CHAPTER 10

FAMILY LAW DEPARTMENT

10.01 LAW AND MOTION

A. Law and Motion Attorney and Self-Represented Calendars. There shall be a Law and Motion attorney-represented and self-represented calendar which shall be heard at the time and place set by the Court.

1. The court electronic bulletin board identifies the Judicial Officer assigned to hear the family law cases scheduled on Family Law and Motion calendars in Department 16 and 17. Unless otherwise assigned, all such cases are hereby assigned to be heard on odd number, even number assignment (last digit of case number). The odd numbered cases are assigned to the Family Law Judge in Department 16 and the even numbered cases are assigned to the Family Law Judge in Department 17.

2. Family Law Trials and Special Hearings: All cases set by a Family Law Judge for special hearing or trial are hereby assigned to that judge for said special hearing or trial. If, in the discretion of the Presiding Judge, the Supervising Family Law Judge, or a judicial delegate, exigent circumstances in the case require a hearing or trial when a Family Law Judge is unavailable (e.g., because of pressing custody issues) the hearing or trial may be otherwise scheduled. In such event, a judge shall be assigned to hear such special hearing or trial and the parties shall be promptly notified of the assignment.

3. Nothing herein shall be construed to prevent the assignment of a family law case to a judge for all purposes whenever in the discretion of the Presiding judge, the Supervising Family Law Judge, or a judicial delegate, one judge should hear the case for all purposes, such as in a particularly complex case.

4. Meet and Confer: The moving party and the responding party, or his/her attorney if represented, shall each contact the other and attempt to resolve the issues raised in the moving papers prior to the date set for hearing, unless to do so would violate a restraining order then in effect.

5. Continuances: The parties may, with good cause, stipulate once to a continuance for a reasonable amount of time. Any subsequent requests for continuances are subject to approval by the assigned Family Court Judge. All requests must be submitted at least a full 48 hours prior to the date of hearing. The request must indicate good cause for the continuance and state the position of the opposing party regarding the continuance as well as the requested date.

6. Matters filed in the Family Law Division are routinely assigned to judges and court commissioners. Except as provided in Code of Civil Procedure § 259(e) and Family Code § 4251(b), matters assigned to a court commissioner require that the parties stipulate to the commissioner hearing the matter. If a party refuses to stipulate to having a case heard by a commissioner, the commissioner may hear any temporary matter pursuant to Code of Civil Procedure § 259(e). A judge of the Superior Court will thereafter approve, reject, or modify the findings and conclusions of the commissioner. In the absence of the assigned judge or court commissioner, matters may be assigned

to a judge *pro tempore* acting as a temporary judge. Failure to stipulate to a judge *pro tempore* will result in the matter being continued to the next available calendar date.

(Adopted July 1, 2017; Amended January 1, 2019)

B. TIMELY FILING OF PAPERS

1. The timely filing of papers must conform to the Rules of Court and the Code of Civil Procedure. (Cal. Rules of Court, rules 3.1300; Code of Civ. Pro., §§ 1005 & 1013; Fam. Code, § 242). *(Amended January 1, 2006; Amended January 1, 2007; Amended July 1, 2012; Amended July 1, 2017)*

2. Orders Shortening Time. Orders shortening time should not be requested unless there is a hardship or emergency requiring prompt action. All requests must be accompanied by a written declaration establishing GOOD CAUSE. Notice of the request must be given to opposing counsel, if any, within twenty-four (24) hours, except for good cause. A declaration must be submitted stating the fact of notice or good cause for its absence.

3. Responsive and Reply Documents. Responsive and reply documents must be filed and served as follows:

   a. Request for Orders without temporary orders attached - at least nine (9) court days prior to the hearing for responsive declarations and five (5) court days prior to the hearing for reply documents. *(Amended January 1, 2006; Amended July 1, 2017).*

   b. Request for Orders with temporary orders attached – five (5) court days prior to the hearing for responsive declarations and two (2) court days prior to hearing for reply declarations.

   c. Orders shortening time - The responsive and reply declarations must be filed and served as set forth in the order.

At the time of the hearing, the court may refuse to consider responsive or reply documents which are not filed and served within the time frames specified in this rule.

C. EX-PARTE APPLICATIONS

The timely filing of papers must conform to the California Rules of Court and Code of Civil Procedure as referenced in the authority stated herein. (California Rules of Court 5.151, 5.165, 5.167, 5.169; Code of Civil Procedure section 575.2)

D. SPECIAL SETTINGS

All matters requiring more than ten (10) minutes must be specially set. Calendaring of special sets shall be done by a family law bench officer. A request for a special set hearing must be calendared by a Request for Order or, if a matter is already set on the law and motion calendar, the request should be made at the time already scheduled for hearing. Advance notice should

be given to the court that a special set will be requested by written declaration if possible. Requests for special sets should not be made unless the matter is ready to be heard and should include a time estimate regarding the length of hearing requested. Continuances of special settings will not be granted except upon exceptional good cause.

E. USE OF DECLARATIONS

1. In all law and motion matters, declarations shall be submitted with pleadings. Testimony shall also be received at hearing or trial unless the court makes a finding that there is good cause to refuse to receive live testimony under Family Code section 217, as set forth in the California Rules of Court, rule 5.113. *(Amended January 1, 2007; Amended July 1, 2012)*

2. Evidence or Argument. Evidence or argument will be heard only on issues clearly raised in timely filed pleadings.

3. Review Hearing Declarations/Supplemental Declarations.

    a. If a matter is set for a review hearing, a declaration describing the current status of the matter shall be submitted by each party as set forth in the next paragraph. If no declaration is filed, the matter may be dropped at the discretion of the court.

    b. Declarations for review hearings must be filed and served no less than five (5) court days prior to the date set for review hearing.

    c. The court may decline to consider declarations or reply declarations which are not filed and received within the time frame specified in this rule.

F. ATTORNEY FEES AND EXPERT WITNESS FEES

Orders for attorney fees, costs or expert witness fees by one party from the other will not be deferred until the time of trial except upon agreement or a showing of GOOD CAUSE. It is the policy of the court to support each party's right to be adequately represented pending trial. No temporary award of attorney fees or costs shall be made without a showing of need and ability to pay, and until sufficient proof of each party's income has been filed with the court. (Fam.Code sec. 2030 et seq.; California Rules of Court, rule 5.427.)

G. TELEPHONE APPEARANCE IN FAMILY LAW ACTION

This rule applies to all family law cases, including domestic violence restraining order cases, except Title IV-D child support proceedings.

Telephone appearances by a party or an attorney for a party may be authorized for appearances at family law status conferences, family centered case resolution conferences, and other hearings, at the discretion of the court. The court may deny or grant a request to appear by telephone if the court determines that it is appropriate to do so in an individual case. A personal appearance is required for domestic violence restraining order hearings, evidentiary hearings, special set hearings, and contempt proceedings when witnesses are expected to be called and cross-examined.

Notice by Party: A party or attorney who wishes to appear by telephone at a family law proceeding must file and serve a Request to Appear by Telephone and Order Thereon (local form CI-139) at least 12 court days before the date set for the hearing or proceeding. Service on the opposing party must be made in time to give notice to the other party at least 12 court days in advance of the court date.

Objections: a party or attorney objecting to the Request for Telephone Appearance may file a pleading objecting to the telephone appearance, which must be filed and served at least 7 court days before the date set for the proceeding.

If approved to make a telephone appearance, teleconferencing is provided through Court Call Service, as set forth in Chapter 6, Local Rule 6.14, unless another method is authorized by the judicial officer.

If telephone appearance is granted, the court may change the date and/or time of the scheduled proceeding, in its discretion.

If at any time during a hearing or proceeding while any person is appearing by telephone, the court determines that a personal appearance is necessary, the court may continue the matter and require a personal appearance.

H. ELISORS

Where one of the parties fails to execute a document necessary to carry out a court order, the Clerk of the Superior Court or the Clerk's authorized designee may be appointed as an elisor to sign the document.

When applying for the appointment of an elisor, the application and proposed order must designate "The Clerk of the Superior Court, County of Monterey or the Clerk's Designee" as the elisor.

An application for appointment of an elisor shall be made by filing a Request for Order. The Request for Order shall have as an attachment, a sample copy of the document(s) to be signed by the elisor. The declaration supporting the application must include specific facts establishing the necessity for the appointment of an elisor.

(Adopted July 1, 2017)

10.02 SETTLEMENT CONFERENCES

A. MANDATORY V. NON-MANDATORY

All long cause (more than one (1) day in length) family law trials will be set for mandatory settlement conference by the court. Upon request of both parties and court order, short cause trials (one (1) day or less in length) shall be set for settlement conference. With agreement of counsel and advance permission of the court, litigants and/or their attorneys may attend settlement conferences telephonically. Arrangements shall be made at least five (5) court days in advance.

B. MEET AND CONFER

Counsel shall confer with opposing counsel, or opposing party if that party is unrepresented by counsel, no less than five (5) court days prior to the first date set for settlement conference. Counsel shall inform the court of all issues that can be determined by stipulation and those remaining for determination by the court in the settlement conference statement filed with the court. The settlement conference statement shall also state that the parties have complied with this rule. Non-compliance may result in the matter being dropped from calendar.

C. SETTLEMENT CONFERENCE STATEMENT

1. Service. Settlement conference statements shall be served and filed with the clerk of the court no later than five (5) court days preceding the settlement conference hearing. Failure to comply with this rule may result in an award of attorney fees or sanctions pursuant to California Rules of Court, rule 2.30, and Code of Civil Procedure section 575.2. *(Amended January 1, 2007; Amended July 1, 2012)*

2. Contents. The statement must set forth the following information as to the party filing, as well as to the opposing party, to the extent known or contended:

    a. Separate Property. List each item of separate property. If characterization of property is uncontested, list only its current market value. If characterization of property as separate is contested, list the date it was acquired, the basis upon which it is claimed that it is separate rather than community property, the current market value, the nature, extent and terms of payment of any encumbrance against the property and the manner in which title thereto is presently vested.

    b. Community Property. List each item of community property. If characterization of property is uncontested, list only its current market value and the nature, extent, and terms of payment of any encumbrance against the property. If characterization of property as community is contested, list the date it was acquired, the basis upon which it is claimed as community rather than separate property, the current market value, the nature, extent, and terms of payment of any encumbrance against the property and the manner in which title thereto is presently vested.

    c. 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 funds, the statement shall fully identify the policy or fund, its present cash value, and any terms or conditions imposed upon withdrawal of such values.

    d. 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, including dates, values, and dollar amounts, the transactions which form the basis upon which the tracing is to be proven.

    e. Current Obligations. Separately list all debts and obligations of the parties which constitute liabilities of the community and debts and obligations which are the separate liabilities of the respective parties. Specify the identity of the creditor, the date upon which the debt was incurred, the balance currently due thereon, the terms of payment and the security, if any, held by the creditor.

f. Proposal for Settlement. Set forth a proposal for settlement, including proposals regarding custody, visitation, division of the community property and liabilities, reimbursements, credits, payment of costs, and payment of attorney's fees. In addition, specify each party's contentions as to the amount and duration of child and spousal support. The purpose of this rule is to promote amicable settlement and thorough preparation of domestic relations matters. Full disclosure of all contested issues will aid the court in suggesting a fair settlement, ease tension between the parties and help to provide a more meaningful resolution. Counsel should confer prior to the time set for settlement conference or trial in order that, to the fullest extent possible, issues can be determined by stipulation and those remaining for determination by the court can be clearly delineated.

3. Declaration of Disclosure. A declaration regarding service of a preliminary declaration of disclosure shall be filed by each party verifying that there has been an exchange of information regarding assets, liabilities and income as required in Family Code sections 2100 – 2110.

4. Current Income and Expense Declaration. A CURRENT income and expense declaration shall be filed concurrently with the settlement conference statement. The parties' last three (3) month's earnings and deduction statements shall be attached. (California Rules of Court, rules 5.260(a)(3), 5.427(d)(1).)

5. Setting at the court's discretion. At the court's discretion, settlement conferences, case management conferences, and trial setting conferences may be set by the court.

(Adopted October 1, 1998; Amended July 1, 1999; Amended July 1, 2000; Amended July 1, 2001; Amended January 1, 2007; Amended subd. C July 1, 2012; Amended July 1, 2017)

10.03 CHILD AND SPOUSAL SUPPORT

A. CHILD SUPPORT

The amount of child support awarded will be determined according to the guidelines set forth in Family Code section 4050 et seq. The percentage of time each party spends with the child(ren) shall be calculated by counting the number of hours that the children spend with each party divided by the total hours for the time period in question.

1. Credit for Time Spent with Others. The parent who bears primary responsibility for the child, even during periods when the child is with others, will be attributed with the hourly credit for that time.

B. SPOUSAL SUPPORT

Temporary spousal support will ordinarily be determined in accordance with Santa Clara County's Temporary Spousal Support Guidelines; the court may order non-guideline temporary spousal support upon a showing of good cause. The court may order a party to pay for the permanent support of the other party in an amount, and for a period of time that the court determines just and reasonable, based upon the standard of living established during the marriage, taking into consideration the factors specified in Family Code section 4320.

C. FINANCIAL DECLARATIONS

Income and expense declarations must be filled out completely by both parties. The last three (3) months' earnings and deduction statements shall be attached. A current income and expense declaration must be on file any time there is a request for a monetary award from the other party. (California Rules of Court, rules 5.92, 5.260, 5.427.)

D. DEPARTMENT OF CHILD SUPPORT SERVICES

All cases in which the Department of Child Support Services is involved in establishing or enforcing child support shall be set on the Department of Child Support Services Calendar when appropriate.

(Adopted October 1, 1998; Amended July 1, 1999; Amended July 1, 2000; Amended July 1, 2003; Amended January 1, 2008; Retitled subd. C July 1, 2012; Amended July 1, 2013; Amended July 1, 2017)

10.04 OFFICE OF FAMILY LAW FACILITATOR / SELF HELP CENTER

The family law facilitator/Self Help Center manager shall perform the duties listed in Family Code section 10004, and may perform any and all of the duties listed in Family Code section 10005 as directed by the court.

(Adopted October 1, 1998; Amended July 1, 2000; Amended July 1, 2017)

10.05 REPEALED

(Adopted July 1, 1999; Co-parenting workshop - Repealed July 1, 2012)

10.06 MEDIATION OF CHILD CUSTODY AND VISITATION DISPUTES

A. PREAMBLE

Child custody and visitation mediation is a program administered by the Office of Family Court Services.

Mediation is provided in a number of different proceedings involving the custody and visitation of a minor. These proceedings include: 1) Dissolution and Legal Separation (Fam. Code, § 3170), 2) Stepparent Visitation (Fam. Code, §§ 3171, 3172, 3185); 3) Grandparent Visitation (Fam. Code, §§ 3171, 3176, 3185); 4) Domestic Violence (Fam. Code, §§ 3170, 3181, 3182); 5) Paternity (Fam. Code, §§ 3172, 7600 et seq.); 6) Child Support Enforcement (Fam. Code, § 17404); 7) Termination of Parental Rights (Fam. Code, § 7660) and 8) Guardianships (Prob. Code, § 1500 et seq.).

B. MANDATORY MEDIATION

Family Code sections 3170 and 3175 require that when it appears on the face of a petition or application or other pleading for an order or modification of an order that custody, temporary custody, or visitation rights are contested, the matter must be set for mediation of the contested issues prior to or concurrent with the setting of the matter for hearing. The purpose of mediation is the reduction of acrimony which may exist between the parties, the development of an

agreement assuring the child's close and continuing contact with both parents, and to effect a settlement of the issue of visitation rights of all parties that is in the best interests of the minor (Fam. Code, § 3161).

C. COST OF MEDIATION

There is no direct cost to either party for the use of the Family Court Services' Mediation Program. The program is paid for by a portion of the filing fee for dissolution actions and a portion of the cost of a marriage license. The parties are free to retain a mediator of their own choice who is not employed or contracted by the court and encouraged to attempt to resolve the dispute without court intervention. Mediation services provided by the court are limited and should be used only when there is an actual dispute that cannot be resolved by the parties themselves or with the assistance of their lawyers. The court will not pay for the services of an independent mediator or family counselor unless such services are provided through the court. Failure to reschedule or cancel timely as stated in 10.06 E.2. may result in the imposition of a monetary sanction.

D. TYPES OF MEDIATION

The court offers "Court Connected Mediation" (confidential mediation) and "Child Custody Recommending Counseling" (recommending mediation). The following sections set forth the general and special rules applicable to Child Custody Recommending Counseling.

E. GENERAL RULES

1. Referral of Cases to Mediation. Mediation services are only available where there is a case filed with the court. If there is no pending action (dissolution, paternity, visitation, guardianship, etc.), no mediation will be scheduled.

   In any case in which custody, temporary custody, or visitation is contested, the matter must be referred for mediation. The parties will be required to participate in a parent orientation in conjunction with mediation. There will be no final judicial determination of any contested custody or visitation issue until mediation has been completed.

2. How to Refer a Case to Mediation. Mediation referrals are made by contacting the Family Court Services Office either by phone or in person, at the following location:

   Family Court Services Office
   1200 Aguajito Rd.
   Monterey, CA 93940
   Monterey: (831) 647-5800 Extension 3009
   Salinas: (831) 775-5400 Extension 3009

   In order to accept a referral and schedule mediation, the following information must be provided:

   a. The case number and case name and the case number of any related cases (such as child support or domestic violence actions);

   b. Information concerning a current domestic violence restraining order, criminal protective order or any allegations of domestic violence between the parties;

c. The parties' names, their current addresses and daytime telephone numbers;

d. The name of a party's attorney if there is one; and

e. Any information that would affect scheduling, such as parties coming from out of town, or the need for an interpreter.

Rescheduling of a mediation appointment is discouraged. However, if there is a compelling reason, an appointment may be rescheduled if the parties contact the Family Court Services Office at least five (5) calendar days before the appointment date and rescheduling will not result in a hearing date being continued.

If the parties wish to cancel a mediation appointment because the dispute has been settled or if both sides agree to cancel the mediation for good reason, at least five (5) calendar days' notice must be given to the mediation service to avoid the possibility of sanctions.

The mediators shall review the court's file in the case prior to mediation to familiarize themselves with existing or temporary orders regarding custody and visitation. If there are other written agreements relating to custody or visitation which are not in the court file and which would assist the mediator, for example orders from another jurisdiction, copies should be delivered to the Family Court Services Office prior to the first session.

3. Mediation Where a Request for Order is pending. If mediation has not been completed nor an agreement reached prior to the date set for hearing or trial of the issue, the court will refer the case for mediation at the hearing. The court may make temporary custody or visitation orders, or continue existing orders pending completion of mediation. All temporary orders pending mediation are without prejudice and should not be cited as a basis for permanent orders. Before arranging mediation the parties or their attorneys should have discussed custody and visitation issues, or made reasonable attempts to do so, and concluded that the issues cannot be resolved by the parties themselves.

   If mediation has not been ordered by the court, a "Request for Mediation" intake form describing the nature of the dispute must be submitted by both parties at the time mediation is requested. Counsel will be allowed to phone in the request for mediation and provide the information required on the form on behalf of their clients.

   The court may ask the mediator to see the parties at the time of hearing (or within 48 hours if orders are requested ex parte) to negotiate temporary orders until further mediation can be scheduled to resolve any dispute related to permanent custody and visitation orders. Attorneys and parties are urged to arrange for mediation sufficiently in advance of the hearing to allow it to be completed prior to the date of the hearing.

   Family Court Services will attempt to accommodate parties who are coming from out of the county or state if given sufficient advance notice. If a case requires mediation and one of the parties resides out of the county or state, the mediation may be scheduled preceding or following the hearing so that disputed issues may be resolved without requiring the out-of-county or out-of-state parent to make additional trips to Monterey County. Parties are not to expect a mediation appointment on the day of the hearing without prior contact with the Family Court Services. Mediation by phone may be

requested in exceptional circumstances and may be scheduled at the discretion of the mediator or staff of Family Court Services, or upon court order. The party who requested the telephonic mediation shall bear the telephone charges.

4. Ex-Parte Requests for Mediation. Any ex parte requests for mediation orders shall be accompanied by a declaration establishing good cause for the ex parte request. The declaration shall detail the existence of a custody or visitation dispute and what efforts, if any, have been made to reach an agreement and state specific reasons why an order for mediation is sought prior to service and without notice.

   Specific appointment dates will not be given ex parte, as there is no certainty that a party will be timely served. If an ex parte application for mediation orders is approved, the applicant without counsel must deliver a completed Request for Mediation form to the Family Court Services Office or provide the required information by telephone. An attorney should contact Family Court Services as soon as service has been made to start the scheduling process.

5. Mediation with No Court Hearing. It is not necessary that a Request for Order for custody or visitation be set for hearing in order to refer a case to mediation. If no Request for Order is scheduled, there must be an actual dispute, the parties must have attempted to resolve the dispute themselves, and there must be an express agreement of both parties to enter into mediation. Even though no hearing is pending, there must be a petition or complaint filed with the court. (This section does not apply to Child Custody Recommending Counseling, which is only available by court order.) Parents may voluntarily attend mediation once every twelve (12) months without a court order or hearing set.

6. Resolution of Other Issues Pending Mediation of Child Custody and Visitation Disputes. The court may make orders on issues such as spousal support and child support pending the completion of mediation. Orders for temporary child support will generally be based upon the custody and visitation arrangement at the time of the hearing. Such orders will be made without prejudice to the rights of either party with respect to the issues of custody and visitation.

7. Child custody and visitation mediation services will be provided in child support actions when both parents are parties to the action.

8. There is a ten (10) day rescission period available to address any objections to an agreement reached in Court Connected Mediation. Child Custody Recommending Counseling reports are to be provided to the parties and/or their counsel ten (10) days in advance of hearing on the receipt of the report.

9. Non-English Speaking Participants. In the event one or both of the parties is not fluent in English, Family Court Services will attempt to provide a mediator or interpreter to conduct the mediation in the spoken language of both participants. If an interpreter is required, the cost of the interpreter shall be paid by the parties in advance. Family Court Services will schedule the interpreter. Sufficient advance notice (seven (7) days) must be provided to allow time to locate an interpreter.

10. Request for Change of Mediator. In the event there is a request by a participant in mediation for a change of mediator or a concern regarding a problem relating to the

mediation process, the participant shall notify the mediation clerk of the request to change of mediator.

11. Status Report. If the dispute between the parties is not resolved in mediation, the mediator will report to the court that no agreement has been reached. The mediator may recommend to the court that an investigation be ordered or psychological evaluation be obtained, note that a report to County Child Protective Services has been made, or recommend appointment of counsel for the child(ren). Further, the mediator may recommend that restraining orders be issued to protect the well-being of the child(ren). The mediator will not advise the court of the reasons why mediation was not successful unless the reason is that one or both of the parties: a) would not cooperate in the process; b) did not come to the appointments; or c) there is an allegation of abuse which was reported.

12. Recommendation for Appointment of Counsel for Child. The mediator or child custody recommending counselor may recommend that counsel be appointed to represent any minor child(ren) when it appears that the best interests of the minor child requires independent counsel (Fam. Code, § 3184). The reason for the recommendation of the mediator or the child custody recommending counselor shall be stated in general terms and shall not be binding on the court. It shall only be considered insofar as it alerts the court to the need to consider the appointment of counsel. Neither the mediator nor the child custody recommending counselor shall be called as a witness regarding the specific factual basis for the recommendation.

13. Extended or Ongoing Family Counseling. In certain cases, the mediator may recommend to the parties extended or ongoing family counseling. If the parties agree, provision for such counseling may be incorporated into the mediation agreement when the child is in need of such counseling, or the parties need extended or ongoing counseling in order to resolve the conflicts in their relationship which give rise to their disputes concerning child custody and visitation. Such extended counseling services will not be provided by Family Court Services or at court expense. The mediator may recommend one or more persons or agencies which the parties might contact to obtain counseling.

14. Child Abuse. Penal Code section 11166 requires that the mediator immediately report all instances of suspected child abuse and/or neglect to a child protective agency. The parties will be advised at the beginning of the first mediation session of the reporting responsibility.

(Amended January 1, 2019)

F. SPECIAL RULES

1. COURT CONNECTED MEDIATION (CONFIDENTIAL)

a. MEDIATION PROCEDURE

The mediator's role is as a neutral party whose primary concern is the satisfactory resolution of the dispute between the parties concerning custody and visitation in a manner which is in the best interests of the child(ren). The mediator is a problem solver and an advocate for the best interests of the child, not an adversary or trier of

fact. In Mediation, all communications between the parties and the mediator are confidential except: 1) information (which legally must be reported) that someone in the dispute is a danger to self or others; or 2) information incorporated into a written agreement between the parties. Confidentiality of mediation proceedings facilitates communications between the parties and the mediator without fear that such communications will be used in subsequent judicial proceedings. Mediator's files are considered confidential and not available to the parties or their attorneys by subpoena or otherwise. The mediator may not be called as a witness in a subsequent hearing, nor may the mediation service records be subpoenaed.

b. THE MEDIATION AGREEMENT

i. GENERAL

If the parties reach a parenting agreement as a result of mediation, their agreement will be written by the mediator immediately. The parties will be asked to review and sign the written version of the parenting agreement. Each party will receive a copy of the signed written parenting agreement before leaving, with a copy forwarded to his or her counsel of record. Copies of the "Parenting Agreement, Stipulation and Order" will be provided to the parties and their counsel of record upon filing. *(Amended January 1, 2006; Amended July 1, 2007; Amended July 1, 2008; Amended July 1, 2017)*

If an agreement is reached, a ten (10) day rescission period is given to permit parties an opportunity to consult with their attorneys regarding the agreement. If, during the ten (10) calendar days following the mediation agreement date, either party wishes to rescind the agreement, they must contact Family Court Services. Written notice of rescission must be given to Family Court Services as well as to opposing counsel.

If either party objects to the agreement, the mediation is reported to the court as one in which no agreement has been reached and the parties are free to pursue whatever legal remedies are available to them. Any agreement which has been rescinded may not be presented to the court at any subsequent hearing.

If a notice of rescission is not received within ten (10) calendar days of the date of the agreement, the agreement will be submitted to a judge for signature, at which point the agreement becomes a court order. Signed and file stamped copies of the agreement will then be mailed to the parties.

The agreement can be filed and made a court order before the expiration of the ten (10) day period either: a) by written stipulation of all parties; or b) by oral stipulation in open court on the record.

The agreement will not create, modify or extinguish any obligation of support. If either party believes that the custody/visitation agreement necessitates a modification of support, a separate order must be sought.

This agreement will not modify, rescind, or preclude existing or future protective orders. Any such orders must be separately modified as necessary before this agreement may be implemented.

ii. PARTIAL AGREEMENTS

In the event some of the disputed issues are resolved and some are left unresolved, the mediator will prepare an agreement covering the resolved issues. A status form appraising the court of the unresolved custody or visitation issues will also be filed. The ten (10) day rescission process described above applies to partial agreements.

2. CHILD CUSTODY RECOMMENDING COUNSELING

Child Custody Recommending Counseling may be scheduled only upon court order. Upon a finding of good cause, the court may direct the Child Custody Recommending Counselor to render a custody or visitation recommendation consistent with Family Code section 3183. Copies of the Child Custody Recommending Counselor's report to the court will be provided to the parties and counsel of record ten (10) days prior to the date of hearing on the review of the report.

If an agreement has been reached between the parties regarding the issues of custody and visitation, the Child Custody Recommending Counselor will prepare and forward to the court and the parties and/or their counsel a written summary of such agreement.

If there is no agreement or only partial agreement between the parties regarding issues of custody and/or visitation, the Child Custody Recommending Counselor will submit a recommendation to the court regarding custody and/or visitation with the minor child(ren) pursuant to Family Code section 3183. The Child Custody Recommending counselor's recommendation shall state the factual basis for the recommendation, which may include matters communicated to the Child Custody Recommending Counselor by the parties or the minor child(ren). The court may consider the written recommendation of the Child Custody Recommending Counselor and the basis for that recommendation in determining the issues before the court at the time of hearing.

All Child Custody Recommending Counseling sessions will be held in private. All communications from a party, a party's attorney, the minor child, the child's attorney and/or any collateral contacts or experts designated by any of the above individuals to the Child Custody Recommending Counselor shall be deemed official information within the meaning of Evidence Code 1040. *(Amended January 1, 2006; Amended July 1, 2007; Amended July 1, 2012)*

3. SEPARATE SESSIONS

In any case in which a domestic violence order (CLETS) has been issued or a criminal protective order is in place against one of the parties, the mediation shall be set and conducted as Child Custody Recommending Counseling. It shall be set and conducted as separate mediation if so ordered by the court or requested by the protected party.

In cases where there has been a history of domestic violence but no order has been issued, the mediation shall be conducted as separate mediation when requested by the party who has alleged under penalty of perjury that the violence has occurred.

The time and date of separate mediation sessions are confidential and are not disclosed to the other party. The parties are cautioned not to inform the other party of the time and date set.

The Child Custody Recommending counselor shall render a written recommendation to the court regarding visitation and custody issues taking into consideration the parameters set by any restraining orders. The protected party may be accompanied by a support person during the session. Until the court adopts the recommendation, the parties must follow any interim order regarding custody and visitation.

(Adopted October 1, 1998; Amended July 1, 1999; Amended July 1, 2000; Amended July 1, 2003; Amended January 1, 2005; Amended July 1, 2005; Amended July 1, 2007; Rule 10.06.E.2 (a) – (f) re-lettered, amended January 1, 2009; Amended subd. C, D, E1 E2(f), E3, E4-5, E8, E10, F, F2, and F3 July 1, 2012; Amended July 1, 2016; Amended July 1, 2017)

10.07 COURT-ORDERED FACT BASED INQUIRY, PSYCHOLOGICAL EVALUATION, AND CUSTODY EVALUATION

A court-ordered fact based inquiry refers to a neutral information gathering process designed to enable litigants to efficiently present information to the court on relevant issues. It is limited to information gathering only, and does not provide the litigants or the court with an analysis, opinion or recommendation as to a child's health, safety or welfare, or the best interests of a child.

A psychological evaluation refers to an evaluation prepared by a psychologist or psychiatrist, under Family Code sections 3110-3118 and Rules of Court 5.220-230. *(Amended January 1, 2007; Amended July 1, 2017)*

A custody evaluation refers to an evaluation prepared by a Child and Family Counselor or similar licensed therapist or counselor, under Family Code section 3110-3118 and Rules of Court 5.220-230. (*Amended January 1, 2007*; *Amended July 1, 2017*)

A. APPOINTMENT OF FACT BASED INQUIRY LIAISON OFFICER, PSYCHOLOGICAL EVALUATOR, OR CUSTODY EVALUATOR

In any case in which custody or visitation is in dispute, the court may appoint a fact based inquiry liaison officer, psychological evaluator or custody evaluator and order that information gathering or an evaluation be conducted if, in the opinion of the court, or upon the recommendation of a mediator, there is a need for such service.

When a fact based inquiry through Family Court Services is ordered, each party shall complete a written questionnaire within seven (7) days or as otherwise directed by the judge. The fee must be paid in full or a payment plan ordered by the court. Each party shall inform the liaison officer within 72 hours of any change of address or telephone number occurring during the pendency of a fact based inquiry. *(Amended January 1, 2006; Amended effective July 1, 2012)*

The court may appoint a person the court has determined possesses the necessary qualifications. Multiple examinations of the child by different examiners shall be avoided to the greatest degree possible.

When an evaluation is ordered, and before appointment as a court-appointed evaluator, the proposed evaluator shall, upon request, provide to the attorneys for the parties, or to the parties if they are unrepresented, the following information:

- a curriculum vitae;
- the names of at least three attorneys who have worked with the individual in connection with previous evaluations, or three mental health professionals who are familiar with the individual's work; and
- provide proof of meeting the requirements of Family Code § 3110-3118 and Rules of Court § 5.220-230 when applicable;
- payment for the evaluation shall be arranged directly with the evaluator.

(Amended effective January 1, 2007; Amended July 1, 2017)

B. CHALLENGES TO COURT-APPOINTED EVALUATOR

No peremptory challenge of a court-appointed evaluator shall be allowed.

C. WITHDRAWAL BY COURT-APPOINTED EVALUATOR

A court-appointed evaluator may seek to withdraw from a case. Such request shall be made as soon as possible after the evaluator is aware of a conflict or other reason that should cause the evaluator to seek to withdraw.

D. EX PARTE CONTACT PROHIBITED

No party or attorney for a party shall initiate contact with a court-appointed evaluator, orally or in writing, to discuss the merits of the case without giving the other party notice and an opportunity to be present or to receive a copy of a written communication. Nothing in this rule shall prohibit the court-appointed evaluator from contacting either party or attorney. (California Rules of Court, rule 5.235.)

E. CONTACT BETWEEN COURT-APPOINTED EVALUATOR AND MINOR CHILDREN

The Court relies on the judgment of the evaluator and other persons appointed, as a part of the evaluation, in making decisions as to whether children will be interviewed, under what circumstances children will be interviewed, and in justifying such decisions in a particular case. Except in extraordinary circumstances, including the potential for danger to the child, children will be informed that the information provided by the child will not be confidential. During the initial meeting, if any, the evaluator shall provide the child with an age-appropriate explanation of the evaluation process. A child seen by the evaluator with one parent will also be seen with the other parent. At the discretion of the evaluator, interviews with siblings may be separate. Unless ordered by the court, an evaluation shall not be based on an interview with only one parent.

F. COURT REPORT

The court order appointing the evaluator shall state the purpose and scope of the evaluation and the date the report shall be filed with the court. Generally, the court will order the report filed within sixty (60) calendar days from the date of appointment. The date for return of the report may be extended by order of the court or written agreement of the parties. The report shall be in writing and shall be distributed to the court, all counsel, and to the parties if they are unrepresented ten (10) calendar days prior to hearing. All written reports and recommendations of the court-appointed evaluator shall be conducted in accordance with and served upon the parties or attorneys consistent with the provisions of Family Code section 3111 and California Rules of Court 5.220. *(Amended effective January 1, 2007)*

G. ACCESS TO THE REPORT

Any written report or recommendation from the court-appointed evaluator or the person appointed by the court to render a report as a part of the evaluation shall be confidential and unavailable to any person except the court, the parties, their attorneys and any person to whom the court expressly grants access by written order made with prior notice to all parties. No person who has access to a report shall make copies of the report or disclose the contents of the report to any child.

H. GRIEVANCE PROCEDURE

Grievances raised in connection with court-ordered evaluations shall be made in writing, signed, under penalty of perjury, by the party filing the grievance, and addressed to the Presiding Judge. The penalty of perjury statement shall be made in the following format:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _____ Signature of Grievant: _____

The grievance must specify the issue which is being alleged as the basis for the grievance. The remedy requested must also be specified. Upon receipt of the grievance, the Presiding Judge shall initiate an internal court investigation. The court will determine whether there are witnesses, ascertain the facts of the allegation, notify the evaluator of the grievance, and solicit a response to the allegation in the grievance from the evaluator. The investigation shall be completed within 30 calendar days of the date the court received the written grievance. The court shall notify the grievant and the grievant' s attorney as to whether the grievance is sustained, not sustained or unfounded. The grievance and findings by the court shall be maintained in the court's Administrative Office, for a period of one year, from the date the Presiding Judge's findings are issued. At the end of the one year period, the grievance file shall be destroyed. The grievance file shall be maintained as a confidential record during and after the evaluation and shall not be made part of the court's case file. The file shall not be open to inspection by the attorneys or the parties, except upon court order.

(Adopted October 1, 1998; Amended July 1, 1999; Amended July 1, 2000; Amended January 1, 2001; Amended January 1, 2005; Amended July 1, 2005; Amended January 1, 2007; Amended 10.07, subd. A and repealed subd. (I)–(J) July 1, 2012, Amended July 1, 2015; Amended July 1, 2017)

10.08 DEPARTMENT OF CHILD SUPPORT SERVICES

CHAPTER 10

FAMILY LAW DEPARTMENT

A. APPEARANCES BY TELEPHONE

1. General Provisions

Requests for appearance by telephone and opposition to such requests shall be made in compliance with California Rules of Court, rule 5.324. Judicial Council form FL-679 must be used for requests. Judicial Council form MC-030 may be used for the declaration in opposition. *(Amended January 1, 2007; Renumbered July 1, 2010)*

B. CHILD SUPPORT ORDER ATTACHMENTS

All orders for child support must have as attachments:

1. Notice of Rights and Responsibilities Health Care Costs and Reimbursement Procedures (Judicial Council form FL-192);

2. Information Sheet on Changing a Child Support Order (Judicial Council form FL-192, side 2);

3. A computer generated support calculation (required in all cases where there is a child support order whether or not there is an agreement regarding support). If the parties do not agree upon a single calculation, each party may attach a computer generated calculation.

4. Notice of Right and Responsibilities, Child Care Costs and Reimbursement Procedures if the order provides for payment of a percentage or ratio of child care costs (Monterey County form to parallel the Medical Reimbursement form).

(Adopted January 1, 2005; Amended January 1, 2007; Section 10.08(D) repealed January 1, 2010; Section 10.08(A-1), (A-3), (A-4) repealed, (A-2) renumbered July 1, 2010; Renumbered from 10.08 C to 10.09 July 1, 2012)

CHAPTER 10

FAMILY LAW DEPARTMENT

10.09 FAMILY CENTERED CASE RESOLUTION

Parties seeking dissolution, nullity, legal separation, termination of domestic partnership, and establishment of paternity under the Uniform Parentage Act are subject to compliance with procedural milestones set forth in California Rules of Court, rule 5.83.

Upon the filing of any of the actions listed above, the court shall set a Status Conference to be held 180 days from the initial filing date, and issue a "Notice of Status Conference" (local form CI-135) to the Petitioner. A copy of this Notice must be served by the Petitioner on the Respondent with the Summons, Petition, and other required documents for service. Upon the initial filing, the clerk shall also provide the Petitioner with a copy of Judicial Council form FL-107-INFO (or local form CI-137 if the matter is a parentage case) and a listing of Local Resources (local form CI-138).

Each party must file and serve a completed "Status Conference Questionnaire" (local form CI-136) at least 30 days prior to any scheduled Status Conference date.

If a judgment has not been entered in the matter at the time of the first Status Conference, it shall be set for a second Status Conference 180 days after the first status conference. A Status Conference Questionnaire (local form CI-136) shall be served and filed at least 30 days prior to the second Status Conference. Court staff will provide litigants with a Status Conference Report detailing required actions and/or documents to be filed to bring the matter to judgment.

If the matter has not been finalized by entry of judgment at the time of the second Status Conference, the matter shall be set for a Case Resolution Conference before a Judicial Officer 180 days after the second Status Conference has been held. A Family Centered Case Resolution plan order shall be issued at the conclusion of the Conference, pursuant to California Rule of Court, rule 5.83.

(Adopted July 1, 2013, Amended July 1, 2015)

10.10 MISCELLANEOUS RULES

A. DUPLICATE FILING

Copies of previously filed pleadings or declarations should not be attached as exhibits to subsequent documents. Reference to the previous documents is sufficient.

B. CONFIDENTIAL RECORDS

Whether filed electronically or otherwise, it is the responsibility of the filing party to identify any documents that are considered confidential and to secure such documents when filed with the court. Such documents may include, but are not limited to, medical reports, HIV laboratory test results, psychological records, custody evaluation reports, and police reports. This rule pertains to any documents that are attached to a pleading and filed with the court. If such attachments are not submitted in a secured envelope pursuant to rule 10.10(F) or as a confidential document through the electronic service provider, the clerk of the court will not act to secure the documents and the documents will be considered as open and public.

C. PLEADING FOR ADVERSE PARTY

CHAPTER 10

FAMILY LAW DEPARTMENT

The practice in domestic relations proceedings whereby the petitioner's attorney prepares a pleading for the respondent is not favored. Unless good cause is shown (e.g., military service, party out of state, etc.), no uncontested civil matter shall be heard on answer or response, unless such instruments are prepared by the answering party or his counsel.

D. SANCTIONS

Failure to comply with these Local Rules of Court may result in an award of attorney fees, costs, or other sanctions pursuant to Code of Civil Procedure section 575.2.

E. DISMISSAL OF FAMILY LAW CASE ON COURT'S OWN MOTION

Absent good cause, a family law case may be dismissed, without prejudice, on the court's own noticed motion when:

1. The case is dropped from the trial calendar because the parties have reconciled; and

2. No further action is taken in the case within one-hundred-eighty (180) calendar days from the date the case is dropped from the trial calendar.

F. INSTRUCTIONS IN SECURING CONFIDENTIAL DOCUMENTS

If not electronically filed, any confidential documents shall be submitted for filing in a clasped envelope not smaller than seven (7) inches by ten (10) inches or larger than eight-and-a-half (8 ½) inches by eleven (11) inches in size. The envelope shall be attached to the accompanying document with the clasp facing up and at the bottom of the document to allow access for the court through the clasped end. A label shall be affixed to the envelope showing the case name, number and identity of the documents enclosed

G. COURT COMMUNICATION PROTOCOL FOR DOMESTIC VIOLENCE AND CHILD CUSTODY ORDERS

Court records shall be accessed as set forth in the following paragraph in order to determine if a Criminal Protective Order (CPO) exists involving the parties and affecting the custody or visitation of the children. Any Custody or Visitation Order (CVO) subsequently issued shall take into consideration the terms of any existing CPO and shall be drafted in a manner not inconsistent with the CPO.

The court records shall be accessed as follows:

1. Family Law, Probate and Juvenile: When there are allegations of domestic violence in the documents submitted to the court.

2. Civil Restraining Orders - Domestic Violence, Harassment, Elder Abuse and Workplace Violence: Prior to the issuance of a temporary restraining order and prior to the hearing on such order.

3. Mediation: Prior to every Separate Mediation and any time there are allegations of domestic violence in the file.

The Domestic Violence court shall make reasonable efforts to determine if a custody or visitation order exists involving the defendant. The court issuing the CPO may permit visitation pursuant to any Family Law, Probate or Juvenile Court order so long as such visitation is determined by the court to be consistent with the safety of the victim[s].

When a CPO exists, any CVO that permits contact between the defendant and the children shall provide for the safe exchange of the children. The CVO shall also specify the time, day, place and manner of transfer of the child pursuant to FC3100 so as to limit the child's exposure to potential domestic conflict or violence and to ensure the safety of all family members. The safety of the parties and their children shall be the court's paramount concern.

This rule does not prevent a CVO from containing more restrictive terms than the CPO.

H. COMPLAINTS CONCERNING FAMILY COURT SERVICES MEDIATORS AND LIAISONS.

Complaints not in connection with court-ordered evaluations, must be made in writing and addressed to the Court Executive Officer, Superior Court of California, County of Monterey, 240 Church Street, Salinas, CA 93901. The Court Executive Officer or designee, will conduct an investigation and will respond to the written complaint within thirty (30) days. The complainant may appeal the response to the Presiding Judge. The Presiding Judge will rule on the appeal within thirty (30) days.

I. LIMITED LEGAL REPRESENTATION

If representation by an attorney is limited in scope, the Notice of Limited Scope Representation form (Judicial Council form FL-950) specifying the scope of the representation shall be filed with the court. All communications and notices relating to the limited purposes shall be made or sent to all attorneys of record, self-represented parties, and the Department of Child Support Services. When the task specified in the Notice of Limited Scope Representation has been completed, the attorney shall file a Substitution of Attorney-Civil (Judicial Council form MC-050) or proceed pursuant to California Rules of Court, rule 5.425.

J. NON–CLETS ORDERS

The court will not issue or approve a stipulation by the parties for a non-CLETS restraining order.

(Adopted October 1, 1998; Amended July 1, 1999; Amended July 1, 2000; Amended July 1, 2001; Amended January 1, 2002; Amended January 1, 2004; Amended January 1, 2005; Amended January 1, 2007; Amended January 1, 2009; Amended January 1, 2010; Amended July 1, 2012; Amended July 1, 2013; Amended July 1, 2014,; Amended July 1, 2015; Amended July 1, 2016)