____, at Kaweah Delta Mental Health Hospital on _____. The hearing resulted in a finding that the patient has capacity to refuse administration of prescribed psychiatric medications. Doctor _____, the treating physician, requests a review of this decision provided for in Welfare and Institutions Code Section 5334(e)(2) and 5334(f).

I understand that unless other arrangements are made with the Court, this hearing will take place at Kaweah Delta Mental Health Hospital within two judicial days from the date this Petition is filed with the Court.

DATE_____ _____
APPELLANT

DATE_____ _____
RICHARD D. SIGMUND

EXHIBIT 6

The Clerk is directed to issue an Order calendaring the matter for hearing and requiring the presence of the patient and treating physician at the time and place specified in the Order. The Public Defender is appointed to represent the patient.

_____ _____

DATE JUDGE OF THE SUPERIOR COURT

ORDER FOR HEARING

TO: THE TULARE COUNTY PUBLIC DEFENDER , PATIENT:_____M.D., the Treating Physician.

YOU ARE ORDERED to appear at KAWEAH DELTA MENTAL HEALTH HOSPITAL before the Honorable_____ Judge of the Superior Court for the County of Tulare, State of California, on the _____ day of _____, 200__, at 4:00 P.M.. You are further ordered to have the Patient in your custody, together with the treatment records relating said patient's treatment present at the Hearing. Given under my hand, the Seal of said Court, this ___day of___, 200__.

LARAYNE CLEEK, Clerk of the Superior Court
of California, County of Tulare

By:_____, Deputy

CERTIFICATE OF SERVICE

I hereby certify that I received and served the above Order on the ____day of ____, 200__ by delivering said Order to the following persons by facsimile. I caused each document to be sent via facsimile to the following numbers:

- ☐ TULARE COUNTY PUBLIC DEFENDER, (559) 733-6113
- ☐ KAWEAH DELTA MENTAL HEALTH HOSPITAL (559) 738-5051
- ☐ LAW OFFICES OF RICHARD SIGMUND, 636-2653

LARAYNE CLEEK, Clerk of the Superior Court
of California, County of Tulare

By:_____, Deputy

LOCATIONS, VENUE, PROCEDURES AND FEES

Addresses and telephone numbers for Mental Health (LPS) Division (01-01-07)

Tulare County Superior Court:
Department, as designated by the Presiding Judge
221 S. Mooney Blvd.
County Civic Center
Visalia, CA 93291
(559) 733-6561
Facsimile: (559) 737-4290

Hearing Officer:
Adam A. Baiza, Jr., Esq.
319 West Murray Avenue
Visalia, CA 93291
(559) 625-2814
Facsimile: (559) 625-3702

County Counsel:
2900 Burrel Avenue
Visalia, CA 93291
(559) 733-6263
Facsimile: (559) 737-4319

Public Defender:
221 S. Mooney Blvd., Room G-35
Visalia, CA 93291
(559) 733-6693
Facsimile: (559) 733-6113

Patient Rights Advocate:
5957 South Mooney Blvd.
Visalia, CA 93277
(559) 737-4660 ext. 2441
Facsimile: (559) 737-4695

District Attorney:
2350 Burrel Avenue, Room 224
Visalia, CA 93291
(559) 733-6411
Facsimile: (559) 730-2658

Kaweah Delta Mental Health Hospital:
1100 South Akers
Visalia, CA 93277
(559) 624-3300
Facsimile: (559) 738-5051

Counsel for Kaweah Delta Health Care District:
Richard D. Sigmund, Esq.
1001 N. Demaree, Ste. 6
Visalia, CA 93291
(559) 636-2653

Department of Mental Health:
5957 South Mooney Blvd.
Visalia, CA 93291
(559) 737-4660 ext. 2374
Facisimile: (559) 737-4572

Public Guardian:
3530 West Mineral King Ave., Ste. E
Visalia, CA 93291
(559) 733-6585
Facsimile: (559) 740-4347