

Judicial Council of California • Administrative Office of the Courts

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INVITATION TO COMMENT

SPR11-36

Title

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

Proposed by

Family and Juvenile Law Advisory Committee

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

Proposed Rules, Forms, Standards, or Statutes

Adopt rules 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.51, 5.52, 5.54, 5.60, 5.62, 5.63, 5.66, 5.68, 5.72, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.250, 5.260, 5.380, 5.381, 5.386, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, 5.430, and 5.440; amend rules 5.1, 5.240, 5.242, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487; and repeal rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.35, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180

Elkins Family Law Implementation Task Force

Hon. Laurie D. Zelon, Chair

Action Requested

Review and submit comments by June 30, 2011

Proposed Effective Date

January 1, 2012

Contact

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Summary

This proposal would restructure and reorganize the family law divisions of the California Rules of Court to address new statutory requirements, reflect current best practices from across the state, fill in gaps in the rules, attempt to make the rules easier for self-represented litigants to understand, and incorporate the final recommendations of the Elkins Family Law Task Force.

Discussion

The Judicial Council established the Elkins Family Law Task Force in response to the decision in *Elkins v. Superior Court* (2007) 41 Cal.4th 1337. The task force was charged

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

with studying and proposing measures to assist trial courts in achieving efficiency and fairness in marital dissolution proceedings and to ensure access to justice for family law litigants.

The formation of the task force followed a suggestion by the California Supreme Court in *Elkins* that the Judicial Council establish a task force to:

study and propose measures to assist trial courts in achieving efficiency and fairness in marital dissolution proceedings and to ensure access to justice for litigants, many of whom are self-represented. Such a task force might wish to consider proposals for adoption of new rules of court establishing statewide rules of practice and procedure for fair and expeditious proceedings in family law, from the initiation of an action to postjudgment motions. Special care might be taken to accommodate self-represented litigants. Proposed rules could be written in a manner easy for laypersons to follow, be economical to comply with, and ensure that a litigant be afforded a satisfactory opportunity to present his or her case to the court.¹

The Elkins Family Law Task Force *Final Report and Recommendations* (Final Report) which was accepted by the Judicial Council on April 23, 2010, contained recommendations to create a more comprehensive set of statewide family law rules of court.²

The task force recommended at page 32 of the Final Report that:

family law rules be revised to be more comprehensive in order to provide greater statewide uniformity in family law procedures. The rules should incorporate best practices from local courts that lend themselves to statewide implementation. Examples of matters that should be covered by statewide rules include pleadings, ex parte requests, declarations and evidentiary objections, financial disclosures, case management, discovery, sanctions, pre-trial preparation, settlement conference and trial, dismissals, preparation and processing of orders and judgments, meet-and-confer requirements, continuances, and attorney fees and costs. The rules should be written in plain language and organized logically.

Structure of the proposal

Chapter summaries.

¹ *Elkins v. Superior Court* (2007) 41 Cal.4th 1337, 1369.

² The Final Report of the Task Force may be found at <http://www.courts.ca.gov/xbcr/cc/elkins-finalreport.pdf>

The rules in the proposal are addressed chapter by chapter. Each chapter summary will indicate whether the rules are mandated by statute or recommended by the Elkins Family Law Task Force and the Family and Juvenile Law Advisory Committee (advisory groups). The chapter summaries will also highlight specific rules on which the advisory groups seek comment.

Rules outline.

Following the chapter summaries is an outline showing the overall layout of the proposed family law rules of court. The outline shows the new rule numbers and titles for all rules in divisions 1 and 2 of title 5 of the California Rules of Court. The proposal does not include changes to division 3, Juvenile Rules of Court.

Conversion tables.

Following the rules outline are two conversion tables. One table lists the proposed new rule numbers and the corresponding existing rule numbers. The other table lists the existing rules and any corresponding new rule numbers.

Proposed family law rules.

Next is the comprehensive set of proposed new rules of court with underlined text. This section contains proposed new rules, amended rules, and renumbered rules that have been organized into distinct chapters. Drafters' notes also follow certain rules to identify renumbered existing rules. The drafters' notes are included only to assist commentators in reviewing the accompanying rule; the notes would not be included in the rule's final publication.

When reviewing the comprehensive set of proposed rules, commentators should note that some rules are being circulated separately for comment, as they propose revisions to or new Judicial Council forms. Drafters' notes will also identify such rules and provide the title of the proposal to help commentators accurately submit their comments on those proposals.

Rules proposed to be repealed and renumbered.

Following the proposed new set of rules are the rules that would be repealed and renumbered. The content of the rules in this section is stricken to indicate that they would be repealed. For purposes of this proposal, drafters' notes are included after each stricken rule to specify its proposed new number.

Division 1 Rules—Chapter summaries

Chapter 1.

This chapter would reorganize and renumber many existing rules of court relating to the application of rules and laws and the use of forms. Also, to implement the recommendations of the *Elkins Family Law Task Force Final Report and Recommendations* (Elkins recommendations), the advisory groups propose new rules and seek comment on rule 5.4, Local rules and forms; rule 5.9, Appearance by telephone; rule 5.12, Discovery motions; and rule 5.14, Sanctions for rules violations in family law cases.

Chapter 2.

The rules in this chapter are existing rules relating to the designation and joinder of parties. The rules in this chapter would be reorganized and renumbered without substantive changes.

Chapter 3.

The proposed rules in this chapter are all new and relate to filing fees and fee waivers. These rules would incorporate civil rules that are applicable to family law proceedings and provide, in rule 5.43, a statewide process to address the handling of family cases following the voiding of paperwork in fee waiver denials.

Chapter 4.

The proposed chapter would provide rules about starting and responding to a family law case and service of papers. Some proposed rules would also help to implement Elkins recommendations regarding declarations of disclosure and service of summons by publication or posting. Others in this chapter are existing rules being reorganized and revised without substantive changes (i.e., appearance by respondent, motion to quash proceeding, pleadings and amended pleadings, domestic partnerships, and summary dissolutions) on which the advisory groups do not specifically seek comment. With respect to proposed rule 5.51, Mandatory information packet, commentators may review the form referenced in the rule (form FL-107) in the companion Invitation to Comment proposal titled “Family Law: Information Sheet.”

Chapter 5.

Although the one proposed new rule 5.83 in this chapter is included in this proposal, commentators who wish to provide comments on rule 5.83. Family law case resolution/management and time standards for cases filed under the Family Code, should reply to the companion Invitation to Comment proposal titled “Family and Juvenile Rules: Family-Centered Case Management Rule and Forms.”

Chapter 6.

The advisory groups seek comment on the rules in this chapter on requests for orders. However, to comment specifically on rule 5.92, commentators should reply to the companion Invitation to Comment proposal titled “Family Law: Request for Order in Lieu of Notice of Motion or Order to Show Cause and Witness List for Use in Family Law Proceedings.”

Commentators should also note that rules 5.111 and 5.113 were circulated for public comment from December 2010 to January 2011, as rules 5.118(f) and 5.119 in the proposal titled “Family Law: Live Testimony at Hearings and Declarations.” These proposed rules will be recommended to the Judicial Council for adoption at the council’s April 29, 2011, meeting. In this proposal, minor changes are recommended to the title of rule 5.111 to clarify that the rule also applies to a response to a request for order application.

Chapter 7.

The advisory groups propose all new rules relating to requests for emergency orders and invite comments on all rules in this chapter.

Chapter 8.

The rules in this chapter relate to child custody mediation, investigations and evaluations, minor’s counsel, and ex part communications in child custody proceedings. The advisory groups specifically seek comment on proposed amendments to rule 5.240 regarding minor’s counsel and proposed new rule 5.250 regarding children’s participation and testimony in child custody proceedings. Because the advisory groups propose no changes to rules 5.210, 5.215, 5.220, 5.225, 5.230, 5.235, and 5.241, the text of these rules is not included in this proposal.

In rule 5.240, item (d)(4) would be added to implement the Elkins recommendation that courts annually review whether counsel appointed to represent a child continues to meet the appointment requirements of the family law rules of court. Also, the term “attorney” would be replaced by “counsel” where it appears in the rule.

Effective January 1, 2012, Assembly Bill 1050 requires the Judicial Council to promulgate a rule establishing procedures for the examination of child witnesses. AB 1050 requires that the rule must also include guidelines on methods other than direct testimony for obtaining information or other input from children regarding custody or visitation. Proposed new rule 5.250, “Children’s participation in and testimony in family court proceedings,” sets forth procedures for such examination and provides guidelines for children’s participation in family court proceedings. The proposal also reflects the Elkins recommendations.

Commentators should note that changes to rule 5.242 are included in this proposal only for context. To provide comments to rule 5.242, commentators should reply to the companion Invitation to Comment proposal titled “Family Law: Counsel Appointed to Represent a Child in Family Law.”

Chapter 9.

The advisory groups invite comment on rule 5.260, “General provisions regarding support cases.” The advisory groups propose no changes to the existing rule 5.275, which will be placed in this chapter without change to rule number or content. Therefore, the text of rule 5.275 is not included in the proposal.

Chapter 10.

This chapter relates to governmental child support cases. Although restructured under chapter 10, rules 5.300–5.375 would maintain their existing content and numbering. Therefore, the advisory groups do not seek comment on these rules.

Chapter 11.

This chapter includes three proposed new rules relating to domestic violence cases. Rules 5.380, 5.381, and 5.386 are included in this proposal only for context.

Commentators who wish to provide comments on rule 5.380, Modification of child custody, visitation, and support orders in Domestic Violence Prevention Act cases, and rule 5.381. Stipulated judgment of parentage in Domestic Violence Prevention Act cases should reply to the companion proposals respectively titled “Agreed Judgment of Parentage in DVPA Cases” and “Domestic Violence: Family Law – Stipulated Judgment of Parentage in Domestic Violence Prevention Act Cases.”

Commentators who wish to provide comments on proposed new rule 5.386 should read and reply to the proposal titled “Filing Tribal Court Protective Orders.”

Chapter 12.

The rules in this chapter pertain to bifurcated issues and interlocutory appeals. In this chapter, the advisory groups propose combining existing rule 5.126, Alternate date of valuation and rule 5.175, Bifurcation of issues and renumbering them as part of rule 5.390. The text of existing rule 5.175 would be changed to reflect other potentially bifurcated issues in a family law proceeding, such as termination of the status of a marriage or domestic partnership, attorney fees and costs, and other matters identified in proposed rule 5.390 (b)(7)–(13).

The advisory groups propose no substantive changes to the other rule in the chapter relating to interlocutory appeals. Therefore, the text of the rule is not included in the proposal.

Chapter 13.

Two proposed new rules relate to trials and long-cause hearings. Rule 5.393 includes the Elkins recommendation that the Judicial Council adopt a rule of court requiring that long-cause hearings and trials that cannot be completed in one day must, absent a finding of good cause, be continued to the next day routinely designated by the court for trials. Rule 5.394 would provide a standard for the contents of briefs for trials and long-cause hearings.

Chapter 14.

Of the 8 rules proposed for placement in this chapter, 3 are new: 5.405, 5.407, and 5.409. Commentators who wish to provide comments on these rules should reply to the proposal titled “Family Law: Default and Uncontested Judgment Checklist and Related Rules and Forms,” which is being circulated during this comment period.

Chapter 15.

The advisory groups seek comment on proposed rule 5.420, “Domestic violence protocol for court-connected settlement services providers.” The Elkins recommendations advised that litigants should have access to a range of settlement service options. The report also noted the need to ensure that such services are provided safely and effectively, especially given the number of family law cases that may involve domestic violence. Existing rule 5.215 provides guidance to family court services on handling court-connected child custody mediation cases where domestic violence may be an issue. Proposed rule 5.420

would provide similar guidance to those providing settlement services involving issues other than child custody.

Chapter 16.

Proposed rule 5.425, Limited scope representation; application of rules, would combine and amend existing rules 5.70 and 5.71. Proposed rule 5.427 relates to attorney fees and costs. Although included in the proposal for context, commentators who wish to provide comments on rule 5.427 should reply to the companion Invitation to Comment proposal titled “Family Law: Attorney Fees and Costs.”

Chapter 17.

Existing rule 5.35, Minimum standards for the Office of the Family Law Facilitator, would be renumbered as rule 5.430 without change to content. No comment is solicited on this rule, therefore, the text of the rule is not included with this proposal.

Chapter 18.

In this chapter, the advisory groups seek comment on rule 5.440, which is a new rule about related cases. No comment is solicited on rule 5.445, which is simply being renumbered from rule 5.450 and included in this chapter.

Division 2 Rules - Chapter summaries

Chapters 1 and 2.

The rules in these chapters are applicable to family and juvenile proceedings. The text of the rules is not included with this proposal as the advisory groups propose no substantive changes to them. However, the advisory groups propose minor amendments to the rules in this section to delete the statutory references in the titles and subheadings so as to make them consistent with the formatting of family law rules.

RULES OUTLINE
CALIFORNIA RULES OF COURT
FAMILY LAW RULES (5.1-5.487)

Division 1. Family Rules

Chapter 1. General Provisions

Article 1. General Provisions

Rule 5.1. Division title; application of rules and laws

Rule 5.4. Local rules and forms; preemption of local rules

Article 2. Use of Forms

Rule 5.7. Use of forms

Article 3. Appearance by Telephone

Rule 5.9. Appearance by telephone

Article 4. Discovery

Rule 5.12. Discovery motions

Article 5. Sanctions

Rule 5.14. Sanctions for rules violations in family law cases

Chapter 2. Parties and Joinder of Parties

Article 1. Parties to Proceedings

Rule 5.16. Designation of parties

Rule 5.17. Other causes of action

Rule 5.18. Injunctive relief and reservation of jurisdiction

Article 2. Joinder of Parties

Rule 5.24. Joinder of persons claiming interest

Article 3. Joinder of Employee Pension Benefit Plan

Rule 5.29. Joinder of employee pension benefit plan

Chapter 3. Filing Fees and Fee Waivers

Article 1. Filing Fees and fee waivers

Rule 5.40. Filing Fees

Rule 5.41. Waiver of fees and costs

Article 2. Special Procedures

Rule 5.43. Fee waiver denial; voided actions; dismissal by clerk

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

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

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

Article 1. Summonses, Notices, and Declarations

Rule 5.50. Papers issued by the court

Rule 5.51. Mandatory information packet

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

Rule 5.54. Preliminary declarations of disclosure; time for service

Article 2. Initial Pleadings

Rule 5.60. Petition or complaint

Rule 5.62. Appearance by respondent or defendant

Rule 5.63. Motion to quash proceeding or responsive relief

Article 3. Time for Service of Papers

Rule 5.66. Proof of service; deadlines

Article 4. Manner of Service

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

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

Article 5. Pleadings and Amended Pleadings

Rule 5.74. Pleadings and amended pleadings

Article 6. Specific Proceedings

Rule 5.76. Domestic partnerships

Rule 5.77. Summary dissolution

Chapter 5. Family-Centered Case Resolution Plans

Rule 5.83. Family law case resolution /management and time standards for cases filed under the Family Code

Chapter 6. Request for Orders

Article 1. General Provisions

Rule 5.90. Format of papers

Rule 5.91. Individual restraining order

Article 2. Filing and Service

Rule 5.92. Application for order; response

Rule 5.94. Time for filing and service of request for order

Rule 5.96. Place and manner of filing

Article 3. Meet and Confer Conferences

Rule 5.98. Meet and confer requirements; document exchange

Article 4. Evidence at Hearings

Rule 5.111. Declarations supporting applications for order

Rule 5.112.1. Declaration page limitation; exemptions

Rule 5.113. Live testimony law hearings

Rule 5.115. Judicial notice

Article 5. Reporting and Preparation of Order After Hearing

Rule 5.123. Reporting of hearing proceeding

Rule 5.125. Preparation and submission of order after hearing

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

Article 1. Request for Emergency Orders

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

Article 2. Notice, Service, Appearance

Rule 5.165. Requirements for notice; method

Rule 5.167. Service of application; temporary emergency orders

Rule 5.169. Personal appearance at hearing for temporary emergency orders

Chapter 8. Child Custody and Parenting Time Proceedings

Article 1. Child Custody Mediation

Rule 5.210. Court-connected child custody mediation

Rule 5.215. Domestic violence protocol for Family Court Services

Article 2. Child Custody Investigations and Evaluations

Rule 5.220. Court-ordered child custody evaluations

Rule 5.225. Appointment requirements for child custody evaluators

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

Article 3. Ex Parte Communications in Child Custody Proceedings

Rule 5.235. Ex parte communication in child custody proceedings

Article 4. Counsel Appointed to Represent a Child

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

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

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

Article 5. Children's Participation in Family Court

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

Chapter 9. Child, Spousal, and Domestic Partner Support

Article 1. General Provisions

Rule 5.260. General provisions regarding support cases

Article 2. Certification of Statewide Uniform Guideline Support Calculators

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

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

Rule 5.300. Purpose, authority, and definitions

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

Rule 5.310. Use of existing family law forms

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

Rule 5.315. Memorandum of points and authorities

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

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

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

Rule 5.330. Procedures for child support case registry form

Rule 5.335. Procedures for hearings on interstate income withholding orders

Rule 5.340. Judicial education for child support commissioners

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

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

Rule 5.360. Appearance by local child support agency

Rule 5.365. Procedure for consolidation of child support orders

Rule 5.370. Party designation in interstate and intrastate cases

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

Chapter 11. Domestic Violence Cases

Article 1. Domestic Violence Prevention Act Cases

Rule 5.380. Modification of child custody, visitation and Support Orders in Domestic Violence Prevention Act Cases

Rule 5.381. Stipulated Judgment of Parentage in Domestic Violence Prevention Act cases

Article 2. Tribal Court Protective Orders

Rule 5.386. Procedures for filing a tribal court protective order

Chapter 12. Separate Trial (Bifurcation) and Interlocutory Appeals

Article 1. Separate Trials

Rule 5.390. Bifurcation of issues

Article 2. Interlocutory Appeals

Rule 5.392. Interlocutory appeals

Chapter 13. Trials and Long-Cause Hearings

Rule 5.393. Trial brief

Rule 5.394. Setting trials and long-cause hearings

Chapter 14. Default Proceedings and Judgments

Rule 5.401. Default

Rule 5.402. Request for default; forms

Rule 5.405. Judgment checklists

Rule 5.407. Review of default and uncontested judgment documents

Rule 5.409. Default and uncontested judgment hearings

Rule 5.411. Stipulation for judgment

Rule 5.413. Notice of entry of judgment

Rule 5.415. Completion of notice of entry of judgment

Chapter 15. Settlement Services

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

Chapter 16. Limited Scope Representation; Attorney Fees and Costs

Article 1. Limited Scope Representation

Rule 5.425. Limited scope representation; application of rules

Article 2. Attorney Fees and Costs

Rule 5.427. Attorney fees and costs

Chapter 17. Family Law Facilitator

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

Chapter 18. Court Coordination Rules

Rule 5.440. Related cases

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

Division 2. Rules Applicable in Family and Juvenile Proceedings

Chapter 1. Contact and Coordination

Rule 5.451. Contact after adoption agreement

Rule 5.460. Request for sibling contact information

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

Chapter 2. Indian Child Welfare Act

Rule 5.480. Application

Rule 5.481. Inquiry and notice

Rule 5.482. Proceedings after notice

Rule 5.483. Transfer of case

Rule 5.484. Placement of an Indian child

Rule 5.485. Termination of parental rights

Rule 5.486. Petition to invalidate orders

Rule 5.487. Adoption record keeping

California Rules of Court Reorganization
(From new number to former number)

Title 5. Family and Juvenile Rules—Divisions 1& 2

New Rule Number	Old Rule Number	Title
		Division 1. Family Rules
		Chapter 1. General Provisions
		Article 1. General Provisions
5.1	5.1, 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.140	<u>Division title, application of rules and laws</u>
5.4	New	<u>Preemption; local rules and forms</u>
		Article 2. Use of Forms
5.7	5.25, 5.26, 5.27	<u>Use of forms</u>
		Article 3. Appearance by Telephone
5.9	New	<u>Appearance by telephone</u>
		Article 5. Discovery
5.12	New	<u>Discovery motions</u>
		Article 6. Sanctions
5.14	New	<u>Sanctions for rule violations in family law cases</u>
		Chapter 2. Parties and Joinder of Parties
		Article 1. Parties to Proceedings
5.16	5.100, 5.102	<u>Designation of parties</u>
5.17	5.104	<u>Other causes of action</u>
5.18	5.106	<u>Injunctive relief and reservation of jurisdiction</u>
		Article 2. Joinder of Parties
5.24	5.150, 5.152, 5.154, 5.156, 5.158, 5.160	<u>Joinder of persons claiming interest</u>
		Article 3. Joinder of Employee Pension Benefit Plan
5.29	5.162	<u>Joinder of employee pension benefit plan</u>
		Chapter 3. Filing Fees and Fee Waivers
		Article 1. Filing Fees and Fee Waivers
5.40	New	<u>Filing Fees</u>
5.41	New	<u>Waiver of fees and costs</u>
		Article 2. Special Procedures
5.43	New	<u>Fee Waiver denials; voided actions; dismissal by clerk</u>
5.45	New	<u>Repayment of waived court fees and costs in support actions</u>
5.46	New	<u>Waiver of fees and costs —Supreme Court or Court of Appeal</u>

		<u>Chapter 4. Starting and Responding to a Family Law Case; Service of Papers</u>
		<u>Article 1. Summonses, Notices, and Declarations</u>
5.50	5.110	<u>Papers issued by the court</u>
5.51	New	<u>Mandatory information packet</u>
5.52	New	<u>Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)</u>
5.54	New	<u>Preliminary declaration of disclosure; time for service</u>
		<u>Article 2. Initial Pleadings</u>
5.60	New and includes 5.114	<u>Petition or complaint; alternative relief</u>
5.62	5.120	<u>Appearance by respondent or defendant</u>
5.63	5.121	<u>Motion to quash proceeding or responsive relief</u>
		<u>Article 3. Time for Service of Papers</u>
5.66	New	<u>Proof of service; deadlines</u>
		<u>Article 4. Manner of Service</u>
5.68	New and includes 5.112	<u>Manner of service of summons and petition; response; jurisdiction</u>
5.72	New	<u>Court order for service of summons by publication or posting when respondent's address is unknown</u>
		<u>Article 5. Pleadings and Amended Pleadings</u>
5.74	5.108	<u>Pleadings and amended pleadings</u>
		<u>Article 6. Specific Proceedings</u>
5.76	5.28	<u>Domestic partnerships</u>
5.77	5.130	<u>Summary dissolution</u>
		<u>Chapter 5. Family-Centered Case Resolution Plans</u>
5.83	New	<u>Family law case resolution/ management and time standards for cases filed under the Family Code</u>
		<u>Chapter 6. Request for Orders</u>
		<u>Article 1. General Provisions</u>
5.90	New	<u>Format of papers</u>
5.91	5.110(b)	<u>Individual restraining order</u>
		<u>Article 2. Filing and Service</u>
5.92	Includes subject matters covered by 5.118.	<u>Application for court order; response</u>
5.94	New	<u>Time for filing; service of request for hearing papers</u>
5.96	New	<u>Place and manner of filing; time of filing</u>
		<u>Article 3. Meet and Confer Conferences</u>
5.98	New	<u>Meet and confer requirements; document exchange</u>
		<u>Article 4. Evidence at Hearing</u>
5.111	New	<u>Declarations supporting application for court order</u>
5.112.1	New	<u>Declaration page limitation; exemptions</u>
5.113	New	<u>Live testimony</u>
5.115	New	<u>Judicial notice</u>

		<u>Article 5. Reporting and Preparation of Order After Hearing</u>
5.123	New	<u>Reporting of hearing proceedings</u>
5.125	New	<u>Preparation and submission of order after hearing</u>
		<u>Chapter 7. Request for Emergency Orders (Ex Parte Orders)</u>
		<u>Article 1. Applications</u>
5.151	New	<u>Application</u>
		<u>Article 2. Notice, Service, Appearance</u>
5.165	New	<u>Requirements for notice</u>
5.167	New	<u>Service of documents requesting emergency orders</u>
5.169	New	<u>Personal appearance at hearing for temporary emergency orders</u>
		<u>Chapter 8. Child Custody and Parenting Time Proceedings</u>
		<u>Article 1. Child Custody Mediation</u>
5.210	5.210	<u>Court-connected child custody mediation</u>
5.215	5.215	<u>Domestic violence protocol for Family Court Services</u>
		<u>Article 2. Child Custody Investigations and Evaluations</u>
5.220	5.220	<u>Court-ordered child custody evaluations</u>
5.225	5.225	<u>Appointment requirements for child custody evaluators</u>
5.230	5.230	<u>Domestic violence training standards for court-appointed child custody investigators and evaluators</u>
		<u>Article 3. Ex Parte Communication in Child Custody Proceedings</u>
5.235	5.235	<u>Ex parte communication in child custody proceedings</u>
		<u>Article 4. Counsel Appointed to Represent A Child</u>
5.240	5.240	<u>Appointment of counsel to represent a child in family law proceedings</u>
5.241	5.241	<u>Compensation of counsel appointed to represent a child in a family law proceeding</u>
5.242	5.242	<u>Qualifications, rights, and responsibilities of counsel appointed to represent a child in family law proceedings</u>
		<u>Article 5. Children’s Participation in Family Court Proceedings</u>
5.250	New	<u>Children’s participation and testimony in family court proceedings</u>
		<u>Chapter 9. Child, Spousal and Domestic Partner Support</u>
		<u>Article 1. General Provisions</u>
5.260	New and includes 5.128	<u>General provisions regarding support cases</u>
		<u>Article 2. Certification of Statewide Uniform Guideline Support Calculators</u>
5.275	5.275	<u>Standards for computer software to assist in determining support</u>

		<u>Chapter 10. Government Child Support Cases (Title IV-D support actions)</u>
5.300	5.300	Purpose, authority, and definitions
5.305	5.305	Hearing of matters by a judge under Family Code sections 4251(a) and 4252(b)(7)
5.310	5.310	Use of existing family law forms
5.311	5.311	Implementation of new and revised governmental forms by local child support agencies
5.315	5.315	Memorandum of points and authorities
5.320	5.320	Attorney of record in support actions under title IV-D of the Social Security Act
5.324	5.324	Telephone appearance in title IV-D hearings and conferences
5.325	5.325	Procedures for clerk's handling of combined summons and complaint
5.330	5.330	Procedures for child support case registry form
5.335	5.335	Procedures for hearings on interstate income withholding orders
5.340	5.340	Judicial education for child support commissioners
5.350	5.350	Procedures for hearings to set aside voluntary declarations of paternity when no previous action has been filed
5.355	5.355	Minimum standards of training for court clerk staff whose assignment includes title IV-D child support cases
5.360	5.360	Appearance by local child support agency
5.365	5.365	Procedure for consolidation of child support orders
5.370	5.370	Party designation in interstate and intrastate cases
5.375	5.375	Procedure for a support obligor to file a motion regarding mistaken identity
		<u>Chapter 11. Domestic Violence Cases</u>
		<u>Article 1. Domestic Violence Prevention Act Cases</u>
5.380	New	<u>Stipulated Judgment of Parentage in Domestic Violence Prevention Act cases</u>
5.381	New	<u>Modification of Child Custody, Visitation and Support orders in Domestic Violence Prevention Act cases</u>
		<u>Article 2. Tribal Court Protective Orders</u>
5.386	New	<u>Procedures for filing a tribal court protective order</u>

		<u>Chapter 12. Separate Trials (Bifurcation) and Interlocutory Appeals</u>
		<u>Article 1. Separate Trials</u>
5.390	5.126 and 5.175	Bifurcation of issues
		<u>Article 2. Interlocutory Appeals</u>
5.392	5.180	Interlocutory appeals
		<u>Chapter 13. Trials and Long-Cause Hearings</u>
5.393	New	<u>Setting trials and long-cause hearings</u>
5.394	New	<u>Trial or hearing brief</u>
		<u>Chapter 14. Default and Judgments</u>
5.401	5.122	Default
5.402	5.124	Request for default
5.405	New	<u>Judgment checklists</u>
5.407	New	<u>Review of default and uncontested judgment documents</u>
5.409	New	<u>Default and uncontested judgment hearings</u>
5.411	5.116	Stipulation for judgment
5.413	5.134	Notice of entry of judgment
5.415	5.136	Completion of notice of entry of judgment
		<u>Chapter 15. Settlement Services</u>
5.420	New	<u>Domestic violence protocol for court-connected settlement services providers</u>
		<u>Chapter 16. Limited Scope Representation; Attorney Fees and Costs</u>
		<u>Article 1. Limited Scope Representation</u>
5.425	5.70, 5.71	<u>Limited scope representation; application of rules</u>
		<u>Article 2. Attorney Fees and Costs</u>
5.427	New	<u>Attorney fees and costs</u>
		<u>Chapter 17. Family Law Facilitator</u>
5.430	5.35	Minimum standards for the Office of the Family Law Facilitator
		<u>Chapter 18. Court Coordination Rules</u>
5.440	New	<u>Related cases</u>
5.445	5.450	<u>Court communication protocol for domestic violence and child custody orders</u>
		<u>Division 2. Rules Applicable in Family and Juvenile Proceedings</u>
		Chapter 1. Contact and Coordination

5.451	5.400	Contact after adoption agreement
5.460	5.410	Request for sibling contact information under Family Code section 9205
5.475	5.475	Custody and visitation orders following termination of a juvenile court proceeding or probate court guardianship proceeding (Fam. Code, § 3105; Welf. & Inst. Code, § 362.4; Prob. Code, § 1602)
		Chapter 2. Indian Child Welfare Act
5.480	5.480	Application (Fam. Code, §§ 170, 177, 3041; Prob. Code, § 1459.5; Welf. & Inst. Code, §§ 224, 224.1)
5.481	5.481	Inquiry and notice (Fam. Code, §§ 177(a), 180; Prob. Code, §§ 1459.5(b), 1460.2; Welf. & Inst. Code, §§ 224.2, 224.3)
5.482	5.482	Proceedings after notice (Fam. Code, §§ 177(a), 180(d), (e); Prob. Code, §§ 1459.5(b), 1460.2(d), (e); Welf. & Inst. Code, §§ 224.2(c), (d); 25 U.S.C. § 1916(b))
5.483	5.483	Transfer of case (Fam. Code, § 177(a); Prob. Code, § 1459.5(b); Welf. & Inst. Code, § 305.5; Guidelines for State Courts; Indian Child Custody Proceedings, 44 Fed.Reg. 67584 (Nov. 26, 1979) Bureau of Indian Affairs Guideline C)
5.484	5.484	Placement of an Indian child (Fam. Code, § 177(a); Prob. Code, § 1459.5(b); Welf. & Inst. Code, §§ 361, 361.31, 361.7(e))
5.485	5.485	Termination of parental rights (Fam. Code, § 7892.5; Welf. & Inst. Code, §§ 361.7, 366.26(c)(2)(B))
5.486	5.486	Petition to invalidate orders (Fam. Code, § 175(e); Prob. Code, § 1459(e); Welf. & Inst. Code, § 224(e))
5.487	5.487	Rule 5.487. Adoption record keeping (Fam. Code, § 9208)

California Rules of Court Reorganization
(From former rule number to new rule number)

Title 5. Family and Juvenile Rule—Divisions 1 &2

Old Rule Number	New Rule Number	Title
		Division 1. Family Rules
		Chapter 1. General Provisions
5.1	5.1	Title <u>Division title, application of rules and laws</u>
5.5	5.1(a)	Division title
5.10	5.1(b)	Definitions and use of terms
5.15	5.1(f)	Extensions of time
5.20	5.1(c)	Application of rules
5.21	5.1(d)	General law applicable
5.22	5.1(e)	Other proceedings
5.25	5.7(a)	Use of forms
5.26	5.7(b)	Use of forms in nonfamily law proceedings
5.27	5.7(c)	Use of interstate forms
5.28	5.76	Domestic partnerships
5.35	5.430	Minimum standards for the Office of the Family Law Facilitator
5.70	5.425(e)	Non <u>disclosure of attorney assistance in preparation of court documents</u> <u>Limited scope representation; application of rules</u>
5.71	5.425(f)	Application to be relieved as counsel on completion of limited scope representation <u>Limited scope representation; application of rules</u>
		Chapter 2. Procedural Rules
5.100	5.16(a)	Designation of parties
5.102	5.16(b)	Designation of parties
5.104	5.17	Other causes of action
5.106	5.18	Injunctive relief and reservation of jurisdiction
5.108	5.74	Pleadings <u>and amended pleadings</u>
5.110	5.50	Summons; restraining order <u>Papers issued by the court</u>
5.112	5.68(c)	<u>Manner of service of summons and petition; response; jurisdiction, (c) Continuing jurisdiction</u>
5.114	5.60(b)	<u>Petition or complaint; alterntive relief, (c) Request for</u>

		<u>a</u> Alternative relief
5.116	5.411	Stipulation for judgment
5.118	Repealed and renumbered 5.92.	Application for court order; <u>response</u>
5.120	5.62	Appearance <u>by respondent or defendant</u>
5.121	5.63	Motion to quash proceeding or responsive relief
5.122	5.401	Default
5.124	5.402	Request for default; <u>forms</u>
5.126	5.390(c)	Alternate date of valuation
5.128	5.260(a)	<u>General provisions regarding support cases, (a) Income and expense declarations</u> Financial declaration
5.130	5.77	Summary dissolution
5.134	5.413	Notice of entry of judgment
5.136	5.415	Completion of notice of entry of judgment
5.140	5.1(g)	<u>Division title; application of rules and laws, (g) Implied procedures</u>
		Chapter 3. Joinder of Parties
5.150	5.24, subparagraph and 5.24(a)(1)	Joinder of persons claiming interest
5.152	5.24(b)	"Claimant" defined
5.154	5.24(c)	Persons who may seek joinder
5.156	5.24(d)	Form of joinder application
5.158	5.24(d)	Determination Court order on joinder
5.160	5.24(a)(2)-(3)	Pleading rules applicable
5.162	5.29	Joinder of employee pension benefit plan
		Chapter 4. Bifurcation and Appeals
5.175	5.390(a),(b),(d)	Bifurcation of issues
5.180	5.392	Interlocutory appeals
		Chapter 5. Child Custody
5.210	5.210	Court-connected child custody mediation
5.215	5.215	Domestic violence protocol for Family Court Services
5.220	5.220	Court-ordered child custody evaluations
5.225	5.225	Appointment requirements for child custody evaluators
5.230	5.230	Domestic violence training standards for court-appointed child custody investigators and evaluators
5.235	5.235	Ex parte communication in child custody proceedings
5.240	5.240	Appointment of counsel to represent a child in family law proceedings
5.241	5.241	Compensation of counsel appointed to represent a child in a

		family law proceeding
5.242	5.242	Qualifications, rights, and responsibilities of counsel appointed to represent a child in family law proceedings
		Chapter 6. Certification of Statewide Uniform Guideline Support Calculators
5.275	5.275	<u>Standards for computer software to assist in determining support</u>
		Chapter 7. Rules for Title IV-D Support Actions
5.300	5.300	Purpose, authority, and definitions
5.305	5.305	Hearing of matters by a judge under Family Code sections 4251(a) and 4252(b)(7)
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5.340	5.340	Judicial education for child support commissioners
5.350	5.350	Procedures for hearings to set aside voluntary declarations of paternity when no previous action has been filed
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5.375	5.375	Procedure for a support obligor to file a motion regarding mistaken identity
		Division 2. Rules Applicable in Family and Juvenile Proceedings

		Chapter 1. Contact and Coordination
5.400	5.451	Contact after adoption agreement
5.450	5.445	Court communication protocol for domestic violence and child custody orders
5.410	5.460	Request for sibling contact information under Family Code section 9205
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5.482	5.482	Proceedings after notice (Fam. Code, §§ 177(a), 180(d), (e); Prob. Code, §§ 1459.5(b), 1460.2(d), (e); Welf. & Inst. Code, §§ 224.2(e), (d); 25 U.S.C. § 1916(b))
5.483	5.483	Transfer of case (Fam. Code, § 177(a); Prob. Code, § 1459.5(b); Welf. & Inst. Code, § 305.5; Guidelines for State Courts; Indian Child Custody Proceedings, 44 Fed.Reg. 67584 (Nov. 26, 1979) Bureau of Indian Affairs Guideline C)
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5.485	5.485	Termination of parental rights (Fam. Code, § 7892.5; Welf. & Inst. Code, §§ 361.7, 366.26(e)(2)(B))
5.486	5.486	Petition to invalidate orders (Fam. Code, § 175(e); Prob. Code, § 1459(e); Welf. & Inst. Code, § 224(e))
5.487	5.487	Rule 5.487. Adoption record keeping (Fam. Code, § 9208)

Rules 5.4, 5.7, 5.9, 5.12, 5.14, 5.16, 5.17, 5.18, 5.24, 5.29, 5.40, 5.41, 5.43, 5.45, 5.46, 5.50, 5.51, 5.52, 5.54, 5.60, 5.62, 5.63, 5.66, 5.68, 5.72, 5.74, 5.76, 5.77, 5.90, 5.91, 5.94, 5.96, 5.98, 5.111, 5.112.1, 5.113, 5.115, 5.123, 5.125, 5.151, 5.165, 5.167, 5.169, 5.250, 5.260, 5.380, 5.381, 5.386, 5.390, 5.392, 5.393, 5.394, 5.401, 5.402, 5.411, 5.413, 5.415, 5.420, 5.425, 5.430, and 5.440 of the California Rules of Court would be adopted; rules 5.1, 5.240, 5.242, 5.375, 5.400, 5.410, 5.450, 5.475, 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, and 5.487 would be amended; and rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, 5.25, 5.26, 5.27, 5.28, 5.35, 5.70, 5.71, 5.100, 5.102, 5.104, 5.106, 5.108, 5.110, 5.112, 5.114, 5.116, 5.118, 5.120, 5.121, 5.122, 5.124, 5.126, 5.128, 5.130, 5.134, 5.136, 5.140, 5.150, 5.152, 5.154, 5.156, 5.158, 5.160, 5.162, 5.175, and 5.180 would be repealed, effective January 1, 2012, to read:

1 Title 5. Family and Juvenile Rules

2
3 Division 1. Family Rules

4
5 Chapter 1. General Provisions

6
7 Article 1. General Provisions

8
9 Rule 5.1. Division title; application of rules and laws

10
11 (a) Division title

12
13 The rules in this title and division may be referred to as the Family Rules.

14
15 (b) Definitions

16
17 As used in this division, unless the context or subject matter otherwise requires, the
18 following definitions apply:

19
20 (1) "Family Code" means that code enacted by chapter 162 of the Statutes of
21 1992 and any subsequent amendments to that code.

22
23 (2) "Proceeding" means a proceeding under the Family Code for dissolution of
24 marriage, nullity of marriage, legal separation, custody and support of minor
25 children, or actions under the Domestic Violence Prevention Act, the
26 Uniform Parentage Act, the Uniform Child Custody Jurisdiction and
27 Enforcement Act, or the Uniform Interstate Family Support Act; local child
28 support agency actions under the Family Code; and contempt proceedings
29 relating to family law or local child support agency actions.

30
31 (c) Application of rules

32
33 The rules in this division apply to every action and proceeding as to which the
34 Family Code applies and, unless these rules elsewhere explicitly make them
35 applicable, do not apply to any other action or proceeding.

1 (d) General law applicable

2
3 Except as otherwise provided in these rules, all provisions of law applicable to civil
4 actions generally apply to a proceeding under the Family Code if they would
5 otherwise apply to such proceeding without reference to this rule. To the extent that
6 these rules conflict with provisions in other statutes or rules, these rules prevail.
7

8 (e) Law applicable to other proceedings

9
10 In any action under the Family Code but not considered a “proceeding” as defined
11 in (b), all provisions of law applicable to civil actions generally apply. Such an
12 action must be commenced by filing an appropriate petition, and the respondent
13 must file an appropriate response within 30 days after service of the summons and
14 a copy of the petition.
15

16 (f) Extensions of time

17
18 The time within which any act is permitted or required to be done by a party under
19 these rules may be extended by the court upon such terms as may be just.
20

21 (g) Implied procedures

22
23 In the exercise of the court’s jurisdiction under the Family Code, if the course of
24 proceeding is not specifically indicated by statute or these rules, any suitable
25 process or mode of proceeding may be adopted by the court that is consistent with
26 the spirit of the Family Code and these rules.
27

28 **Drafters’ Notes:**

29 Existing rule 5.1 would be amended to combine various existing rules. Existing rule 5.1
30 would be renumbered as rule 5.1(a). Existing rule 5.5 would be renumbered as rule
31 5.1(a). Existing rule 5.10 would be renumbered as rule 5.1(b). Existing rule 5.20 would
32 be renumbered as rule 5.1(c). Existing rule 5.21 would be renumbered as 5.1(d).
33 Existing rule 5.22 would be renumbered as 5.5(e) and amended to change the title and
34 reference a new rule number. Existing rule 5.15 would be renumbered as 5.1(f). Existing
35 rule 5.140 would be renumbered as 5.1(g).
36

37 Rule 5.4. Preemption; local rules and forms

38
39 Local rules and forms must not conflict with Judicial Council rules and forms.
40

41 Article 2: Use of forms

42
43 Rule 5.7. Use of forms

44
45 (a) Status of family law and domestic violence forms
46

1 All forms adopted or approved by the Judicial Council for use in any proceeding
2 under the Family Code, including any form in the FL, ADOPT, DV, and FJ series,
3 are adopted as rules of court under the authority of Family Code section 211; article
4 VI, section 6 of the California Constitution; and other applicable law.

5
6 **(b) Forms in nonfamily law proceedings**

7
8 The forms specified by this division may be used, at the option of the party, in any
9 proceeding involving a financial obligation growing out of the relationship of
10 parent and child or husband and wife or domestic partners, to the extent they are
11 appropriate to that proceeding.

12
13 **(c) Interstate forms**

14
15 Notwithstanding any other provision of these rules, all Uniform Interstate Family
16 Support Act forms approved by either the National Conference of Commissioners
17 on Uniform State Laws or the U.S. Department of Health and Human Services are
18 adopted for use in family law and other support actions in California.

19
20 **Drafters' Notes:**

21 Existing rule 5.25 would be renumbered as rule 5.7(a). Existing rule 5.26 would be
22 renumbered as rule 5.7(b). Existing rule 5.27 would be renumbered as rule 5.7(c).

23
24 **Article 3. Appearance by Telephone**

25
26 **Rule 5.9. Appearance by telephone**

27
28 **(a) Application**

29
30 This rule applies to all family law cases, except for actions for child support
31 involving a local child support agency. Rule 5.324 governs telephone appearances
32 in governmental child support cases.

33
34 **(b) Telephone appearance**

35
36 The court may permit a party to appear by telephone at a hearing, conference, or
37 proceeding if the court determines that a telephone appearance is appropriate.

38
39 **(c) Need for personal appearance**

40
41 **(1) At its discretion, the court may require a party to appear in person at a**
42 **hearing, conference, or proceeding if the court determines that a personal**
43 **appearance would materially assist in the determination of the proceedings or**
44 **in the effective management or resolution of the particular case.**

1
2 (2) “Person” means a party, a witness, or any other individual or entity whose
3 consent is necessary for the disposition of the case.
4

5 **(c) Sanctions imposed on a person**

6
7 In addition to any other sanctions permitted by law, the court may order a person,
8 after written notice and an opportunity to be heard, to pay reasonable monetary
9 sanctions to the court or to an aggrieved person, or both, for failure without good
10 cause to comply with the applicable rules. The sanction must not put an
11 unreasonable financial burden on the person ordered to pay.
12

13 **(d) Notice and procedure**

14
15 Sanctions must not be imposed under this rule except on a request for order by the
16 party seeking sanctions or on the court’s own motion after the court has been
17 provided notice and an opportunity to be heard.
18

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

20
21 (A) State the applicable rule that has been violated;

22
23 (B) Describe the specific conduct that is alleged to have violated the rule; and

24
25 (C) Identify the attorney, law firm, party, witness, or other person against
26 whom sanctions are sought.
27

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

29
30 (A) State the applicable rule that has been violated;

31
32 (B) Describe the specific conduct that appears to have violated the rule; and

33
34 (C) Direct the attorney, law firm, party, witness, or other person to show cause
35 why sanctions should not be imposed for violation of the rule.
36

37 **(e) Award of expenses**

38
39 In addition to the sanctions awardable under this rule, the court may order the
40 person who has violated an applicable rule to pay to the party aggrieved by the
41 violation that party’s reasonable expenses, including reasonable attorney’s fees and
42 costs, incurred in connection with the motion for sanctions or the request for order.
43

44 **(f) Order**

1 A court order awarding sanctions must be in writing and must recite in detail the
2 conduct or circumstances justifying the order.

3
4
5 Title 5. Family and Juvenile Rules

6
7 Division 1. Family Rules

8
9 Chapter 2. Parties and Joinder of Parties

10
11 Article 1. Parties to Proceedings

12
13 Rule 5.16. Designation of parties

14
15 (a) Designation of parties

- 16
17 (1) In cases filed under the Family Code, the party starting the case is referred to
18 as the “petitioner,” and the other party is the “respondent.”
19
20 (2) In local child support agency actions, the local child support agency starts the
21 case and is the petitioner or plaintiff in the case. The parent sued by the child
22 support agency is the “respondent” or “defendant,” and the parent who is not
23 the defendant is referred to as the “Other Parent.” Every other proceeding
24 must be prosecuted and defended in the names of the real parties in interest.

25
26 (b) Parties to proceeding

- 27
28 (1) The only persons permitted to be parties to a proceeding for dissolution, legal
29 separation, or nullity of marriage are the spouses, except as provided in (3) or
30 when a third party is joined in the case as provided in rule 5.24.
31
32 (2) The only persons permitted to be parties to a proceeding for dissolution, legal
33 separation, or nullity of domestic partnership are the domestic partners,
34 except as provided in (3) or when a third party is joined in the case as
35 provided in rule 5.24.
36
37 (3) In a nullity proceeding, the case can be started by the spouses or domestic
38 partners. The case may also be started by a parent or guardian, conservator,
39 or other person specified in Family Code section 2211. For this type of case,
40 the person starting the case is a party and the caption on all papers must be
41 appropriately changed to reflect that fact.

42
43 **Drafters’ Notes:**

44 Existing rule 5.100 would renumbered as rule 5.16(a) with minor changes to formatting.
45 Existing rule 5.102 would be renumbered as 5.16(b) with changes made to reference
46 new rule numbers.

1 Rule 5.17. Other causes of action

2
3 A party in a family law proceeding may only ask that the court make orders against or
4 involving the other party, or any other person, that are available to the party in these
5 rules, Family Code sections 17400, 17402, and 17404, or other sections of the California
6 Family Code.

7
8 **Drafters' Notes:**

9 Existing rule 5.104 would be renumbered as rule 5.17 and amended to clarify the rule's
10 meaning.

11
12 Rule 5.18. Injunctive relief and reservation of jurisdiction

13
14 **(a) Injunctive relief**

15
16 When a party in a family law case applies for a court order under rule 5.92, the
17 court may grant injunctive or other relief against or for the following persons to
18 protect the rights of either or both parties:

- 19
20 (1) A person who has or claims an interest in the case;
21
22 (2) A person who would be a necessary party to a complete disposition of the
23 issues in the case, but is not permitted to be a party under rule 5.16; or
24
25 (3) A person who is acting as a trustee, agent, custodian, or similar fiduciary with
26 respect to any property subject to disposition by the court in the proceeding,
27 or other matter subject to the jurisdiction of the court in the proceeding.
28

29 **(b) Reservation of jurisdiction**

30
31 If the court is unable to resolve the issue in the proceeding under the Family Code,
32 the court may reserve jurisdiction over the particular issue until such time as the
33 rights of such person and the parties to the proceeding under the Family Code have
34 been determined in a separate action or proceeding.
35

36 **Drafters' Notes:**

37 Existing rule 5.106 would be renumbered as rule 5.18 with changes made to formatting.
38 The rule would also be amended to include a reference to a new rule number.
39

40 Article 2. Joinder of Parties

41
42 Rule 5.24. Joinder of persons claiming interest

43
44 A person who claims or controls an interest in any matter subject to disposition in the
45 proceeding may be joined as a party to the family law case only as provided in this
46 chapter.
47

1 (a) Applicable rules

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

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

13
14 (b) “Claimant” defined

15
16 For purposes of this rule, a “claimant” is a person joined or sought or seeking to be
17 joined as a party to the family law proceeding.

18
19 (c) Persons who may seek joinder

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

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

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

38
39 (d) Form of joinder application

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

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

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

7
8 (e) Court order on joinder

9
10 (1) **Mandatory joinder**

11
12 The court must order that a person be joined as a party to the proceeding if
13 any person the court discovers has physical custody or claims custody or
14 visitation rights with respect to any minor child of the marriage.

15 (2) **Permissive joinder**

16 The court may order that a person be joined as a party to the proceeding if the
17 court finds that it would be appropriate to determine the particular issue in the
18 proceeding and that the person to be joined as a party is either indispensable
19 in order to make a determination before the court makes an order of about
20 that issue or is necessary to the enforcement of any judgment rendered on that
21 issue.

22
23 In determining whether it is appropriate to determine the particular issue in
24 the proceeding, the court must consider its effect upon the proceeding,
25 including:

26
27 (A) Whether resolving that issue will unduly delay the disposition of the
28 proceeding;

29
30 (B) Whether other parties would need to be joined to make an effective
31 judgment between the parties;

32
33 (C) Whether resolving that issue will confuse other issues in the
34 proceeding; and

35
36 (D) Whether the joinder of a party to determine the particular issue will
37 complicate, delay, or otherwise interfere with the effective disposition
38 of the proceeding.

39
40 (3) **Procedure upon joinder**

41
42 If the court orders that a person be joined as a party to the proceeding under
43 this rule, the court must direct that a summons be issued on *Summons*
44 (*Joinder*) (form FL-375) and that the claimant be served with a copy of

1 Notice of Motion and Declaration for Joinder (form FL-371), the pleading
2 attached thereto, the order of joinder, and the summons. The claimant has 30
3 days after service within which to file an appropriate response.

4
5 **Drafters' Notes:**

6 Existing rule 5.150 would include minor amendments and be renumbered as rule 5.24
7 (first subparagraph) and 5.24(a)(1). Existing rule 5.160 would be amended and
8 renumbered as rule 5.24(a)(2). Existing rule 5.152 would be renumbered as 5.24(b).
9 Existing rule 5.154 would be renumbered as 5.24(c). Existing rule 5.156 would be
10 amended and renumbered as rule 5.24(d). Existing rule 5.158 would be renumbered as
11 rule 5.24(e) with a minor change to the title.

12
13 Article 3. Employee Pension Benefit Plan

14
15 Rule 5.29. Joinder of employee pension benefit plan

16
17 **(a) Request for joinder**

18
19 Every request for joinder of employee pension benefit plan and order and every
20 pleading on joinder must be submitted on *Request for Joinder of Employee Benefit*
21 *Plan and Order* (form FL-372) and *Pleading on Joinder-Employee Benefit Plan*
22 (form FL-370).

23
24 **(b) Summons**

25
26 Every summons issued on the joinder of employee pension benefit plan must be on
27 *Summons (Joinder)* (form FL-375).

28
29 **(c) Notice of Appearance**

30
31 Every notice of appearance of employee pension benefit plan and responsive
32 pleading file under Family Code section 2063(b) must be given on *Notice of*
33 *Appearance and Response of Employee Benefit Plan* (form FL-374).

34
35 **Drafters' Notes:**

36 Existing rule 5.162 would be renumbered as rule 5.29 with minor formatting changes.

37
38 Title 5. Family and Juvenile Rules

39
40 Division 1. Family Rules

41
42 Chapter 3. Filing Fees and Fee Waivers

43
44 Article 1. Filing Fees and Fee Waivers

45
46 Rule 5.40. Filing Fees

1 (a) Filing fees

2
3 Parties must pay filing fees to the clerk of the court at the time the parties file
4 papers with the court.

5
6 (b) Authority

7
8 The amount of money required to pay filing fees in family court is established by
9 the Uniform Civil Fees and Standard Fee Schedule Act of 2005 under Government
10 Code section 70670 et seq and is subject to change. The Act covers fees the court
11 may charge parties to file the first papers in a family proceeding, motions, or other
12 papers requiring a hearing. It also covers filing fees that courts may charge in
13 proceedings relating to child custody or parenting time to cover the costs of
14 maintaining mediation services under Family Code section 3160 et seq.

15
16 (c) Other fees

17
18 (1) The court must not charge filing fees that are inconsistent with law or with
19 rules adopted by the Judicial Council and may not impose any tax, charge, or
20 penalty upon a proceeding, or the filing of any pleading allowed by law, as
21 provided by Government Code section 68070.

22
23 (2) In the absence of a statute or rule authorizing or prohibiting a fee by the
24 superior court for a particular service or product, the court may charge a
25 reasonable fee not to exceed the costs of providing the service or product, if
26 the Judicial Council approves the fee, as provided by Government Code
27 section 70631. Approved fees must be clearly posted and accessible to the
28 public.

29
30 Rule 5.41. Waiver of fees and costs

31 If unable to afford the costs to file an action in family court, a party may request that the
32 court waive fees and costs. The procedure and forms needed to request an initial fee
33 waiver in a family law action are the same as for all other civil actions, unless otherwise
34 provided by a statute or rule in the California Rules of Court.

35 (a) Forms

36
37 The forms required to request a fee waiver may be obtained from the clerk of the
38 court, the public law library, or online at the California Court's Web site.

39
40 (b) Rules

41
42 Rules 3.50–3.56 of the California Rules of Court (title 3, division 2) govern fee
43 waivers in family law cases. Parties may refer to the civil rules for information
44 about:

- 1
- 2 (1) Applying for a fee waiver (rule 3.51);
- 3
- 4 (2) Forms for requesting a fee waiver (rule 3.51);
- 5
- 6 (3) How the court makes an order on a fee waiver application (rule 3.52);
- 7
- 8 (4) The time required for the court to grant a fee waiver (rule 3.53);
- 9
- 10 (5) The confidentiality of fee waiver applications and hearings (rule 3.54);
- 11
- 12 (6) Court fees and costs included in an initial fee waiver (rule 3.55); and
- 13
- 14 (7) Additional court fees and costs that may be included in the fee waiver (rule
- 15 3.56).
- 16

Article 2. Special Procedures

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

(a) Voided paperwork

The clerk of the court must void the papers that were filed with a petitioner's fee waiver application if 10 days pass after notice of the fee waiver denial and petitioner has not:

- 27 (1) Paid the fees owed;
- 28
- 29 (2) Submitted a new *Request to Waive Court Fees* (form FW-001) if the fee
- 30 waiver was denied because the first form was incomplete; or
- 31
- 32 (3) Requested a hearing using *Request for Hearing About Court Fee Waiver*
- 33 *Order (Superior Court)* (form FW-006).
- 34

(b) Dismissal or continuation of case

(1) *No response filed*

If a petition or complaint is voided under (a) and a response to the petition or complaint has not been filed, the court may dismiss the case without prejudice and the clerk of the court must notify the parties.

(2) *Response filed; case continuation or dismissal*

If a petition or complaint is voided and a response has been filed with the

1 court, the court must:

2
3 (A) Review the response to determine whether or how the case will proceed
4 based on the relief requested in the response;

5
6 (B) Notify the parties of the court’s determination; and

7
8 (C) Refund filing fees paid by the respondent if the court dismisses the case.
9

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

11
12 (a) Determination of repayment required

13
14 When a judgment or support order is entered, the court may order either party to
15 pay all or part of the fees and costs that the court waived under Government Code
16 section 68637. The court must consider and determine the repayment of waived
17 fees as required by Government Code section 68637(d) and (e).

18
19 (b) Required forms

20
21 An order determining repayment of waived initial fees must be made on *Order to*
22 *Pay Waived Court Fees and Costs (Superior Court)* (form FL-336). An order for
23 payment of waived court fees must be accompanied by a blank *Application to Set*
24 *Aside Order to Pay Waived Court Fees—Attachment* (form FL-337). An order
25 granting or denying a request to set aside an order to pay waived court fees and
26 costs must be made on *Order After Hearing on Motion to Set Aside Order to Pay*
27 *Waived Court Fees (Superior Court)* (form FL-338).
28

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

30
31 (a) Application

32
33 Rule 8.26 of the appellate rules specifies the procedure and forms for applying for
34 an initial waiver of court fees and costs in the Supreme Court or Court of Appeal.
35

36 (b) Information

37
38 Parties may refer to rule 8.26 for information about:

39
40 (1) Applying for a fee waiver in appeals, writ proceedings, and petitions for
41 review;

42
43 (2) Required forms requesting a fee waiver;
44

1 summons that includes automatic temporary (standard) restraining orders in cases
2 under Family Code section 233 on the reverse side of the summons. The summons
3 and standard restraining orders must be issued and filed in the same manner as a
4 summons in a civil action and must be served and enforced in the manner
5 prescribed for any other restraining order. If service is by publication, the
6 publication need not include the restraining orders.

7
8 (c) Individual restraining order

9
10 On application of a party and as provided in the Family Code, a court may issue
11 any individual restraining order that appears to be reasonable or necessary,
12 including those automatic temporary restraining orders included on the back of the
13 family law summons under Family Code section 233. Individual orders supersede
14 the standard family law restraining orders on the back of the Family Law and
15 Uniform Parentage Act summons.

16
17 **Drafters' Notes:**

18 Existing rule 5.110 would be repealed and renumbered as 5.50.

19
20 Rule 5.51. Mandatory information packet

21
22 When starting a family law case, the petitioner must serve all parties with a copy of *Legal*
23 *Steps for a Divorce (Dissolution)* (form FL-107-INFO) which includes general
24 information about how to resolve a family law case without formal litigation.

25
26 Rule 5.52. Declaration Under Uniform Child Custody Jurisdiction and
27 Enforcement Act (UCCJEA)

28
29 Petitioner and respondent must each complete, serve, and file a *Declaration Under*
30 *Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)* (form FL-105/GC-
31 120) if there are children of their relationship under the age of 18. This form is a required
32 attachment to the petition and response. After filing the form, a party has a continuing
33 duty to inform the court if he or she obtains further information about a custody
34 proceeding in a California court or any other court concerning a child who is named in
35 the form.

36
37 Rule 5.54. Preliminary declaration of disclosure; time for service

38
39 In divorce, annulment, and legal separation cases, Family Code sections 2100–2128
40 require that parties give each other written information about property owned, debts
41 owed, and about income and expenses.

42
43 (a) Preliminary declaration of disclosure

44
45 Each party must serve the other with a Preliminary Declaration of Disclosure,
46 which includes all the following completed documents:

- 1
2 (1) Declaration of Disclosure (form FL-140);
3
4 (2) Income and Expense Declaration (form FL-150) and required attachments,
5
6 (3) Schedule of Assets and Debts (form FL-142) or Property Declaration (form
7 FL-160) and required attachments;
8
9 (4) Federal and state income tax returns filed by the declarant within two years
10 prior to serving the preliminary declaration of disclosure; and
11
12 (5) Any other information required under Family Code section 2104.

13
14 (b) Time for service

15
16 Petitioner must serve respondent with a completed preliminary declaration of
17 disclosure either along with the petition or within 60 days of filing the petition. The
18 respondent must serve petitioner with a completed preliminary declaration of
19 disclosure either along with the response or within 60 days of filing the response.
20

21 (c) Proof of service

- 22
23 (1) To prove that a party served his or her preliminary declaration of disclosure,
24 the party must complete and file with the clerk of the court a *Declaration*
25 *Regarding Service of Declaration of Disclosure* (form FL-141).
26
27 (2) A party must not file with the clerk of the court the original or copies of the
28 preliminary declaration of disclosure, unless required by court order.
29

30 (d) Disclosures to be served before requesting default judgment

31
32 Petitioner may not request entry of a default judgment against respondent before
33 petitioner files the *Declaration Regarding Service of Declaration of Disclosure*
34 (form FL-142) with the court.
35

36 (e) Failure to disclose

37
38 If a party fails to comply with disclosure requirements, the complying party may
39 request orders described in Family Code section 2107.
40

41 Article 2. Initial pleadings

42
43 Rule 5.60. Petition or complaint; alternative relief

44
45 (a) Format
46

1 A party starting a family law case must file an appropriate petition or complaint
2 using a form approved by the Judicial Council. Where the Judicial Council has not
3 approved a specific petition or complaint form, the party must submit the petition
4 or complaint in an appropriate format under Trial Court Rules, rules 2.100 through
5 2.119.

6
7 **(b) Request for alternative relief**

8
9 The petitioner or respondent may request alternative relief when filing a family law
10 action. The request for alternative relief must be indicated in the petition or
11 response.

12
13 **Drafters' Notes:**

14 Existing rule 5.114 would be repealed and renumbered as 5.60(b).

15
16 **Rule 5.62. Appearance by respondent or defendant**

17
18 **(a) Appearance**

19
20 Except as provided in Code of Civil Procedure section 418.10, a respondent or
21 defendant is deemed to have appeared in a proceeding when he or she files:

22
23 **(1) A response or answer;**

24
25 **(2) A notice of motion to strike, under section 435 of the Code of Civil**
26 **Procedure;**

27
28 **(3) A notice of motion to transfer the proceeding under section 395 of the Code**
29 **of Civil Procedure; or**

30
31 **(4) A written notice of his or her appearance.**

32
33 **(b) Notice required after appearance**

34
35 After appearance, the respondent or defendant or his or her attorney is entitled to
36 notice of all subsequent proceedings of which notice is required to be given by
37 these rules or in civil actions generally.

38
39 **(c) No notice required**

40
41 Where a respondent or defendant has not appeared, notice of subsequent
42 proceedings need not be given to the respondent or defendant except as provided in
43 these rules.

44
45 **Drafters' Notes:**

46 Existing rule 5.120 would be repealed and renumbered as rule 5.62.

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

3
4 (a) Respondent’s application

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

8
9 (1) Lack of legal capacity to sue;

10
11 (2) Prior judgment or another action pending between the same parties for the
12 same cause;

13
14 (3) Failure to meet the residence requirement of Family Code section 2320; or

15
16 (4) Statute of limitations in Family Code section 2211.

17
18 (b) Service of respondent’s motion

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

24
25 (c) Petitioner’s application

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

30
31 (d) Waiver

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

35
36 (e) Relief

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

43
44 **Drafters’ Notes:**

45 Existing rule 5.121 would be renumbered as rule 5.63 with minor changes to formatting.

1
2
3 Article 3. Time for Service of Papers
4

5 Rule 5.66. Proof of service; deadlines
6

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

10 (a) Form
11

12 The proof of service may be a form approved by the Judicial Council or a
13 document or pleading containing the same information required in *Proof of Service*
14 of *Summons* (form FL-115).
15

16 (b) Proof of service of summons and petition; deadlines
17

18 The petitioner must file a completed proof of service of summons with the court
19 within 60 days after the filing of the summons and petition, unless the court allows
20 additional time for service.
21

22 Article 4. Manner of Service
23

24 Rule 5.68. Manner of service of summons and petition; response; jurisdiction
25

26 (a) Service of summons and petition
27

28 The petitioner must arrange to serve the other party with a summons, petition, and
29 other papers by one of the methods permitted under the Code of Civil Procedure.
30

31 (1) Personal service (Code Civ.Proc.,§ 415.10);
32

33 (2) Substituted service (Code Civ.Proc.,§ 415.20);
34

35 (3) Service by mail with a notice and acknowledgment of receipt (Code
36 Civ.Proc.,§ 415.30); or
37

38 (4) Service on person outside of the state (Code Civ.Proc.,§ 415.40).
39

40 (b) Service of response to petition
41

42 A response to a family law petition may be served by the methods described in (a)
43 but may also be served by mail without notice and acknowledgment of receipt.
44

45 (c) Continuing jurisdiction
46

1 The court has jurisdiction of the parties and control of all subsequent proceedings
2 from the time of service of the summons and a copy of the petition. A general
3 appearance of the respondent is equivalent to personal service within this state of
4 the summons and a copy of the petition upon him or her.

5
6 **Drafters' Notes:**

7 Existing rule 5.112 would be renumbered as rule 5.68(c).

8
9 **Rule 5.72. Court order for service of summons by publication or posting when**
10 **respondent's address is unknown**

11
12 If respondent cannot be found to be served a petition by any method described in
13 California Code of Civil Procedure sections 415.10 through 415.40, petitioner may
14 request an order for service by publication or posting of notice under CCP sections
15 415.50 and 413.20, respectively.

16
17 **(a) Forms**

18
19 To request service by publication or posting, the Petitioner must complete and
20 submit to the court *Application for Order for Publication or Posting of Summons*
21 (form FL-980) and *Order for Publication or Posting of Summons* (form FL-982).
22 Petitioner must also list all the reasonable diligent efforts that have been made to
23 find and serve respondent by other means.

24
25 **(b) Order**

26
27 Service by posting may be ordered only if the court finds that petitioner is eligible
28 for a waiver of court fees and costs.

29
30 (1) To request service by posting, petitioner must complete and file a *Request to*
31 *Waive Court Fees*, (form FW-001), unless one has been approved in the last
32 4 months. If the court finds that the petitioner does not qualify for a fee
33 waiver, then the court may order service by publication of the Summons.

34
35 (2) *Verification of Service by Posting of Summons* (form FL-985) is needed, if
36 the court approves service by posting.

37
38 **(c) Non-appearance by respondent**

39
40 If petitioner serves the respondent with the petition and summons by publication or
41 posting and the respondent has not appeared:

42
43 (1) The petitioner may serve all subsequent forms and notices by mailing them to
44 the respondent, in care of the clerk's office, at the address of the superior
45 court where the family case is proceeding or as required by the clerk of the
46 court.

1
2 (2) On any proof of service, petitioner must indicate that respondent was served
3 by mail in care of the clerk’s office.

4
5 (3) The back of the envelope delivered under (1) must include the following
6 information: “Service is being made under Code of Civil Procedure section
7 1011(b) on a party whose residence address is unknown.”

8
9 **Drafters’ Notes:**

10 Proposed rule 5.72 is included only for context. Commentators who wish to provide
11 comments on proposed new rule 5.72 should read and reply to the proposal titled
12 “Family Law – Proof of Service by Publication or Posting.”

13
14 Article 5. Pleadings and Amended Pleadings

15
16 Rule 5.74. Pleadings and amended pleadings

17
18 (a) Forms of pleading

19
20 The forms of pleading and the rules by which the sufficiency of pleadings is to be
21 determined are solely those prescribed in these rules. Demurrers must not be used.

22
23 (b) Amendment to pleadings

24
25 (1) Amendments to pleadings, amended pleadings, and supplemental pleadings
26 may be served and filed in conformity with the provisions of law applicable
27 to such matters in civil actions generally, but the petitioner is not required to
28 file a reply if the respondent has filed a response.

29
30 (2) If both parties have filed initial pleadings (petition and response), there may
31 be no default entered on an amended pleading of either party.

32
33 **Drafters’ Notes:**

34 Existing rule 5.108 would be renumbered as rule 5.74 with minor changes to formatting.

35
36 Article 6. Specific proceedings

37
38 Rule 5.76. Domestic partnerships

39
40 (a) Procedures for obtaining a dissolution, a legal separation, or an annulment of
41 a domestic partnership

42
43 (1) Petition-Domestic Partnership (Family Law) (form FL-103) must be filed to
44 commence an action for dissolution, legal separation, or annulment of a
45 domestic partnership. Response-Domestic Partnership (Family Law) (form
46 FL-123) must be filed in response to this petition.

1 The purpose of this rule is to set out processes and procedures for courts to
2 effectively handle cases from the time of initial filing to final disposition in an
3 effective and timely manner. This rule seeks to advance the goals of Family Code
4 2450(a) and Standard of Judicial Administration 5.30.
5

6 (b) Definitions
7

8 (1) “Family centered case resolution process” refers to the process employed by
9 the court to ensure that family law cases move through the court process from
10 filing to final disposition in a timely, fair and effective manner.
11

12 (2) “Disposition” refers to final judgment on all issues, dismissal, change of
13 venue, or consolidation of the case into another lead case. It does not include
14 judgments terminating marital status only.
15

16 (3) “Status conference” refers to court events scheduled with the parties and
17 attorneys for the purpose of identifying the current status of the case and
18 determining the next steps required to reach disposition.
19

20 (4) “Family centered case resolution conference” refers to meetings scheduled
21 with parties, attorneys, and a judicial officer to develop and implement a
22 family centered case resolution plan under Family Code section 2451.
23

24 (c) Family centered case resolution process
25

26 (1) Courts must implement a family centered case resolution process to identify
27 and assist all dissolution, legal separation, and nullity and parentage cases to
28 move through the court process toward disposition effectively in a timely
29 manner. The court may identify other family law case types and cases to
30 participate in the family centered case resolution process.
31

32 (2) For cases filed on or after January 1, 2012, the court must include as part of
33 the family centered case resolution process a review of all dissolution, legal
34 separation, nullity, and parentage cases without a disposition at least 180 days
35 from the date of the initial filing and at least every 180 days thereafter until
36 disposition in order to determine the most appropriate next steps to help
37 ensure an effective, fair and timely resolution to the case. Unless the court
38 determines that procedural milestones are being met, the review must include
39 at least one of the following: (1) a status conference; (2) a family centered
40 case resolution conference.. Nothing in this section prohibits courts from
41 setting review dates that are more frequent.
42

43 (3) If after 18 months from the date the petition was filed, both parties have
44 failed to participate in the family law process as determined by the court, the
45 court’s obligation for further review of the case is relieved until such time the
46 case qualifies for dismissal pursuant to CCP 583.210 or CCP 583.310 or until

1 the parties reactivate participation in the case, and the case is not counted
2 toward the goals for disposition set out section (c)(5) of the this rule.

3
4 (4) In deciding whether a case is moving forward effectively in a timely manner,
5 the court should consider procedural milestones including, but not limited to,
6 the following:

7
8 (A) A Proof of Service of Summons and Petition is not filed within 60 days
9 of case initiation

10
11 (B) If no Response has been filed, and the parties have not agreed on an
12 extension of time to respond, a Request to Enter Default is not
13 submitted within 60 days after the date the Response was due;

14
15 (C) If the Preliminary Declaration of Disclosure is not served within 60
16 days of the filing of the Petition

17
18 (D) When a Default has been entered, a judgment is submitted within 60
19 days of the entry of Default;

20
21 (E) No trial date has been scheduled; and,

22
23 (F) When the parties have notified the court that they are actively
24 negotiating or mediating their case, a written agreement for judgment is
25 submitted within 6 months of the date the petition was filed, or a
26 request for trial date is submitted.

27
28 (5) For dissolution, legal separation, and nullity cases initially filed on or after
29 January 1, 2012, the goal of any family centered case resolution process
30 should be to finalize dispositions as follows:

31
32 (A) At least 20% are disposed within 6 months from the date the petition
33 was filed.

34
35 (B) At least 75% are disposed within 12 months from the date the petition
36 was filed.

37
38 (C) At least 90% are disposed within 18 months from the date the petition
39 was filed.

40
41 (6) The court may select various procedural milestones at which to facilitate
42 cases to move forward effectively in a timely manner by providing assistance
43 such as:

44
45 (A) Notification to the parties and attorneys by mail , telephone , email or
46 other electronic methods of communication informing them of the

1 current status of the case and the next steps required to reach
2 disposition.

3
4 (B) Implementing a schedule of status conferences for cases to identify the
5 status of the case and determine the next steps required to reach
6 disposition.

7
8 (C) Providing assistance at the time scheduled for hearings on requests for
9 orders to identify the status of the case and determine the next steps
10 required to reach disposition.

11
12 (D) Providing financial and property settlement opportunities with judicial
13 officers or qualified attorney settlement officers to parties.

14
15 (E) Scheduling a family centered case resolution conference to develop and
16 implement a family centered case resolution plan under Family Code
17 section 2451.

18
19 (7) In deciding that a case requires a family centered case resolution conference,
20 the court should consider in addition to procedural milestones, factors
21 including but not limited to the following:

22
23 (A) Difficulty in locating, and serving the Respondent;

24
25 (B) Complexity of issues;

26
27 (C) Nature and extent of discovery anticipated;

28
29 (D) Number and location of percipient and expert witnesses;

30
31 (E) Estimated length of trial;

32
33 (F) Statutory priority for issues such as custody and visitation of minor
34 children;

35
36 (G) Extent of property and support issues in controversy;

37
38 (H) Existence of issues of domestic violence, child abuse or substance
39 abuse;

40
41 (I) Pendency of other actions or proceedings that may affect the case;

42
43 (J) Likelihood of review by writ or appeal;

44
45 (K) Any other factor that would affect the time for disposition of the case.
46

1 (d) Family centered case resolution conferences

- 2
- 3 (1) The court may hold an initial family centered case resolution conference to
4 develop a specific case resolution plan.
- 5
- 6 (2) Family centered case resolution conferences must be heard by a judicial
7 officer. On the court’s initiative or the request of the parties, to enhance
8 access to the court, the conference may be held in person, by telephone,
9 video-conferencing or other appropriate means of communication.
- 10
- 11 (3) At the conference, which is neither intended to be an evidentiary hearing or a
12 settlement conference, counsel for each party and each self-represented
13 litigant must be familiar with the case and must be prepared to discuss the
14 party’s positions on the issues.
- 15
- 16 (4) Before alternative dispute resolution (except for mandatory child custody
17 mediation) is included in a family centered case resolution plan under Family
18 Code section 2451(a)(2), the court must inform the parties that their
19 participation in alternative dispute resolution services offered by the court is
20 voluntary and ADR services can only be part of a plan if both parties
21 voluntarily choose to opt in to utilizing these services. Additionally, the court
22 must:
- 23
- 24 (A) Inform the parties that alternative dispute resolution may not be
25 appropriate in cases involving domestic violence and provide
26 information about separate sessions, and
- 27
- 28 (B) Ensure that all court-connected providers of alternative dispute
29 resolution services that are part of a family centered case resolution
30 plan have been trained on assessing and handling cases that may
31 involve domestic violence.
- 32
- 33 (5) Nothing in this rule prohibits the court from having an employee of the court
34 review the file and notify the parties of any deficiencies in their paperwork
35 before the parties appear in front of the judicial officer at a family centered
36 case resolution conference. This type of assistance can occur by telephone,
37 in person or in writing, on or before each scheduled family centered case
38 resolution conference. However, this type of procedural assistance is not
39 intended to replace family centered case resolution plan management or
40 create a barrier to litigants’ access to a judicial officer.

41

42 (e) Family centered case resolution plan order

- 43
- 44 (1) Family centered case resolution plans as ordered by the court must comply
45 with Family Code sections 2450(b) and 2451.
- 46

1 Rule 5.90. Format of papers

2
3 The rules regarding the format of a request for order are the same as the rules for format
4 of motions in civil rules 3.1100 through 3.1116.

5
6 Rule 5.91. Individual restraining order

7
8 On application of a party and as provided in the Family Code, a court may issue any
9 individual restraining order that appears to be reasonable or necessary, including those
10 automatic temporary restraining orders included on the back of the family law summons
11 under Family Code section 233. Individual orders supersede the standard family law
12 restraining orders on the back of the Family Law and Uniform Parentage Act summons.

13
14 **Drafters' Notes**

15 Existing rule 5.110(b) would be renumbered 5.91.

16
17
18 Article 2. Filing and Service

19
20 Rule 5.92. Application for court order; response

21
22 (a) Application for order; procedures

23
24 (1) In a family law proceeding, other than an action under the Domestic Violence
25 Prevention Act, local child support agency actions under the Family Code, or
26 a contempt proceeding relating to family law, a notice of motion or order to
27 show cause must be filed on a *Request for Order* (form FL-300), unless there
28 is another Judicial Council form adopted or approved for the specific motion
29 or order to show cause.

30
31 (A) If the request for order seeks court orders pending a hearing or seeks
32 an order that the other party attend the hearing, the *Request for Order*
33 (form FL-300) and attachments as appropriate to the case must be filed
34 with the court before service on the other party and a copy of the
35 *Temporary Orders* (form FL-305) endorsed by the clerk must be served
36 in the manner specified for the service of a summons as specified in
37 Code of Civil Procedure section 4.13.10 et seq, unless the other party
38 has made an appearance in the action in which case service may be
39 made on the attorney of record.

40
41 (B) If the *Request for Order* (form FL-300) is filed after entry of a
42 judgment of dissolution of marriage, nullity of marriage, legal
43 separation of the parties, or paternity, or after a permanent order in any
44 other proceeding in which there was at issue the visitation, custody, or
45 support of a child, it must be served as specified in Family Code
46 section 215.

1 (2) The *Request for Order* (form FL-300) must set forth facts sufficient to notify
2 the other party of the contentions of the declarant in support the relief
3 requested.

4
5 (3) No memorandum of points and authorities need be filed with an application
6 for a court order unless required by the court on a case-by-case basis.

7
8 (4) A completed *Income and Expense Declaration* (form FL-150) or *Financial*
9 *Statement (Simplified)* (form FL-155), and *Property Declaration* (form FL-
10 160) must be attached to *Request for Order* (FL-300) when relevant to the
11 relief requested.

12
13 (5) The moving party must file the documents with the court and serve a copy on
14 the person against whom relief is requested, along with a blank copy of the
15 following:

16
17 (A) *Responsive Declaration to Request for Order* (form FL-320);

18
19 (B) *Income and Expense Declaration* (form FL-150) or *Financial*
20 *Statement (Simplified)* (form FL-155) and *Property Declaration* (form
21 FL-160), when completed declarations are among the papers required
22 to be served.

23
24 (b) Responding papers

25
26 To respond to the issues raised in *Request for Orders* (FL-300) and attached papers,
27 the party must complete, file and serve a *Responsive Declaration to Request for*
28 *Order* (form FL-320). The responding papers may request relief related to the
29 orders requested in the moving papers. Unrelated relief must be sought by filing a
30 separate request for order as specified in (a). Respondent may also be required to
31 complete the following:

32
33 (1) A memorandum of points and authorities.

34
35 (2) *Income and Expense Declaration* (form FL-150) or *Financial Statement*
36 *(Simplified)* (form FL-155) and *Property Declaration* (form FL-160), when
37 completed declarations are among the papers required to be served.

38
39 (3) The *Responsive Declaration to Request for Order* (form FL-320) must set
40 forth facts sufficient to notify the other party of the contentions of the declarant
41 in response to the request for order and in support of any relief requested.

42
43 (c) Additional documents

44
45 As specified in these rules, the moving and responding party may be required to
46 complete, file, and serve additional papers to request or respond to a *Request for*

1 Order (FL-300) about child custody and parenting time, attorney fees and costs,
2 support, and other financial matters.

3
4
5 **Drafters' Notes:**

6 Existing rule 5.118 addressing the subject of applications for court order and supporting
7 declarations would be repealed and renumbered as rule 5.92. To comment specifically
8 on rule 5.92, commentators should read and reply to the proposal titled "Family Law:
9 Request for Order in Lieu of Notice of Motion or Order to Show Cause and Witness List
10 for Use in Family Law Proceedings."

11
12 Rule 5.94. Time for filing; service of request for order

13
14 (a) In general

15
16 Unless otherwise ordered or specifically provided by law, the *Request for Order*
17 (FL-300) and supporting papers must be filed and then served in accordance with
18 Code of Civil Procedure section 1005.

19
20 (b) Order shortening time

21
22 The court, on its own motion or on application for an order shortening time
23 supported by a declaration showing good cause, may prescribe shorter times for the
24 filing and service of papers than the times specified in Code of Civil Procedure
25 section 1005.

26
27 (c) Time for filing proof of service

28
29 Proof of service of the *Request for Order* (FL-300) and supporting papers should be
30 filed no later than five court days before the time appointed for the hearing.

31
32 (d) Failure to serve moving papers

33
34 If a *Request for Order* (FL-300) is not timely served on the opposing party, the
35 moving party must notify the court as soon as possible before the hearing date. The
36 party may ask that the request for order be reissued by the court before the hearing
37 date. To do so, the moving party must submit an *Application and Order for*
38 *Reissuance of Request for Order* (form FL-306).

39
40 (e) Filing of late papers

41
42 No moving or responding papers relating to a request for order may be rejected for
43 filing on the ground that it was untimely submitted for filing. If the court, in its
44 discretion, refuses to consider a late filed paper, the minutes or order must so
45 indicate.

1 (f) Computation of time

2
3 Moving or responding papers submitted before the close of the clerk's office to the
4 public on the day that the paper is due is deemed timely filed.

5
6 Rule 5.96. Place and manner of filing

7
8 (a) Papers filed in clerk's office

9
10 All papers relating to a request for order proceeding must be filed in the clerk's
11 office, unless otherwise provided by local rule.

12
13 (b) General schedule

14
15 The clerk must post a general schedule showing the days and departments for
16 holding each type of request for order.

17
18 (c) Duty to notify if matter not to be heard

19
20 The moving party must immediately notify the court if a matter will not be heard
21 on the scheduled date. If the matter has been settled before the scheduled court
22 date, the moving party must immediately notify the court of the settlement.

23
24 Article 3. Meet-and-Confer Conferences

25
26 Rule 5.98. Meet and confer requirements; document exchange

27
28 (a) Meet and confer

29
30 All parties and all attorneys are required to meet and confer in person or by
31 telephone before the date of the hearing. During this time, parties must discuss and
32 make a good faith attempt to settle all issues, even if a complete settlement is not
33 possible and only conditional agreements are made. The requirement to meet and
34 confer does not apply to cases involving domestic violence.

35
36 (b) Document exchange

37
38 Before or while conferring, parties must exchange all documentary evidence that is
39 to be relied on for proof of any material fact at the hearing. At the hearing, the court
40 may decline to consider documents that were not given to the other party before the
41 hearing as required under this rule.

42
43 Article 4. Evidence at Hearings

1 **Rule 5.111. Declarations supporting and responding to applications for court**
2 **orders**

3
4 A party must submit a supporting declaration and serve it on the other party along with a
5 request for order or a response to a request for order. The declarations must follow the
6 following requirements:

7
8 **(a) Length of declarations**
9

10 Each declaration in support of a request for order and each responsive declaration
11 must not exceed 10 pages in length, and a reply declaration must not exceed 5
12 pages in length, unless:

13
14 (1) The declaration is of an expert witness; or

15
16 (2) The court grants permission to extend the length of a declaration.
17

18 **(b) Form and format of declarations**
19

20 The form and format of each declaration submitted in a case filed under the Family
21 Code must comply with the requirements set out in California Rules of Court rule
22 2.100 et seq.
23

24 **(c) Objections to declarations**
25

26 (1) A declaration must be based on personal knowledge. The statements in the
27 declaration must be admissible in evidence.

28
29 (2) If a party thinks that a declaration does not meet the requirements of (1), the
30 party must file his or her objections in writing at least two court days before
31 the time of the hearing or any objection will be considered waived and the
32 declaration may be considered as evidence. Upon a finding of good cause,
33 objections may be made in writing or orally at the time of the hearing.
34

35 (3) If the court does not specifically rule on the objection raised by a party, the
36 objection is presumed overruled. If an appeal is filed, any presumed
37 overrulings can be challenged.
38

39 **Drafters' Notes:**

40 Proposed rule 5.111 was circulated for public comment from December 2010 to January
41 2011, as rule 5.118(f) in the proposal titled "Family Law: Live Testimony at Hearings and
42 Declarations." The proposed rule will be recommended to the Judicial Council for
43 adoption at the council's April 29, 2011, meeting. This proposal would provide minor
44 changes to the rule's title to clarify that the rules also pertains to a response to the
45 applications for request for order.

1
2 **Rule 5.112.1. Declaration page limitation; exemptions**
3

4 The Judicial Council form portion of a declaration does not count toward the page
5 limitation for declarations specified in rule 5.111. In addition, the following documents
6 may be attached to a *Request for Order* (form FL-300) or *Responsive Declaration to*
7 *Request for Order* (form FL-320) without being counted toward the page limitation for
8 declarations: *Income and Expense Declaration* (form FL-150) and its required
9 attachments; *Financial Statement (Simplified)* (form FL-155) and its required
10 attachments; *Property Declaration* (form FL-160) and required attachments; exhibits
11 attached to declarations; and memoranda of points and authorities.
12

13 **Rule 5.113. Live testimony**
14

15 **(a) Purpose**
16

17 Under Family Code section 217, at a hearing on any order to show cause or notice
18 of motion brought under the Family Code, absent a stipulation of the parties or a
19 finding of good cause under (b), the court must receive any live, competent, and
20 admissible testimony that is relevant and within the scope of the hearing.
21

22 **(b) Factors**
23

24 A court must consider the following factors in making a finding of good cause to
25 refuse to receive live testimony under Family Code section 217:
26

- 27 (1) Whether a substantive matter is at issue— such as child custody, parenting
28 time (visitation), parentage, child support, spousal support, requests for
29 restraining orders, or the characterization, division, or temporary use and
30 control of the property or debt of the parties—;
31
32 (2) Whether material facts are in controversy;
33
34 (3) Whether live testimony is necessary for the court to assess the credibility of
35 the parties or other witnesses;
36
37 (4) The right of the parties to question anyone submitting reports or other
38 information to the court;
39
40 (5) In testimony from persons other than the parties, whether there has been
41 compliance with Family Code section 217(c); and
42
43 (6) Any other factor that is just and equitable.
44

1 **(c) Findings**

2
3 If the court makes a finding of good cause to exclude live testimony, it must state
4 its reasons on the record or in writing. The court is required to state only those
5 factors on which the finding of good cause is based.

6
7 **(d) Minor children**

8
9 When receiving or excluding testimony from minor children, in addition to
10 fulfilling the requirements of Evidence Code section 765, the court must follow the
11 procedures in Family Code section 3042 and California Rules of Court governing
12 children’s testimony.

13
14 **(e) Witness lists**

15
16 Witness lists required by Family Code section 217(c) must be served along with the
17 order to show cause, notice of motion, or responsive papers in the manner required
18 for the service of those documents. If no witness list has been served, the court may
19 require an offer of proof before allowing any nonparty witness to testify.

20
21 **(f) Continuance**

22
23 The court must consider whether or not a brief continuance is necessary to allow a
24 litigant adequate opportunity to prepare for questioning any witness for the other
25 parties. When a brief continuance is granted to allow time to prepare for
26 questioning witnesses, the court should make appropriate temporary orders.

27
28 **(g) Questioning by court**

29
30 Whenever the court receives live testimony from a party or any witness it may elicit
31 testimony by directing questions to the parties and other witnesses.

32
33 **Drafters’ Notes:**

34 Proposed rule 5.113 is included only for context. It was circulated for public comment
35 from December 2010 to January 2011, as rule 5.119 in the proposal titled “Family Law:
36 Live Testimony at Hearings and Declarations.” The proposed rule will be recommended
37 to the Judicial Council for adoption at the council’s April 29, 2011, meeting.

38
39 **Rule 5.115. Judicial notice**

40 A party requesting judicial notice of material under Evidence Code sections 452 or 453
41 must provide the court and each party with a copy of the material. If the material is part
42 of a file in the court in which the matter is being heard, the party must specify in writing
43 the part of the court file sought to be judicially noticed and make arrangements with the
44 clerk to have the file in the courtroom at the time of the hearing.

1
2 Article 6. Reporting and Preparation of Order After Hearing

3
4 Rule 5.123. Reporting of hearing proceedings

5
6 A court that does not regularly provide for reporting of hearings on motions must so state
7 in its local rules. The rules must also provide a procedure by which a party may obtain a
8 court reporter in order to provide the party with an official verbatim transcript.
9

10 Rule 5.125. Preparation and submission of order after hearing

11
12 The court may prepare the order after hearing and serve copies on the parties. If not, the
13 court may order one of the parties to prepare the proposed order.
14

15 (a) Submission of proposed order after hearing to the court

16
17 Within five calendar days of the court hearing, the party preparing the proposed
18 order must submit it to the other party for approval.
19

20 (b) Failure to prepare proposed order after hearing

21
22 If the party ordered by the court to prepare the proposed order fails to do so within
23 five calendar days, the other party may prepare the proposed order and send it
24 directly to the court without the approval of the party ordered to prepare it.
25

26 (c) Failure of other party to approve or reject proposed order after hearing

27
28 The other party must approve or reject the proposed order. If the other party does
29 not respond to the proposed order within five calendar days of service, the party
30 preparing the order may submit it to the court without approval as to form and
31 content.
32

33 (1) The party must submit the proposed order with a letter to the court and to the
34 other party that includes:
35

36 (A) The date the proposed order was sent to the other party;

37
38 (B) The other party's reasons for not approving the proposed order, if
39 known;
40

41 (C) The date and results of the parties' attempt to meet and confer; and
42

43 (D) A request that the court sign the proposed order.
44

1 The purpose of a hearing on a request for emergency orders is to address matters
2 that cannot be heard on the court's regular hearing calendar. In this type of
3 proceeding, notice to the other party of the emergency hearing is shorter than in
4 other proceedings. Notice to the other party can also be waived under exceptional
5 and other circumstances as provided in these rules. This process is used to request
6 that the court:

- 7
- 8 (1) Make orders to help prevent an immediate danger or irreparable harm to a
9 party or to the children involved in the matter;
- 10
- 11 (2) Make orders to help prevent immediate loss or damage to property subject to
12 disposition in the case;
- 13
- 14 (3) Set a date for a hearing on the matter that is sooner than that of a regular
15 hearing (grant an order shortening time for hearing);
- 16
- 17 (4) Shorten or extend the time required for the moving party to serve the other
18 party with the notice of the hearing and supporting papers (grant an order
19 shortening time for service);
- 20
- 21 (5) Continue a hearing or trial; or
- 22
- 23 (6) Make orders about procedural matters.
- 24

25 **(c) Required documents**

26

27 A request for emergency orders must be in writing and must include all of the
28 following completed documents:

- 29
- 30 (1) Request for Order (form FL-300) that identifies the relief requested;
- 31
- 32 (2) Application for Order and Supporting Declaration (form FL-310) and any
33 attachments to the application;
- 34
- 35 (3) Temporary Orders (form FL-305) to serve as the proposed temporary order;
- 36
- 37 (4) A written declaration regarding notice of application for emergency orders
38 based on personal knowledge;
- 39
- 40 (5) A memorandum of points and authorities (required only if specified by the
41 court on a case-by-case basis);
- 42

1 **(d) Contents of application and declaration**

2
3 **(1) Identification of attorney or party**

4
5 An application for emergency orders must state the name, address, and
6 telephone number of any attorney known to the applicant to be an attorney
7 for any party or, if no such attorney is known, the name, address, and
8 telephone number of the party, if known to the applicant.

9
10 **(2) Affirmative factual showing required in written declarations**

11
12 The declarations must contain facts within the personal knowledge of the
13 declarant that demonstrate why the matter is appropriately handled as an
14 emergency hearing, as opposed to being on the court's regular hearing
15 calendar.

16
17 An applicant must make an affirmative factual showing of irreparable harm,
18 immediate danger, or any other statutory basis for granting relief without or
19 with shortened notice to the other party.

20
21 **(3) Disclosure of previous applications and orders**

22
23 An applicant must submit a declaration that fully discloses all previous
24 applications made on the same issue and whether any orders were made on
25 any of the applications, even if an application was previously made upon a
26 different state of facts. Previous applications include orders to shorten
27 time for service of notice or order shortening time for hearing.

28
29 **(4) Disclosure of change in status quo**

30
31 The applicant has a duty to disclose that an emergency order will
32 result in a change in the current situation or status quo. Absent such
33 disclosure, attorney fees and costs incurred to reinstate the status quo may be
34 awarded.

35
36 **(5) Applications regarding child custody or parenting time**

37
38 Applications for emergency orders regarding child custody or parenting time
39 must:

40
41 **(A) Provide a full, detailed description of the most recent incidents of**
42 **physical harm, threats of harm, or threats to remove the children from**
43 **the state;**

1
2 (B) Specify the date of each incident described in (A);

3
4 (C) Advise the court of the existing custody and parenting time
5 arrangements and how they would be changed by the request for
6 emergency orders;

7
8 (D) Include a copy of the current custody orders or, if no orders exist,
9 explain where the child is living now; and

10
11 (E) Include a completed *Declaration Under Uniform Child Custody*
12 *Jurisdiction and Enforcement Act (UCCJEA) (FL-105).*

13
14 **(e) Contents of notice and declaration regarding notice of emergency hearing**

15
16 (1) *Contents of notice*

17
18 When notice of a request for emergency orders is given, the person giving
19 notice must:

20
21 (A) State with specificity the nature of the relief to be requested and the
22 date, time, and place for the presentation of the application; and

23
24 (B) Attempt to determine whether the opposing party will appear to oppose
25 the application.

26
27 (2) *Declaration regarding notice*

28
29 An application for emergency orders must be accompanied by a completed
30 declaration regarding notice stating:

31
32 (A) The notice given, including the date, time, manner, and name of the
33 party informed, the relief sought, any response, and whether opposition
34 is expected and that, within the applicable time under rule 5.165, the
35 applicant informed the opposing party where and when the application
36 would be made;

37
38 (B) That the applicant in good faith attempted to inform the opposing party
39 but was unable to do so, specifying the efforts made to inform the
40 opposing party; or

41
42 (C) That, for reasons specified, the applicant should not be required to
43 inform the opposing party.

1
2 Article 2. Notice, Service, Appearance

3
4 Rule 5.165. Requirements for notice

5
6 (a) Notice to a party

7
8 A party seeking emergency orders under this chapter must give notice to all parties
9 or their attorneys so that it is received no later than 10:00 a.m. on the court day
10 before the matter is to be considered by the court. This rule does not apply to a
11 party seeking emergency orders under the Domestic Violence Prevention Act.

12
13 (1) Explanation for shorter notice

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

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

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

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

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

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

36
37 (D) The parties agree that no notice is required;

38
39 (E) No significant direct burden or inconvenience to the other party is
40 likely to result from the orders sought;

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

45
46 (3) Notice automatically waived

1
2 The court may consider the following matters without notice or personal
3 appearance:

4
5 (A) Applications to restore a former name after judgment;

6
7 (B) Stipulations by the parties;

8
9 (C) An order or judgment after a default proceeding;

10
11 (D) A wage and earnings assignment order based on an existing support
12 order;

13
14 (E) An order for service of summons by publication or posting;

15
16 (F) An order or judgment that the other party or opposing counsel approved
17 or agreed not to oppose; and

18
19 (G) Application for an order waiving filing fees.

20
21 (b) Notice to the court

22
23 The court may adopt a local rule requiring that the party provide additional notice to
24 the court that he or she will be requesting emergency orders the next court day.
25 Courts that adopt this local rule must provide a dedicated telephone number for this
26 purpose.

27
28 (c) Method of notice

29
30 Notice of appearance at a hearing to request emergency orders may be given by
31 telephone, in writing, or by voicemail message.

32
33 Rule 5.167. Service of application; temporary restraining orders

34
35 (a) Service of documents requesting emergency orders

36
37 A party seeking emergency orders and a party providing written opposition must
38 serve the papers on each other or on each other's attorney at the first reasonable
39 opportunity before the hearing. Absent exceptional circumstances, no hearing may
40 be conducted unless such service has been made. The court may waive this
41 requirement in extraordinary circumstances if good cause is shown that imminent
42 harm is likely if documents are provided to the other party before the hearing. This
43 rule does not apply in cases filed under the Domestic Violence Prevention Act.
44

1 (b) Service of temporary emergency orders

2
3 If the judicial officer signs the applicant's proposed emergency orders, the
4 applicant must obtain and personally serve a conformed copy of the orders upon all
5 parties.
6

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

8
9 The court may consider an application for emergency orders without requiring a personal
10 appearance of the applicant or other party.
11

12 Title 5. Family and Juvenile Rules

13
14 Division 1. Family Rules

15
16 Chapter 8. Child Custody and Parenting Time Proceedings

17 Article 1. Child Custody Mediation

18 Rule 5.210. Court-connected child custody mediation

19 (a)—(h) ***

20
21 Rule 5.215. Domestic violence protocol for Family Court Services

22
23 (a)—(j) ***
24
25

26 Article 2. Child Custody Mediation

27
28 Rule 5.220. Court-ordered child custody evaluations

29
30 (a)—(j) ***
31
32

33 Rule 5.225. Appointment requirements for child custody evaluators

34
35 (a)—(n) ***
36
37

38 Rule 5.230. Domestic violence training standards for court-appointed child custody
39 investigators and evaluators
40

1 (a)—(g) ***
2

3 **Article 3. Ex parte communication**

4 Rule 5.235. Ex parte communication in child custody proceedings
5

6 (a)—(f) ***
7
8

9 **Article 4. Counsel Appointed to Represent a Child**

10
11 Rule 5.240. Appointment of counsel to represent a child in family law proceedings
12

13 (a)—(c) ***
14

15 (c) Orders appointing counsel for a child
16

17 The court must issue written orders when appointing and terminating counsel for a
18 child.
19

20 (1) ***
21

22 (2) The appointment orders may include the:
23

24 (A)—(F) ***
25

26 (G) Source of funds and manner of reimbursement for counsel's fees and
27 costs and attorney's fees;
28

29 (H) Allocation of payment of ~~attorney's~~ counsel's fees to one party subject to
30 reimbursement by the other party;
31

32 (I)—(J) ***
33

34 (d) Panel of counsel eligible for appointment

35 (1)—(3) ***

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

40 (e)—(f) ***
41

1
2 Rule 5.241. Compensation of counsel appointed to represent a child in a family law
3 proceeding

4
5 (a)—(d) ***
6

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

9 (a)—(i) ***

10
11 (j) Responsibilities of counsel for a child

12
13 Counsel is charged with the representation of the ~~best interest of the child's~~ best
14 interests. The role of the child's counsel is to gather ~~facts~~ evidence that bears on the
15 best interest of the child, and present ~~those facts~~ admissible evidence to the court
16 ~~including the child's wishes when counsel deems it appropriate for consideration~~
17 ~~by the court under Family Code section 3042.~~ in the same manner as counsel for a
18 party. If the child so desires, the child's counsel must present the child's wishes to
19 the court. The ~~C~~counsel's duties, unless under the circumstances it is inappropriate
20 to exercise the duties, include those under Family Code section 3151~~;~~.

21 ~~(1) Interviewing the child;~~

22 ~~(2) Reviewing the court files and all accessible relevant records available to both~~
23 ~~parties;~~

24 ~~(3) Making any further investigations that counsel considers necessary to ascertain~~
25 ~~the facts evidence relevant to the custody or visitation hearings;~~

26 ~~(4) Participating in the proceeding to the degree necessary to adequately represent~~
27 ~~the child, including introducing and examining counsel's own witnesses and~~
28 ~~presenting arguments to the court concerning the child's welfare; and~~

29 ~~(5) Preparing, at the court's request, a written statement of issues and contentions~~
30 ~~setting forth the facts that bear on the best interest of the child.~~

31 (k) ***
32
33

34 **Drafters' Notes:**

35 Changes to rule 5.242 are included in this proposal only for context. To provide
36 comments to rule 5.242, please read and reply to the proposal titled "Family Law:
37 Counsel Appointed to Represent a Child in Family Law" which is also being circulated in
38 this cycle.
39

1 Article 5. Children’s Participation in Family Court

2
3 Rule 5.250. Children’s participation and testimony in family court proceedings

4
5 (a) Children’s participation

6
7 This rule is intended to implement Family Code section 3042. Children’s
8 participation in family law matters must be considered on a case-by-case basis. No
9 statutory mandate, rule, or practice requires children to participate in court or
10 prohibits them from doing so. When a child wishes to participate, the court should
11 find a balance between protecting the child, the statutory duty to consider the
12 wishes of and input from the child, and the probative value of the child’s input
13 while ensuring all parties’ due process rights to challenge evidence relied upon by
14 the court in making custody decisions.

15
16 (b) Determining if the child wishes to address the court

17
18 (1) The following persons must inform the court if they have information
19 indicating that a child in a custody or visitation matter wishes to address the
20 court:

21
22 (A) A minor’s counsel;

23
24 (B) An evaluator;

25
26 (C) An investigator; and

27
28 (D) A child custody recommending counselor who provides
29 recommendations to the judge under Family Code section 3183.

30
31 (2) The following persons may inform the court if they have information
32 indicating that a child wishes to address the court:

33
34 (A) A party; and

35
36 (B) A party’s attorney.

37
38 (3) In the absence of a request, the judicial officer may inquire whether the child
39 wishes to address the court.

40
41 (c) Guidelines for determining whether addressing the court is in the child’s best
42 interest

43
44 (1) When a child indicates that he or she wishes to address the court, the judicial
45 officer must consider whether involving the child in the proceedings is in the
46 child’s best interest.

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(2) If the child indicating an interest in addressing the court is 14 years old or older, the judicial officer must hear from that child unless the court makes a finding that addressing the court is not in the child's best interest and states the reasons on the record.

(3) In determining whether addressing the court is in a child's best interest, the judicial officer should consider the following:

- (A) Whether the child is of sufficient age and capacity to reason to form an intelligent preference as to custody or visitation;
- (B) Whether the child is of sufficient age and capacity to understand the nature of testimony;
- (C) Whether information has been presented indicating that the child may be at risk emotionally if he or she is permitted or denied the opportunity to address the court or that the child may benefit from addressing the court;
- (D) Whether the subject areas about which the child is anticipated to address the court are relevant to the court's decision making process; and
- (E) Whether any other factors weigh in favor of or against having the child address the court, taking into consideration the child's desire to so.

(d) Guidelines for receiving testimony and other input

(1) If the court precludes the calling of a child as a witness, alternatives for the court to obtain input from the child may include, but are not limited to:

- (A) The child's participation in child custody mediation under Family Code 3180;
- (B) Appointment of a child custody evaluator or investigator under Family Code section 3110 or Evidence Code section 730;
- (C) Admissible evidence provided by the parents, parties, or witnesses in the proceeding;
- (D) Information provided by a child custody recommending counselor authorized to provide recommendations under Family Code section 3183(a); and

- 1 (E) Information provided from a child interview center or professional so
2 as to avoid unnecessary multiple interviews.
3
- 4 (2) If the court precludes the calling of a child as a witness and specifies one of
5 the other alternatives, the court must require that the information or evidence
6 obtained by alternative means:
7
- 8 (A) Be in writing and fully document the child’s views on the matters on
9 which the child wished to express an opinion;
10
- 11 (B) Describe the child’s input in sufficient detail to assist the court in its
12 adjudication process;
13
- 14 (C) Be provided to the court and to the parties.
15
- 16 (3) Upon deciding to take the testimony of a child, the judicial officer should
17 balance the necessity of taking the child’s testimony in the courtroom with
18 parents and attorneys present with the need to create an environment in
19 which the child can be open and honest. In each case in which a child’s
20 testimony will be taken, courts should consider:
21
- 22 (A) Where the testimony will be taken, including the possibility of closing
23 the courtroom to the public or hearing from the child on the record in
24 chambers;
25
- 26 (B) Who should be present when the testimony is taken, such as: both
27 parents and their attorneys, only attorneys in the case in which both
28 parents are represented, the child’s attorney and parents, or only a court
29 reporter with the judicial officer;
30
- 31 (C) How the child will be questioned, such as whether only the judicial
32 officer will pose questions that the parties have submitted, whether
33 attorneys or parties will be permitted to cross-examine the child, or
34 whether a child advocate or expert in child development will ask the
35 questions in the presence of the judicial officer and parties or a court
36 reporter; and
37
- 38 (D) Whether a court reporter is available in all instances, but especially when
39 testimony may be taken outside the presence of the parties and their
40 attorneys and, if not, whether it will be possible to provide a listening
41 device so that testimony taken in chambers may be heard simultaneously
42 by the parents and their attorneys in the courtroom or to otherwise make
43 a record of the testimony.
44
- 45 (4) In taking testimony from a child, the court must take special care to protect
46 the child from harassment or embarrassment and to restrict the unnecessary

1 repetition of questions. The court must also take special care to ensure that
2 questions are stated in a form that is appropriate to the witness's age or
3 cognitive level. If the child is not represented by an attorney, the court must
4 inform the child in an age-appropriate manner about the limitations on
5 confidentiality and that the information provided to the court will be on the
6 record and provided to the parties in the case. In the process of listening to
7 and inviting the child's input, the court must allow but not require the child to
8 state a preference regarding custody or visitation and should, in an age-
9 appropriate manner, provide information about the process by which the
10 court will make a decision.

11
12 (5) In any case in which a child will be called to testify, the court may consider
13 the appointment of minor's counsel for that child. The court may consider
14 whether such appointment will cause unnecessary delay or otherwise
15 interfere with the child's ability to participate in the process. In addition to
16 adhering to the requirements for minor's counsel under Family Code section
17 3151 and rules 5.240, 5.241, and 5.242, minor's counsel must:

18
19 (A) Provide information to the child in an age-appropriate manner about the
20 limitations on confidentiality and the possibility that information
21 provided to the court may be on the record and provided to the parties
22 in the case;

23
24 (B) Allow but not require the child to state a preference regarding custody
25 or visitation and, in an age-appropriate matter, provide information
26 about the process by which the court will make a decision;

27
28 (C) Provide procedures relevant to the child's participation and, if
29 appropriate, provide an orientation to the courtroom where the child
30 will be testifying; and

31
32 (D) Inform the parties and then the court about the client's desire to provide
33 input.

34
35 (6) Due process requirements and rules prohibiting ex parte communication
36 preclude the judicial officer from taking testimony or in any way privately
37 discussing the merits of the case with a child off the record even with a
38 waiver or stipulation by the parties.

39
40 (e) Responsibilities of court-connected or appointed professionals

41
42 (1) A child custody evaluator, a child custody recommending counselor, an
43 investigator, or a mediator appointed or assigned to meet with a child in a
44 family court proceeding must:

1 (A) Provide information to the child in an age-appropriate manner about the
2 limitations on confidentiality and the possibility that information
3 provided to the professional may be shared with the court on the record
4 and provided to the parties in the case;

5
6 (B) Allow but not require the child state a preference regarding custody and
7 visitation, and, in an age-appropriate matter, provide information about
8 the process by which the court will make a decision; and

9
10 (C) Provide to the parents of the child participating in the court process
11 information about local court procedures relevant to the child's
12 participation and information about how to best support the child in an
13 age-appropriate manner during the court process.

14
15 (f) Methods of providing information to parents and supporting children

16
17 Courts should provide information to parties and parents and support for children
18 when children want to participate or testify or are otherwise involved in family law
19 proceedings. Such methods may include but are not limited to:

20
21 (1) Having court-connected professionals meet jointly or separately with the
22 parents or parties to discuss alternatives to having a child provide direct
23 testimony;

24
25 (2) Providing an orientation for a child about the court process and the role of the
26 judicial officer in making decisions, how the courtroom or chambers will be
27 set up, and what participating or testifying will entail;

28
29 (3) Providing information to parents or parties before and after a child
30 participates or testifies so that they can consider the possible effect on their
31 child of participating or not participating in a given case;

32
33 (4) Including information in child custody mediation orientation presentations
34 and publications about a child's participation in family law proceedings;

35
36 (5) Providing a children's waiting room; and

37
38 (6) Providing an interpreter for the child, if needed.

39
40 (g) Education and training

41
42 Education and training content for court staff and judicial officers should include
43 information on children's participation in family court processes and methods, other
44 than direct testimony, for receiving input from children and procedures for taking
45 children's testimony.

1 Title 5. Family and Juvenile Rules

2
3 Division 1. Family Rules

4
5 Chapter 9. Child, Spousal, and Domestic Partner Support

6
7 Article 1. General Provisions

8
9 Rule 5.260. General provisions regarding support cases

10
11 (a) Income and expense declarations

12
13 For all requests for orders involving child, spousal, or domestic partner support,
14 both parties must complete and serve a current *Income and Expense Declaration*
15 (form FL-150) on all parties.

16
17 (1) “Current” means the form has been completed within the past three months
18 providing no facts have changed. The form must be sufficiently completed to
19 allow the court to make an order.

20
21 (2) In child support hearings, a party may complete a current *Financial*
22 *Statement (Simplified)* (form FL-155) instead of a current *Income and*
23 *Expense Declaration* (form FL-150) if he or she meets the requirements
24 allowing submission of a *Financial Statement (Simplified)* (form FL-155).

25
26 (3) *Financial Statement (Simplified)* (form FL-155) is not appropriate for use in
27 proceedings to determine or modify spousal or domestic partner support, to
28 determine or modify family support, or to determine attorney fees and costs.

29
30 (b) Deviations from guideline child support

31
32 If a party contends that the amount of support as calculated under the guideline
33 formula is inappropriate, that party must file a declaration stating the amount of
34 support alleged to be proper and the factual and legal bases justifying a deviation
35 from guideline support. In its discretion, for good cause shown, the court may
36 deviate from the amount of guideline support resulting from the computer
37 calculation.

38
39 (c) Request to change prior support orders

40
41 The supporting declaration submitted in a request to change a prior child, spousal,
42 or domestic partner support order must include specific facts demonstrating a
43 change of circumstances. No change of circumstances must be shown to change a
44 previously agreed upon child support order that was below the child support
45 guidelines.

1 (d) Notification to the local child support agency

2
3 The party requesting court orders must provide the local child support agency
4 timely notice of any request to establish, change, or enforce any child, spousal or
5 domestic partner support order if the agency is providing services.

6
7 (e) Judgment for support

8
9 (1) If child support is an issue in a judgment:

10
11 (A) Each party must file a proposed support calculation that sets forth the
12 party's assumptions with regard to gross income, tax filing status,
13 timeshare, add-on expenses, and any other factor relevant to the support
14 calculation.

15
16 (B) The court may use and must permit parties or their attorneys to use any
17 software certified by the Judicial Council to present support
18 calculations to the court.

19
20 (2) If spousal or domestic partner support is an issue in a judgment:

21
22 (A) Use of support calculation software is not appropriate when requesting
23 a judgment or modification of a judgment for spousal or domestic
24 partner support.

25
26 (B) If petitioner seeks a default judgment of dissolution or judgment of
27 legal separation involving a marriage of over 10 years, petitioner must
28 address the issue of spousal or domestic partner support for both parties
29 considering the factors under Family Code section 4320 in the
30 proposed judgment. *Spousal or Partnership Support Declaration*
31 *Attachment* (form FL-157) may be used to provide this information.

32
33 **Drafters' Notes:**

34 Existing rule 5.128 would be repealed and renumbered as rule 5.260(a) with changes to
35 reflect requirements for support hearings.

36
37 Article 2. Certification of Statewide Uniform Guideline Support Calculators

38
39
40 Rule 5.275. Standards for computer software to assist in determining support

41
42 (a)—(j) ***

43
44 Title 5. Family and Juvenile Rules

1 Division 1. Family Rules

2
3 Chapter 10. Government Child Support Cases (Title IV-D Support Cases)

4
5
6 Rule 5.300. Purpose, authority, and definitions

7
8 (a)—(c) ***

9
10
11 Rule 5.305. Hearing of matters by a judge under Family Code sections 4251(a) and
12 4252(b)(7)

13
14 (a)—(c) ***

15
16 Rule 5.310. Use of existing family law forms

17
18 ***

19
20 Rule 5.311. Implementation of new and revised governmental forms by local child
21 support agencies

22
23 (a)—(b) ***

24
25 Rule 5.315. Memorandum of points and authorities

26
27 ***

28
29 Rule 5.320. Attorney of record in support actions under title IV-D of the Social
30 Security Act

31
32 ***

33
34 Rule 5.324. Telephone appearance in title IV-D hearings and conferences

35
36 (a)—(k) ***

37
38
39 Rule 5.325. Procedures for clerk's handling of combined summons and complaint

40
41 (a)—(e) ***

42
43 Rule 5.330. Procedures for child support case registry form

44
45 (a)—(g) ***

1
2 Rule 5.335. Procedures for hearings on interstate income withholding orders

3
4 (a)—(g) ***

5
6
7 Rule 5.340. Judicial education for child support commissioners

8
9 ***

10
11 Rule 5.350. Procedures for hearings to set aside voluntary declarations of paternity
12 when no previous action has been filed

13
14 (a)—(f) ***

15
16
17 Rule 5.355. Minimum standards of training for court clerk staff whose assignment
18 includes title IV-D child support cases

19
20 ***

21
22 Rule 5.360. Appearance by local child support agency

23
24 ***

25
26 Rule 5.365. Procedure for consolidation of child support orders

27
28 (a)—(b) ***

29
30 Rule 5.370. Party designation in interstate and intrastate cases

31
32 ***

33
34 Rule 5.375. Procedure for a support obligor to file a motion regarding mistaken
35 identity

36
37 (a) ***

38
39 (b) Procedure for filing motion in superior court

40
41 The support obligor's motion in superior court to establish mistaken identity must
42 be filed on ~~Notice of Motion (form FL-301)~~, Request for Order (form FL-300) with
43 appropriate attachments. The support obligor must also file as exhibits to the ~~notice~~
44 ~~of motion~~ request for order a copy of the claim of mistaken identity that he or she
45 filed with the local child support agency and a copy of the local child support
46 agency's denial of the claim.

1
2 **Drafters' Notes:**

3 Existing rule 5.375(b) would be amended to reference the proposed name change to
4 form FL-301.
5

6
7 Title 5. Family and Juvenile Rules

8
9 Division 1. Family Rules

10
11 Chapter 11. Domestic Violence Cases

12
13 Article 1. Domestic Violence Prevention Act Cases

14
15 **Rule 5.380. Stipulated Judgment of Parentage in Domestic Violence Prevention Act**
16 **cases**

17
18 **(a) Stipulated judgment filed on Judicial Council form**

19
20 This rule applies to a judgment of parentage made under Family Code section
21 6323(b)(2). Such a judgment may be filed on form DV-180, *Agreed Judgment of*
22 *Parentage*.

23
24 **(b) No requirement to open separate case; no filing fee**

25
26 If the court issues a restraining order in the case after a noticed hearing under
27 Family Code section 6340 and the court accepts the *Agreed Judgment of*
28 *Parentage*, the court may not require a party to open a separate parentage or other
29 type of case file. When an *Agreed Judgment of Parentage* is filed in a Domestic
30 Violence Prevention Act case, no filing fee may be levied.

31
32 **Drafters' Notes:**

33 Rule 5.380 is included only for context. Commentators who wish to provide comments
34 on proposed new rule 5.380 should read and reply to the proposal titled "Family Law -
35 Domestic Violence: adopt rule of court regarding modification of child custody and
36 visitation orders and revise, approve, and adopt forms used in Domestic Violence
37 Prevention Act Cases."
38

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

41
42 **(a) Application of Rule**

43
44 **(1) Child custody, visitation, and support orders remain in effect upon the**
45 **termination of a protective order as defined in Family Code section 6218.**
46

1 (2) This rule addresses court procedures for the modification of child custody,
2 visitation, and support orders in accordance with Family Code section 6340(a).

3
4 **(b) No Requirement to Open Separate Case; Filing Fees**

5
6 The court may not require a party to open a separate type of case file to request a
7 modification to a child custody, visitation, or support order. A filing fee may be
8 levied on a request to modify a child custody, visitation, or support order only after
9 a protective order, as defined in Family Code section 6218, has terminated. The
10 filing fee, if levied, shall be that which is levied on a motion, application, or any
11 other paper requiring a hearing subsequent to the first paper.

12
13 **(c) Forms**

14
15 Child custody, visitation, or support orders must be modified using standard Family
16 Law forms and procedures.

17
18 **Drafters' Notes:**

19 Rule 5.381 is included only for context. Commentators who wish to provide comments
20 on proposed new rule 5.381 should read and reply to the proposal titled "Domestic
21 Violence: Family Law – Stipulated Judgment of Parentage in Domestic Violence
22 Prevention Act Cases."
23

24 Article 2. Tribal Court Protective Orders

25
26 **Rule 5.386. Procedures for filing a tribal court protective order**

27
28 **(a) Request for written procedures for filing a tribal court protective order**

29
30 At the request of any tribal court located within the county, a court must adopt a
31 written procedure or local rule to permit the fax and/or electronic filing of any tribal
32 protective order that is entitled to be registered pursuant to § 6404 of the Family
33 Code.

34
35 **(b) Process for registration of order**

36
37 In consultation with the tribal court or tribal courts within the county, the written
38 procedure or local rule may provide a process for:

39
40 (1) The tribal court or courts to contact a representative of the superior court to
41 inform them that a request for registration of a tribal court protective order
42 will be made;

43
44 (2) Confirmation of receipt of the request for registration of the order; and

45
46 (3) Return of certified copies of the registered order to the tribal court.

1
2 (b) No filing fee required

3
4 In accordance with § 6404 (b) of the Family Code, no fee may be charged for the
5 fax or electronic filing registration of a tribal court protective order.

6
7 (c) Facsimile coversheet

8
9 The Facsimile Transmission Cover sheet for Registration of a Tribal Court
10 Protective Order (form DV-610) may be used when fax filing a tribal court
11 protective order.

12
13
14 **Drafters' Notes:**

15 Rule 5.386 is included only for context. Commentators who wish to provide comments
16 on proposed new rule 5.386 should read and reply to the proposal titled "Filing Tribal
17 Court Protective Orders."

18
19 Title 5. Family and Juvenile Rules

20
21 Division 1. Family Rules

22
23 Chapter 12. Separate Trials (Bifurcation) and Interlocutory Appeals

24
25 Article 1. Separate Trials

26
27 Rule 5.390. Bifurcation of issues

28
29 (a) Motion to bifurcate

30
31 On noticed motion of a party, the stipulation of the parties, or its own motion or
32 under case management, the court may bifurcate one or more issues to be tried
33 separately before other issues are tried. The motion must be heard not later than the
34 trial-setting conference. A party requesting a separate trial or responding to a
35 request for a separate trial must complete *Application or Response to Application*
36 for Separate Trial (form FL-315).

37
38 (b) When to bifurcate

39
40 The court may separately try one or more issues before trial of the other issues if
41 resolution of the bifurcated issue is likely to simplify the determination of the other
42 issues. Issues that may be appropriate to try separately in advance include:

43
44 (1) Validity of a postnuptial or premarital agreement;

45
46 (2) Date of separation;

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

22

23 (c) Alternate date of valuation

24

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

27

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

35

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

37

- 38 (1) All pension plans that have not been divided by court order that require
39 joinder must be joined as a party to the case before a petitioner or respondent
40 may file a request for a separate trial to terminate marital status or the
41 domestic partnership. Parties may refer to *Retirement Plan Joinder—*
42 *Information Sheet* (form FL-318-INFO) to help determine whether their
43 retirement benefit plans must be joined.
 - 44
 - 45 (2) The party not requesting termination of status may ask the court:
- 46

1 (A) To order that the judgment granting a dissolution include conditions
2 that preserve his or her claims in retirement benefit plans, health
3 insurance and other assets; and
4

5 (B) For other orders made as conditions to terminating the parties' marital
6 status or domestic partnership.
7

8 (3) The court must use *Bifurcation of Status of Marriage or Domestic*
9 *Partnership—Attachment* (form FL-347) as an attachment to the order after
10 hearing in these matters.
11

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

21 (e) Notice by clerk
22

23 Within 10 days after the order deciding the bifurcated issue and any statement of
24 decision under rule 3.1591 have been filed, the clerk must mail copies to the parties
25 and file a certificate of mailing.
26

27 **Drafters' Notes:**

28 Existing rule 5.175(a) would be renumbered as 5.390(a) and amended to include a third
29 sentence referencing use of mandatory form FL-315. Existing rule 5.175(b) would be
30 renumbered to rule 5.390(e). Existing rule 5.175(c) would be renumbered 5.390(b) and
31 amended to include new provisions (b)(7)-(13). Existing rule 5.126 would be renumbered
32 as rule 5.390(c).
33

34 Article 2. Interlocutory Appeals
35

36 Rule 5.392. Interlocutory appeals
37

38 (a)–(h) ***
39

40 **Drafters' Notes:**

41 Existing rule 5.180 would be renumbered as rule 5.392 without change to content.
42

1
2 Title 5. Family and Juvenile Rules

3
4 Division 1. Family Rules

5
6 Chapter 13. Trials and Long-Cause Hearings

7
8 Rule 5.393. Setting trials and long-cause hearings

9
10 (a) Definitions

11 For purposes of this rule:

- 12
13
14 (1) A “trial day” is defined as a period no less than two and a half hours of a
15 single court day.
- 16
17 (2) A “long cause hearing” is defined as a hearing on a request for order that
18 extends over a single court day.
- 19
20 (3) A “trial brief” or “hearing brief” is a written summary or statement submitted
21 by a party that explains to a judge the party’s position on particular issues
22 that will be part of the trial or hearing.

23
24 (b) Conference with judge before trial or long-cause hearing

25
26 The judge may schedule a conference with the parties and their attorneys before
27 any trial or long-cause hearing.

28
29 (1) Time estimates

30
31 During the conference, each party must provide an estimate of the amount of
32 time that will be needed to complete the trial or long-cause hearing. The
33 estimate must take into account the time needed to examine witnesses and
34 introduce evidence at the trial.

35
36 (2) Trial or hearing brief

37
38 The judge must determine at the conference whether to require each party to
39 submit a trial or hearing brief. If trial briefs will be required, they must
40 comply with the requirements of rule 5.394. Any additional requirements to
41 the brief must be provided to the parties in writing before the end of the
42 conference.

43
44 (c) Sequential days

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

5
6 **(d) Intervals between trial or hearing days**

7
8 When trials or long-cause hearings are not completed in the number of days
9 originally scheduled, the court must schedule the remaining trial days as soon as
10 possible on the earliest available days with the goal of minimizing intervals
11 between days for trials or long-cause hearings.

12
13 **Rule 5.394. Trial or hearing brief**

14
15 **(a) Contents of brief**

16
17 In cases where the judge orders each party to complete a trial or hearing brief or
18 other pleading, the contents of the brief must include at least:

- 19
20 (1) The statistical facts and any disputes about the statistical facts. Statistical
21 facts that may apply to the case could include:
22
23 (A) Date of the marriage or domestic partnership;
24
25 (B) Date of separation;
26
27 (C) Length of marriage or domestic partnership in years and months; and
28
29 (D) Names and ages of parties' children.
30
31 (2) A brief summary of the case;
32
33 (3) A statement of any issues that need to be resolved at trial;
34
35 (4) A brief statement summarizing the contents of any appraisal or expert report
36 to be offered at trial;
37
38 (5) A list of all witnesses to be called at trial and a brief summary of their
39 testimony, as well as name, business address, and statement of qualifications
40 of any expert witness;
41
42 (6) Any legal arguments upon which a party intends to rely; and
43
44 (7) Any other matters determined by the judge to be necessary and provided to
45 the parties in writing.

1
2 **(b) Service of brief**
3

4 The parties must serve the trial or hearing brief on all parties and file the brief with
5 the court a minimum of 5 court days before trial or long-cause hearing.
6

7 Title 5. Family and Juvenile Rules
8

9 Division 1. Family Rules
10

11 Chapter 14. Default Proceedings and Judgments
12

13 Rule 5.401. Default
14

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

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

- 20 (1) Make an appearance as stated in rule 5.62;
21
22 (2) File a notice of motion to quash service of summons under section 418.10 of
23 the Code of Civil Procedure; or
24
25 (3) File a petition for writ of mandate under section 418.10 of the Code of Civil
26 Procedure.
27

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

- 30 (1) The petitioner may apply to the court for the relief sought in the petition at
31 the time default is entered. The court must require proof to be made of the
32 facts stated in the petition and may enter its judgment based on that proof.
33
34 (2) The court may permit the use of a completed *Income and Expense*
35 *Declaration* (form FL-150) or *Financial Statement (Simplified)* (form FL-
36 *155)* and *Property Declaration* (form FL-160) for all or any part of the proof
37 required or permitted to be offered on any issue as to which they are relevant.
38

39 **Drafters' Notes:**

40 Existing rule 5.122 would be renumbered as rule 5.401 with minor changes to (a)(1) to
41 reference a new rule number.
42

43 **Rule 5.402. Request for default; forms**
44

1
2 **(a) Forms**
3

4 No default may be entered in any proceeding unless a request has been completed
5 on a *Request to Enter Default* (form FL-165) and filed by the petitioner. However,
6 an *Income and Expense Declaration* (form FL-150) or *Financial Statement*
7 *(Simplified)* (form FL-155) are not required if the petition contains no request for
8 support, costs, or attorney’s fees. A *Property Declaration* (form FL-160) is not
9 required if the petition contains no request for property.

10
11 **(b) Service address required**
12

13 For the purpose of completing the declaration of mailing, unless service was by
14 publication and the address of respondent is unknown, it is not sufficient to state
15 that the address of the party to whom notice is given is unknown or unavailable.

16
17 **Drafters’ Notes:**

18 Existing rule 5.124 would be amended and renumbered as rule 5.402 with minor
19 changes to titles and formatting.

20
21
22 **Rule 5.405. Judgment checklists**
23

24 **Drafters’ Notes:**

25 The text of rule 5.405 is not included with this proposal. Commentators who wish to
26 provide comments to rule 5.405 should read and reply to the proposal titled “Family Law:
27 Default and Uncontested Judgment Checklist and Related Rules and Forms,” which is
28 being circulated during this comment period.

29
30
31 **Rule 5.407. Review of default and uncontested judgments submitted on the basis of**
32 **declaration under Family Code section 2336**
33

34 Once a proof of service of summons has been filed with the court or respondent has made
35 a general appearance in the case, the court must do the following:

36
37 **(a) Court review**
38

39 The court must complete a review of all documents submitted for default or
40 uncontested judgment under Family Code section 2336 before any of the
41 documents can be rejected and returned to the attorneys or self-represented litigants
42 who submitted them.

43
44 **(b) Notice of errors and omissions**
45

1 All errors and omissions must be identified and basic information for correction of
2 the defects must be included in any rejection and return of the paperwork to
3 attorneys or self-represented litigants.

4
5 **Drafters' Notes:**

6 Rule 5.407 is included in this proposal only for context. Commentators who wish to
7 provide comments to rule 5.407 should read and reply to the proposal titled "Family Law:
8 Default and Uncontested Judgment Checklist and Related Rules and Forms," which is
9 being circulated during this comment period.

10
11 **Rule 5.409. Default and uncontested judgment hearings on judgments submitted on**
12 **the basis of declarations under Family Code section 2336**

13
14 The decision to hold a hearing in a case in which a judgment has been submitted on the
15 basis of a declaration under Family Code section 2336 should be made on a case-by-case
16 basis at the discretion of the court or request of a party. Courts must allow judgments in
17 default and uncontested cases to be submitted by declaration pursuant to section 2336 and
18 must not require that a hearing be conducted in all such cases.

19
20 **Drafters' Notes:**

21 Rule 5.409 is included in this proposal only for context. Commentators who wish to
22 provide comments to rule 5.409 should read and reply to the proposal titled "Family Law:
23 Default and Uncontested Judgment Checklist and Related Rules and Forms," which is
24 being circulated during this comment period.

25
26
27 **Rule 5.411. Stipulation for judgment**

28
29 **(a) Format**

30
31 A stipulation for judgment (which must be attached to form FL-180 or form FL-
32 250) may be submitted to the court for signature at the time of the hearing on the
33 merits and must contain the exact terms of any judgment proposed to be entered in
34 the case. At the end, immediately above the space reserved for the judge's
35 signature, the stipulation for judgment must contain the following:

36
37 The foregoing is agreed to by

<hr/> <u>(Petitioner)</u> <hr/>	<hr/> <u>(Respondent)</u> <hr/>
<hr/> <u>(Attorney for Petitioner)</u> <hr/>	<hr/> <u>(Attorney for Respondent)</u> <hr/>

1
2 **(b) Disposition of all matters required**

3
4 A stipulation for judgment must include disposition of all matters subject to the
5 court's jurisdiction for which a party seeks adjudication or an explicit reservation
6 of jurisdiction over any matter not proposed for disposition at that time. A
7 stipulation for judgment constitutes a written agreement between the parties as to
8 all matters covered by the stipulation.

9
10 **Drafters' Notes:**

11 Existing rule 5.116 above would be renumbered as rule 5.411 with minor changes to
12 formatting.

13
14 **Rule 5.413. Notice of entry of judgment**

15
16 **(a) Notice by clerk**

17
18 Notwithstanding Code of Civil Procedure section 664.5, the clerk must give notice
19 of entry of judgment, using *Notice of Entry of Judgment* (form FL-190), to the
20 attorney for each party or to the party if self-represented, of the following:

- 21
22 (1) A judgment of legal separation;
23
24 (2) A judgment of dissolution;
25
26 (3) A judgment of nullity;
27
28 (4) A judgment establishing parental relationship (on form FL-190); or
29
30 (5) A judgment regarding custody or support.

31
32 **(b) Notice to local child support agency form**

33
34 This rule applies to local child support agency proceedings except that the notice of
35 entry of judgment must be on *Notice of Entry of Judgment and Proof of Service by*
36 *Mail* (form FL-635).

37
38 **Drafters' Notes:**

39 Existing rule 5.134 above would be renumbered as rule 5.413 with minor changes to
40 formatting.

41
42
43 **Rule 5.415. Completion of notice of entry of judgment**

44
45 **(a) Required attachments**

46
47 Every person who submits a judgment for signature by the court must submit:

1
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- (1) Stamped envelopes addressed to the parties; and
- (2) An original and at least two additional copies of the *Notice of Entry of Judgment* (form FL-190).

(b) Fully completed

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

(c) Address of respondent or defendant

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

(d) Consequences of failure to comply

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

(e) Application to local child support agencies

This rule applies to local child support agency proceedings filed under the Family Code except that:

- (1) The local child support agency must use form *Notice of Entry of Judgment and Proof of Service by Mail* (form FL-635);
- (2) The local child support agency may specify in the certificate of mailing that the address where the *Notice of Entry of Judgment* (form FL-190) was mailed is on file with the local child support agency; and
- (3) An envelope addressed to the local child support agency need not be submitted.

Drafters' Notes:

Existing rule 5.136 would be renumbered as rule 5.415 without change to content.

1 Division 1. Family Rules

2
3 Chapter 15. Settlement Services

4
5 Rule 5.420. Domestic violence protocol for court-connected settlement service
6 providers

7
8 (a) Purpose

9
10 This rule sets forth the protocol for court-connected settlement service providers
11 handling cases involving domestic violence and not involving child custody or
12 parenting time.

13
14 (b) Definitions

15
16 (1) “Domestic violence” is used as defined in Family Code sections 6203 and
17 6211.

18
19 (2) “Protective order” is synonymous with “domestic violence restraining order”
20 as well as the following:

21
22 (A) “Emergency protective order” under Family Code section 6215;

23
24 (B) “Protective order” under Family Code section 6218; and

25
26 (C) “Orders by court” under Penal Code section 136.2.

27
28 (3) “Settlement service(s)” refers to voluntary procedures in which the parties in
29 a family law case agree to meet with a neutral third party professional for the
30 purpose of identifying the issues involved in the case and attempting to reach
31 a resolution of those issues by mutual agreement.

32
33 (c) Duties of settlement service providers

34
35 All settlement services must:

36
37 (1) Include review of court files and, if available, intake forms, by appropriate
38 staff;

39
40 (2) Identify cases referred to settlement services that involve domestic violence;

41
42 (3) Make reasonable efforts to ensure the safety of victims, children, and other
43 parties when they are participating in services provided by the court;

1 (4) Not negotiate with the parties about using violence with each other, whether
2 either party should or should not obtain or dismiss a restraining order, or
3 whether either party should cooperate with criminal prosecution;
4

5 (5) Provide information and materials that describe the settlement services and
6 procedures with respect to domestic violence.
7

8 (d) Domestic violence procedures
9

10 (1) In a case in which there has been a history of domestic violence between the
11 parties or in which a protective order as defined in Family Code section 6218
12 is in effect, settlement service providers must first meet with the parties
13 separately to determine whether joint meetings are appropriate.
14

15 (2) In a case in which there has been a history of domestic violence between the
16 parties or in which a protective order as defined in Family Code section 6218
17 is in effect, at the request of the party who is alleging domestic violence in a
18 written declaration under penalty of perjury or who is protected by the order,
19 settlement service providers must meet with the parties separately and at
20 separate times throughout the case.
21

22 (3) When appropriate, the settlement service providers and staff must protect the
23 confidentiality of each party's times of arrival, departure, and meeting for
24 separate sessions.
25

26 (4) If domestic violence is discovered after services have begun, the professional
27 assigned to the case must confer with the parties separately regarding safety-
28 related issues and the option of continuing in separate sessions at separate
29 times.
30

31 (5) Settlement service providers and staff, including support staff, must not
32 respond to a party's request for separate sessions as though it were evidence
33 of his or her lack of cooperation with the settlement process.
34

35 (e) Safety issues
36

37 (1) When domestic violence is identified or alleged in a case, settlement service
38 staff must consult with the party alleging domestic violence away from the
39 presence of the party against whom such allegations are made and discuss the
40 existence of or need for a safety plan and provide information on appropriate
41 services. Safety planning may include, but is not limited to, discussion of safe
42 housing, workplace safety, safety for other family members and children,
43 access to financial resources, and information about local domestic violence
44 agencies.
45

1 “Limited scope representation” is a relationship between an attorney and a person
2 seeking legal services in which they have agreed that the scope of the legal services
3 will be limited to specific tasks that the attorney will perform for the person.

4
5 (b) Application

6
7 This rule applies to limited scope representation in family law cases. Rules 3.35
8 through 3.37 apply to limited scope representation in civil cases.

9
10 (c) Types of limited scope representation

11
12 These rules recognize two types of limited scope representation:

13
14 (1) *Noticed representation*

15
16 This type occurs when an attorney and a party notify the court and other
17 parties of the limited scope representation.

18
19 (2) *Undisclosed representation*

20
21 In this type of limited scope representation, a party contracts with an attorney
22 to draft or assist in drafting legal documents, but the attorney does not make
23 an appearance in the case.

24
25 (d) Noticed limited scope representation

26
27 (1) A party and an attorney may provide notice of their agreement to limited
28 scope representation by serving and filing a *Notice of Limited Scope*
29 *Representation* (form FL-950).

30
31 (2) After the notice in (1) is received and until either a substitution of attorney or
32 an order to be relieved as attorney is filed and served, papers in the case must
33 be served on both the attorney providing the limited scope representation and
34 the client.

35
36 (e) Procedures to be relieved as counsel on completion of limited scope
37 representation

38
39 An attorney who has completed the tasks specified in the *Notice of Limited Scope*
40 *Representation* (form FL-950) may use the following procedures in this rule to
41 request that he or she be relieved as attorney in cases in which the attorney has
42 appeared before the court as an attorney of record and the client has not signed a
43 *Substitution of Attorney-Civil* (form MC-050):

44
45 (1) *Application*

1 An application to be relieved as attorney on completion of limited scope
2 representation under Code of Civil Procedure section 284(2) must be directed
3 to the client and made on the *Application to Be Relieved as Counsel Upon*
4 *Completion of Limited Scope Representation* (form FL-955).

5
6 (2) *Filing and service of application*

7
8 The application to be relieved as attorney must be filed with the court and
9 served on the client and on all other parties or attorneys for parties in the
10 case. The client must also be served with a blank *Objection to Application to*
11 *Be Relieved as Attorney on Completion of Limited Scope Representation*
12 (form FL-956).

13
14 (3) *No objection*

15
16 If no objection is served and filed with the court within 15 days from the
17 date that the *Application to Be Relieved as Attorney on Completion of Limited*
18 *Scope Representation* (form FL-955) is served on the client, the attorney
19 making the application must file an updated form FL-955 indicating the lack
20 of objection, along with a proposed *Order on Application to Be Relieved as*
21 *Attorney on Completion of Limited Scope Representation* (form FL-958). The
22 clerk must then forward the order for judicial signature.

23
24 (4) *Objection*

25
26 If an objection to the application is served and filed within 15 days, the clerk
27 must set a hearing date on the *Objection to Application to Be Relieved as*
28 *Attorney on Completion of Limited Scope Representation* (form FL-956). The
29 hearing must be scheduled no later than 25 days from the date the objection is
30 filed. The clerk must send the notice of the hearing to the parties and the
31 attorney.

32
33 (5) *Service of the order*

34
35 If no objection is served and filed and the proposed order is signed, the
36 attorney who filed the *Application to Be Relieved as Attorney on Completion*
37 *of Limited Scope Representation* (form FL-955) must serve a copy of the
38 signed order on the client and on all parties or the attorneys for all parties
39 who have appeared in the case. The court may delay the effective date of the
40 order relieving the attorney until proof of service of a copy of the signed
41 order on the client has been filed with the court.

42
43 (f) *Nondisclosure of attorney assistance in preparation of court documents*

44
45 (1) *Nondisclosure*

1 In a family law proceeding, an attorney who contracts with a client to draft
2 or assist in drafting legal documents, but not to make an appearance in the
3 case, is not required to disclose within the text of the document that he or she
4 was involved in preparing the documents.

5
6 (2) Attorney fees

7
8 If a litigant seeks a court order for attorney fees incurred as a result of
9 document preparation, the litigant must disclose to the court information
10 required for a proper determination of attorney fees-including the name of the
11 attorney who assisted in the preparation of the documents, the time involved
12 or other basis for billing, the tasks performed, and the amount billed.

13
14 (3) Applicability

15
16 This rule does not apply to an attorney who has made a general appearance or
17 has contracted with his or her client to make an appearance on any issue that
18 is the subject of the pleadings.

19
20 **Drafters' Notes:**

21 Existing rules 5.70 and 5.71 would be renumbered as rule 5.425 (e) and (f), respectively,
22 with minor changes to formatting.

23
24 Article 2. Attorney Fees and Costs

25
26 Rule 5.427. Attorney fees and costs

27
28 **(a) Request**

29
30 A party requesting that the court award attorney fees and costs must complete, file,
31 and serve *Request for Order* (form FL-300) and *Request for Attorney Fees and*
32 *Costs Order Attachment* (form FL-319). The party must also file a personal
33 declaration in support of the request for attorney fees and costs, either using
34 *Supporting Declaration for Attorney Fees and Costs Order Attachment* (form FL-
35 158) or a comparable declaration that addresses the factors covered in form FL-
36 158.

37
38 **(b) Response to request**

39
40 A party responding to the request for payment of attorney fees and costs must
41 complete, file, and serve *Responsive Declaration to Request for Order* (form FL-
42 320). The party must also file a personal declaration responding to the request for
43 attorney fees and costs, either using *Supporting Declaration for Attorney Fees and*
44 *Costs Order Attachment* (form FL-158) or a comparable declaration that addresses
45 the factors covered in form FL-158.

1 **(c) Income and expense declaration**

2
3 Both parties must complete, file, and serve a current *Income and Expense*
4 *Declaration* (form FL-150).

- 5
6 (1) “Current” is defined as being completed within the past three months,
7 provided that no facts have changed. The form must be sufficiently
8 completed to allow determination of the issues.
9
10 (2) A *Financial Statement (Simplified)* (form FL-155) is not appropriate for use
11 in proceedings to determine or modify attorney fees and costs.
12
13 (3) When attorney fees are requested by either party, the section on the *Income*
14 *and Expense Declaration* (form FL-150) related to the amount in savings,
15 credit union, certificates of deposit, and money market accounts must be fully
16 completed, as well as the section related to the amount of attorney fees
17 incurred, currently owed, and the source of money used to pay such fees.
18

19 **(d) Court findings and order**

20
21 The court must make an order regarding attorney fees and costs using
22 *Attorney Fees and Costs Order Attachment* (form FL-346).
23

24 **Drafters’ Notes:**

25 Rule 5.427 is included in this proposal only for context. Commentators who wish to
26 provide comments to rule 5.427 should read and reply to the proposal titled “Family
27 Law: Attorney Fees and Costs.”
28

29
30 Title 5. Family and Juvenile Rules

31
32 Division 1. Family Rules

33
34 Chapter 17. Family Law Facilitator
35

36
37 Rule 5.430 ~~5.35~~. Minimum standards for the Office of the Family Law Facilitator
38

39 **(a)—(h) *****
40

41
42 **Drafters’ Notes:**

43 Existing rule 5.35 would be renumbered as 5.430 without change to content.
44
45

1 Title 5. Family and Juvenile Rules

2
3 Division 1. Family Rules

4
5 Chapter 18. Court Coordination Rules

6
7 Article 1. Related Cases

8
9 Rule 5.440. Related cases

10
11 Where resources permit, courts should identify cases related to a pending family law case
12 to avoid issuing conflicting orders and make effective use of court resources.

13
14 (a) Definition of “related case”

15
16 For purposes of this rule, a pending family law case is related to another pending
17 case, or to a case that was dismissed with or without prejudice, or to a case that was
18 disposed of by judgment, if the cases:

19
20 (1) Involve the same parties or the parties’ minor children;

21
22 (2) Are based on issues governed by the Family Code or by the guardianship
23 provisions of the Probate Code; or

24
25 (3) Are likely for other reasons to require substantial duplication of judicial
26 resources if heard by different judges.

27
28 (b) Confidential information

29
30 Where the identification of a related case includes a disclosure of information
31 relating to a juvenile dependency or delinquency matter involving the children of
32 the parties in the pending family law case, the clerk must file that information in
33 the confidential portion of the court file.

34
35 (c) Coordination of Title IV-D cases

36
37 To the extent possible, courts should coordinate Title IV-D (government child
38 support) cases with other related family law matters.

39
40 **Rule ~~5.445~~ 5.450. Court communication protocol for domestic violence and child**
41 **custody cases.**

42
43 (a)—(c) ***

44
45 **Drafters’ Notes:**

46 Existing rule 5.450 would be renumbered as rule 5.445 without change to content.

47

1
2 Title 5. Family and Juvenile Rules
3

4 Division 2. Rules Applicable in Family and Juvenile Proceedings
5

6 Chapter 1. Contact and Coordination
7

8 **Rule ~~5.451~~ 5.400. Contact after adoption agreement**

9 (a) Applicability of rule (~~Fam. Code, §§ 8714, 8714.5, 8714.7; Welf. & Inst. Code,~~
10 ~~§§ 358.1, 366.26)~~
11

12 ***
13

14 (b) Contact after adoption agreement (~~Fam. Code, § 8714.7~~)
15

16 ***
17

18 (c) Court approval; time of decree (~~Fam. Code, § 8714.7~~)
19

20 ***
21

22 (d) Terms of agreement (~~Fam. Code, § 8714.7~~)
23

24 ***
25

26 (e) Child a party (~~Fam. Code, § 8714.7~~)
27

28 ***
29

30 (f) Form and provisions of the agreement (~~Fam. Code, § 8714.7~~)
31

32 ***
33

34 (g) Report to the court (~~Fam. Code, § 8715~~)
35

36 ***
37

38 (h) Enforcement of the agreement (~~Fam. Code, § 8714.7~~)
39

40 ***
41

42 (i) Modification or termination of agreement (~~Fam. Code, § 8714.7~~)
43

44 ***

1
2 (j) Costs and fees (~~Fam. Code, § 8714.7~~)

3
4 ***

5
6 (k) Adoption final (~~Fam. Code, § 8714.7~~)

7
8 ***

9
10 **Drafters' Notes:**

11 Existing rule 5.400 would be renumbered as rule 5.451 and amended by striking code
12 sections as indicated in the rule.

13
14
15 Rule ~~5.410-5.460~~. Request for sibling contact information ~~under Family Code section~~
16 ~~9205~~

17
18 (a)—(b)

19
20 (c) Waiver submitted by person under the age of 18 years ~~under Family Code~~
21 ~~section 9205(f)~~

22
23 ***

24
25 (d) No waiver on file-sibling requesting contact ~~under Family Code section~~
26 ~~9205(g)~~

27
28 ***

29
30 **Drafters' Notes:**

31 Existing rule 5.410 would be renumbered as rule 5.460 and amended by deleting code
32 sections as indicated in the above text.

33
34
35 Rule 5.475. Custody and visitation orders following termination of a juvenile court
36 proceeding or probate court guardianship proceeding (~~Fam. Code, § 3105;~~
37 ~~Welf. & Inst. Code, § 362.4; Prob. Code, § 1602~~)

38
39 (a)—(c) ***

40
41 **Drafters' Notes:**

42 Existing rule 5.475 would be amended by deleting code sections as indicated in the
43 above text.

1 Rule 5.480. Application (~~Fam. Code, §§ 170, 177, 3041; Prob. Code, § 1459.5; Welf.~~
2 ~~& Inst. Code, §§ 224, 224.1)~~

3
4 ***

5
6 **Drafters' Notes:**

7 Existing rule 5.480 would be amended by deleting code sections as indicated in the
8 above text.

9
10
11 Rule 5.481. Inquiry and notice (~~Fam. Code, §§ 177(a), 180; Prob. Code, §§ 1459.5(b),~~
12 ~~1460.2; Welf. & Inst. Code, §§ 224.2, 224.3)~~

13
14 (a) Inquiry (~~Fam. Code, § 177(a); Prob. Code, § 1459.5(b); Welf. & Inst. Code, §~~
15 ~~224.3)~~

16
17 ***

18
19 (b) Notice (~~Fam. Code, § 180; Prob. Code, § 1460.2; Welf. & Inst. Code, § 224.2)~~

20
21 (1)–(4) ***

22
23 **Drafters' Notes:**

24 Existing rule 5.481 would be amended by deleting code sections as indicated in the
25 above text.

26
27
28 Rule 5.482. Proceedings after notice (~~Fam. Code, §§ 177(a), 180(d), (e); Prob. Code,~~
29 ~~§§ 1459.5(b), 1460.2(d), (e); Welf. & Inst. Code, §§ 224.2(c), (d); 25 U.S.C. §~~
30 ~~1916(b))~~

31
32 (a) Timing of proceedings (~~Fam. Code, § 180(d), (e); Prob. Code, § 1460.2(d), (e);~~
33 ~~Welf. & Inst. Code, § 224.2(c), (d))~~

34
35 ***

36
37 (b) Proof of notice (~~Fam. Code, § 180(d); Prob. Code, § 1460.2(d); Welf. & Inst.~~
38 ~~Code, § 224.2(c))~~

39
40 ***

41
42 (c) When there is information or a response from a tribe that requires additional
43 steps

44
45 ***

1 (d) When there is no information or response from a tribe (~~Fam. Code, § 177(a);~~
2 ~~Prob. Code, § 1459.5(b); Welf. & Inst. Code, § 224.3(e)(3)~~)

3
4 ***

5
6 (e) Intervention (~~Fam. Code, § 177(a); Prob. Code, § 1459.5(b); Welf. & Inst.~~
7 ~~Code, § 224.4)~~)

8
9 ***

10
11 (f) Posthearing actions (~~25 U.S.C. § 1916(b)~~)

12
13 ***

14 (g) Consultation with tribe

15
16 ***

17
18 **Drafters' Notes:**

19 Existing rule 5.482 would be amended by deleting code sections as indicated in the
20 above text.

21
22
23 Rule 5.483. Transfer of case (~~Fam. Code, § 177(a); Prob. Code, § 1459.5(b); Welf. &~~
24 ~~Inst. Code, § 305.5; Guidelines for State Courts; Indian Child Custody~~
25 ~~Proceedings, 44 Fed.Reg. 67584 (Nov. 26, 1979) Bureau of Indian Affairs~~
26 ~~Guideline C)~~)

27
28 (a)—(c) ***

29
30 (d) Cause to deny a request to transfer to tribal court with concurrent state and
31 tribal jurisdiction ~~under subdivision (b)~~

32
33 ***

34
35 (e) Evidentiary considerations ~~under subdivision (b)~~

36
37 ***

38
39 (f) Evidentiary burdens ~~under subdivision (b)~~

40
41 ***

42
43 (g)-(h) ***

44
45 **Drafters' Notes:**

46 Existing rule 5.483 would be amended by deleting code sections as indicated in the
47 above text.

1
2
3 Rule 5.484. Placement of an Indian child (~~Fam. Code, § 177(a); Prob. Code, §~~
4 ~~1459.5(b); Welf. & Inst. Code, §§ 361, 361.31, 361.7(e)~~)

5
6 (a) Evidentiary burdens (~~Fam. Code, § 177(a); Prob. Code, § 1459.5(b); Welf. &~~
7 ~~Inst. Code, §§ 361, 361.31, 361.7(e)~~)

8
9 ***

10
11 (b) Standards and preferences in placement of an Indian child (~~Fam. Code, §~~
12 ~~177(a); Prob. Code, § 1459(b); Welf. & Inst. Code, § 361.31)~~)

13
14
15 (c) Active efforts (~~Fam. Code, § 177(a); Prob. Code, § 1459.5(b); Welf. & Inst.~~
16 ~~Code, § 361.7)~~)

17
18 ***

19
20 **Drafters' Notes:**

21 Existing rule 5.484 would be amended by deleting code sections as indicated in the
22 above text.

23
24
25 Rule 5.485. Termination of parental rights (~~Fam. Code, § 7892.5; Welf. & Inst.~~
26 ~~Code, §§ 361.7, 366.26(e)(2)(B)~~)

27
28 (a)—(b) ***

29
30
31 **Drafters' Notes:**

32 Existing rule 5.485 would be amended by deleting code sections as indicated in the
33 above text.

34
35
36 Rule 5.486. Petition to invalidate orders (~~Fam. Code, § 175(e); Prob. Code, §~~
37 ~~1459(e); Welf. & Inst. Code, § 224(e)~~)

38
39 (a)—(c)

40
41 **Drafters' Notes:**

42 Existing rule 5.483 would be amended by deleting code sections as indicated in the
43 above text.

1 Rule 5.487. Adoption record keeping (~~Fam. Code, § 9208~~)

2

3 (a)—(b) ***

4

5 **Drafters' Notes:**

6 Existing rule 5.483 would be amended by deleting code sections as indicated in the
7 above text.

8

1 Title 5. Family and Juvenile Rules

2
3 Division 1. Family Rules

4
5 Chapter 1. General Provisions

6 **Rule 5.1. Title**

7
8 The rules in this title may be referred to as the Family and Juvenile Rules.

9
10 **Drafters' Notes:**

11 Existing rule 5.1 would be amended to combine existing rules 5.5, 5.10, 5.15, 5.20, 5.21,
12 5.22, and 5.140.

13
14 **Rule 5.5. Division title**

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

17
18 **Drafters' Notes:**

19 Existing rule 5.5 would be repealed and renumbered as rule 5.1(a).

20
21
22 **Rule 5.10. Definitions and use of terms**

23
24 As used in this division, unless the context or subject matter otherwise requires, the
25 following definitions apply:

26
27 (1) "Family Code" means that code enacted by chapter 162 of the Statutes of 1992 and
28 any subsequent amendments to that code.

29
30 (2) "Proceeding" means a proceeding under the Family Code for dissolution of marriage,
31 nullity of marriage, legal separation, custody and support of minor children, or
32 actions under the Domestic Violence Prevention Act, the Uniform Parentage Act,
33 the Uniform Child Custody Jurisdiction and Enforcement Act, or the Uniform
34 Interstate Family Support Act; local child support agency actions under the Family
35 Code; and contempt proceedings relating to family law or local child support
36 agency actions.

37
38 (3) "Property" includes assets and obligations.

39
40 (4) "Best interest of the child" is described in Family Code section 3011.

41
42 **Drafters' Notes:**

43 Existing rule 5.10 would be repealed and renumbered as rule 5.1(b).

1 **Rule 5.15. Extensions of time**

2
3 ~~The time within which any act is permitted or required to be done by a party under these~~
4 ~~rules may be extended by the court upon such terms as may be just.~~

5
6 **Drafters' Notes:**

7 Existing rule 5.15 would be repealed and renumbered as 5.1(f).
8

9 **Rule 5.20. Application of rules**

10
11 ~~The rules in this division apply to every action and proceeding as to which the Family~~
12 ~~Code applies and, unless these rules elsewhere explicitly make them applicable, do not~~
13 ~~apply to any other action or proceeding.~~

14
15 **Drafters' Notes:**

16 Existing rule 5.20 would be repealed and renumbered as rule 5.1(c).
17

18 **Rule 5.21. General law applicable**

19
20 ~~Except as otherwise provided in these rules, all provisions of law applicable to civil~~
21 ~~actions generally apply to a proceeding under the Family Code if they would otherwise~~
22 ~~apply to such proceeding without reference to this rule. To the extent that these rules~~
23 ~~conflict with provisions in other statutes or rules, these rules prevail.~~

24
25 **Drafters' Notes:**

26 Existing rule 5.21 would be repealed and renumbered as 5.1(d).
27

28 **Rule 5.22. Other proceedings**

29
30 ~~In any action under the Family Code but not otherwise subject to these rules by virtue of~~
31 ~~rule 5.10(2), all provisions of law applicable to civil actions generally apply. Such an~~
32 ~~action must be commenced by filing an appropriate petition, and the respondent must file~~
33 ~~an appropriate response within 30 days after service of the summons and a copy of the~~
34 ~~petition.~~

35
36 **Drafters' Notes:**

37 Existing rule 5.22 would be repealed and renumbered as 5.5(e).
38

39 **Rule 5.25. Status of family law and domestic violence forms**

40
41 ~~All forms adopted or approved by the Judicial Council for use in any proceeding under~~
42 ~~the Family Code, including any form in the FL, ADOPT, DV, and FJ series, are adopted~~
43 ~~as rules of court under the authority of Family Code section 211; article VI, section 6 of~~
44 ~~the California Constitution; and other applicable law.~~

1
2 **Drafters' Notes:**

3 Existing rule 5.25 would be repealed and renumbered as 5.7(a).
4

5 **Rule 5.26. Use of forms in nonfamily law proceedings**
6

7 The forms specified by this division may be used, at the option of the party, in any
8 proceeding involving a financial obligation growing out of the relationship of parent and
9 child or husband and wife, to the extent they are appropriate to that proceeding.
10

11 **Drafter's Notes:**

12 Existing rule 5.26 would be repealed and renumbered as rule 5.7(b).
13

14 **Rule 5.27. Use of interstate forms**
15

16 Notwithstanding any other provision of these rules, all Uniform Interstate Family Support
17 Act forms approved by either the National Conference of Commissioners on Uniform
18 State Laws or the U.S. Department of Health and Human Services are adopted for use in
19 family law and other support actions in California.
20

21 **Drafter's Notes:**

22 Existing rule 5.27 would be repealed and renumbered as rule 5.7(c).
23

24 **Rule 5.28. Domestic partnerships**
25

26 **(a) — Procedures for obtaining a dissolution, a legal separation, or an annulment of**
27 **a domestic partnership**
28

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

34 (2) — All other forms and procedures used for the dissolution, legal separation, or
35 annulment of a domestic partnership are the same as those used for the
36 dissolution, legal separation, or annulment of a marriage, except that parties
37 who qualify for a "Notice of Termination of Domestic Partnership" under
38 Family Code section 299 must follow that procedure rather than file a
39 summary dissolution proceeding with the superior court.
40

41 **(b) — Terminology for rules and forms**
42

43 For the purposes of family law rules and forms, the terms "spouse," "husband," and
44 "wife" encompass "domestic partner." The terms "father" and "mother" encompass

1 "parent." The terms "marriage" and "marital status" encompass "domestic
2 partnership" and "domestic partnership status," respectively.
3

4 **Drafter's Notes:**

5 Existing rule 5.28(a) would be repealed and renumbered as rule 5.76. Existing rule
6 5.28(b) would be repealed as the proposed rules have been drafted using gender neutral
7 terms or specifically stating that the rules apply to spouses or domestic partners.
8

9 **Rule 5.35. Minimum standards for the Office of the Family Law Facilitator**

10
11 **(a) — Authority**

12
13 These standards are adopted under Family Code section 10010.
14

15 **(b) — Family law facilitator qualifications**

16
17 The Office of the Family Law Facilitator must be headed by at least one attorney,
18 who is an active member of the State Bar of California, known as the family law
19 facilitator. Each family law facilitator must possess the following qualifications:
20

21 (1) — A minimum of five years experience in the practice of law, which must
22 include substantial family law practice including litigation and/or mediation;
23

24 (2) — Knowledge of family law procedures;
25

26 (3) — Knowledge of the child support establishment and enforcement process under
27 Title IV-D of the federal Social Security Act (42 U.S.C. § 651 et seq.);
28

29 (4) — Knowledge of child support law and the operation of the uniform state child
30 support guideline; and
31

32 (5) — Basic understanding of law and psychological issues related to domestic
33 violence.
34

35 **(c) — Substituted experience**

36
37 Courts may substitute additional experience, skills, or background appropriate to
38 their community for the qualifications listed above.
39

1 ~~(d) — Desirable experience~~

2
3 ~~Additional desirable experience for a family law facilitator may include experience~~
4 ~~in working with low-income, semiliterate, self-represented, or non-English-~~
5 ~~speaking litigants.~~

6
7 ~~(e) — Service provision~~

8
9 ~~Services may be provided by other paid and volunteer members of the Office of the~~
10 ~~Family Law Facilitator under the supervision of the family law facilitator.~~

11
12 ~~(f) — Protocol required~~

13
14 ~~Each court must develop a written protocol to provide services when a facilitator~~
15 ~~deems himself or herself disqualified or biased.~~

16
17 ~~(g) — Grievance procedure~~

18
19 ~~Each court must develop a written protocol for a grievance procedure for~~
20 ~~processing and responding to any complaints against a family law facilitator.~~

21
22 ~~(h) — Training requirements~~

23
24 ~~Each family law facilitator should attend at least one training per year for family~~
25 ~~law facilitators provided by the Judicial Council.~~

26
27 **Drafter's Notes:**

28 Existing rule 5.35 would be repealed and renumbered as rule 5.430.

29
30 **~~Rule 5.70. Nondisclosure of attorney assistance in preparation of court documents~~**

31
32 ~~(a) — Nondisclosure~~

33
34 ~~In a family law proceeding, an attorney who contracts with a client to draft or assist~~
35 ~~in drafting legal documents, but not to make an appearance in the case, is not~~
36 ~~required to disclose within the text of the document that he or she was involved in~~
37 ~~preparing the documents.~~

38
39 ~~(b) — Attorney's fees~~

40
41 ~~If a litigant seeks a court order for attorney's fees incurred as a result of document~~
42 ~~preparation, the litigant must disclose to the court information required for a proper~~
43 ~~determination of attorney's fees including the name of the attorney who assisted in~~

1 the preparation of the documents, the time involved or other basis for billing, the
2 tasks performed, and the amount billed.

3
4 **(e) — Applicability**

5
6 This rule does not apply to an attorney who has made a general appearance or has
7 contracted with his or her client to make an appearance on any issue that is the
8 subject of the pleadings.

9
10 **Drafter's Notes:**

11 Existing rule 5.70 would be repealed and renumbered as rule 5.425(e).

12
13 **Rule 5.71. Application to be relieved as counsel on completion of limited scope**
14 **representation**

15
16 **(a) — Applicability of this rule**

17
18 Notwithstanding rule 3.1362, an attorney who has completed the tasks specified in
19 the *Notice of Limited Scope Representation* (form FL-950) may use the procedure
20 in this rule to request that the attorney be relieved as counsel in cases in which the
21 attorney has appeared before the court as attorney of record and the client has not
22 signed a *Substitution of Attorney Civil* (form MC-050).

23
24 **(b) — Notice**

25
26 An application to be relieved as counsel on completion of limited scope
27 representation under Code of Civil Procedure section 284(2) must be directed to the
28 client and made on the *Application to Be Relieved as Counsel Upon Completion of*
29 *Limited Scope Representation* (form FL-955).

30
31 **(c) — Service**

32
33 The application must be filed with the court and served on the client and on all
34 other parties and counsel who are of record in the case. The client must also be
35 served with *Objection to Application to Be Relieved as Counsel Upon Completion*
36 *of Limited Scope Representation* (form FL-956).

37
38 **(d) — No objection**

39
40 If no objection is filed within 15 days from the date that the *Application to Be*
41 *Relieved as Counsel Upon Completion of Limited Scope Representation* (form FL-
42 955) is served upon the client, the attorney making the application must file an
43 updated form FL-955 indicating the lack of objection, along with a proposed *Order*

1 *on Application to Be Relieved as Counsel Upon Completion of Limited Scope*
2 *Representation* (form FL-958). The clerk will then forward the file with the
3 proposed order for judicial signature.
4

5 **(e) — Objection**

6
7 If an objection is filed within 15 days, the clerk must set a hearing date on the
8 *Objection to Application to Be Relieved as Counsel Upon Completion of Limited*
9 *Scope Representation* (form FL-956). The hearing must be scheduled no later than
10 25 days from the date the objection is filed. The clerk must send the notice of the
11 hearing to the parties and counsel.
12

13 **(f) — Service of the order**

14
15 After the order is signed, a copy of the signed order must be served by the attorney
16 who has filed the *Application to Be Relieved as Counsel Upon Completion of*
17 *Limited Scope Representation* (form FL-955) on the client and on all parties who
18 have appeared in the case. The court may delay the effective date of the order
19 relieving counsel until proof of service of a copy of the signed order on the client
20 has been filed with the court.
21

22 **Drafter's Notes:**

23 Existing rule 5.71 would be repealed and renumbered as rule 5.425(f).
24

25 **Chapter 2. Procedural Rules**

26
27 **Rule 5.100. Designation of parties**

28
29 In proceedings filed under the Family Code, except for local child support agency
30 actions, the party initiating the proceeding is the petitioner, and the other party is the
31 respondent. In local child support agency actions, the responding party is the defendant
32 and the parent who is not the defendant is referred to as the "Other Parent." Every other
33 proceeding must be prosecuted and defended in the names of the real parties in interest.
34

35 **Drafters' Notes:**

36 Existing rule 5.100 would be repealed and renumbered as rule 5.16(a).
37

38 **Rule 5.102. Parties to proceeding**

39
40 **(a) —** Except as provided in (c) or in rules 5.150 through 5.160, the only persons
41 permitted to be parties to a proceeding for dissolution, legal separation, or nullity of
42 marriage are the husband and wife.
43

1 ~~(b) — Except as provided in (c) or in rules 5.150 through 5.160, the only persons~~
2 ~~permitted to be parties to a proceeding for dissolution, legal separation, or nullity of~~
3 ~~domestic partnership are the domestic partners.~~

4
5 ~~(c) — In a nullity proceeding commenced by a person specified in Family Code section~~
6 ~~2211, other than a proceeding commenced by or on behalf of the husband or wife~~
7 ~~in a marriage or one of the domestic partners in a domestic partnership, the person~~
8 ~~initiating the proceeding is a party and the caption on all papers must be suitably~~
9 ~~modified to reflect that fact.~~

10
11 **Drafters' Notes:**

12 Existing rule 5.102 would be repealed and renumbered as rule 5.16(b).

13 **Rule 5.104. Other causes of action**

14 ~~Neither party to the proceeding may assert against the other party or any other person any~~
15 ~~cause of action or claim for relief other than for the relief provided in these rules, Family~~
16 ~~Code sections 17400, 17402, and 17404, or other sections of the Family Code.~~

17
18 **Drafters' Notes:**

19 Existing rule 5.104 would be repealed and renumbered as rule 5.17.

20
21 **Rule 5.106. Injunctive relief and reservation of jurisdiction**

22
23 ~~(a) — Upon application as set out in rule 5.118, the court may grant injunctive or other~~
24 ~~relief against or for the following persons to protect the rights of either or both~~
25 ~~parties to the proceeding under the Family Code:~~

26
27 ~~(1) — A person who has or claims an interest in the controversy;~~

28
29 ~~(2) — A person who but for rule 5.102 would be a necessary party to a complete~~
30 ~~adjudication of the controversy; or~~

31
32 ~~(3) — A person who is acting as a trustee, agent, custodian, or similar fiduciary with~~
33 ~~respect to any property subject to disposition by the court in the proceeding,~~
34 ~~or other matter subject to the jurisdiction of the court in the proceeding.~~

35
36 ~~(b) — If the court is unable to resolve the issue in the proceeding under the Family Code,~~
37 ~~the court may reserve jurisdiction over the particular issue until such time as the~~
38 ~~rights of such person and the parties to the proceeding under the Family Code have~~
39 ~~been adjudicated in a separate action or proceeding.~~

40
41 **Drafters' Notes:**

42 Existing rule 5.106 would be repealed and renumbered as rule 5.18.

1

2 **Rule 5.108. Pleadings**

3

4 ~~(a) — The forms of pleading and the rules by which the sufficiency of pleadings is to be~~
5 ~~determined are solely those prescribed in these rules. Demurrers must not be used.~~

6

7 ~~(b) — Amendments to pleadings, amended pleadings, and supplemental pleadings may be~~
8 ~~served and filed in conformity with the provisions of law applicable to such matters~~
9 ~~in civil actions generally, but the petitioner is not required to file a reply if the~~
10 ~~respondent has filed a response. If both parties have filed initial pleadings (petition~~
11 ~~and response), there may be no default entered on an amended pleading of either~~
12 ~~party.~~

13

14 **Drafters' Notes:**

15 Existing rule 5.108 would be repealed and renumbered as rule 5.74.

16

17 **Rule 5.110. Summons; restraining order**

18

19 ~~(a) — Issuing the summons; form~~

20

21 ~~Except for support proceedings initiated by a local child support agency, the~~
22 ~~procedure for issuance of summons in the proceeding is that applicable to civil~~
23 ~~actions generally. The clerk must not return the original summons, but must~~
24 ~~maintain it in the file.~~

25

26 ~~(b) — Standard family law restraining order; handling by clerk~~

27

28 ~~Notwithstanding Family Code section 233, a summons (form FL-110 or FL-210)~~
29 ~~with the standard family law restraining orders must be issued and filed in the same~~
30 ~~manner as a summons in a civil action and must be served and enforced in the~~
31 ~~manner prescribed for any other restraining order. If service is by publication, the~~
32 ~~publication need not include the restraining orders.~~

33

34 ~~(c) — Individual restraining order~~

35

36 ~~On application of a party and as provided in the Family Code, a court may issue~~
37 ~~any individual restraining order that appears to be reasonable or necessary,~~
38 ~~including those restraining orders included in the standard family law restraining~~
39 ~~orders. Individual orders supersede the standard family law restraining orders on~~
40 ~~the Family Law and Uniform Parentage Act summons.~~

41

42 **Drafters' Notes:**

1 Existing rule 5.110(a) and (b) would be repealed and renumbered as rule 5.50; rule
2 5.110(c) would be repealed and renumbered as 5.91.

3
4 **Rule 5.112. Continuing jurisdiction**

5
6 ~~The court has jurisdiction of the parties and control of all subsequent proceedings from~~
7 ~~the time of service of the summons and a copy of the petition. A general appearance of~~
8 ~~the respondent is equivalent to personal service within this state of the summons and a~~
9 ~~copy of the petition upon him or her.~~

10
11 **Drafters' Notes:**

12 Existing rule 5.112 would be repealed and included in rule 5.68.

13
14 **Rule 5.114. Alternative relief** _____

15
16 A party seeking alternative relief must so indicate in the petition or response.

17
18 **Drafters' Notes:**

19 Existing rule 5.114 would be repealed and renumbered as rule 5.60.

20
21 **Rule 5.116. Stipulation for judgment**

22
23 ~~(a) — A stipulation for judgment (which must be attached to form FL-180 or form FL-~~
24 ~~250) may be submitted to the court for signature at the time of the hearing on the~~
25 ~~merits and must contain the exact terms of any judgment proposed to be entered in~~
26 ~~the case. At the end, immediately above the space reserved for the judge's~~
27 ~~signature, the stipulation for judgment must contain the following:~~

28
29 _____ The foregoing is agreed to by

_____ (Petitioner)	_____ (Respondent)
_____ (Attorney for Petitioner)	_____ (Attorney for Respondent)

30
31
32 ~~(b) — A stipulation for judgment must include disposition of all matters subject to the~~
33 ~~court's jurisdiction for which a party seeks adjudication or an explicit reservation of~~
34 ~~jurisdiction over any matter not proposed for disposition at that time. A stipulation~~
35 ~~for judgment constitutes a written agreement between the parties as to all matters~~
36 ~~covered by the stipulation.~~

37
38 **Drafters' Notes:**

39 Existing rule 5.116 would be repealed and renumbered as part of rule 5.411.

1

2 **Rule 5.118. Application for court order**

3

4 ~~(a) — No memorandum of points and authorities need be filed with an application for a~~
5 ~~court order unless required by the court on a case-by-case basis.~~

6

7 ~~(b) — A completed *Income and Expense Declaration* (form FL-150) or *Financial*~~
8 ~~*Statement (Simplified)* (form FL-155), *Property Declaration* (form FL-160), and~~
9 ~~*Application for Order and Supporting Declaration* (form FL-310) must be attached~~
10 ~~to an application for an injunctive or other order when relevant to the relief~~
11 ~~requested.~~

12

13 ~~(c) — A copy of the *Application for Order and Supporting Declaration* with all~~
14 ~~attachments and a blank copy of the *Responsive Declaration* (form FL-320) must~~
15 ~~be served on the person against whom relief is requested. The original application~~
16 ~~and order must be retained in the court file.~~

17

18 ~~(d) — If relief is sought by an *Order to Show Cause*, a copy of the order endorsed by the~~
19 ~~clerk must be served.~~

20

21 ~~(e) — Blank copies of the *Income and Expense Declaration* or *Financial Statement*~~
22 ~~*(Simplified)* and the *Property Declaration* must be served when completed~~
23 ~~declarations are among the papers required to be served.~~

24

25 ~~(f) — The court may grant or deny the relief solely on the basis of the application and~~
26 ~~responses and any accompanying memorandum of points and authorities.~~

27

28 **Drafters' Notes:**

29 Existing rule 5.118 would be repealed and renumbered as part of rule 5.92.

30

31 **Rule 5.120. Appearance**

32

33 ~~(a) — Except as provided in Code of Civil Procedure section 418.10, a respondent or~~
34 ~~defendant is deemed to have appeared in a proceeding when he or she files:~~

35

36 ~~(1) — A response or answer;~~

37

38 ~~(2) — A notice of motion to strike, under section 435 of the Code of Civil~~
39 ~~Procedure;~~

40

41 ~~(3) — A notice of motion to transfer the proceeding under section 395 of the Code~~
42 ~~of Civil Procedure; or~~

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~~(4) — A written notice of his or her appearance.~~

~~(b) — After appearance, the respondent or defendant or his or her attorney is entitled to notice of all subsequent proceedings of which notice is required to be given by these rules or in civil actions generally.~~

~~(c) — Where a respondent or defendant has not appeared, notice of subsequent proceedings need not be given to the respondent or defendant except as provided in these rules.~~

Drafters' Notes:
Existing rule 5.120 would be repealed and renumbered as rule 5.62.

Rule 5.121. Motion to quash proceeding or responsive relief

~~(a) — Within the time permitted to file a response, the respondent may move to quash the proceeding, in whole or in part, for any of the following reasons:~~

- ~~(1) — Lack of legal capacity to sue;~~
- ~~(2) — Prior judgment or another action pending between the same parties for the same cause;~~
- ~~(3) — Failure to meet the residence requirement of Family Code section 2320; or~~
- ~~(4) — Statute of limitations in Family Code section 2211.~~

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

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

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

~~(e) — When a motion to quash is granted, the court may grant leave to amend the petition or response and set a date for filing the amended pleadings. The court may also dismiss the action without leave to amend. The action may also be dismissed if the~~

1 motion has been sustained with leave to amend and the amendment is not made
2 within the time permitted by the court.

3
4 **Drafters' Notes:**

5 Existing rule 5.121 would be repealed and renumbered as rule 5.63.

6
7 **Rule 5.122. Default**

8
9 ~~(a) — Upon proper application of the petitioner, the clerk must enter the respondent's
10 default if the respondent or defendant fails within the time permitted to:~~

11
12 ~~(1) Make an appearance as stated in rule 5.120;~~

13
14 ~~(2) File a notice of motion to quash service of summons under section 418.10 of
15 the Code of Civil Procedure; or~~

16
17 ~~(3) File a petition for writ of mandate under section 418.10 of the Code of Civil
18 Procedure.~~

19
20 ~~(b) — The petitioner may apply to the court for the relief sought in the petition at the time
21 default is entered. The court must require proof to be made of the facts stated in the
22 petition and may enter its judgment accordingly. The court may permit the use of a
23 completed *Income and Expense Declaration* (form FL-150) or *Financial Statement*
24 *(Simplified)* (form FL-155) and *Property Declaration* (form FL-160) as to all or
25 any part of the proof required or permitted to be offered on any issue as to which
26 they are relevant.~~

27
28 **Drafters' Notes:**

29 Existing rule 5.122 would be repealed and renumbered as rule 5.401.

30
31 **Rule 5.124. Request for default**

32
33 ~~(a) — No default may be entered in any proceeding unless a request has been completed
34 in full on a *Request to Enter Default* (form FL-165) and filed by the petitioner.
35 However, an *Income and Expense Declaration* (form FL-150) or *Financial*
36 *Statement (Simplified)* (form FL-155) are not required if the petition contains no
37 demand for support, costs, or attorney's fees. A *Property Declaration* (form FL-
38 160) is not required if the petition contains no demand for property.~~

39
40 ~~(b) — For the purpose of completing the declaration of mailing, unless service was by
41 publication and the address of respondent is unknown, it is not sufficient to state
42 that the address of the party to whom notice is given is unknown or unavailable.~~

1 **Drafters' Notes:**

2 Existing rule 5.124 would be repealed and renumbered as rule 5.402.

3
4 **Rule 5.126. Alternate date of valuation**

5
6 **(a) — Notice of motion**

7
8 *An Application for Separate Trial (form FL-315) must be used to provide the*
9 *notice required by Family Code section 2552(b).*

10
11 **(b) — Declaration accompanying notice**

12
13 Form FL-315 must be accompanied by a declaration stating the following:

14
15 (1) — The proposed alternate valuation date;

16
17 (2) — Whether the proposed alternate valuation date applies to all or only a portion
18 of the assets and, if the motion is directed to only a portion of the assets, the
19 declaration must separately identify each such asset; and

20
21 (3) — The reasons supporting the alternate valuation date.

22
23 **Drafters' Notes:**

24 Existing rule 5.126 would be repealed and renumbered as part of rule 5.390(c).

25
26 **Rule 5.128. Financial declaration**

27
28 **(a) —** *A current Income and Expense Declaration (form FL-150) or a current Financial*
29 *Statement (Simplified) (form FL-155), when such form is appropriate, and a current*
30 *Property Declaration (form FL-160) must be served and filed by any party*
31 *appearing at any hearing at which the court is to determine an issue as to which*
32 *such declarations would be relevant. "Current" is defined as being completed*
33 *within the past three months providing no facts have changed. Those forms must be*
34 *sufficiently completed to allow determination of the issue.*

35
36 **(b) —** *When a party is represented by counsel and attorney's fees are requested by either*
37 *party, the section on the Income and Expense Declaration pertaining to the amount*
38 *in savings, credit union, certificates of deposit, and money market accounts must be*
39 *fully completed, as well as the section pertaining to the amount of attorney's fees*
40 *incurred, currently owed, and the source of money used to pay such fees.*

41
42 **(c) —** *A Financial Statement (Simplified) is not appropriate for use in proceedings to*
43 *determine or modify spousal support or to determine attorney's fees.*

1
2 **Drafters' Notes:**

3 Existing rule 5.128 would be repealed and renumbered as rule 5.260(a) with changes to
4 reflect requirements for support hearings.
5

6 **Rule 5.130. Summary dissolution**

7
8 **(a) — Declaration of disclosure**

9
10 For the purposes of a proceeding for summary dissolution under chapter 5
11 (beginning with section 2400) of part 3 of division 6 of the Family Code,
12 attachment to the petition of completed worksheet pages listing separate and
13 community property and obligations as well as an *Income and Expense Declaration*
14 (form FL-150) or *Financial Statement (Simplified)* (form FL-155) constitutes
15 compliance with the disclosure requirements of chapter 9 (beginning with section
16 2100) of part 1 of division 6 of the Family Code.
17

18 **(b) — Fee for filing**

19
20 The fee for filing a *Joint Petition for Summary Dissolution of Marriage* (form FL-
21 800) is the same as that charged for filing a *Petition Marriage* (form FL-100). No
22 additional fee may be charged for the filing of any form prescribed for use in a
23 summary dissolution proceeding, except as required by Government Code section
24 26859.
25

26 **Drafters' Notes:**

27 Existing rule 5.130 would be repealed and renumbered as rule 5.77.
28

29 **Rule 5.134. Notice of entry of judgment**

30
31 **(a) —** Notwithstanding Code of Civil Procedure section 664.5, the clerk must give notice
32 of entry of judgment, using Notice of Entry of Judgment (form FL-190), to the
33 attorney for each party or to the party if self-represented, of the following:
34

35 (1) — A judgment of legal separation;

36
37 (2) — A judgment of dissolution;

38
39 (3) — A judgment of nullity;

40
41 (4) — A judgment establishing parental relationship (on form FL-190); or
42

43 (5) — A judgment regarding custody or support.

1
2 ~~(b) — This rule applies to local child support agency proceedings except that the notice of~~
3 ~~entry of judgment must be on *Notice of Entry of Judgment and Proof of Service by*~~
4 ~~*Mail* (form FL-635).~~

5
6 **Drafters' Notes:**

7 Existing rule 5.134 would be repealed and renumbered as part of rule 5.413.

8
9 **Rule 5.136. Completion of notice of entry of judgment**

10
11 **(a) — Required attachments**

12
13 Every person who submits a judgment for signature by the court must submit:

14
15 (1) — Stamped envelopes addressed to the parties; and

16
17 (2) — An original and at least two additional copies of the *Notice of Entry of*
18 *Judgment* (form FL-190).

19
20 **(b) — Fully completed**

21
22 Form FL-190 must be fully completed except for the designation of the date
23 entered, the date of mailing, and signatures. It must specify in the certificate of
24 mailing the place where notices have been given to the other party.

25
26 **(c) — Address of respondent or defendant**

27
28 If there has been no appearance by the other party, the address stated in the
29 affidavit of mailing in part 3 of the *Request to Enter Default* (form FL-165) must be
30 the party's last known address and must be used for mailing form FL-190 to that
31 party. In support proceedings initiated by the local child support agency, an
32 envelope addressed to the child support agency need not be submitted. If service
33 was by publication and the address of respondent or defendant is unknown, those
34 facts must be stated in place of the required address.

35
36 **(d) — Consequences of failure to comply**

37
38 Failure to complete the form or to submit the envelopes is cause for refusal to sign
39 the judgment until compliance with the requirements of this rule.

40
41 **(e) — Application to local child support agencies**

42 This rule applies to local child support agency proceedings filed under the Family
43 Code except that:

- 1
2 (1) ~~The local child support agency must use form *Notice of Entry of Judgment*~~
3 ~~and *Proof of Service by Mail* (form FL 635);~~
4
5 (2) ~~The local child support agency may specify in the certificate of mailing that~~
6 ~~the address where the *Notice of Entry of Judgment* (form FL 190) was mailed~~
7 ~~is on file with the local child support agency; and~~
8
9 (3) ~~An envelope addressed to the local child support agency need not be~~
10 ~~submitted.~~

11 **Drafters' Notes:**

12 Existing rule 5.136 would be repealed and renumbered as rule 5.415.

13
14
15 **Rule 5.140. Implied procedures**

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

21
22 **Drafters' Notes:**

23 Existing rule 5.140 would be repealed and renumbered as rule 5.1(g).

24
25 **Chapter 3. Joinder of Parties**

26
27 **Rule 5.150. Joinder of persons claiming interest**

28
29 ~~Notwithstanding any other rule in this division, a person who claims or controls an~~
30 ~~interest subject to disposition in the proceeding may be joined as a party to the~~
31 ~~proceeding only as provided in this chapter. Except as otherwise provided in this chapter,~~
32 ~~all provisions of law relating to joinder of parties in civil actions generally apply to the~~
33 ~~joinder of a person as a party to the proceeding.~~

34
35 **Drafters' Notes:**

36 Existing rule 5.150 be repealed and renumbered as rule 5.24 (first subparagraph) and
37 5.24(a)(1).

38
39 **Rule 5.152. "Claimant" defined**

40
41 ~~As used in this chapter, "claimant" means a person joined or sought or seeking to be~~
42 ~~joined as a party to the proceeding.~~

43
44 **Drafters' Notes:**

1 Existing rule 5.152 would be renumbered as 5.24(b).

2
3 **Rule 5.154. Persons who may seek joinder**

4
5 ~~(a) — The petitioner or the respondent may apply to the court for an order joining a~~
6 ~~person as a party to the proceeding who has or claims custody or physical control~~
7 ~~of any of the minor children subject to the action, or visitation rights with respect to~~
8 ~~such children, or who has in his or her possession or control or claims to own any~~
9 ~~property subject to the jurisdiction of the court in the proceeding.~~

10
11 ~~(b) — A person who has or claims custody or physical control of any of the minor~~
12 ~~children subject to the action, or visitation rights with respect to such children, may~~
13 ~~apply to the court for an order joining himself or herself as a party to the~~
14 ~~proceeding.~~

15
16 ~~(c) — A person served with an order temporarily restraining the use of property that is in~~
17 ~~his or her possession or control or that he or she claims to own, or affecting the~~
18 ~~custody of minor children subject to the action, or visitation rights with respect to~~
19 ~~such children, may apply to the court for an order joining himself or herself as a~~
20 ~~party to the proceeding.~~

21
22 **Drafters' Notes:**

23 Existing rule 5.154 would be renumbered as 5.24(c).

24
25 **Rule 5.156. Form of joinder application**

26
27 ~~(a) — All applications for joinder other than for an employee pension benefit plan must~~
28 ~~be made by serving and filing form a *Notice of Motion and Declaration for Joinder*~~
29 ~~(form FL 371). The hearing date must be less than 30 days from the date of filing~~
30 ~~the notice. The completed form must state with particularity the claimant's interest~~
31 ~~in the proceeding and the relief sought by the applicant, and it must be~~
32 ~~accompanied by an appropriate pleading setting forth the claim as if it were~~
33 ~~asserted in a separate action or proceeding.~~

34
35 ~~(b) — A blank copy of *Responsive Declaration to Motion for Joinder and Consent Order*~~
36 ~~*for Joinder* (form FL 373) must be served with the *Notice of Motion* and~~
37 ~~accompanying pleading.~~

38
39 **Drafters' Notes:**

40 Existing rule 5.156 would be amended and renumbered as rule 5.24(d).

1 **Rule 5.158. Determination on joinder**

2
3 **(a) — Mandatory joinder**

4
5 The court must order joined as a party to the proceeding any person the court
6 discovers has physical custody or claims custody or visitation rights with respect to
7 any minor child of the marriage.
8

9 **(b) — Permissive joinder**

10
11 The court may order that a person be joined as a party to the proceeding if the court
12 finds that it would be appropriate to determine the particular issue in the proceeding
13 and that the person to be joined as a party is either indispensable to a determination
14 of that issue or necessary to the enforcement of any judgment rendered on that
15 issue.
16

17 In determining whether it is appropriate to determine the particular issue in the
18 proceeding, the court must consider its effect upon the proceeding, including:

19
20 (1) — Whether the determination of that issue will unduly delay the disposition of
21 the proceeding;

22
23 (2) — Whether other parties would need to be joined to render an effective
24 judgment between the parties;

25
26 (3) — Whether the determination of that issue will confuse other issues in the
27 proceeding; and
28

29 (4) — Whether the joinder of a party to determine the particular issue will
30 complicate, delay, or otherwise interfere with the effective disposition of the
31 proceeding.
32

33 **(c) — Procedure upon joinder**

34
35 If the court orders that a person be joined as a party to the proceeding under
36 subdivision (a) of rule 5.154, the court must direct that a summons be issued on
37 *Summons (Joinder)* (form FL-375) and that the claimant be served with a copy of
38 *Notice of Motion and Declaration for Joinder* (form FL-371), the pleading attached
39 thereto, the order of joinder, and the summons. The claimant has 30 days after
40 service within which to file an appropriate response.
41

42 **Drafters' Notes:**

43 Existing rule 5.158 would be renumbered as rule 5.24(e) with a minor change to the title.

1

2 **Rule 5.160. Pleading rules applicable**

3

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

9

10 **Drafters' Notes:**

11 Existing rule 5.160 would be amended and renumbered as rule 5.24(a)(2).

12

13 **Rule 5.162. Joinder of employee pension benefit plan**

14

15 (a) — Every request for joinder of employee pension benefit plan and order and every
16 pleading on joinder must be submitted on *Request for Joinder of Employee Benefit*
17 *Plan and Order* (form FL-372) and *Pleading on Joinder Employee Benefit Plan*
18 (form FL-370).

19

20 (b) — Every summons issued on the joinder of employee pension benefit plan must be on
21 *Summons (Joinder)* (form FL-375).

22

23 (c) — Every notice of appearance of employee pension benefit plan and responsive
24 pleading file under Family Code section 2063(b) must be given on *Notice of*
25 *Appearance and Response of Employee Benefit Plan* (form FL-374).

26

27 **Drafters' Notes:**

28 Existing rule 5.162 would be repealed and renumbered as rule 5.29.

29

30 **Chapter 4. Bifurcation and Appeals**

31

32 **Rule 5.175. Bifurcation of issues**

33

34 (a) — **Bifurcation of issues**

35

36 On noticed motion of a party, the stipulation of the parties, or its own motion, the
37 court may bifurcate one or more issues to be tried separately before other issues are
38 tried. The motion must be heard not later than the trial-setting conference.

39

1 **(b) — Notice by clerk**

2
3 The clerk must mail copies of the order deciding the bifurcated issue and any
4 statement of decision under rule 3.1591 to the parties within 10 days of their filing
5 and must file a certificate of mailing.
6

7 **(c) — When to bifurcate**

8
9 The court may try separately one or more issues before trial of the other issues if
10 resolution of the bifurcated issue is likely to simplify the determination of the other
11 issues. Issues that may be appropriate to try separately in advance include:
12

- 13 (1) — Validity of a postnuptial or premarital agreement;
14
15 (2) — Date of separation;
16
17 (3) — Date to use for valuation of assets;
18
19 (4) — Whether property is separate or community;
20
21 (5) — How to apportion increase in value of a business; or
22
23 (6) — Existence or value of business or professional goodwill.
24

25 **Drafters' Notes:**

26 Existing rule 5.175 would be repealed and renumbered as part of rule 5.390.
27

28 **Rule 5.180. Interlocutory appeals**

29
30 **(a) — Applicability**

31
32 This rule does not apply to appeals from the court's termination of marital status as
33 a separate issue, or to appeals from other orders that are separately appealable.
34

35 **(b) — Certificate of probable cause for appeal**

- 36
37 (1) — The order deciding the bifurcated issue may include an order certifying that
38 there is probable cause for immediate appellate review of the issue.
39
40 (2) — If it was not in the order, within 10 days after the clerk mails the order
41 deciding the bifurcated issue, a party may notice a motion asking the court to
42 certify that there is probable cause for immediate appellate review of the

1 order. The motion must be heard within 30 days after the order deciding the
2 bifurcated issue is mailed.

3
4 ~~(3) The clerk must promptly mail notice of the decision on the motion to the~~
5 ~~parties. If the motion is not determined within 40 days after mailing of the~~
6 ~~order on the bifurcated issue, it is deemed granted on the grounds stated in~~
7 ~~the motion.~~

8
9 ~~(c) Content and effect of certificate~~

10
11 ~~(1) A certificate of probable cause must state, in general terms, the reason~~
12 ~~immediate appellate review is desirable, such as a statement that final~~
13 ~~resolution of the issue:~~

14
15 ~~(A) Is likely to lead to settlement of the entire case;~~

16
17 ~~(B) Will simplify remaining issues;~~

18
19 ~~(C) Will conserve the courts' resources; or~~

20
21 ~~(D) Will benefit the well being of a child of the marriage or the parties.~~

22
23 ~~(2) If a certificate is granted, trial of the remaining issues may be stayed. If trial~~
24 ~~of the remaining issues is stayed, unless otherwise ordered by the trial court~~
25 ~~on noticed motion, further discovery must be stayed while the certification is~~
26 ~~pending. These stays terminate upon the expiration of time for filing a motion~~
27 ~~to appeal if none is filed, or upon the Court of Appeal denying all motions to~~

28
29 ~~appeal, or upon the Court of Appeal decision becoming final.~~

30
31 ~~(d) Motion to appeal~~

32
33 ~~(1) If the certificate is granted, a party may, within 15 days after the mailing of~~
34 ~~the notice of the order granting it, serve and file in the Court of Appeal a~~
35 ~~motion to appeal the decision on the bifurcated issue. On ex parte application~~
36 ~~served and filed within 15 days, the Court of Appeal or the trial court may~~
37 ~~extend the time for filing the motion to appeal by not more than an additional~~
38 ~~20 days.~~

39
40 ~~(2) The motion must contain:~~

41
42 ~~(A) A brief statement of the facts necessary to an understanding of the~~
43 ~~issue;~~

1
2 (B) — A statement of the issue; and

3
4 (C) — A statement of why, in the context of the case, an immediate appeal is
5 desirable.

6
7 ~~(3) The motion must include or have attached:~~

8
9 (A) — A copy of the decision of the trial court on the bifurcated issue;

10
11 (B) — Any statement of decision;

12
13 (C) — The certification of the appeal; and

14
15 (D) — A sufficient partial record to enable the Court of Appeal to determine
16 whether to grant the motion.

17
18 ~~(4) — A summary of evidence and oral proceedings, if relevant, supported by a~~
19 ~~declaration of counsel may be used when a transcript is not available.~~

20
21 ~~(5) — The motion must be accompanied by the filing fee for an appeal under rule~~
22 ~~8.100(c) and Government Code sections 68926 and 68926.1.~~

23
24 ~~(6) — A copy of the motion must be served on the trial court.~~

25
26 ~~(c) — Proceedings to determine motion~~

27
28 ~~(1) — Within 10 days after service of the motion, an adverse party may serve and~~
29 ~~file an opposition to it.~~

30
31 ~~(2) — The motion to appeal and any opposition will be submitted without oral~~
32 ~~argument, unless otherwise ordered.~~

33
34 ~~(3) — The motion to appeal is deemed granted unless it is denied within 30 days~~
35 ~~from the date of filing the opposition or the last document requested by the~~
36 ~~court, whichever is later.~~

37
38 ~~(4) — Denial of a motion to appeal is final forthwith and is not subject to rehearing.~~
39 ~~A party aggrieved by the denial of the motion may petition for review by the~~
40 ~~Supreme Court.~~

1 **(f) — Proceedings if motion to appeal is granted**

2
3 (1) — If the motion to appeal is granted, the moving party is deemed an appellant,
4 and the rules governing other civil appeals apply except as provided in this
5 rule.

6
7 (2) — The partial record filed with the motion will be considered the record for the
8 appeal unless, within 10 days from the date notice of the grant of the motion
9 is mailed, a party notifies the Court of Appeal of additional portions of the
10 record that are needed for a full consideration of the appeal.

11
12 (3) — If a party notifies the court of the need for an additional record, the additional
13 material must be secured from the trial court by augmentation under rule
14 8.155, unless it appears to the Court of Appeal that some of the material is
15 not needed.

16
17 (4) — Briefs must be filed under a schedule set for the matter by the Court of
18 Appeal.

19
20 **(g) — Review by writ or appeal**

21
22 The trial court's denial of a certification motion under (b) does not preclude review
23 of the decision on the bifurcated issue by extraordinary writ.

24
25 **(h) — Review by appeal**

26
27 None of the following precludes review of the decision on the bifurcated issue upon
28 appeal of the final judgment:

29
30 (1) — A party's failure to move for certification under (b) for immediate appeal;

31
32 (2) — The trial court's denial of a certification motion under (b) for immediate
33 appeal;

34
35 (3) — A party's failure to move to appeal under (d); and

36
37 (4) — The Court of Appeals denial of a motion to appeal under (d).

38
39 **Drafters' Notes:**

40 Existing rule 5.180 would be repealed and renumbered as rule 5.392 without change to
41 content.

Item SPR11-36 Response Form

Title: Family Law: New, Restructured, and Revised Family Law Rules of Court
(repeal Cal. Rules of Court, rules 5.1—5.487 and adopt rules 5.1—5.487)

- Agree with proposed changes
- Agree with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: _____

Name: _____ **Title:** _____

Organization: _____

- Commenting on behalf of an organization**

Address: _____

City, State, Zip: _____

To Submit Comments

Comments may be submitted online, written on this form, or prepared in a letter format. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments. You are welcome to email your comments as an attachment.

Internet: www.courts.ca.gov/policyadmin-invitationstocomment.htm

Email: invitations@jud.ca.gov

Mail: Ms. Camilla Kieliger
Judicial Council, 455 Golden Gate Avenue
San Francisco, CA 94102

Fax: (415) 865-7664, Attn: Camilla Kieliger

DEADLINE FOR COMMENT: 5:00 p.m., Thursday, June 30, 2011

Circulation for comment does not imply endorsement by the Judicial Council or the Rules and Projects Committee. All comments will become part of the public record of the council's action.