

**1/1/99 SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIPOSA
LOCAL RULES**

RULE 1. COURT ORGANIZATION

A. ADOPTION AND AMENDMENT OF RULES

These rules shall become effective as of September, 1998; thereupon all other rules heretofore adopted by this Court shall be repealed, provided that no action heretofore taken in compliance with such rules shall be made invalid or ineffective by such repeal. These rules may be amended at any time by the Judge of the Superior Court

B. HOURS OF JUDICIAL BUSINESS

1. The Court will be open for judicial business from 8:00 a.m. until 0:00 p.m. In case of emergencies, contact the Court Clerk at (209) 966-2005.
2. All trials will commence at 9:00 a.m. insofar as practical. All calendar departments will commence sessions at 9:00 a.m.
3. The Court calendar is as follows:

Monday	Department 1	Department 2	Family Law
9:00 am	jury trials	criminal	.
1:30 pm	.	civil	.
3:15 am	.	juvenile	.
Tuesday	.	.	.
9:00 a m	jury trials	criminal	.
Wednesday	.	.	.
9:00 am	jury/court trials	jury	.
2:00 pm	.	.	family law
Thursday	.	.	.
9:00 am	criminal matters	Except as otherwise calendared by the Court. Motions will be heard on Monday or tuesday	
10:30 am	juvenile matters		
1:15 pm	civil matters		
3:00 pm	adoptions		

9:00 am	jury trials	
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***This calendaring may be modified at times by the Presiding Judge.**

Any matter which will take one-half hour or longer to hear will not be set on the law and motion calendar. Contact the Court Clerk for hearing date and time at (209) 966-2005.

(eff. January 1, 1999)

RULE 2. FILING PROCEDURES

A. TIME OF FILING PAPERS

All papers necessary to hearing in default cases, including default dissolutions, a return of service on orders to show cause (except wherein the Court has by order shortened the time for service), probate matters, adoptions, compromise claims of minors, consents, military affidavits, demands for default, doctor's reports, property settlement agreement in dissolution actions, etc., shall be filed by 4:00 p.m. on the second court day preceding the date set for hearing.

EXAMPLE: If a matter is set for hearing on a Monday morning, the documents that are necessary for said hearing shall be filed with the Court Clerk by 4:00 p.m. on the Thursday preceding that Monday. Saturdays, Sundays and court holidays are not considered court days.

B. DOCUMENTS SHALL BE TYPEWRITTEN

All documents presented for filing shall be typewritten and shall meet the standards of the California Rules of Court, Rule 201 (b) and (c).

The Clerk of the Court shall not accept for filing or file any papers which do not comply with this rule, but for good cause shown, the Court may permit the filing of papers which do not comply.

All documents shall be in proper legal form. They shall be properly assembled and stapled.

C. ENDORSEMENT OF HEARING DATE

It shall be the duty of counsel, in all documents of whatsoever nature presented for filing as part of the official court files, to indicate the date, if one has been scheduled, of any pending court trial or hearing to which the documents may be pertinent, directly below the caption describing the nature of the document.

The Clerk shall process court filings on a priority basis, ensuring that all documents are properly entered and filed in the appropriate file. The Clerk shall further give all necessary processing priority to documents with pending court trial or hearing dates, ensuring that documents reach the Court file prior to delivery of the file to the Court for hearing, or as soon thereafter as is reasonably possible in consideration of the date of receipt.

D. COMPLETION OF FILE

No hearing will be set on an uncontested matter until all requisite pleadings and documents have been filed and the Clerk has entered the default, unless it is a matter requiring Court entry of the default, in which case the return of service must be filed before the request for hearing.

E. FILING AND SERVICE OF ORDERS

All written orders shall be filed in the office of the Clerk immediately after they are signed. All documents, other than those provided in Local Rule 3(B), that may be pertinent or necessary for any hearing shall be filed prior to 4:30 p.m. of the second court day prior to the date set for hearing.

F. FORMA PAUPERIS PROCEDURE

Where it is made to appear by affidavit or declaration under penalty of perjury that a person desiring to file an action, or appear in an action already filed, does not have and cannot presently obtain funds with which to prepay the filing fee and other legal costs, proposed action or defense, counterclaim or cross-complaint, is meritorious, the Judge of this Court may, by order, allow the filings of such action or pleadings without payment of filing fee or other legal costs. Any such order shall, however, direct that such filing fee and other costs be and remain the obligation of such person, and except if ordered paid and actually paid by another party, shall be a lien upon any money to or for the benefit of such party pursuant to any order of judgment in the action of settlement thereof, and that such filing fee and other costs shall be paid upon receipt of any such money. The order shall be supplied by the Court Clerk. In any case, the Court may order a hearing to determine the party's ability to pay court fees and costs.

G. AFFIDAVITS OF MAILING

Except in probate matters, affidavits of mailing shall be attached to any group of documents which are to be filed separately. An affidavit of mailing shall be attached to each document filed, if affidavit of mailing is required by law.(eff. January 1, 1999)

(eff. January 1, 1999)

RULE 3. MOTIONS

A. FAILURE TO APPEAR

Failure of moving counsel to appear at the time set in the department to which the matter is assigned, unless excused by the Judge, shall be deemed cause for placing such matters off calendar, for proceeding to hear the matter in the absence of counsel, or for assignment of costs and sanctions as the Court in its discretion may determine.

B. PAPERS ON FILE

All supporting affidavits, declarations, memoranda of points and authorities and similar documents shall be attached to the notice of motion, or order to show cause, or other moving papers, when filed. Failure to comply with this requirement may be deemed cause for taking the matter off calendar. All responsive and opposing documents shall be filed by respondents at least five court days before the day set for hearing. The application of

this rule shall not apply to responsive and opposing documents where the moving party has obtained an order shortening time for hearing. This rule shall not be applicable where the other time limits are required or provided by law, as in CCP Section 659(a) or CRC Section 317. Failure to file a memorandum of points and authorities by the filing deadline is a waiver of the memorandum and:

(i) in the case of the moving party, may be considered an admission that the motion is without merit.

(ii) in the case of the opposing party, may be considered a waiver of objections and an admission that the motion is meritorious.

(iii) matters ordered off the calendar may be reset only by motion.

(eff. January 1, 1999)

RULE 4. SETTING CASE FOR TRIAL

A. FILING AT-ISSUE MEMORANDUM

The Calendar Clerk, under the direction of the Judge, upon receipt of a Memorandum that Civil Case is At Issue which has been filed in the Clerk's Office, shall, within fifteen days, set on the calendar a time for the trial of all short causes and a time for a Trial-Setting Conference for all long causes.

B. CONTINUANCE OF CONFERENCE OR TRIALS

1. Stipulations, either orally or in writing, to continue a conference or a civil trial require approval of the Court.
2. Stipulations, either orally or in writing, that any trial or conference may go off calendar require the approval of the Court, except when the case is actually settled.
3. Motions for continuance of a trial or a conference must be in writing with notice supported by a declaration unless the Court accepts a stipulation.
4. If counsel has a conflict on the assigned trial date, counsel shall contact the Clerk's Office for the confirmation of an available trial or conference date which is acceptable to all parties.

The requesting party shall prepare and circulate to all parties a stipulation and form of order setting forth the new trial or conference date.

If there is no agreement and stipulation filed, the original date shall remain fixed.

5. Within ten calendar days of the date set for jury trial in a criminal matter, the Court will refuse to grant any continuance, except in extraordinary circumstances, and the Court will also refuse to accept any plea bargains on the day of trial.

C. TRIAL SETTING/STATUS CONFERENCE

Each party to an action in which a Trial Setting/Status Conference is to be held shall appear in person or by counsel, unless counsel makes arrangements at least three days

in advance of the conference date for such conference to be held by conference telephone call. Arrangement for such conference telephone call shall be made and the cost thereof paid for by counsel requesting the same.

A copy of this rule and the telephone number of the Court shall be attached to each Notice of Trial Setting Conference.

(eff. January 1, 1999)

RULE 5. SETTLEMENT

A. SETTLEMENT POLICY

This court recognizes that settlement promotes judicial economy and, therefore, this Court encourages settlement either through arbitration, attorneys' or parties' own initiative or trial settlement conference.

B. OPTIONAL ARBITRATION

Arbitration may be initiated at or after the time of filing an At-Issue Memorandum and before the trial date has been set or by filing an original Notice of Stipulation or Election for Arbitration with the Court Clerk.

(eff. January 1, 1999)

RULE 6. TRIAL SETTLEMENT CONFERENCES

A. REQUIREMENT OF TRIAL SETTLEMENT CONFERENCE

All civil trial matters, except domestic and short causes (one day or less), are required to have a settlement conference. Initiation of a voluntary settlement conference may be accomplished by serving upon all other parties and filing the request for settlement conference with the Clerk's Office.

The Calendar Clerk will set the time, date and place of the conference and will give notice of the hearing to the parties at least fifteen days prior to the date set for the conference.

B. EACH PARTY TO BE PREPARED

Each plaintiff or party seeking affirmative relief of recovery shall be prepared to make his or her minimum request and each defendant must come to the conference prepared to make his or her highest offer.

In each case, counsel who attend the conference shall be thoroughly familiar with the case and shall be prepared to discuss it. The attorney responsible for the preparation and trial of the case should attend in each case.

Experience has demonstrated the importance and necessity of the presence of all persons whose consent will be required for a binding settlement agreement. Therefore, only extraordinary circumstances shall excuse the non-appearance at the conference of the principals and authorized representative of the insurer. The Court may impose sanctions in the event of an unexcused absence of principal or insurer.

Civil jury instructions are to be provided by counsel at time of settlement conference and/or at the latest readiness conference.

C. SETTLEMENT STATEMENT

Except in domestic cases, it is mandatory that all counsel shall, at least five days prior to the scheduled hearing, file with the Court Clerk a settlement statement containing the following:

1. All parties, including intervenors and their representatives.
2. The party's summary of his version of the facts, injuries, the legal issues involved and attach a copy of the most recent medical reports from his side. Plaintiff's statement shall contain a list of special damages.
3. In other than personal injury cases, the party's statement setting forth his version of the facts, legal issues, damages and relief demanded.

In all cases, the parties, prior to settlement conference, shall have communicated their settlement requests and offers to each other.

D. PARTICIPATION IN GOOD FAITH

For a meaningful conference, all attorneys and/or the parties must agree to participate in good faith. Any failure of an attorney to prepare for, appear at and participate in a settlement conference unless good cause is shown for any such failure, may result in sanctions.

E. FAILURE TO APPEAR

If, at the time of the scheduled settlement conference, plaintiff or those parties seeking affirmative relief fail to appear, the Court may order the trial date vacated or impose monetary sanctions. Written notice thereof will be mailed to all parties or their counsel of record as ordered by the Court. If the defendant or other responding party fails to appear at the settlement conference and good cause is not shown, the Court may impose sanctions by way of costs, actual expenses and counsel fees and order that case to proceed to trial on the date assigned.

F. FAILURE OF SETTLEMENT CONFERENCES

In the event settlement negotiations are not successful, counsel should expect and be prepared to proceed to trial on the date scheduled. Every effort will be made by the Court to ensure that the case goes to trial on the date scheduled. Notice to continue may be entertained by the settlement Judge.

(eff. January 1, 1999)

RULE 7. PRETRIAL CONFERENCES

A. PRETRIAL PROCEDURE

A pretrial conference will NOT be set unless the requesting party, at the time the At-Issue Memorandum is filed, files a declaration setting forth facts indicating that the case is so

unusually complex that a pretrial conference is justified and the Presiding Judge so finds and orders.

If a pretrial conference is ordered, the following shall apply:

1. Each party appearing in the case shall attend the conference by counsel, or if none, in person; and shall have a thorough knowledge of the case, be prepared to discuss it, and to make stipulations and admissions when appropriate.
2. The parties shall confer before the date assigned for the conference to reach agreement upon as many matters as possible and shall be prepared to respond to inquiry by the Judge as to the possibility of a settlement of the case.
3. The parties shall prepare, jointly or separately, and submit before the conference, a written statement of the matters agreed upon.

(eff. January 1, 1999)

RULE 8. JURY TRIALS

A. POSTING OF JURY FEES

When a demand for jury has been made, the demanding party shall deposit with the office of the Court Clerk a fee in the amount of \$280.00. The \$280.00 fee shall be posted twenty-five (25) days prior to the date of trial and shall be held therein accountable for the use of jurors as required for the case.

Should the depositing party notify the Calendar Clerk seven calendar days or more prior to the date of trial that the case has been settled or is to be removed from the trial calendar, the deposit shall be returned to the depositing party upon receipt of dismissal.

At any time within the period of seven calendar days prior to the date of trial, the Calendar Clerk is notified that the case will not proceed to trial, a portion of the deposited sum shall be forfeited, based upon the costs incurred by the Clerk's Office in calling off the jury.

Should the case proceed to trial on the date as set, the party who has demanded trial by jury and has deposited the \$280.00 shall be charged the fees and mileage of all jurors appearing for voir dire examination. The Clerk of the Court shall assess the actual jurors' fees and mileage for the jurors sworn to try the case, including alternate jurors and costs of meals, against the deposit, and if thereafter a balance of monies remain, that amount shall be returned to the depositing party. If the Clerk finds that the deposit is not sufficient to cover the costs of trial jurors, the Clerk shall notify the demanding party that there is a balance due and owing, and the said party shall deposit that amount forthwith in the office of the Court Clerk.

Should any portion of the deposit be used prior to trial or during a trial and a remaining balance remains on deposit in the office of the Court Clerk pending a new trial on the matter, the demanding party shall deposit the difference between the remaining amount and deposit as required, making the total once again a sum of \$280.00. The new deposit shall be made fourteen calendar days prior to the new trial date.

B. PAYMENT FOR FOOD, LODGING AND OTHER EXPENSES

In a civil action in which a jury has been sworn, the expenses for food, lodging and other reasonable necessities which are incurred shall be borne by the party or parties who have demanded the jury. Before any such expenses are incurred, the Court Clerk at the trial shall require the party or parties through their respective counsel who have demanded the jury, to advance such sums of money as the Court Clerk deems reasonably necessary in order to pay for the anticipated expenses. The money so advanced shall be deposited with the daily jury fees on the last day of the trial prior to the deliberation by the jury. Any surplus amount of money remaining after said expenses have been paid in full shall be returned to the party or parties who advanced said money by the Court Clerk when the monies heretofore deposited are disbursed. If the parties fail upon the request of the Court Clerk to advance such necessary expense money, the jury will forthwith be dismissed and the cause shall proceed as if no jury had been selected and sworn.

(eff. January 1, 1999)

RULE 9. JURY INSTRUCTIONS

A. USE OF BAJI AND CALJIC INSTRUCTIONS

The Court Clerk shall keep available for use by the Court a supply of instructions from BAJI and CALJIC. The Court Clerk shall also keep on hand for examination by and distribution to counsel who shall request from the same a printed schedule of all available printed BAJI and CALJIC instructions. No charge shall be made to counsel for the schedule of printed BAJI and CALJIC instructions.

B. SERVICE OF JURY INSTRUCTIONS

Within 10 days prior to commencement of the trial in all civil juries, counsel shall serve upon all other parties participating in the trial and deliver to the Clerk of the trial court a written request captioned in the action and entitled "Instructions Requested by (name of party)" which shall be either on the printed form provided by the Court Clerk for that purpose or on forms prepared by counsel which shall contain, in numerical order, the instructions requested identifying the same by the numbers used in BAJI or CALJIC.

C. DELIVERY OF INSTRUCTIONS TO COURT

The Clerk of the Court shall deliver to the Court the printed instructions requested by the respective parties as directed by the Court.

D. ADDITIONAL INSTRUCTIONS SUBMITTED

The parties shall have the right to submit typewritten instructions prepared by themselves, which instruction shall contain the authorities relied upon and shall be sequentially numbered.

E. ADDITIONAL BAJI AND CALJIC INSTRUCTIONS

Counsel desiring to submit an instruction contained in BAJI or CALJIC which has not been printed by the Court Clerk shall prepare a typewritten copy thereof on a form furnished by the Clerk and submit it to the Court, identifying such instructions by its BAJI

or CALJIC number.

F. TYPEWRITTEN INSTRUCTIONS

All proposed instructions submitted under section (D) and (E) of this rule shall be served upon counsel for all other parties prior to their submission to the Court.

(eff. January 1, 1999)

RULE 10. WITHDRAWAL OF EXHIBITS

A. CIVIL CASES PRIOR TO JUDGMENT

In civil cases prior to final judgment, no exhibits may be withdrawn except on stipulation of counsel for the parties or on motion after due notice to the opposing parties and order of the Court and the filing of a receipt for the exhibits with the Clerk. The Court may require as a condition for such order that a certified copy of the exhibits (if in writing) be substituted in place of the exhibits so withdrawn.

B. CIVIL CASES AFTER FINAL JUDGMENT

In civil cases after final judgment, no exhibit may be withdrawn except on stipulation of counsel for the parties or on motion after due notice to the opposing parties and order of the Court, and the filing of a receipt for the exhibits with the Clerk.

C. CRIMINAL CASES

In criminal cases, exhibits may be withdrawn or disposed of as provided in the Penal Code and Code of Civil Procedure.

D. STIPULATION FOR RETURN OF EXHIBITS

The Clerk of the Court may obtain the signature of counsel for both parties on a stipulation and the order of the Court for return of exhibits. After the time has expired for appeal, the Clerk may notify counsel that the exhibits are available and ready to be returned to the party introducing said exhibits. When the exhibits are delivered to counsel, the attorney or representative shall sign a receipt for exhibits on the same documents entitled "Stipulation for Return of Exhibits".

(eff. January 1, 1999)

RULE 11. JUDGMENTS, FINDINGS AND ORDERS

A. PROPOSED ORDERS

Statements of decisions and proposals as required by Section 632, Code of Civil Procedure, proposed orders and judgments shall bear the date in which the matter was heard and shall be presented directly to the Court Clerk. All proposed statements of decision (when required) and orders and judgments in contested matters shall be served on the adverse party or approved by the adverse party or his attorney prior to the presentation to the Judge for signature. Decrees and orders not approved as to form by opposing counsel shall be submitted to the Judge who heard the matter. The Clerk shall

check the order against the minute order of the Court. If said order complies with the minute order, the Clerk shall initial the documents. Said document will then be presented to the court for signature. If said decree or order does not conform to the minute order, the clerk shall deliver it to the Court for appropriate action.

B. NOTIFICATION OF COUNSEL

Whenever the Court makes an order in a case or matter which has previously been submitted and taken under advisement, the Clerk of the Court is directed to promptly notify counsel of record for each party, in writing, of the date and contents of such order and place a written memorandum in the file indicating to whom the copies were delivered.

C. JUDGMENT-SIGNATURE BY JUDGE

In all civil cases in which a written judgment is required, counsel (or the party, if appearing in propria persona) shall prepare an original of all proposed civil orders or judgments. The original shall be presented to the Judge for signature; if and after it has been signed by the Judge, said original judgment shall then be presented to the clerk for filing and entry. For the purpose of this section, a judgment is defined as any written judgment, order or decree from which an appeal lies.

D. CLERK'S JUDGMENT ON DEFAULT - DEPT. 2

The Clerk of this Court will not enter judgment pursuant to Code of Civil Procedure Section 585, paragraph 1, on any complaint pleading only common counts in contract actions unless the party requesting the Clerk's Judgment has in addition to the requirements of Section 585(1) also filed, under oath or penalty of perjury, a declaration stating:

- a. Compliance with Section 585.5 of the Civil Code of Procedure; and,
- b. That the monetary total of the account sued upon does not include any interest, service charges, carrying charges, late charges, or any other costs added to the account sued upon.

(eff. January 1, 1999)

RULE 12. TOXIC AND HAZARDOUS MATERIALS

Prior to bringing any toxic, hazardous or potentially hazardous materials into the Courtroom, counsel shall provide to the Court a written statement containing information as hereinafter set forth:

1. A list of the technical and street names of the said materials.
2. The types and sizes of the containers to be utilized for the materials.
3. The name of the person who will transport the materials into the courtroom.
4. Where the materials will be stored and the conditions under which the materials will be stored, viewed or handled.

5. The name of the person who will remove the materials.
6. An explanation as to why the material is hazardous or potentially hazardous and the remedies to be followed in the event of a spill, leak or other accident.
7. An explanation as to why the introduction of the materials into evidence must be accomplished by their physical presence in the courtroom, rather than proof of their existence by any other method.

Toxic, hazardous or potentially hazardous materials shall include, but not be limited to, all chemicals, pesticides, and materials as contained in the California Administrative Code TITLE 22, DIVISION 4, CHAPTER 30, ARTICLE 9, entitled Hazardous Waste and Hazardous Materials. Any further information concerning this list of materials provided in the aforementioned Administrative Code or additional information concerning other hazardous materials may be obtained by contacting the Mariposa County Department of Environmental Health.

This rule is made for the protection of the public and all persons involved in the processes of the justice system of Mariposa County.

(eff. January 1, 1999)

RULE 13. CIVIL CASES - DISMISSAL FOR FAILURE TO BRING TO TRIAL

All cases not brought to trial within five (5) years of the date on which the original complaint was filed shall be automatically dismissed, without notice, regardless of whether an at-issue memorandum has been filed unless there is a waiver, to a date certain, of the five-year statute.

(eff. January 1, 1999)

RULE 14. RESERVED

RULE 15. CRIMINAL LAW AND MOTION

A. PRETRIAL MOTIONS

All pretrial motions, except motions to continue when a need for a continuance is discovered where there is insufficient time to file a written motion, shall be served and set for hearing at 9:00 a.m. on any Thursday the Court is in session. The opposing party will be given such notice as is required by law. Written response is required and shall be served and filed no later than the second court day prior to the hearing. Sanctions may be imposed for the failure to file such papers, absent good cause to the contrary. Criminal law and motion matters shall be heard not less than 14 days prior to the trial date. No order shortening time to allow a hearing within the 14 days prior to trial will be granted, unless the motion is accompanied by a declaration showing good cause why the motion was not brought and heard more than 14 days prior to trial. Failure to exercise due diligence to bring the motion to hearing more than 14 days prior to the trial date may result in the imposition of sanctions.

B. CRIMINAL PRETRIALS

All criminal matters set for trial shall have a pretrial readiness conference prior to the date of trial. Trial counsel for each party are required to discuss the case with each other prior to the date of the pretrial conference and are to attend the conference with the goal of disposing of the case without trial and are to have the full authority to negotiate a disposition of the case to the extent allowed by law.

C. TRANSCRIPTS

In felony proceedings in which a plea of guilty or nolo contendere is entered and where a defendant is sentenced to the state prison shall be transcribed and certified by the Court Reporter and filed with the Clerk.

D. TAPE RECORDINGS

No audio tape recording shall be marked for identification, admitted as an exhibit, or played before the judge or jury unless the proponent thereof first provided the Court with a written transcript of the tape recording.

E. CONTINUANCES

Continuances of criminal matters are disfavored as such frustrates the public policy of prompt and early disposition of criminal matters, as well as often denying a party the right to a speedy trial and disputing the Court's orderly process. Generally, no continuance will be granted, absent good cause, even if stipulated to, joined in or brought by all parties.

The Court recognizes that, in criminal matters, the right of a party to a fair trial may prevail over lack of good cause for a continuance, thereby requiring a continuance to be granted, even absent legal good cause, if such does not violate some other constitutional rights. If the need for such a continuance is caused by an act or omission by counsel for either party, sanctions may be imposed.

(eff. January 1, 1999)

RULE 16 - 18. RESERVED

RULE 19. APPELLATE DEPARTMENT

A. ORAL ARGUMENT

Unless otherwise ordered, counsel for each party shall be allowed fifteen minutes for oral argument. The appellant or the moving party shall have the right to open and close.

B. BRIEFS

Briefs shall be prepared and filed as provided by Rule 105, California Rules of Court. In addition thereto, counsel shall deposit with the Clerk of the Court, when filing the original brief, two legible copies of the original brief for the assistance of the members of the Court.

C. CALENDARING

When the time for briefs in any matter in which the Appellate Department has jurisdiction has expired, whether pursuant to California Rules of Court or as extended by Court order,

the Clerk of the Court, unless otherwise ordered, shall place such matters upon the calendar for hearing on the first Friday of each month.

D. MOTIONS

All motions shall be heard at regular sessions unless a different time for the hearing of a particular motion is designated by the Presiding Judge of the Appellate Department.

(eff. January 1, 1999)

RULE 20. ATTORNEYS

A. ATTORNEY ACTING AS WITNESS

Except by stipulation of all the parties to the action or by special order of the Court, no attorney who has been a witness in a case shall argue the case before the Court or the jury; provided however, that this shall be inapplicable if the attorney is a witness only by reason of being called to the stand by opposing counsel.

B. NUMBER OF COUNSEL PARTICIPATING IN EXAMINATION OF WITNESS

Except with stipulation or opposing counsel and/or by express permission of the Court, only one lawyer representing the same party may examine or cross-examine a witness.

C. DISCUSSING CASE WITH THE JUDGE

An attorney or party shall not discuss a contested matter with a judge unless opposing counsel is present or has consented to the conference.

D. BILLINGS FOR COURT APPOINTED COUNSEL

All billings for court-appointed counsel must be submitted in writing within fourteen days after the closing of the proceedings. Failure to do so will result in the Court applying appropriate discounts for late billings. All bills submitted must be under the penalty of perjury.

(eff. January 1, 1999)

RULE 21. COURT REPORTERS

A. CERTIFICATION

All official and pro tempore reporters shall be licensed as Certified Shorthand Reporters (CSR) by the State of California, except as otherwise provided by law.

B. DAILY TRANSCRIPTS

Requests for daily transcripts in civil cases must be made at least one week in advance of trial. Counsel requesting such daily transcripts will be required to pay daily transcript rates and the per diem rate for an official court reporter; \$140.00 per day, and may include mileage.

C. TRANSCRIPTS OF TRIAL OR PROCEEDINGS: INQUIRY BY REPORTER

Whenever a party requests a court reporter to furnish a transcript of all or part of a trial or proceeding, the reporter shall forthwith inform all other parties of such request and inquire whether any of such parties desires, at his own expense, a copy of such transcript.

(eff. January 1, 1999)

RULE 22. JURY MANAGEMENT

PURPOSE

The purpose of this rule is to supplement the applicable statutes regarding jurors and jury service as provided by Section 190 et seq. of the California Code of Civil Procedure, and to comply with the requirements of Rule 4.5(b) of the Standards of Judicial Administration, California Rule of Court.

A. JURY COMMISSIONER

In the opinion of the Presiding Judge, the business of the Court requires the appointment of a Jury Commissioner. Pursuant to Section 195 of the Code of Civil Procedure, the Presiding Judge has appointed a Jury Commissioner for Mariposa County who shall have the authority, duties and responsibilities and who shall perform the functions of a Jury Commissioner provided for by law and by these rules.

The Court Administrator shall act as Jury Commissioner and is designated as the "attache" of the Court to perform the functions set forth in Sections 195, et seq. of the California Code of Civil Procedure. Said functions may be performed by such Deputy Jury Commissioners as may be designated by the Court Administrator.

(eff. January 1, 1999)

RULE 23. JUROR SELECTION PROGRAM

A. SOURCE LISTS

The most current Mariposa County voter registration list, combined with the Department of Motor Vehicles list of licensed drivers and identification card holders living in the County who are 18 years of age and older, shall constitute the source from which prospective jurors will be selected.

B. RANDOM SELECTION OF PROSPECTIVE JURORS

Random selection shall be utilized in creating master and qualified juror lists, beginning with selection from the source list and continuing through selection of prospective jurors for voir dire. A master list of prospective jurors shall be created annually and shall be used for the purpose of mailing jurors questionnaires and subsequent creation of a qualified juror list. The plan for random selection shall be designed to ensure the random selection of a fair cross section of the persons residing in Mariposa County.

If non-response to the juror questionnaires exceeds 5% of the total questionnaires mailed, the Jury Commissioner shall send a letter, by first class mail, to those persons who have

not responded, advising them of the provisions of CCP 196 (c).

C. ELIGIBILITY AND QUALIFICATION FOR JURY SERVICE

The Jury Commissioner shall determine the statutory qualifications of each prospective trial juror and shall exclude from the jury lists any person found to be not statutorily competent to serve. No class or category of persons shall be automatically excluded from jury duty except as provided by law.

D. EXCUSE FROM JURY SERVICE

The Jury Commissioner shall excuse from jury service any prospective trial juror (s)he determines qualifies for excuse under Sections 204(b) and 218 of the Code of Civil Procedure, provisions of the Standards of the Judicial Administration, California Rules of Court, and of these rules. An eligible person may be excused from jury service only for undue hardship. Grounds constituting undue hardship are include but are not limited to:

1. The prospective juror will bear an extreme financial burden, if required to serve more than two (2) days.
2. The prospective juror has a physical or mental disability or impairment, not affecting that person's competence to act as a juror, that would expose the potential juror to undue risk of mental or physical harm. In any individual case, except where the person is aged 70 years or older, the prospective juror may be required to furnish verification of the disability or impairment, its probable duration, and the particular reason for the person's inability to serve as a juror.
3. The prospective juror's services are immediately needed for the protection of the public health and safety and it is not feasible to make alternative arrangements.
4. The prospective juror has a personal obligation to provide actual and necessary care to another and no comparable substitute care is either available or practical without imposing an undue hardship on the prospective juror or person cared for.
5. A person who has served on a grand or trial jury or was summoned and appeared for jury service in any state or federal court during the period immediately preceding 12 months should be excused on request.
6. The prospective juror has no reasonably available means of public or private transportation to the Court.
7. The prospective juror must travel an excessive distance. Excessive distance is defined as reasonable travel time that exceeds one and one-half hours from the prospective juror's home to the Court.
8. The prospective juror will bear an undue risk of material injury to or destruction of the prospective juror's property or property entrusted to the prospective juror, where it is not feasible to make alternative arrangements to alleviate the risk.

When a prospective juror requests excuse for a temporary or marginal hardship, that person's jury service should be deferred rather than granting excuse; provided, however, that such deferment may not be beyond the calendar year.

E. PROCEDURE FOR EXCUSE FROM JURY SERVICE

All excuses shall be in writing, addressed to the Jury Commissioner, setting forth the basis of the request and shall be signed by the juror. The Jury Commissioner shall fairly weigh and consider all relevant information and may personally interview the prospective trial juror when (s)he deems it desirable or necessary to do so. The Jury Commissioner may refer any request to the Presiding Judge for his determination. In the event the Jury Commissioner should deny a request for excuse, the prospective trial juror may request and shall be entitled to review and reconsideration by the Presiding Judge.

Once a prospective juror has been summoned, appeared and been given the panel oath, only the judge presiding may excuse.

(eff. January 1, 1999)

Rule 24. JUROR PROCESSING PROGRAM

A. SELECTION OF PROSPECTIVE JURORS

The Jury Commissioner will randomly select a sufficient number of names of prospective trial jurors to the court and shall summon each person by first class mail to attend the Court for service as a member of a trial jury panel. The summons shall contain the date, time, and place of appearance and instructions as to calling the Jury Commissioner for telephonic instructions for appearance. Prospective trial jurors may also be requested to appear for service by telephone, and subsequently served personally with a trial jury summons upon appearance.

The Jury Commissioner shall advise any prospective juror, by first class mail, who fails to appear as summoned of the provisions of CCP Section 209. If there is no response to the aforementioned letter, the Jury Commissioner may then summon such juror by certified, return receipt requested, mail.

No peace officer, as defined in Section 830.1 and 830.2(a) of the Penal Code shall be selected for voir dire in a criminal case.

B. MAINTENANCE OF RECORDS

The Jury Commissioner shall maintain records regarding selection, qualification and assignment of prospective jurors. The Jury Commissioner shall maintain records providing a clear audit trail regarding a juror's attendance, jury fees and mileage.

C. TRIAL JURY ASSIGNMENT

Upon each appearance of a panel of jurors, a roll call shall be taken and a record of attendance maintained by the Jury Commissioner, Deputy Jury Commissioner, or courtroom clerk in attendance. The Jury Commissioner will provide the courtroom clerk with a list, in random order, of the trial jury panel. The Jury Commissioner will also provide all counsel with an alphabetical list of names only of the trial jury panel.

D. DISCHARGE OF JURORS FROM SERVICE

Jurors shall be considered discharged when any one of the following has occurred:

1. The juror has been summoned for service as a member of a jury panel, has appeared for such service and has been excused from further service on the panel.
2. The juror has completed one (1) day of actual service as a sworn trial juror on a case in the Superior Court, and has completed the trial of any case in which (s)he is actually engaged. A juror will be excused from jury duty after One (1) day service upon written request filed with the Jury Commissioner.

(eff. January 1, 1999)

RULE 25. JURY FEES AND EXPENSES

A. IN GENERAL

At no time shall the members of the jury be informed as to which party is paying fees, mileage or other costs.

B. RESERVE

C. REFUND AND FORFEITURE OF DEPOSITS

If the case is settled or the jury waived or the case goes off calendar for whatever reason or the case is continued for trial on motion of the party depositing the jury fees, none of the deposit shall be refunded if the court finds there has been insufficient time to notify the jurors that the trial would not proceed at the time set.

D. FEE AND MILEAGE OBLIGATION

Obligation for payment of jury fees and mileage at the rate provided by law for the jurors selected and sworn to try a civil case shall be paid by the party demanding the jury commencing with the day on which the jury is finally selected and sworn.

E. PAYMENT OF FOOD AND LODGING EXPENSES

A party who demands a jury trial in a civil action shall, upon request of the clerk or bailiff, advance the amount determined by the trial judge to be reasonably necessary to pay the cost of food, lodging and other necessities of the jurors while they are kept together during the trial and until they are discharged by the Court. The monies shall be paid to the bailiff in charge of the jury and any amount remaining after payment of such expenses shall be returned with appropriate receipts to the party.

(eff. January 1, 1999)

RULE 26. USE OF MASTER PANEL

JURORS

It should be remembered that jurors are making a great personal sacrifice to give their time to assist the court and the community; hence, they are entitled to consideration and courtesy.

The judge, counsel and court attaches should make every effort to avoid inconveniencing a jury panel by having them called in, or failing to excuse them, in the event a case scheduled is not to be tried or is to be recessed beyond the usual and normal time for reconvening the trial.

At each recess, the jurors should be allowed to leave the courtroom before the spectators.

To protect jurors' right to privacy, no juror's name or address will be furnished by the Jury Commissioner to any party, except upon order of the Court.

(eff. January 1, 1999)

FAMILY LAW RULES

RULE 27. MATTERS HEARD

A. MATTERS HEARD ON FAMILY LAW CALENDAR

Matters heard on the Family Law Calendar shall include the following:

1. All orders to show cause, motions and other family law matters preliminary to trial;
2. All orders to show cause and motions relating to enforcement or modification of family law orders or judgments;
3. All orders to show cause and motions relating to child custody, support, visitation or attorneys' fees and costs in paternity cases and non-marital relationship cases;
4. All proceedings under the Uniform Reciprocal Enforcement of Support Act (Code of Civil Procedure Sect. 1650, et seq.);
5. All requests for restraining orders enjoining domestic violence;
6. Domestic relations discovery matters;
7. Applications for issuance of writs of execution in domestic relations cases.

(eff. January 1, 1999)

RULE 28. FINANCIAL DECLARATIONS

No case shall be heard unless a current financial declaration is completed as is applicable to the issues to be determined at that hearing. If a party is receiving public assistance

benefits, that fact shall be disclosed in Part a(a) of the financial declaration. The Court may impose sanctions if delay results from the failure of either party to comply with these requirements.

The financial declaration will be considered as received in evidence at the hearing, subject to amendment and cross-examination. Such financial declaration shall not be considered as received in evidence at the hearing if the party submitting the same is not personally present in court, unless receipt of the same is agreed upon by all counsel or parties. Direct examination on matters covered by the financial declaration will be heard only under exceptional circumstances within the Court's discretion and normally will be limited to testimony regarding unusual items not adequately explained in the financial declaration.

(eff. January 1, 1999)

RULE 29. MOTION AND ORDER TO SHOW CAUSE CALENDAR

A. DATE, TIME AND PLACE OF HEARING

The date, time and place of hearing of any domestic relations motion or order to show cause shall be scheduled by the Calendar Clerk.

All orders to show cause, notices of motions and responsive declarations set for hearing on the Domestic Relations Calendar shall state on the face sheet immediately below the title of the document the issues to be heard, and the date and time that the hearing is scheduled.

B. FILING ORIGINAL WITH CLERK

The original of any order to show cause or notice of motion shall be filed immediately with the Court Clerk. Endorsed copies shall be used for all other purposes.

C. TIME LIMITATION ON FILING DECLARATIONS OR POINTS AND AUTHORITIES - TWO DAY RULE

Unless otherwise ordered or for good cause shown, any declarations or points and authorities shall be served and filed no later than 4:00 p.m., the second court day prior to the date of the hearing so they may be read and considered by the Court. Unless good cause is shown, the Court may impose sanctions for failure of a party to comply with this rule. Failure to comply shall entitle the aggrieved party to one continuance as a matter of course.

D. FAILURE TO SERVE

Unless a written order continuing the matter to a new date has been signed prior to the original hearing date, if service is not effected by the date specified by law or in the order to show cause, the matter will be dropped from the calendar and counsel must file new papers to reset the matter. Counsel shall advise the calendar clerk of failure to obtain service at least twenty-four (24) hours prior to the time of the hearing.

E. CONTINUANCES

Requests for continuances are looked upon with disfavor, unless good cause is shown or

there is agreement of all parties.

Unless agreed to by the parties, no more than two continuances will be granted. Thereafter, the matter will be ordered off calendar.

F. LACK OF APPEARANCE

Any case, in which there is no appearance at the time of calendar call, shall be ordered off calendar unless the courtroom clerk has been notified that there will be a late appearance.

G. MATTERS EXCEEDING 20 MINUTES - SPECIAL SETTING

Matters which each counsel and the court agree will take more than twenty (20) minutes shall be given a special setting time and date. Special setting may be obtained by calling the Superior Court Calendar Clerk at (209) 966-2005.

H. MEET AND CONFER REQUIREMENT

No case on the Domestic Order to Show Cause Calendar will be heard unless and until counsel, with their respective clients either physically present or immediately physically available, have met and conferred in a good faith effort to resolve all issues. All relevant documents shall be exchanged by counsel while conferring absent good cause to the contrary. Failure to so meet and confer may result in the matter being dropped from calendar or continued, or rejection of documents not so exchanged, or other appropriate sanctions.

I. CHILD CUSTODY/VISITATION - REFERRAL FOR REPORT (EXCLUDING MEDIATION)

Except in unusual cases, prehearing investigation and reports will not be ordered by the Court. The Court shall have discretion to order that either or both parties bear a portion or all of the costs of such prehearing investigation and/or report, or in the alternative, for appointment of minor's counsel per F.C. Section 3150 et seq.

(eff. January 1, 1999)

RULE 30. TEMPORARY SUPPORT ORDERS

A. DURATION OF SUPPORT ORDERS

Unless otherwise specifically ordered, temporary orders for child support or spousal support shall remain in effect until the time of the trial. Unless otherwise specified, the support shall be payable one-half on the first and one-half on the fifteenth of each month, and such specification shall be set forth in the order on order to show cause prepared in accordance with these rules and the California Rules of Court.

B. RECIPIENTS OF PUBLIC ASSISTANCE BENEFITS

If a party is receiving public assistance benefits, the temporary support order shall comply with Fam. Code Section 4200, et seq.

(eff. January 1, 1999)

RULE 31. FORM OF ORDER ON ORDER TO SHOW CAUSE

After an order to show cause, the party directed by the Court or in absence of such direction, the moving party shall prepare the order on order to show cause in accordance with the Court's decision and shall submit it to opposing counsel for signature under the legend, "Approved as conforming to court order." If not so approved, the preparing party shall submit the proposed order to the judge who heard the matter with a cover letter explaining why it is submitted without such approval and showing that copy of said correspondence has been sent to opposing counsel.

(eff. January 1, 1999)

RULE 32. EX PARTE ORDERS

A. APPLICATION FOR EX PARTE ORDER; DECLARATION

An ex parte order will be issued only if the application is accompanied by a declaration adequate to support its issuance. Ordinarily, an ex parte order will not be issued unless one of the following conditions exists:

1. Notice was given to the adverse party so that party might oppose the application; or
2. It clearly appears in the declaration that giving notice would frustrate the purpose of the proposed order; or
3. The applicant would suffer immediate and irreparable injury before the adverse party could be heard in opposition; or
4. It appears by declaration that no significant burden or inconvenience will result to the adverse party.

B. ORDER EXCLUDING FROM HOME

An application for an ex parte restraining order excluding either party from the family dwelling or the dwelling of the other must be supported by a declaration showing immediate and serious harm, specifying in detail the time and place of any past act or threat or acts of alleged misconduct.

C. ORDER CHANGING CUSTODY OF MINOR

An application for an ex parte order to immediately change the custody of any minor children must be supported by a declaration showing by clear, specific allegations that the health and welfare of the children requires the immediate change in custody. The declaration shall also set forth, in brief, the circumstances under which the child will be placed pending hearing.

(eff. January 1, 1999)

RULE 33. STIPULATIONS MODIFYING EXISTING ORDERS

A. GENERAL

In any domestic relations matter in which a modification of an existing order is sought by stipulation, the stipulation must be signed by both parties and their respective attorneys, if any. The stipulation shall then be presented to the judge for the judge's consideration and signature.

B. RECIPIENTS OF PUBLIC ASSISTANCE BENEFITS

If the custodial parent has assigned support rights to the county under Welfare and Institutions Code Section 11477, the District Attorney (Family Support Division) and a supporting non-custodial parent may stipulate without the signature of the custodial parent, for an order modifying the method of payment of or changing the amount of child support, provided, however, that such modification shall only be effective for such period or periods that the custodial parent is on public aid. Any such stipulation for modification shall contain a notice in bold type that clearly states that the modification contained in the agreement is only effective for such periods that the custodial parent is on aid, and that the previous order shall become effective upon such termination. A copy of the order of modification shall be served on both parties. Upon termination of public aid, the District Attorney shall serve notice on all parties of the termination, which notice shall clearly state that the modification contained in the agreement is no longer effective, and that the original order of stipulation is reinstated, which notice shall be sent by first class mail, postage prepaid, addressed to the last known address for each of the parties. The previous order or stipulation shall not become effective unless such notice is served on the parties in accordance with this paragraph. If, for any reason, the District Attorney's office has failed to give such notice, either party may serve notice in accordance with the requirements of this paragraph to effect the reinstatement of the previous order or stipulation.

(eff. January 1, 1999)

RULE 34. UNCONTESTED TRIALS

A. SETTING FOR HEARING

Uncontested matters may be set for hearing by telephone call to the calendar clerk.

B. DOCUMENTS REQUIRED

Prior to an uncontested matter's being set for hearing, the following documents shall be filed:

1. Either (a) a Request and Declaration re Default in the form prescribed by Rule 1286 of the California Rules of Court or (b) an executed written stipulation that the matter may be treated on an uncontested basis, and
2. A current financial declaration, completed as prescribed in F.C. Section 2106 unless excused by Fam. Code Section 2105.
3. Preliminary and Final Disclosure Statements per F.C. Section 2100 et seq., unless waived per F.C. Section 2105.

C. FINANCIAL DECLARATION

Financial declaration shall be in the form prescribed by Rule 1285.5 of the California Rules of Court, be dated where specified on the first page, and be completed as follows:

1. Part A.

(Income and Expense Statement), shall be fully completed (a) if the case involves child support, whether or not an agreement in writing has been reached by the parties, or (b) if there is any request for spousal support, attorney's fees, costs or other payment of obligations which has not been resolved by written agreement of the parties. In the event that the case or hearing involved, for which the financial declaration is being prepared is uncontested or default, or it is known by the party filing the financial declaration that there will be no appearance by the opposing party, a reasonable estimate can be made.

2. Part B.

(Property Settlement) shall have the appropriate box checked. If there are community property assets or joint obligations not disposed of by written agreement of the parties, the value of the assets or obligations must be proved at the hearing.

3. Part C

(Attorney's Fees and Cost Statement) shall be fully completed whenever a party is represented by counsel and attorney's fees or costs are requested by such party.

D. PROCEEDINGS INVOLVING RECIPIENTS OF PUBLIC ASSISTANCE BENEFITS

Notwithstanding any other rule, if a party is receiving public assistance benefits, that fact shall be disclosed in Part A(a) of the financial declaration and all orders submitted to the Court shall comply with Civil Code Section 4702.

E. TIME OF UNCONTESTED HEARING

Uncontested matters shall be called for hearing on any Wednesday the Court is in session at 2:00 p.m.

F. PROPOSED JUDGMENT

In all matters set on the uncontested calendar, counsel shall provide the original of the proposed judgment, including any marital settlement, to the clerk no later than 4:00 p.m. on the second court day prior to the hearing.

G. CONTENTS OF PROPOSED JUDGMENT

The proposed judgment shall comply with rule IIC. At the option of counsel, blank spaces may be left for the insertion of the amount of child and spousal support.

(eff. January 1, 1999)

RULE 35. CONTESTED TRIALS

A. PURPOSE OF RULES: DUTIES OF COUNSEL

The purpose of the rules in this section is to ensure that contested domestic relations matters are thoroughly prepared and expeditiously tried, and to avoid the trial itself as a vehicle for what should be pretrial depositions, discovery and settlement procedures.

B. RELIEF FROM RULES

Relief from the operation of these rules relating to contested trials may be had in appropriate cases, but only on motion and for good cause shown. Either side may move to strike the At-Issue Memorandum, Pretrial Statement or Reply Pretrial Statement of the other side upon the ground that the document was not prepared and filed in good faith, but rather as a means to avoid the operation of these rules. Sanctions against the offending side may be requested and awarded.

C. COMPLIANCE WITH OTHER RULES

The filing of the statements referred to in these rules shall be deemed as compliance with all other rules requiring the filing of any pretrial statement or settlement conference statement.

D. AT-ISSUE MEMORANDUM

An At-Issue Memorandum shall be filed before any contested case may be set for trial.

E. SHORT CAUSE CASES (REQUIRING ONE DAY OR LESS FOR TRIAL)

No At-Issue Memorandum in a short cause contested domestic relations case will be filed with the Clerk unless and until a Pretrial Statement is filed with the Clerk, together with proof of service of a copy thereof upon opposing counsel, or unless the same is filed concurrently with the At-Issue Memorandum. Within thirty (30) calendar days after mailing of the Pretrial Statement, the opposing side shall serve and file a Reply Pretrial Statement. Both the Pretrial Statement and the Reply Pretrial Statement shall be prepared in accordance with subdivision (7) of this rule. The Reply Pretrial Statement shall not incorporate a request for admissions.

F. LONG CAUSE CASES (REQUIRING MORE THAN ONE DAY FOR TRIAL)

At the trial setting conference, all long cause matters will be assigned a date for a trial and, upon request by either party, for a settlement conference. Each attorney or party appearing shall be reminded to comply with these rules relating to contested trials. Either party may request a telephone conference call trial setting conference pursuant to the rules of this court. If one side files and serves the Pretrial Statement within the required time, and the opposing side fails to do so, such failure is cause for sanctions.

G. INFORMATION AND DOCUMENTATION REQUIRED

The Pretrial Statement shall be prepared in the form of and be entitled "Pretrial Statement". In short causes, the reply shall be entitled "Reply Pretrial Statement" and

shall contain all of the information required by these rules.

The Pretrial Statement and/or the Reply Pretrial Statement shall set forth the issues as known at the time each is filed. These documents shall also include a full and complete statement of property, income and expenses and shall set forth the following information in the following order, as it applies to the party filing, except as hereafter provided:

1. SEPARATE PROPERTY (IF CONTESTED)

List each item of separate property together with the basis upon which it is claimed as separate rather than community property, the current market value, the nature, extent, and terms of payment of any encumbrance against the property, the manner in which title thereto is presently vested and the record title date.

2. COMMUNITY PROPERTY

List (a) each item of community property, (b) the basis upon which it is claimed as community rather than separate property if contested, (c) the current market value, (d) the encumbrances against the property.

3. FUNDS HELD BY OTHERS

To the extent that either separate property or community property consists of funds held by others, such as insurance policies, pensions, profit sharing, or other trust or retirement funds, the statement shall fully identify the policy or funds, including policy, serial or account numbers, the present value and basis for calculations, and all terms or conditions imposed upon withdrawal of such funds. If any loans exist against any of these funds, the details regarding those loans should be set forth.

H. TRACING

If a segregation of community property and separate property interests in a single asset is to be an issue in the case, the statement shall set forth in detail, with dates, values, and dollar amounts, the transactions relevant to the tracing issue as well as the basis for computation or proration.

I. CURRENT OBLIGATIONS

Separately list all debts and obligation of the spouses which are liabilities of the community, and so far as known, debts and obligations which are alleged to be the separate liabilities of the respective spouses. Specify the identity of the creditor, the purpose for which the debt was incurred, the balance currently due thereon, the terms of payment and the security, if any, held by the creditor.

J. CURRENT INCOME AND EXPENSES

Specify and set forth current income and expenses by completing and filing a financial declaration in the form prescribed by Rule 1285.50 of the California Rules of Court; Part B and Part C of the financial declaration need not be completed. Previously filed financial declarations shall not be considered as compliance with this requirement.

K. PROPOSAL FOR PROPERTY DIVISION AND SUPPORT

Set forth a proposed equal division of community property of the parties, giving due consideration to liabilities, costs and attorney's fees. In addition, specify each party's contentions as to child custody and visitation and as to amount and duration of child and spousal support.

L. APPRAISALS OF REAL OR PERSONAL PROPERTY

Each party may attach to the statement a copy of an appraisal of any real or personal property by a qualified appraiser.

(eff. January 1, 1999)

RULE 36. JUDGMENTS

A. DUTY TO PREPARE

After a contested trial, the party directed by the Court shall prepare an order and/or judgment in accordance with the Court decision and shall submit it to opposing counsel for signature under the legend "Approved as Conforming to Court Order." If not so approved, the preparing party shall submit the proposed judgment to the trial judge with a cover letter explaining why it is submitted without such approval, and showing that a copy of said correspondence has been sent to opposing counsel.

B. CONTENTS

Except as otherwise agreed between the parties and subject to the approval of the Court:

1. CHILD SUPPORT - AMOUNT, DURATION AND DATES OF PAYMENT

All judgments providing child support shall state the name, date of birth and amount of support for each child, and shall state, it is "payable until (the) (each) child reaches the age of majority, marries or otherwise becomes emancipated, or further order of the Court." Unless otherwise specifically ordered, the support shall be payable one-half on the 1st and one-half on the 15th day of each month, and such specification shall be set forth in the judgment.

2. SPOUSAL SUPPORT

All judgments shall state the amount of spousal support, as well as its duration, if specified, or any waiver of spousal support.

3. RECIPIENTS OF PUBLIC ASSISTANCE

If a party is receiving public assistance benefits for a minor child, the judgment shall comply with Family Code Section 4200 et seq.

4. REAL PROPERTY

All judgments shall contain the legal description of all interests in real

property affected by the Court's decision.

5. RESERVATION OF JURISDICTION

Any and all reservations as to jurisdiction over any matter set forth in the judgment shall be specified in the judgment.

(eff. January 1, 1999)

RULE 37. MISCELLANEOUS RULES

APPLICATION OF RULES AND COPIES

These rules shall apply in all cases whether a party is proceeding with counsel or in propria persona. A copy of the rules shall be made available at the Clerk's office as well as the Law Library for review of the public or attorneys.

(eff. January 1, 1999)

RULE 38. RULES REGARDING CHILD SUPPORT

1. **Legislative Intent:** In adopting the statewide uniform guideline provided in this article, it is the intention of the Legislature to ensure that this state remains in compliance with federal regulations for child support guidelines.
2. **Adherence to Guidelines:** The court shall adhere to the statewide uniform guideline and may depart from the guideline only in the special circumstances set forth in this article.
3. **Child support according to parent's circumstances and station in life:** In implementing the statewide uniform guideline, the courts shall adhere to the following principles:
 - a. A parent's first and principal obligation is to support his or her minor children according to the parent's circumstances and station in life.
 - b. Both parents are mutually responsible for the support of their children.
 - c. The guideline takes into account each parent's actual income and level of responsibility for the children.
 - d. Each parent should pay for the support of the children according to his or her ability.
 - e. The guideline seeks to place the interests of children as the state's top priority.
 - f. Children should share in the standard of living of both parents. Child support may therefore appropriately improve the standard of living of the custodial household to improve the lives of the children.
 - g. Child support orders in cases in which both parents have high levels of responsibility for the children should reflect the

increased costs of raising the children in two homes and should minimize significant disparities in the children's living standards in the two homes.

- h. The financial needs of the children should be met through private financial resources as much as possible.
- i. It is presumed that a parent having primary physical responsibility for the children contributes a significant portion of available resources for the support of the children.
- j. The guideline seeks to encourage fair and efficient settlements of conflicts between parents and seeks to minimize the need for litigation.
- k. The guideline is intended to be presumptively correct in all cases, and only under special circumstances should child support orders fall below the child support mandated by the guideline formula.
- l. Child support orders must ensure that children actually receive fair, timely, and sufficient support reflecting the state's high standard of living and high costs of raising children compared to other states.

(eff. January 1, 1999)

RULE 39. UNILATERAL SET-OFFS PROHIBITED

A parent obligated to pay child support shall not reduce the amount of ordered child support by reason of a claimed credit or set-off, or a claimed violation of a visitation or other order, without the express written consent of the other parent or order of this Court; and if the custodial parent is receiving A.F.D.C., the written consent of the District Attorney must be obtained.

(eff. January 1, 1999)

RULE 40. COSTS OF VISITATION

Costs incurred by either parent to effect visitation such as travel expenses, normally shall be borne equally by both parties. If this results in an unreasonable burden upon one parent, child support may be adjusted accordingly.

(eff. January 1, 1999)

RULE 41. INCOME UNKNOWN

Where a party's income is not known, a reasonable estimate of net income shall be used based upon past employment, ability, minimum wage, or other reasonable factors. For example, if the other party is healthy and able to work, but employment status is unknown, an estimated gross income based upon minimum wage may be proper if that party has no particular employment skills.

(eff. January 1, 1999)

RULE 42. NOTICE OF MOTION AND ORDER TO SHOW CAUSE

Unless temporary orders are being requested, all motions for custody, support, or

restraining orders shall be by Notice of Motion.

(eff. January 1, 1999)

RULE 43. CONTINUANCES AND MATTERS TO BE DROPPED FROM THE CALENDAR

If a hearing is to be dropped, or the parties have agreed on a continuance, then the court should be notified at least one day in advance, whenever possible.

(eff. January 1, 1999)

RULE 44. MEDIATION

The Court will generally not hear other matters on the same day that mediation is set. The parties should either stipulate to another date, or obtain another date from the court to determine all other issues. The Court shall generally keep all temporary restraining orders in effect until the new date.

Either party may petition the Court to assign a different mediator to the case or to have the Court hear the matter without mediation.

(eff. January 1, 1999)

RULE 45. SUPPORT ORDER WHEN ONE OF THE PARTIES IS ON AID OR RECEIVING AFDC.

The District Attorney (Family Support Division) must be given notice of any hearing where either party is requesting or modifying support by moving party when one of the parties is receiving AFDC, or is acting on behalf of one of the parents.

NOTE REGARDING CHILD SUPPORT

Limitations of the Child Support Schedule

The use of the child support schedule, in accordance with these Rules, provides uniformity, predictability, and will achieve settlement of many cases involving child support issues prior to trial. Nevertheless, it is important to understand and to deal effectively with the limitations inherent in the schedule. Some of the problems are as follows:

1. The Schedule does not have any entry for living expenses. This is because, in most cases, a substantial limited factor in determining child support is available income. It is the policy of this Court not to require parents who live within the limits of their income to pay more child support than those who fail to control their expenses. Living expenses shall be considered by the Court, but primary emphasis must be placed on necessary expenses as opposed to those incurred for the amenities of life. Often, after separation, even necessary and reasonable expenses must be deferred where there is insufficient income to support two households, and children require food and clothing.
- 2.

Issues involving the amount of a parent's net income often present a difficult problem. Timely discovery (such as service of subpoena duces tecum before the hearing) may be required for a meaningful resolution of the issues. Parties are expected to use reasonable foresight and diligence in such discovery matters.

- 3. Problems often arise relating to the "ability" of a parent to earn income, particularly unemployed parents. The parties must be prepared to present, by declaration, facts relating to prior employment, reasons for termination of employment, or the reasonable value of household services, or minimum wage.**

(eff. January 1, 1999)