

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN LUIS OBISPO  
FAMILY LAW DIVISION**

**POLICY AND PROCEDURES MANUAL**

Effective January 3, 2006

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## **SECTION ONE**

### **1:1 INTRODUCTION**

The guidelines set forth in the San Luis Obispo County Family Law Division Policies and Procedures Manual were drafted and approved by the San Luis Obispo County Bar Association's Family Law Section and by the San Luis Obispo County Superior Court. These guidelines supplement the San Luis Obispo County Rules of Court.

## SECTION TWO

### **2:1 FAMILY LAW DIVISION PRACTICE GUIDE**

The Family Law Division of the San Luis Obispo County Superior Court is made up of three judicial officers and one family law facilitator. One judicial officer supervises the Division; one judicial officer hears matters in which the Department of Child Support Services has an interest; and one judicial officer hears matters involving applications for Domestic Violence Protective Orders (Family Code § 6200 et seq.). All three judicial officers hear all other family law issues and are available to mediate family law disputes.

An application for Domestic Violence Protective Orders will be heard by the judicial officer assigned to the Domestic Violence calendar unless a family law action is already pending. If a family law action is already pending, the Domestic Violence Protective order application will be filed in the pending action (or consolidated with the pending action) and referred to the judicial officer to whom the case was assigned for all purposes. Temporary orders may be made by any of the Family Law Division judicial officers until the matter can be heard by the judicial officer to whom the case was assigned for all purposes.

The Family Law Division operates under a direct calendaring system. When a case is filed or transferred to this court, it is immediately assigned to a judicial officer for all purposes pursuant to Family Code § 2330.3. Assignments to court commissioners are assignments to the commissioners for all purposes as a temporary judge. A party wishing to not stipulate to an assigned commissioner as a temporary judge shall file an objection in writing within ten (10) days after the first pleading is filed in the action by that party. A failure to timely file an objection to the appointment of a commissioner as a temporary judge

is deemed a stipulation to the commissioner acting as a temporary judge for all purposes. Relief from such stipulation shall be sought only as provided in California Rules of Court, rule 2.816.

It is the policy of the court to encourage cooperation and consultations between counsel to facilitate settlement, to avoid needless appearances and to achieve a prompt and cost-effective resolution of family law disputes. Parenting disputes are given the highest priority and continuances of hearing on parenting issues are discouraged.

## **2:2 FAMILY LAW FACILITATOR**

The court's Family Law Facilitator has walk-in clinics and makes appointments for individual assistance. For current information on dates and hours of service and for appointments, call (805) 788-3418 or visit [www.slocourts.ca.gov/civil/family/facsch.cfm](http://www.slocourts.ca.gov/civil/family/facsch.cfm)

The services provided by the Family Law Facilitator include:

1. Providing educational materials and information about how to prepare forms to establish parentage and how to establish modify and enforce child support orders.
2. Developing and providing educational materials to litigants about how to:
  - a. initiate or respond to a petition to dissolve or annul a marriage;
  - b. prepare required disclosure forms in a dissolution or separation action;
  - c. process defaults in dissolution, separation, or annulment actions;
  - d. prepare the judgment and other forms necessary to dissolve or annul a marriage.

- e. initiate or respond to a domestic violence restraining order;
- f. establish or modify orders for child custody or visitation;
- g. make a request for other relief in family law actions;
- h. schedule and serve a request for Family Court Services mediation;
- i. schedule or respond to an ex parte hearing in an emergency situation.

The Family Law Facilitator's services are provided to all self-represented litigants, including opposing parties to any matter. The Facilitator and staff do not provide legal advice or representation, and statements made to the Facilitator are not confidential.

### **2:3 ALTERNATIVE DISPUTE RESOLUTION**

It is the policy of the San Luis Obispo Superior Court to promote and encourage the parties to settle their disputes by the use of Alternative Dispute Resolution, which includes mediation, arbitration, neutral evaluation and/or court-supervised settlement conference. The parties and counsel are encouraged to review the Alternative Dispute Resolution Policy Statement for more specific and detailed information.

To accommodate requests for Alternative Dispute Resolution with court involvement, each of the Family Law Divisions is available to schedule and conduct mediation and settlement conferences. Unless expressly requested by the parties, such Alternative Dispute Resolution conferences will not be conducted by the judicial officer assigned for all purposes. Upon request by both parties, mediations and settlement conferences shall be scheduled by the assigned judge directly with the department which shall conduct the mediation/settlement conference.

## **2:4 COURTCALL/TELEPHONIC APPEARANCES**

Counsel and self-represented litigants may make telephonic appearances in certain hearings by contacting CourtCall at (888) 88COURT. Generally, CourtCall may be utilized for appearances at ex parte hearings, orders to show cause, law and motion matters, trial setting conferences and status conferences.

A CourtCall appearance is made as a part of the court's regular calendar call and all counsel who have timely filed their request form and paid the fee may appear by dialing the courtroom's dedicated toll free teleconference number and access code (if any) which will be provided by CourtCall, on the confirmation faxed to your office. A pre-hearing check-in will occur five (5) minutes prior to the scheduled hearing time. A CourtCall appearance is voluntary and may be made without consent of the other party or advance consent of the court, which, however, reserves the right to reject any request. See San Luis Obispo County Court Rules, rule 7.13.

## **2:5 TEMPORARY RESTRAINING ORDERS/EX PARTE ORDERS**

### ***2:5.1 Ex Parte Applications***

Ex parte requests may provide the foundation for temporary restraining orders and custodial orders that change the status quo. Such orders are frequently made under circumstances which give one of the parties a very limited time to respond. Accordingly, attorneys, parties, and services employed to type pleadings must adhere to the highest standards of good faith and honesty in preparing declarations in support of ex parte orders. If it is determined that a party is misusing the ex parte process, sanctions will be imposed.

The parties and their counsel must disclose the fact that a requested ex parte order will change the status quo.



Ex parte applications must be in writing. The moving party must contact the Clerk's Office before 10:00 a.m. the day before the hearing to reserve a day and time for the hearing. All pleadings must be on file by 12:00 noon on the day before the hearing. Fees must be paid when the pleadings are filed. The pleadings and notice of the hearing must be served on the other party as soon as possible, but in no event later than 4:00 p.m. the day before the hearing. If the other party's (or attorney's) facsimile number is known or publicly available, the pleading and notice will be served by facsimile transmission no later than 1:30 p.m. If the pleadings are not timely filed or the fees not paid, the ex parte application will not be heard. Exceptions to this rule will be entertained by the court only when the circumstances are shown to be extraordinary.

The moving party must file a declaration stating how the notice was given or why it was not given, what the responding party was told and affirming that the responding party was told he or she had a right to be present, both in person and by counsel. If exceptional circumstances are claimed, they must be specifically stated. The notice shall include advising the other party of the following paragraph:

Normally, ex parte applications will be considered by a judicial officer on the basis of what appears in pleadings only. If additional time is required to respond, the court will consider a request for a 24 hour continuance of the ex parte request to permit a response to be prepared and filed, provided a written statement of this request and a summary of the reasons for such request are filed with the clerk or the bailiff before 8:30 a.m. at the door of the department where the matter is scheduled.

### ***2:5.2 Declarations Required***

Declarations in support of ex parte relief and domestic violence protective orders must recite specific facts within the personal knowledge of the declarant which support the relief requested. If a temporary emergency order is requested that alters custodial arrangements, restricts visitation or orders the removal of one party from the family residence, the declaration must recite facts describing specific incidents and harm. Attorney verification of declarations is not permitted.

### ***2:5.3 Conditions for Issuance of Ex Parte Orders***

Before submitting ex parte orders for a judge's signature, parties must comply with Family Code § 241, 3062, 3120, 3409, 7710, and California Rules of Court, rule 5.118, including all requirements for declarations explaining that notice to the other party has been given, or the reason notice was not given.

### ***2:5.4 Emergency Nature of Request***

The evidentiary declaration must include facts which show why the matter must be heard as an ex parte matter as opposed to being heard on the court's law and motion calendar. As a general rule, a declaration in support of an order shortening time for service must show emergency circumstances. Emergencies do not include proposed revisions in custody or visitation to accommodate holiday or vacation or birthday plans.

### ***2:5.5 Domestic Violence Orders***

The Domestic Violence laws allow restraining orders to be obtained on an expedited basis without the necessity of paying court fees or giving advance notice to the other party. Domestic Violence Protective Orders may also create certain parenting presumptions. This

process must never be used simply to secure an advantage in a family law case. Declarations in support of the application must be honest, factual and specific.

1. Declarations Required

- a. If an Emergency Protective Order (EPO) was issued by a law enforcement agency, the order must be attached to the declaration if available.
- b. The party seeking a Domestic Violence Protective Order must disclose any other incident of domestic violence or abuse that was reported to any law enforcement agency, or resulted in criminal charges against either party, or resulted in the imposition of a period of probation or parole, or resulted in court-ordered restraints on the conduct of either party.

2. Child Custody Orders

Any person seeking custody of or visitation with a child must disclose in their application all of the following information:

- a. What facts establish the parental relationship. (Family Code §5323, 6341);
- b. whether any custody or visitation orders were previously issued by any court; and
- c. the specific terms of those orders if a copy is neither referenced nor attached.

3. Notice Requirements

If there is an existing family law file and the other party is represented by counsel, the party seeking a Domestic Violence Protective Order must represent to the court that the attorney for the other party was notified of the request for restraining orders. Notification is particularly important where the relief requested includes a change to existing custody or visitation orders or a request for a residence exclusion. If there has been no notice to the attorney or other party, the application must include specific facts justifying the issuance of any order affecting custody, visitation or residence exclusion without notice.

4. Accuracy

The parties must maintain the highest standards of good faith and accuracy in their declarations. Any attempt to use the Domestic Violence restraining order process as a strategy to gain an improper advantage, including the failure to make full disclosure of all existing cases and orders in any court which involve or have involved the parties or any minor children, will be sanctioned and such conduct is likely to influence the orders made by the court when the matter is heard. Sanctions may include, but are not limited to, an order to pay attorney fees resulting from such misuse, an order giving custody or expanded visitation to the aggrieved party, an order requiring supervised visitation by the offending party, or an order excluding the offending party from the residence, or other appropriate sanctions.

**2:5.6 Order Shortening Time**

If an order shortening time for service of a pleading is requested, the supporting declaration must state whether or not the responding party is represented

by counsel and whether or not the party or his or her attorney was notified that a request for an order shortening time would be made. If the responding party or his or her attorney was not contacted or does not agree to the proposed setting, the supporting declaration must clearly demonstrate why the hearing should be set on the proposed date without the consent of the opposing party or counsel. Provision for immediate delivery of the pleading to the opposing party or his or her counsel's office should be set forth in the order.

## **2:6 ORDER TO SHOW CAUSE AND MOTION CALENDARING**

### ***2:6.1 Hearing Dates and Times***

1. Orders to show cause and motions are calendared for hearing in the department to which the case has been assigned for all purposes. Each department hears orders to show cause and motions one day per week. The parties or their counsel must call the Family Law Calendaring Clerk (805/781-5706) to reserve a time for hearing.
2. San Luis Obispo Child Support Services matters are set on Monday at 8:00 a.m. for conferencing with the Department of Child Support Services staff and are heard at 8:30 a.m. in Department 3. Parties who have completed the Child Support Calculations Worksheet will be given priority on the calendar
3. Domestic Violence Prevention Order cases are set on Tuesdays and Wednesdays at 8:30 a.m. in Department 12.
4. If one of the attorneys or the parties believes the hearing, including a review of the paperwork, will take more than one (1) hour, the judicial officer will determine whether the matter will be heard or reset. The party estimating one

hour or longer duration must inform the opposing counsel or party well in advance of the hearing of the time estimate.

### **2:6.2 Continuances**

It is the policy of the court to encourage settlements, cooperation between the parties and full, informal disclosure of pertinent information. If the parties advise the court the matter has settled, or is likely to settle, or that information is being exchanged that will facilitate a settlement, the court will normally grant one mutually agreed upon continuance. The parties must notify the clerk of the court as soon as possible if it is likely a case will settle so that the matter will not be unnecessarily worked on by the court.

Continuances for any other reason rest in the discretion of the court and will only be granted upon a showing of good cause. If granted, a continuance may be subject to terms and conditions. Good cause for a continuance will normally be found to exist if

1. the party requesting it wishes to retain counsel;
2. counsel was only recently obtained or;
3. the party or the attorney has an irreconcilable calendar conflict.

### **2:6.3 Unserved Orders to Show Cause**

If an order to show cause cannot be timely served, the moving party may obtain a Reissuance of the Order to Show Cause by filing Judicial Council form FL-306 or form 982(a)(30).

### **2:6.4 Matters Taken Off Calendar**

1. After the motion or order to show cause is served, the matter cannot be taken off calendar without the agreement of (1) either both attorneys or (2) both parties, if they have no attorney.
2. Parties must notify the Family Law Clerk as soon as possible if the hearing cannot proceed because the moving papers or order to show cause were not served.

### **2:6.5 Required Parenting Class Fees with First Order to Show Cause Involving Custody**

On filing the first order to show cause or motion in any proceeding under the Family Code, the moving part must pay, in addition to any applicable filing fee, the fee necessary to attend the class provided by Family Court Services known as “Children: the Challenge in Divorce.” The responding party must also pay the fee for the class when a responsive declaration to the order to show cause or motion is filed.

### **2:6.6 Mediation**

In 2001, the Family Law Bar Association and the court established a program to help the parties settle the disputes they bring to the courthouse. Family Law attorneys who have completed a mediation training program help the parties communicate about the dispute and options for settlement. The attorneys do not represent either party in the case. The process is voluntary and confidential. If the parties choose to mediate, the mediator will meet with them for up to two hours at no charge. The parties are free thereafter to continue their settlement discussions with the mediator on a fee-for-service basis outside the courthouse.

If the mediation conference does not result in a settlement, the matter will be returned to the court for adjudication. The court will not be provided with a report from the mediator about the dispute.

## **2.7 DEFAULT JUDGMENTS OR UNCONTESTED MATTERS AND JUDGMENTS AFTER TRIAL**

### ***2:7.1 General Policies***

1. An uncontested Family Law judgment can be obtained without a personal appearance by either party if a declaration is filed supporting the request. (See Family Code § 2336.) A hearing may be set upon request of a party or by court order.
2. A judgment nullifying a void or voidable marriage (annulment) requires a court hearing, which will be set upon request.
3. At the conclusion of any trial, the court will direct one of the parties to prepare the judgment. In the event no one is ordered to prepare a judgment, the Petitioner must submit a judgment consistent with the ruling or statement of decision of the court.
4. A judgment will not be entered unless there has been compliance with Family Code § 2100 regarding the obligation of the parties to file and serve preliminary and final declarations of disclosure. Default hearings or uncontested matters involving minor children also require proof of attendance at the Parenting Class provided by Family Court Services, or a showing of good cause for an exception.
5. Before judgment is entered, the court will require payment of fees previously waived and payment of other fees due to the court.



### **2:7.2 Format of Judgment**

1. A Petitioner who seeks a default judgment must comply with Family Code § 4062 and 4065, which require certain language in a stipulation for child support and shall incorporate the Notice of Rights and Responsibilities re Health Care Costs and Reimbursement Procedures (Judicial Council Form FL-192) in the judgment if there are minor children.
2. An order concerning custody, visitation, support, or injunctive relief must be set forth on Judicial Council forms unless they are set forth in a written marital settlement agreement attached to the judgment.
3. The division of the community property and debts and the confirmation of separate property must be set forth in the body of the judgment or in a marital settlement agreement attached to and incorporated in the judgment.
4. The relief sought in the judgment must be consistent with the relief sought in the petition, unless the parties otherwise agree in a marital settlement agreement or stipulated judgment. An order restraining the conduct of a party or excluding a party from the family residence will not generally be ordered unless the party affected by the order was notified that such relief would be sought. The party seeking such orders must prove a factual basis for it at a hearing.
5. Restoration of a party's former name will be ordered only at the request of that party.

6. The signature of a defaulted party or self-represented party on a marital settlement agreement must be notarized.
7. A judgment which affects a child must include an acknowledgment that the parties are the parents of that child.

### ***2:7.3 Application for Judgment Nunc Pro Tunc***

Any application for a Judgment Nunc Pro Tunc must be accompanied by testimony or a declaration that supports the order requested and must comply with Family Code § 2346.

### ***2:7.4 Documents***

A party requesting a judgment must present the following documents to the clerk:

1. Original and three copies of Judgment and all attachments;
2. Original and two copies of Notice of Entry of Judgment with stamped, pre-addressed envelopes for all parties containing a return address for the court;
3. Declaration for Default or Uncontested Dissolution (if no personal appearance is made);
4. Current Income and Expense Declarations if the requested relief sought involves issues of support and attorney's fees;
5. Request for Entry of Default, or Appearance, Stipulation and Waivers forms (where needed);

6. Declaration Regarding Service of Preliminary and Final Disclosure  
Declaration for both parties absent an appropriate waiver and order of the court;
7. Proof of completion by both parties of the Parenting Class, unless waived by the court; unless the same has been previously filed with the court;
8. The Domestic Judgment Worksheet (Local Form FL02)

### ***2:7.5 Duties of the Clerk***

1. The clerk must return copies of the Judgment to counsel or the paralegal service offering it and shall mail the Notice of Entry to the parties.
2. If the Judgment is submitted by a self-represented party, the clerk shall mail the copies of the Judgment and the Notice of Entry to the parties at their most recent addresses as indicated by the file.

## **2:8 PLEADINGS AND TIME LIMITATIONS**

### ***2:8.1 Statement of Purpose***

Orders to Show Cause are major events in the lives of family law litigants. Orders to Show Cause consume a large amount of time and money and frequently cause high levels of anxiety and anger. The court's goal is to provide a cost-effective way to resolve disputes that minimizes anxiety and hostility. The following rules require the parties to exchange basic financial information that provides the basis for a settlement without expensive court intervention. If any party fails to obey these

rules, he or she will normally be required to pay sanctions and the attorney's fees occasioned by a failure to comply or by the need to continue the hearing.

### **2:8.2 Service of Documents**

In addition to serving the pleadings on the other party as required by California Law and Rules of court, any party requesting or opposing child support, spousal support, family support, or attorney's fees and costs, or seeking to modify an existing support order, must serve with the pleading copies of the following documents and be prepared to lodge proof of service with the courtroom clerk on the day of hearing.

1. The moving and responding parties must exchange:
  - a. A copy of all payroll statements and/or evidence of all self-employment income received for last 180 days
  - b. A copy of the last two individual federal income tax returns, including all schedules;
  - c. A copy of an income and expense statement and a profit and loss statement covering the preceding twelve months for any business operated by the party;
  - d. A copy of each statement issued by any financial or banking institution for any business or personal account maintained by the parties during the preceding 12 months;
  - e. A copy of each 1099, W-2 and K-1 received by the parties during the preceding two years.

2. If the party is employed by a subchapter S corporation, or a corporation wherein he or she is at least a 25% shareholder, then the party must additionally provide:
  - a. Copies of the two most current corporate federal income tax returns, including all schedules and attachments and;
  - b. Copies of all corporate bank statements for the preceding 12 months;
  - c. Copies of the most recent Profit and Loss and/or Balance Sheet statements for the corporation
3. The moving party must serve a copy of this rule on any unrepresented party.
4. Each party must take whatever steps are necessary to secure the documents listed above. Non-compliance and/or bad faith delays are not an option and will normally be sanctioned. If the documents are not immediately available, the party who cannot comply must prepare, serve and file a declaration of why the documents cannot be produced, what efforts are being made to obtain them, when they will be available and the identify and location of the individual who has the documents.

### ***2:8.3 Cases Initiated by Department of Child Support Services***

On matters initiated by the Department of Child Support Services, the parties must comply with § 2:8.2 except where the custodial parent is receiving welfare benefits in which case compliance will be at the court's discretion.

### **2:8.4 Failure to Appear**

1. Failure of the moving party or attorney to be present at the calendar call, unless the party or his or her attorney has notified the clerk or bailiff of the reason for their absence, will result in sanctions and the removal of the matter from the calendar. If the responding party appears, the court may award attorney's fees and costs to the party who appears.
2. In the event the responding party fails to appear, the court may continue the matter and award attorney's fees to the moving party who appears or proceed with the hearing and make orders based upon the evidence presented by the moving party.

### **2:8.5 Tardiness**

If an attorney or a party is unable to be present at the time of the calendar call, the court and opposing party must be notified of the reason for the delay at the earliest possible opportunity and when an appearance can be expected. Late, unexcused appearances will be sanctioned.

Counsel and the parties are reminded that their principal obligations on days when court appearances are scheduled is to be in court in a timely manner. Valid reasons for not appearing in a timely manner are appearances in other departments of this court, mandatory appearances in other courts and medical appointments or emergencies. Events such as depositions, other business or academic appointments or the like are not valid reasons to fail to appear in court on time and are discourteous, time consuming and expensive to the court and the parties. The court recognizes that, on occasion, unforeseen events cause a party or attorney to be late. Such isolated

incidents will not be sanctioned, nor will the court proceed to hear the matter in the absence of counsel or a party in these cases, provided notice has been given to the court and the opposition.

However, ongoing conflicts where counsel or a party makes commitments to be in places other than in court on a regular basis, which conflict with the obligation to be in court on a timely basis will not be tolerated. In those cases, the court may impose sanctions on the party or counsel not appearing in a timely manner, or may proceed to hear the matter when it was originally set whether or not the court receives notice that the party or counsel will be late.

### ***2:8.6 Pre-Hearing Settlement Efforts***

1. The parties and their counsel must be mindful of the fact that the court's staff spends time collecting and organizing pleadings and files and that judicial officers spend time reading motions, declarations and the authorities bearing on the dispute presented. A failure of the parties to discuss settlement before they reach the courthouse wastes the time and scarce resources of the parties and the courts.
2. Counsel for the parties must confer in good faith at least 48 hours in advance of the hearing to determine how the matter in dispute can be settled. The parties must make every effort to resolve minor issues where the cost of the hearing exceeds the amount in dispute. Sanctions will be imposed upon one or both parties for a failure to do so.

3. If the attorneys inform the court that a hearing may not be necessary because the parties are engaged in meaningful, productive negotiations wherein both sides are compromising positions previously taken earlier, then the matter will be dropped to the foot of the calendar. If the parties have not settled the matter when the case is called again, it will be heard and resolved by the court.

If a case is settled after calendar call but before the hearing, one of the attorneys must inform the judge's clerk or bailiff of that fact. The stipulation will generally be taken ahead of all contested matters by the family law judge. If the parties reduce their agreement to writing, they may pass the agreement to the bailiff or the clerk. Once it has been signed and filed and they have signed for and received their copy, they may leave without waiting for the next calendar call.

### ***2:8.7 Calling the Calendar***

1. When the calendar for each session of a Family Law department is called, counsel must state their names and an accurate time estimate for the hearing. The parties must submit a list of the issues to be adjudicated before the hearing begins.
2. Attorneys must be prepared to address the issues raised by the pleadings and efficiently present the facts the court requires to resolve the dispute. Parties must not use a hearing as an opportunity to conduct discovery. If depositions or other forms of discovery are needed to prepare for hearing, the court may, in its discretion, continue the matter to facilitate the needs of the parties. The court may enter



appropriate temporary orders, subject to adjustment, to cover the period of delay.

3. Matters with a total time estimate exceeding one hour may be continued to another day and time. If appropriate, the court may enter temporary orders, subject to adjustment, to cover the period of delay.

### **2:8.8 Presentation of Evidence**

1. Counsel or a party must be prepared to present their case based upon pleadings, declarations and offers of proof. Testimony is rarely necessary to resolve issues presented by an order to show cause and counsel or a party must be prepared to explain why any testimony is necessary and must have previously filed a California Rules of Court, rule 323 notice. The court, however, may entertain requests for oral testimony in the absence of 323 notices where the court feels it requires further facts.
2. Sensitive or confidential documents may be received by the clerk and returned to the parties at the conclusion of the hearing. When appropriate, the court may order such documents to be maintained in a portion of the file not open to public inspection without a court order.
3. At least 48 hours before the hearing, counsel should make every effort to exchange all documents they intend to present at the hearing except those reserved for true impeachment. Documents that are not exchanged and pre-marked may not be received in evidence in the court's discretion. If all parties and/or their counsel agree, any

documents subpoenaed for a hearing and produced directly to the court may be inspected by the parties before the date scheduled for a hearing. The document inspection must be arranged by the clerk of the department where the matter has been assigned for all purposes.

### **2:8.9 Witnesses**

1. California Rule of Court 323 should be followed if a party expects to offer testimony.
2. If a witness is subpoenaed to appear at a hearing on an order to show cause or motion, counsel must confer prior to the hearing to determine if a stipulation can be reached as to the substance of the testimony expected from the witness. The witness may then be excused. Third party witnesses will normally be afforded priority.

### **2:8.10 Time Estimates**

Accurate time estimates are important to the parties and the court.

Examination of witnesses and the presentation of argument must not be unnecessarily extended. Counsel must focus upon presenting only the information the judicial officer requires to resolve the disputed issues. Window dressing is a waste of the time and money of the parties and the court.

If the time estimate of the parties is exceeded, the court may terminate the hearing and decide the dispute based upon the state of the record at that time, or continue the matter to another date, or order the matter off calendar.

The court may apportion the time allocated to a case between the parties, allowing each party a specific amount of time to present their case. In that event,

time spent cross-examining a witness called by a party shall be charged against the party calling the witness. The court may control the nature, extent and manner of cross-examination so as to avoid an unfair use of time in an effort to “run out the clock.”

## **2:9 TRIALS AND HEARINGS**

### ***2:9.1 How to Obtain a Trial Date***

Any party may obtain a trial date by submitting a Joint At-Issue Memorandum (Local Form FL003) to the court. Counsel for the parties must meet and confer in advance of the trial date to agree upon three dates when the trial should commence. The court will set the trial on one of the dates selected by the parties.

### **2:9.2 *Selection of Trial Date***

If agreement on three dates cannot be achieved, either party may submit a Joint At-Issue Memorandum listing dates the trial should begin. A unilateral request must be accompanied by a brief declaration stating the attempts made to secure dates agreeable to both sides and the reasons they were not obtained. Sanctions will be imposed against one or both parties if the failure to secure agreement on a trial date is without substantial justification. If any party refuses or fails to sign the Joint At-Issue Memorandum, the initiating party may file the Joint At-Issue Memorandum with one signature, together with a Certificate of Non-Compliance, (Local form FL004).

### **2:9.3 *Trial Date Without At-Issue Memorandum***

A trial date may also be requested by both parties at any appearance. Provided the parties agree that the case is ready, the court will select a date agreeable to both sides without filing an At-Issue Memorandum.

## **2:10 PRE-TRIAL ORDERS**

### **2:10.1 *Pre-Trial Management***

The Court may designate cases as subject to Pretrial Management. In those cases, the parties must comply with the following orders which may be modified at the Court's discretion:

#### 1. 10 Court Days Before Trial

- a. Complete all discovery and basic trial preparation. Continuances will rarely be granted for the purpose of completing discovery.
- b. Ensure the preliminary and final disclosures required by Family Code § 2103 through 2106 have been served.
- c. Schedule a Case Conference with opposing side. This conference is held outside the presence of the court and shall be a face to face meeting. It is mandatory and it must be completed at least 5 court days before the scheduled trial date.

#### 2. 5 Court Days Before Trial

- a. At the Case Conference all sides must simultaneously permit the review of, and exchange copies of, each exhibit that will be used at trial. Exhibits that are intended in good faith to be used only as impeachment are exempt from review and exchange. The parties shall obtain a blank form Exhibit List and evidence stickers from the courtroom clerk in the department where the trial is set. Each side must prepare an Exhibit List that briefly describes each exhibit that they may offer. Using a sticker, mark each exhibit with a number in the approximate order that they will be offered beginning with the

number “1.” Mark only one copy of each exhibit. Numbers 1 through 100 are assigned to petitioner and numbers 101 through 200 are assigned to respondent. Additional parties shall use numbers beginning with 201. Stickers go in a clear space on the lower right-hand corner of the first page of the exhibit. Exhibits that have not been exchanged or premarked may not be allowed admission into evidence by the court. Exhibits comprised of several pages of financial data must have a summary page that explains what is hoped to be proved by the exhibit. Redact all but the last four digits of any personally identifying bank account numbers or social security numbers.

- b. The parties must stipulate to the foundation for business records of health care providers, financial institutions, school records and expert reports unless there is a valid reason to question their authenticity.
- c. At the Case Conference, counsel must prepare a Joint Property Statement that lists each asset, debt, claim for reimbursement and charge. The parties must state their contention as to the character of the property, its value and the disposition proposed by each side. The standard “Fredman Form” (Local Form FL001) or a “Propetizer” must be used and counsel for both sides shall sign the form.

- d. At the Case Conference, a trial plan must be formulated that leads to the introduction of admissible evidence and eliminates irrelevant and cumulative evidence.
- e. At the Case Conference, all sides must meet and confer in person and in good faith to identify the issues in dispute and arrive at stipulations designed to simplify the presentation of relevant evidence. This component is mandatory and compliance will be excused, even if some settlement discussions occurred earlier in the case or prospects for settlement seem poor. The court will encourage cooperation by considering the sanction provisions of Family Code § 271. All settlement options must be thoroughly explored and methods of efficiently resolving disputed issues must be discussed. In the event the parties are unable to agree upon a location for the Case Conference, and there is a valid reason for objecting to meeting at the default location of the courthouse where the case is assigned, the court shall set the location on ex parte application.

- f. 2 Court Days Before Trial
- g. File the Trial Brief with the clerk of the department where the trial is set and serve copies on all sides. The trial brief shall identify all issues in dispute, summarize the facts relating to each issue and cite any applicable legal authority.
- h. The Trial Brief must include a witness list that identifies the persons that may be called to testify and a brief summary of the expected testimony of each witness. If the witness will testify as an expert witness, attach a copy of the expert's resume and any written report prepared by that witness.
- i. File the Joint Property Statement with the court.
- j. File current Income and Expense Declarations with supporting schedules and payroll documentation, including all most current W2's, 1099's and pay stubs showing current year to date income from all employers in the current year. If W2's are not yet available, the party shall submit the final pay stub for the prior year showing year to date income.
- k. If child support is an issue, prepare a computer generated report setting forth your contention of Guideline Child Support and give it to the court clerk.

3. Day of Trial

Counsel shall:

- a. certify to the court that they have met and conferred in person at the Case Conference;
- b. advise the court what issues are settled;
- c. provide the court a written list of the issues to be adjudicated, signed by both counsel and the parties as all inclusive;
- d. provide the court any written stipulations relating to evidence or agreed facts;
- e. deliver the Exhibit List and the original set of exhibits to the clerk in the trial department, together with a copy of the exhibits to be used by the court for note taking;
- f. state that the timely appearance of witnesses is insured.

## **2:10.2 Cases Not Subject to Pretrial Management**

In cases in which no designation of formal Pretrial Management under 2:10.1 et seq. is made, counsel shall:

- a. On the day of hearing, exchange exhibits and a fully completed exhibit list showing the number and brief description of all documentary evidence which a party intends to present other than evidence intended solely for impeachment and provide a copy of such exhibits to the court for note taking.
- b. At least 2 court days prior to trial, serve and file (1) a trial brief identifying all issues in dispute, summarizing the facts relating to each issue and citing any applicable legal authority; (2) a computer generated support calculation showing the child support requested;



(3) a schedule of community and separate property of the parties showing each party's contentions as to separate or community character and value; (4) a completed income and expense declaration with all most current W2's, 1099's and a pay stub showing current year to date income from all employers in the current year.

### **2:10.3 Evidence**

#### 1. Orders to Show Cause and Motions

The court prefers to hear orders to show cause and motions on the pleadings only. If oral testimony is required to present substantive material that cannot be found in the pleadings, the parties should generally comply with Rule 323 and convince the court at the hearing of the need for testimony. The parties are cautioned not to use hearings on orders to show cause and motions to conduct discovery.

#### 2. Trial Readiness Calendar

Each department shall set all matters for trial in the following week on a trial readiness calendar to be called at 8:30 a.m. on the court's Law and Motion Calendar during the week preceding the assigned trial date. At the Trial Readiness Calendar, counsel shall be prepared to represent the following:

- a. that no continuance of the trial will be requested
- b. that all paperwork necessary for preparation of exhibits is available
- c. that the appearance of all witnesses has been arranged
- d. that the parties have arranged compliance with Rule 2.10

## **2:11 BIFURCATED TRIALS**

A request to set a bifurcated matter for trial must be made on the Judicial Council form “Application for Separate Trial.” (Judicial Council Form FL-315). If a bifurcated trial has already been completed on a matter entitled to statutory priority, any party may request a trial date for the remaining issues by filing a Joint At-Issue Memorandum. (See Rule 2.9 above)

## **2:12 CONTINUANCES**

Trial dates assigned to a matter are firm and will not be continued except for demonstrated good cause. The parties and their counsel must be prepared to proceed with the trial on the date and at the time they select. If more than one matter is ready to proceed on the date and at the time scheduled, the court will decide which case shall proceed first.

## **2:13 SELF-REPRESENTED PARTIES**

Family law is very complex and important right and remedies may be lost by persons who are unable or unqualified to represent themselves. The parties are encouraged to consult a specialist in family law matters to be sure that all issues are resolved in a way that avoids future disagreements. Any party who is proceeding to trial or hearing without an attorney must understand that he or she is solely responsible for competently presenting the evidence needed by the judicial officer to decide the case. Self-represented parties must understand that the judicial officer who will decide the case is not permitted to give legal advice to the parties or to assist them in presenting their case.

## **2:14 SETTLEMENTS**

If the case settles prior to the date of trial or hearing, the court must be promptly notified, either in writing or by telephone as soon as possible, so that pending matters can be

removed from calendar and other matters can be set. If the parties appear at trial, the court must be notified at the earliest time that the matter is settled, so that it can be taken off calendar, or heard as an uncontested matter.

## **2:15 INTERPRETERS**

If any party requires an interpreter, the clerk's office must be notified at least one week before the trial date. The party requesting the interpreter must pay the interpreter's fee and must deposit the clerk's estimate of the fee at least 48 hours before the hearing. The party who requires an interpreter must not use a relative or friend to interpret in a contested proceeding. In accordance with the applicable law, the judge may determine that a non-certified interpreter is provisionally qualified. (See California Rules of Court, rule 984.1 et seq.)

## **2:16 PERSONAL PROPERTY – ARBITRATION**

1. Disputes about the value and distribution of household furniture and furnishings and personal effects are usually adjudicated by binding or non-binding arbitration. The court will refer the dispute to the arbitrator selected by the parties for binding arbitration or to an attorney on the court's panel of arbitrators if the arbitration is to be non-binding. The cost of arbitration must be advanced by the parties in equal shares.
2. No arbitration may proceed unless the parties first submit "Fredman Forms" (Local Form FL001) to the arbitrator.
3. The arbitrator will not give legal advice to the parties and will not issue subpoenas, call witnesses or require compliances with the court rules. Fee waivers do not apply to an arbitrator's fees and costs.

4. The arbitrator may refuse to complete the arbitration if one or both of the parties is rude, contentious, uncooperative, or abusive during the hearing. When arbitration is terminated for that reason, the arbitrator must report the misconduct to the court. The offending party will be required to pay the entire cost of the proceeding and a sanction.
5. If the parties do not set and lodge a retainer with the arbitrator as set forth in paragraph 1 above, within thirty (30) days of the arbitrator's request, the matter will be referred back to the court for disposition.

## **2:17 PREPARATION OF ORDERS**

### **2:17.1 Orders**

The attorney or party designated by the court to prepare an order after a hearing must do so within ten (10) days. Forms approved by the Judicial Council must be used when they apply to the proceedings. The proposed order must be submitted to the other attorney or party for approval. If the other party/attorney does not respond within ten (10) days, the party preparing the order may submit it to the court with a letter stating that the order was mailed to the opposing party and no objections were received. The court will then consider the proposed order and execute it if it accurately reflects the court's rulings or the party's stipulations.

### **2:17.2 Disagreement**

If there is a disagreement about the accuracy of a proposed order, the parties must submit the dispute to the judge who heard the matter by way of letter briefs.

**2:17.3 Copies**

When a filed endorsed copy of the order is returned by the court, a copy must be served on all parties or their counsel.

## SECTION THREE

### **3:1 MEDIATION**

1. Whenever a case involves unresolved issues over parental responsibilities or access to children, the parties must attend mediation at the Family Court Services section of the Superior Court. The mediator will attempt to help the parties fashion a parenting plan that serves the best interests of the children.
2. Mediation MUST occur before the court will hear any contested custodial matter. If there has been mediation prior to an initial hearing for a temporary order, there must be another mediation prior to a trial. There must also be a separate mediation before any court hearing for a modification after the judgment.
3. Before the parties attend mediation, they must first attend the Family Court Services Mediation orientation. At the orientation, the parties will be given information sheets to fill out and bring to their actual mediation. They will also be given examples of parenting plan agreements, information about examples of parenting plan agreements, information about resources available to them, parenting plan worksheets, a mediation report example, a form regarding the limits of confidentiality and other useful information.  
  
Reservations are made by calling Family Court Services at (805) 781-5423.
4. Mediation in San Luis Obispo County is confidential. No reference (orally or in pleadings) to discussions in mediation may be mentioned in court, nor shall any pleading be filed referring to mediation other than the fact that it was or

was not scheduled. There shall be no reference that any person or attorney signed or did not sign a proposed parenting plan.

5. Unless the parties stipulate otherwise, the mediator will not make any recommendations to the court for visitation or custody. The mediator may only make the following suggestions to the court:
  - a. That more mediation time is needed.
  - b. That an attorney should be appointed to represent the minor children.
  - c. That a custody/psychological evaluation of the parties should be completed at the parties' expense.
  - d. That a full or abbreviated investigation by Family Court Services pursuant to Family Code § 3111 should be completed at the expense of the parties.
  - e. That the parties and/or the children should receive counseling.
  - f. That the parties should attend the COPE class given by Family Court Services.
6. Parties seeking mediation services and the orientation class should contact Family Court Services at 778 Osos Street, Suite A-1, San Luis Obispo, California 93401; telephone (805) 781-5423. (See 3:2 et seq. below for details and time requirements for setting mediation dates.) Parties with pending litigation should be provided the first convenient mediation date, preferably within twenty (20) days of the request.
7. Parties who have a family law case filed, but no pending motion before the Superior Court, may request mediation from Family Court Services. Any

charge to the parties for elective mediation, where there is no pending court hearing, shall be established by the court and shall be paid, unless waived prior to the mediation sessions.

8. Any party who has been granted a fee waiver by the court within the six (6) months prior to a request from the Family Court Services for fees for mediations will not be required to pay the fees or costs, unless later ordered by the court to reimburse the court for the waived fees or costs, unless their financial circumstances have materially improved.
9. C.O.P.E.
  - a. The C.O.P.E. class (Co-Parenting Effectiveness) is available for parties in order to learn about co-parenting issues and practice appropriate parenting skills. In the absence of a fee waiver, there is a \$50 charge per person for enrollment.
  - b. In cases of domestic violence or where there are current restraining orders, the guideline of attending the parenting class before mediation (See § 3:5 below) may be waived for the protected party and the class may be attended at another time.

### **3:2 SETTING A MATTER FOR MEDIATION**

1. When it appears a case involves unresolved issues over parental responsibilities or parental access to children or which involves access to minor children, counsel or an unrepresented party shall telephone Family Court Services to schedule an appointment for mediation. It is the responsibility of the moving party to schedule the appointment and give



written notice to verify the appointment with opposing counsel or unrepresented party at least ten (10) days before the appointment, or as soon as reasonably possible after the appointment is set. Such appointment date, time and place shall be noted on the moving papers to be filed with the court. The moving party shall provide Family Court Services with the case name, case number and home and work telephone numbers of the parties. The moving party shall confirm the appointment with Family Court Services at least five (5) days before the appointment date, or indicate why confirmation cannot be made or is doubtful. The responding party to mediation shall confirm the appointment with Family Court Services at least two (2) days before the appointment date or indicate why confirmation cannot be made or is doubtful, and provide the current address and home and work telephone numbers of the party.

2. No unrepresented party or counsel shall calendar a motion or order to show cause concerning issues regarding access to children before the date set for mediation unless temporary restraining orders will expire prior to the mediation date, or unless no mediation date is available within twenty-five (25) days of the request for mediation being made. The court may hear other issues in the same case prior to the mediation. If it appears to the court that no reasonable effort has been made by the moving party to schedule a mediation session prior to the hearing, the court may remove the issues regarding access to children from the court calendar and take such other appropriate action, including continuing the hearing and/or awarding sanctions.

3. At the time of hearing, if a matter has not been to mediation, the court will refer the parties to mediation prior to having a contested hearing. The court shall also have the discretion to order mediation the same day in an emergency situation or where it is deemed by the court that it would be a burden to the parties not to proceed the same day. The court has the discretion to make interim orders pending mediation.
4. If a request to schedule a mediation session has been timely made, but, due to scheduling problems, no mediation appointment is available prior to the hearing, it shall be the responsibility of the moving party to have the matter continued on the court's calendar. Notice in writing must be provided to all other parties.
5. The assignment of any particular case to one of the mediators will be solely at the discretion of the supervisor of Family Court Services. If the matter has been mediated previously, the moving party shall so indicate and provide the name of mediator who was previously involved.
6. If a party to a new or previously mediated matter objects to being assigned to a particular mediator, said party or their counsel shall contact the Family Court Services' supervisor to give notice of the objection or request not to be assigned to a particular mediator. The objection or request shall be made in writing on a form provided by Family Court Services and the matter will be resolved on a case-by-case basis.

7. If an interpreter is required to conduct mediation, the party scheduling the appointment shall so notify Family Court Services at the time the appointment is made of such a need and to assist in making arrangements for an interpreter.
8. If one of the parents is in custody in the San Luis Obispo County Jail, the mediator will arrange for telephone mediation. If a parent is in custody in another jurisdiction, a court order may be required.

### **3:3 MEDIATION PROCESS**

1. The mediator may have an initial conference with counsel for each party, or an unrepresented party, prior to the mediation session in order for each side to present a summary of the dispute.
2. Possession of tape recording devices or weapons of any type are not permitted on Family Court Services premises.
3. Individuals associated with the parties who are not authorized by the mediator to participate in mediation shall not be on Family Court Services' premises nor in the vicinity of those premises before, after, or during the mediation appointment unless previously authorized by the mediator or supervisor of Family Court Services. This includes spouses, parents and significant others. This section does not apply to support persons allowed by Family Code § 6303.
4. Mediation sessions are to be conducted with only the parties. However, the mediator has the discretion to include children or other significant persons involved with the family if he or she believes inclusion is helpful to resolution.

5. As provided for in Family Code § 3181 and 6303, all cases involving allegations of domestic violence, with current restraining orders, shall be screened by the mediator to determine the necessity of the presence of a support person during mediation, with separate waiting areas for the parties and separate mediation to insure safety and facilitate mediation.
6. The mediator shall meet with the parties separately or together in a joint session in order to isolate the points of agreement and disagreement in an effort to settle the unresolved issues.
7. The mediator may also interview the children privately to assess their needs and interests.
8. The manner in which the session is conducted shall be at the discretion of the mediator. The proceedings shall be confidential with all communications being privileged except as required in Penal Code § 11164 through and including 11174.1 (Child Abuse and Neglect Reporting Act) for mandatory reporting of child abuse. The mediator shall advise the parties of this provision before mediation begins.
9. Following the mediation session, the mediator may confer with counsel either in person or by telephone to communicate the results of the session. If an agreement between the parties has been reached, the mediator shall convey and may discuss the terms of such proposed agreement. A formal stipulation may then be prepared and submitted for signature by the parties and their attorneys, if any.

### **3:4 MEDIATION ORDERS**

#### 1. Signed Stipulations

Stipulations and proposed orders which have been signed by both parties and their counsel shall be presented for signature to the assigned Family Law judicial officer.

#### 2. Unsigned Stipulations

The attorney shall be notified that the stipulation is ready for signature.

Family Court Services shall hold the stipulation for ten (10) days or may send the stipulation to the attorneys by facsimile transmission. If an attorney is not authorized to sign the stipulation, the attorney shall notify Family Court Services. If the attorney has not signed the stipulation within that period, Family Court Services shall report to the court that no agreement has been reached.

If after the 10-day period the attorney or unrepresented party seeks to sign the stipulation, the attorney or unrepresented party shall verify with opposing counsel or party that the stipulation is still a valid agreement. The attorney or unrepresented party is to note verification by writing “verified agreement” below the signature block on the stipulation when signing and dating agreement.

### **3:5 PARENTING CLASS**

1. All parties with minor children filing an action to dissolve their marriage or any action to establish a parental access plan involving minor children or

which involves access to minor children shall make every effort to attend and complete a required education program entitled, “Children: The Challenge in Divorce” prior to the initial mediation. **The class shall be attended by both parents prior to the entry of any final judgment, unless excused by the court.**

2. Parties are encouraged to register and attend the class at the earliest possible time. Upon proof of payment of or waiver of the required fee, Family Court Services will submit a Certificate of Completion to the Clerk of the Superior Court after the party’s attendance and completion of the class. Pre-registration is required. Parties are to register by contacting Family Court Services.
3. To attend a substitute class out of the area, the parties may make a request by application for an order supported by a declaration.
4. In cases of domestic violence, or where there are current restraining orders, the guideline of attending the parenting class before mediation may be waived for the protected party and the class may be attended at another time.

### **3:6 MEDIATION PROBLEMS**

Requests for change of mediators or concerns about general problems relating to mediation shall be made initially to the supervisor of Family Court Services. In the event of any disagreement with his or her decision, a party may request a review by the Family Law judicial officer.

### **3:7 PRESENCE OF CHILDREN**

While the children who are the subject of litigation may appear at the courthouse, it is the policy of the court not to have any subject child in the courtroom without the court's prior knowledge and consent. Children shall remain in the hallway or elsewhere in the care of a responsible person who is not a party to the matter. The court provides a no cost Children's Waiting Room with space available for children (ages 3-6) of parents/guardians doing business at the court. Call 594-1752 for more information.

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