Judicial Council of California • Administrative Office of the Courts

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www.courts.ca.gov/policyadmin-invitationstocomment.htm

INVITATION TO COMMENT

SPR11-36

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

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

Proposed by
Family and Juvenile Law Advisory Committee
Hon. Kimberly Nystrom-Geist, Cochair
Hon. Dean Stout, Cochair

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 These proposals are circulated for comment purposes only.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 in unknown

Article 5. Pleadings and Amended Pleadings

Rule 5.74. Pleadings and amended leadings

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	Division title, application of rules and laws
5.4	New	Preemption; local rules and forms
		Article 2. Use of Forms
5.7	5.25, 5.26, 5.27	Use of forms
		Article. 3. Appearance by Telephone
5.9	New	Appearance by telephone
		Article 5. Discovery
5.12	New	Discovery motions
		Article 6. Sanctions
5.14	New	Sanctions for rule violations in family law cases
		Chapter 2. Parties and Joinder of Parties
		Article 1. Parties to Proceedings
5.16	5.100, 5.102	Designation of parties
5.17	5.104	Other causes of action
5.18	5.106	Injunctive relief and reservation of jurisdiction
		Article 2. Joinder of Parties
5.24	5.150, 5.152, 5.154, 5.156, 5.158, 5.160	Joinder of persons claiming interest
		Article 3. Joinder of Employee Pension Benefit Plan
5.29	5.162	Joinder of employee pension benefit plan
		Chapter 3. Filing Fees and Fee Waivers
		Article 1. Filing Fees and Fee Waivers
5.40	New	Filing Fees
5.41	New	Waiver of fees and costs
		Article 2. Special Procedures
5.43	New	Fee Waiver denials; voided actions; dismissal by clerk
5.45	New	Repayment of waived court fees and costs in support actions
5.46	New	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
5.50	5.110	Papers issued by the court
5.51	New	Mandatory information packet
5.52	New	Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)
5.54	New	Preliminary declaration of disclosure; time for service
		Article 2. Initial Pleadings
5.60	New and includes 5.114	Petition or complaint; alternative relief
5.62	5.120	Appearance by respondent or defendant
5.63	5.121	Motion to quash proceeding or responsive relief
		Article 3. Time for Service of Papers
5.66	New	Proof of service; deadlines
		Article 4. Manner of Service
5.68	New and includes 5.112	Manner of service of summons and petition; response; jurisdiction
5.72	New	Court order for service of summons by publication or posting when respondent's address is unknown
		Article 5. Pleadings and Amended Pleadings
5.74	5.108	Pleadings and amended pleadings
		Article 6. Specific Proceedings
5.76	5.28	Domestic partnerships
5.77	5.130	Summary dissolution
		Chapter 5. Family-Centered Case Resolution Plans
5.83	New	Family law case resolution/ management and time standards for cases filed under the Family Code
		Chapter 6. Request for Orders
		Article 1. General Provisions
5.90	New	Format of papers
5.91	5.110(b)	Individual restraining order
		Article 2. Filing and Service
5.92	Includes subject matters covered by 5.118.	Application for court order; response
5.94	New	Time for filing; service of request for hearing papers
5.96	New	Place and manner of filing; time of filing
		Article 3. Meet and Confer Conferences
5.98	New	Meet and confer requirements; document exchange
		Article 4. Evidence at Hearing
5.111	New	Declarations supporting application for court order
5.112.1	New	Declaration page limitation; exemptions
5.113	New	Live testimony
5.115	New	Judicial notice

		Article 5. Reporting and Preparation of Order After Hearing
5.123	New	Reporting of hearing proceedings
5.125	New	Preparation and submission of order after hearing
		Chapter 7. Request for Emergency Orders (Ex Parte Orders)
		Article 1. Applications
5.151	New	Application
		Article 2. Notice, Service, Appearance
5.165	New	Requirements for notice
5.167	New	Service of documents requesting emergency orders
5.169	New	Personal appearance at hearing for temporary emergency orders
		Chapter 8. Child Custody and Parenting Time Proceedings
		Article 1. Child Custody Mediation
5.210	5.210	Court-connected child custody mediation
5.215	5.215	Domestic violence protocol for Family Court Services
		Article 2. Child Custody Investigations and Evaluations
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
		Article 3. Ex Parte Communication in Child Custody Proceedings
5.235	5.235	Ex parte communication in child custody proceedings
		Article 4. Counsel Appointed to Represent A Child
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
		Article 5. Children's Participation in Family Court
5.250	New	Children's participation and testimony in family court proceedings
		Chapter 9. Child, Spousal and Domestic Partner Support
		Article 1. General Provisions
5.260	New and includes 5.128	General provisions regarding support cases
		Article 2. Certification of Statewide Uniform Guideline Support Calculators
5.275	5.275	Standards for computer software to assist in determining support

		Chapter 10. Government Child Support Cases (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)
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
		Chapter 11. Domestic Violence Cases
		Article 1. Domestic Violence Prevention Act Cases
5.380	New	Stipulated Judgment of Parentage in Domestic Violence Prevention Act cases
5.381	New	Modification of Child Custody, Visitation and Support orders in Domestic Violence Prevention Act cases
		Article 2. Tribal Court Protective Orders
5.386	New	Procedures for filing a tribal court protective order

		Chapter 12. Separate Trials (Bifurucation) and Interlocutory Appeals
		Article 1. Separate Trials
5.390	5.126 and 5.175	Bifurcation of issues
		Article 2. Interlocutory Appeals
5.392	5.180	Interlocutory appeals
		Chapter 13. Trials and Long-Cause Hearings
5.393	New	Setting trials and long-cause hearings
5.394	New	Trial or hearing brief
		Chapter 14. Default and Judgments
5.401	5.122	Default
5.402	5.124	Request for default
5.405	New	Judgment checklists
5.407	New	Review of default and uncontested judgment documents
5.409	New	Default and uncontested judgment hearings
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
		Chapter 15. Settlement Services
5.420	New	Domestic violence protocol for court-connected settlement services providers
		Chapter 16. Limited Scope Representation; Attorney Fees and Costs
		Article 1. Limited Scope Representation
5.425	5.70, 5.71	Limited scope representation; application of rules
		Article 2. Attorney Fees and Costs
5.427	New	Attorney fees and costs
		Chapter 17. Family Law Facilitator
5.430	5.35	Minimum standards for the Office of the Family Law Facilitator
		Chapter 18. Court Coordination Rules
5.440	New	Related cases
5.445	5.450	Court communication protocol for domestic violence and child custody orders
		Division 2. Rules Applicable in Family and Juvenile Proceedings
		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(c))~~
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~~ Division title, application of rules and laws
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)	~~Nondisclosure of attorney assistance in preparation of court documents~~ Limited scope representation; application of rules
5.71	5.425(f)	~~Application to be relieved as counsel on completion of limited scope representation~~ Limited scope representation; application of rules
		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 and amended pleadings
5.110	5.50	~~Summons; restraining order~~ Papers issued by the court
5.112	5.68(c)	Manner of service of summons and petition; response; jurisdiction, (c) Continuing jurisdiction
5.114	5.60(b)	Petition or complaint; alterntive relief, (c) Request for

		a~~A~~lternative relief
5.116	5.411	Stipulation for judgment
5.118	Repealed and renumbered 5.92.	Application for court order; response
5.120	5.62	Appearance by respondent or defendant
5.121	5.63	Motion to quash proceeding or responsive relief
5.122	5.401	Default
5.124	5.402	Request for default; forms
5.126	5.390(c)	Alternate date of valuation
5.128	5.260(a)	General provisions regarding support cases, (a) Income and expense declarations ~~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)	Division title; application of rules and laws, (g) Implied procedures
		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	Standards for computer software to assist in determining support
		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)
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
		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~~
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(c))~~
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)~~

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:

Title 5. Family and Juvenile Rules

Division 1. Family Rules

Chapter 1. General Provisions

Article 1. General Provisions

Rule 5.1. Division title; application of rules and laws

(a) Division title

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

(b) Definitions

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

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

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

(c) Application of rules

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

(d) General law applicable

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

(e) Law applicable to other proceedings

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

(f) Extensions of time

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

(g) Implied procedures

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

Drafters' Notes:
Existing rule 5.1 would be amended to combine various existing rules. Existing rule 5.1 would be renumbered as rule 5.1(a). Existing rule 5.5 would be renumbered as rule 5.1(a). Existing rule 5.10 would be renumbered as rule 5.1(b). Existing rule 5.20 would be renumbered as rule 5.1(c). Existing rule 5.21 would be renumbered as 5.1(d). Existing rule 5.22 would be renumbered as 5.5(e) and amended to change the title and reference a new rule number. Existing rule 5.15 would be renumbered as 5.1(f). Existing rule 5.140 would be renumbered as 5.1(g).

Rule 5.4. Preemption; local rules and forms

Local rules and forms must not conflict with Judicial Council rules and forms.

Article 2: Use of forms

Rule 5.7. Use of forms

(a) Status of family law and domestic violence forms

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

(b) Forms in nonfamily law proceedings

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

(c) Interstate forms

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

Drafters' Notes:
Existing rule 5.25 would be renumbered as rule 5.7(a). Existing rule 5.26 would be renumbered as rule 5.7(b). Existing rule 5.27 would be renumbered as rule 5.7(c).

Article 3. Appearance by Telephone

Rule 5.9. Appearance by telephone

(a) Application

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

(b) Telephone appearance

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

(c) Need for personal appearance

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

(2) If, at any time during a hearing, conference, or proceeding conducted by telephone, the court determines that a personal appearance is necessary, the court may continue the matter and require a personal appearance.

Article 4. Discovery

Rule 5.12. Discovery motions

(a) Applicable law

Family law discovery motions are subject to the provisions of Code of Civil Procedure sections 2016.010 through 2036.050 and Family Code section 2100 et seq regarding disclosure of assets and liabilities.

(b) Applicable rules

Discovery proceedings brought under the Family Code must comply with applicable civil rules, including:

(1) The format of supplemental and further discovery (rule 3.1000);

(2) Oral deposition by telephone, videoconference, or other remote electronic means (rule 3.1010);

(3) Separate statement requirements (rule 3.1345);

(4) Service of motion papers on nonparty deponent (rule 3.1346); and

(5) Sanctions for failure to provide discovery (rule 3.1348).

Article 5: Sanctions

Rule 5.14. Sanctions for rule violations in family law cases

(a) Application

This sanctions rule applies to proceedings under the Family Code.

(b) Definition

For purposes of the rules in this division,

(1) "Sanctions" means a monetary fine or penalty ordered by the court.

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

(c) Sanctions imposed on a person

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

(d) Notice and procedure

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

(1) A party's request for sanctions must:

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

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

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

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

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

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

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

(e) Award of expenses

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

(f) Order

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

Title 5. Family and Juvenile Rules

Division 1. Family Rules

Chapter 2. Parties and Joinder of Parties

Article 1. Parties to Proceedings

Rule 5.16. Designation of parties

(a) Designation of parties

(1) In cases filed under the Family Code, the party starting the case is referred to as the "petitioner," and the other party is the "respondent."

(2) In local child support agency actions, the local child support agency starts the case and is the petitioner or plaintiff in the case. The parent sued by the child support agency is the "respondent" or "defendant," and the parent who is not the defendant is referred to as the "Other Parent." Every other proceeding must be prosecuted and defended in the names of the real parties in interest.

(b) Parties to proceeding

(1) The only persons permitted to be parties to a proceeding for dissolution, legal separation, or nullity of marriage are the spouses, except as provided in (3) or when a third party is joined in the case as provided in rule 5.24.

(2) The only persons permitted to be parties to a proceeding for dissolution, legal separation, or nullity of domestic partnership are the domestic partners, except as provided in (3) or when a third party is joined in the case as provided in rule 5.24.

(3) In a nullity proceeding, the case can be started by the spouses or domestic partners. The case may also be started by a parent or guardian, conservator, or other person specified in Family Code section 2211. For this type of case, the person starting the case is a party and the caption on all papers must be appropriately changed to reflect that fact.

Drafters' Notes:
Existing rule 5.100 would renumbered as rule 5.16(a) with minor changes to formatting. Existing rule 5.102 would be renumbered as 5.16(b) with changes made to reference new rule numbers.

Rule 5.17. Other causes of action

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

Drafters' Notes:
Existing rule 5.104 would be renumbered as rule 5.17 and amended to clarify the rule's meaning.

Rule 5.18. Injunctive relief and reservation of jurisdiction

(a) Injunctive relief

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

(1) A person who has or claims an interest in the case;

(2) A person who would be a necessary party to a complete disposition of the issues in the case, but is not permitted to be a party under rule 5.16; or

(3) A person who is acting as a trustee, agent, custodian, or similar fiduciary with respect to any property subject to disposition by the court in the proceeding, or other matter subject to the jurisdiction of the court in the proceeding.

(b) Reservation of jurisdiction

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

Drafters' Notes:
Existing rule 5.106 would be renumbered as rule 5.18 with changes made to formatting. The rule would also be amended to include a reference to a new rule number.

Article 2. Joinder of Parties

Rule 5.24. Joinder of persons claiming interest

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

(a) Applicable rules

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

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

(b) "Claimant" defined

For purposes of this rule, a "claimant" is a person joined or sought or seeking to be joined as a party to the family law proceeding.

(c) Persons who may seek joinder

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

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

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

(d) Form of joinder application

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

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

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

(e) Court order on joinder

(1) Mandatory joinder

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

(2) Permissive joinder

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

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

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

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

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

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

(3) Procedure upon joinder

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

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

Drafters' Notes:
Existing rule 5.150 would include minor amendments and be renumbered as rule 5.24 (first subparagraph) and 5.24(a)(1). Existing rule 5.160 would be amended and renumbered as rule 5.24(a)(2). Existing rule 5.152 would be renumbered as 5.24(b). Existing rule 5.154 would be renumbered as 5.24(c). Existing rule 5.156 would be amended and renumbered as rule 5.24(d). Existing rule 5.158 would be renumbered as rule 5.24(e) with a minor change to the title.

Article 3. Employee Pension Benefit Plan

Rule 5.29. Joinder of employee pension benefit plan

(a) Request for joinder

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

(b) Summons

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

(c) Notice of Appearance

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

Drafters' Notes:
Existing rule 5.162 would be renumbered as rule 5.29 with minor formatting changes.

Title 5. Family and Juvenile Rules

Division 1. Family Rules

Chapter 3. Filing Fees and Fee Waivers

Article 1. Filing Fees and Fee Waivers

Rule 5.40. Filing Fees

(a) Filing fees

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

(b) Authority

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

(c) Other fees

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

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

Rule 5.41. Waiver of fees and costs

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

(a) Forms

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

(b) Rules

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

(1) Applying for a fee waiver (rule 3.51);

(2) Forms for requesting a fee waiver (rule 3.51);

(3) How the court makes an order on a fee waiver application (rule 3.52);

(4) The time required for the court to grant a fee waiver (rule 3.53);

(5) The confidentiality of fee waiver applications and hearings (rule 3.54);

(6) Court fees and costs included in an initial fee waiver (rule 3.55); and

(7) Additional court fees and costs that may be included in the fee waiver (rule 3.56).

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:

(1) Paid the fees owed;

(2) Submitted a new *Request to Waive Court Fees* (form FW-001) if the fee waiver was denied because the first form was incomplete; or

(3) Requested a hearing using *Request for Hearing About Court Fee Waiver Order (Superior Court)* (form FW-006).

(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

court, the court must:

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

(B) Notify the parties of the court's determination; and

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

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

(a) Determination of repayment required

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

(b) Required forms

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

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

(a) Application

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

(b) Information

Parties may refer to rule 8.26 for information about:

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

(2) Required forms requesting a fee waiver;

(3) The confidentiality of fee waiver applications and hearings;

(4) Time required for the court to grant a fee waiver; and

(5) Denial of a fee waiver application.

Title 5. Family and Juvenile Rules

Division 1. Family Rules

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

(a) Issuing the summons; form

If a summons is required to commence a family law case, the clerk of the court must issue the summons using the same procedure for issuing a summons in civil actions, generally.

(1) The clerk of the court must:

(A) Issue a *Summons (Family Law)* (form FL-110) for divorces, legal separations, or annulment cases involving married persons or domestic partnerships;

(B) Issue a *Summons (Uniform Parentage—Petition for Custody and Support)* (form FL-210) for parentage or custody and support cases;

(C) Issue a *Summons (UIFSA)* (form FL-510) when a party seeks to establish or enforce child support orders from other states; and

(D) Process a *Summons and Complaint or Supplemental Complaint Regarding Parental Obligations* (form FL-600) as specified in rule 5.325.

(2) The clerk of the court must not give the original summons to the petitioner, but must maintain it in the court file, except for support cases initiated by a local child support agency.

(b) Temporary family law restraining order in summons; handling by clerk

In proceedings for dissolution, legal separation, or nullity of a marriage or domestic partnership and in parentage proceedings, the clerk of the court must issue a

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

(c) Individual restraining order

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

Drafters' Notes:
Existing rule 5.110 would be repealed and renumbered as 5.50.

Rule 5.51. Mandatory information packet

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

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

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

Rule 5.54. Preliminary declaration of disclosure; time for service

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

(a) Preliminary declaration of disclosure

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

(1) *Declaration of Disclosure* (form FL-140);

(2) *Income and Expense Declaration* (form FL-150) and required attachments,

(3) *Schedule of Assets and Debts* (form FL-142) or *Property Declaration* (form FL-160) and required attachments;

(4) Federal and state income tax returns filed by the declarant within two years prior to serving the preliminary declaration of disclosure; and

(5) Any other information required under Family Code section 2104.

(b) Time for service

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

(c) Proof of service

(1) To prove that a party served his or her preliminary declaration of disclosure, the party must complete and file with the clerk of the court a *Declaration Regarding Service of Declaration of Disclosure* (form FL-141).

(2) A party must not file with the clerk of the court the original or copies of the preliminary declaration of disclosure, unless required by court order.

(d) Disclosures to be served before requesting default judgment

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

(e) Failure to disclose

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

Article 2. Initial pleadings

Rule 5.60. Petition or complaint; alternative relief

(a) Format

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

(b) Request for alternative relief

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

Drafters' Notes:
Existing rule 5.114 would be repealed and renumbered as 5.60(b).

Rule 5.62. Appearance by respondent or defendant

(a) Appearance

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

(1) A response or answer;

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

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

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

(b) Notice required after appearance

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) No notice required

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 5.63. Motion to quash proceeding or responsive relief

(a) Respondent's application

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) Service of respondent's motion

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) Petitioner's application

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) Waiver

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) Relief

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 motion has been sustained with leave to amend and the amendment is not made within the time permitted by the court.

Drafters' Notes:
Existing rule 5.121 would be renumbered as rule 5.63 with minor changes to formatting.

Article 3. Time for Service of Papers

Rule 5.66. Proof of service; deadlines

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

(a) Form

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

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

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

Article 4. Manner of Service

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

(a) Service of summons and petition

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

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

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

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

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

(b) Service of response to petition

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

(c) Continuing jurisdiction

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

Drafters' Notes:
Existing rule 5.112 would be renumbered as rule 5.68(c).

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

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

(a) Forms

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

(b) Order

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

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

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

(c) Non-appearance by respondent

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

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

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

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

Drafters' Notes:
Proposed rule 5.72 is included only for context. Commentators who wish to provide comments on proposed new rule 5.72 should read and reply to the proposal titled "Family Law – Proof of Service by Publication or Posting."

Article 5. Pleadings and Amended Pleadings

Rule 5.74. Pleadings and amended pleadings

(a) Forms of pleading

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

(b) Amendment to pleadings

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

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

Drafters' Notes:
Existing rule 5.108 would be renumbered as rule 5.74 with minor changes to formatting.

Article 6. Specific proceedings

Rule 5.76. Domestic partnerships

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

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

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

Drafters' Notes:
Existing rule 5.28 would be renumbered as rule 5.76.

Rule 5.77. Summary dissolution

(a) Declaration of disclosure

For the purposes of a proceeding for summary dissolution, attachment to the petition of completed worksheet pages listing separate and community property and obligations as well as an Income and Expense Declaration (form FL-150) or Financial Statement (Simplified) (form FL-155) constitutes compliance with the disclosure requirements of chapter 9 (beginning with section 2100) of part 1 of division 6 of the Family Code.

(b) Fee for filing

The fee for filing a Joint Petition for Summary Dissolution of Marriage (form FL-800) is the same as that charged for filing a Petition-Marriage (form FL-100). No additional fee may be charged for the filing of any form prescribed for use in a summary dissolution proceeding, except as required by Government Code section 26859.

Drafters' Notes:
Existing rule 5.130 would be renumbered as rule 5.77.

Title 5. Family and Juvenile Rules

Division 1. Family Rules

Chapter 5. Family-Centered Case Resolution Plans

Rule 5.83. Family Centered Case Resolution

(a) Purpose

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

(b) Definitions

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

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

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

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

(c) Family centered case resolution process

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) Complexity of issues;

(C) Nature and extent of discovery anticipated;

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

(E) Estimated length of trial;

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

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

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

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

(J) Likelihood of review by writ or appeal;

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

(d) Family centered case resolution conferences

(1) The court may hold an initial family centered case resolution conference to develop a specific case resolution plan.

(2) Family centered case resolution conferences must be heard by a judicial officer. On the court's initiative or the request of the parties, to enhance access to the court, the conference may be held in person, by telephone, video-conferencing or other appropriate means of communication.

(3) At the conference, which is neither intended to be an evidentiary hearing or a settlement conference, counsel for each party and each self-represented litigant must be familiar with the case and must be prepared to discuss the party's positions on the issues.

(4) Before alternative dispute resolution (except for mandatory child custody mediation) is included in a family centered case resolution plan under Family Code section 2451(a)(2), the court must inform the parties that their participation in alternative dispute resolution services offered by the court is voluntary and ADR services can only be part of a plan if both parties voluntarily choose to opt in to utilizing these services. Additionally, the court must:

(A) Inform the parties that alternative dispute resolution may not be appropriate in cases involving domestic violence and provide information about separate sessions, and

(B) Ensure that all court-connected providers of alternative dispute resolution services that are part of a family centered case resolution plan have been trained on assessing and handling cases that may involve domestic violence.

(5) Nothing in this rule prohibits the court from having an employee of the court review the file and notify the parties of any deficiencies in their paperwork before the parties appear in front of the judicial officer at a family centered case resolution conference. This type of assistance can occur by telephone, in person or in writing, on or before each scheduled family centered case resolution conference. However, this type of procedural assistance is not intended to replace family centered case resolution plan management or create a barrier to litigants' access to a judicial officer.

(e) Family centered case resolution plan order

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

(2) The family centered case resolution plan order should set a schedule for subsequent family centered case resolution conferences and otherwise provide for the management of the case.

(f) Family centered case resolution order without appearance

If the court determines that appearances at a family centered case resolution conference are not necessary, the court may notify the parties and, if stipulated, issue a family centered case resolution order without an appearance at the conference.

(g) Family centered case resolution information

(1) Upon the filing of first papers in dissolution, legal separation, nullity or parentage actions the court must provide that party with the following:

(A) Written information summarizing the process of a case through disposition;

(B) A list of local resources that offer procedural assistance, legal advice or information, settlement opportunities and domestic violence services;

(C) Instructions for keeping the court informed of the person's current address and phone number, and e-mail address if appropriate;

(B) Information for self represented parties about the opportunity to meet with court self-help center staff or facilitator; and

(C) Information for litigants on how to request a status conference or a family centered case resolution conference earlier or in addition to, any status conference or family centered case resolution conferences scheduled by the court.

Drafters' Notes:
Proposed rule 5.83 is included only for context. Commentators who wish to provide comments on proposed new rule 5.83. should read and reply to the proposal titled "Family and Juvenile Rules: Family-Centered Case Management Rule and Forms."

Title 5. Family and Juvenile Rules

Division 1. Family Rules

Chapter 6. Request for Order

Article 1. General Provisions

Rule 5.90. Format of papers

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

Rule 5.91. Individual restraining order

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

Drafters' Notes
Existing rule 5.110(b) would be renumbered 5.91.

Article 2. Filing and Service

Rule 5.92. Application for court order; response

(a) Application for order; procedures

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

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

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

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

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

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

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

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

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

(b) Responding papers

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

(1) A memorandum of points and authorities.

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

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

(c) Additional documents

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

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

Drafters' Notes:
Existing rule 5.118 addressing the subject of applications for court order and supporting declarations would be repealed and renumbered as rule 5.92. To comment specifically on rule 5.92, commentators should read and reply to the 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."

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

(a) In general

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

(b) Order shortening time

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

(c) Time for filing proof of service

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

(d) Failure to serve moving papers

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

(e) Filing of late papers

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

(f) Computation of time

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

Rule 5.96. Place and manner of filing

(a) Papers filed in clerk's office

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

(b) General schedule

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

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

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

Article 3. Meet-and-Confer Conferences

Rule 5.98. Meet and confer requirements; document exchange

(a) Meet and confer

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

(b) Document exchange

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

Article 4. Evidence at Hearings

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

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

(a) Length of declarations

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

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

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

(b) Form and format of declarations

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

(c) Objections to declarations

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

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

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

Drafters' Notes:

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

Rule 5.112.1. Declaration page limitation; exemptions

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

Rule 5.113. Live testimony

(a) Purpose

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

(b) Factors

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

(1) Whether a substantive matter is at issue— such as child custody, parenting time (visitation), parentage, child support, spousal support, requests for restraining orders, or the characterization, division, or temporary use and control of the property or debt of the parties—;

(2) Whether material facts are in controversy;

(3) Whether live testimony is necessary for the court to assess the credibility of the parties or other witnesses;

(4) The right of the parties to question anyone submitting reports or other information to the court;

(5) In testimony from persons other than the parties, whether there has been compliance with Family Code section 217(c); and

(6) Any other factor that is just and equitable.

(c) Findings

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

(d) Minor children

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

(e) Witness lists

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

(f) Continuance

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

(g) Questioning by court

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

Drafters' Notes:

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

Rule 5.115. Judicial notice

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

Article 6. Reporting and Preparation of Order After Hearing

Rule 5.123. Reporting of hearing proceedings

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

Rule 5.125. Preparation and submission of order after hearing

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

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

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

(b) Failure to prepare proposed order after hearing

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

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

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

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

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

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

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

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

(2) The court must first compare the proposed order after hearing to the minute order or other court record before signing a proposed order submitted without the other party's approval as to form and content.

(d) Objections to proposed order after hearing

If the other party objects to the form or content of the proposed order after hearing, the parties must meet and confer by telephone or in person to attempt to resolve the disputed language. If the parties fail to resolve their disagreement and the other party rejects the proposed order, the other party must submit alternate proposed language to the court along with a copy of the minute order or official transcript of the court hearing.

(e) Award of attorney fees and costs

If either party fails to comply with the procedures set forth in this rule, the court may award attorney fees, costs of preparing the court reporter's transcript, or other costs upon an application.

(f) Service of order after hearing signed by the court

After the court order is signed, the courtroom clerk must file the order. The party who prepared the order must mail an endorsed filed copy to the other party.

Title 5. Family and Juvenile Rules

Division 1. Family Rules

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

(a) Application

The rules in this chapter govern applications for emergency orders (also known as ex parte applications) in family law cases, unless otherwise provided by statute or rule. These rules may be referred to as "the emergency order rules." Unless specifically stated, these rules do not apply to ex parte applications for domestic violence restraining orders under the Domestic Violence Prevention Act.

(b) Purpose

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

(1) Make orders to help prevent an immediate danger or irreparable harm to a party or to the children involved in the matter;

(2) Make orders to help prevent immediate loss or damage to property subject to disposition in the case;

(3) Set a date for a hearing on the matter that is sooner than that of a regular hearing (grant an order shortening time for hearing);

(4) Shorten or extend the time required for the moving party to serve the other party with the notice of the hearing and supporting papers (grant an order shortening time for service);

(5) Continue a hearing or trial; or

(6) Make orders about procedural matters.

(c) Required documents

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

(1) *Request for Order* (form FL-300) that identifies the relief requested;

(2) *Application for Order and Supporting Declaration* (form FL-310) and any attachments to the application;

(3) *Temporary Orders* (form FL-305) to serve as the proposed temporary order;

(4) A written declaration regarding notice of application for emergency orders based on personal knowledge;

(5) A memorandum of points and authorities (required only if specified by the court on a case-by-case basis);

(d) Contents of application and declaration

(1) *Identification of attorney or party*

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

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

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

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

(3) *Disclosure of previous applications and orders*

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

(4) *Disclosure of change in status quo*

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

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

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

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

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

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

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

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

(e) Contents of notice and declaration regarding notice of emergency hearing

(1) *Contents of notice*

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

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

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

(2) *Declaration regarding notice*

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

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

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

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

Article 2. Notice, Service, Appearance

Rule 5.165. Requirements for notice

(a) Notice to a party

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

(1) *Explanation for shorter notice*

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

(2) *Explanation for waiver of notice (no notice)*

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

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

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

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

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

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

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

(3) *Notice automatically waived*

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

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

(B) Stipulations by the parties;

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

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

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

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

(G) Application for an order waiving filing fees.

(b) Notice to the court

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

(c) Method of notice

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

Rule 5.167. Service of application; temporary restraining orders

(a) Service of documents requesting emergency orders

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

(b) Service of temporary emergency orders

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

Rule 5.169. Personal appearance at hearing for temporary emergency orders

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

Title 5. Family and Juvenile Rules

Division 1. Family Rules

Chapter 8. Child Custody and Parenting Time Proceedings

Article 1. Child Custody Mediation

Rule 5.210. Court-connected child custody mediation

(a)—(h) ***

Rule 5.215. Domestic violence protocol for Family Court Services

(a)—(j) ***

Article 2. Child Custody Mediation

Rule 5.220. Court-ordered child custody evaluations

(a)—(j) ***

Rule 5.225. Appointment requirements for child custody evaluators

(a)—(n) ***

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

(a)—(g) ***

Article 3. Ex parte communication

Rule 5.235. Ex parte communication in child custody proceedings

(a)—(f) ***

Article 4. Counsel Appointed to Represent a Child

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

(a)–(c) ***

(c) Orders appointing counsel for a child

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

(1) ***

(2) The appointment orders may include the:

(A)–(F) ***

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

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

(I)–(J) ***

(d) Panel of counsel eligible for appointment

(1)–(3) ***

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

(e)–(f) ***

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

(a)—(d) ***

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

(a)—(i) ***

(j) Responsibilities of counsel for a child

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

~~(1) Interviewing the child;~~

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

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

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

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

(k) ***

Drafters' Notes:

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

Article 5. Children's Participation in Family Court

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

(a) Children's participation

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

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

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

(A) A minor's counsel;

(B) An evaluator;

(C) An investigator; and

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

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

(A) A party; and

(B) A party's attorney.

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

(c) Guidelines for determining whether addressing the court is in the child's best interest

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

(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

(E) Information provided from a child interview center or professional so as to avoid unnecessary multiple interviews.

(2) If the court precludes the calling of a child as a witness and specifies one of the other alternatives, the court must require that the information or evidence obtained by alternative means:

(A) Be in writing and fully document the child's views on the matters on which the child wished to express an opinion;

(B) Describe the child's input in sufficient detail to assist the court in its adjudication process;

(C) Be provided to the court and to the parties.

(3) Upon deciding to take the testimony of a child, the judicial officer should balance the necessity of taking the child's testimony in the courtroom with parents and attorneys present with the need to create an environment in which the child can be open and honest. In each case in which a child's testimony will be taken, courts should consider:

(A) Where the testimony will be taken, including the possibility of closing the courtroom to the public or hearing from the child on the record in chambers;

(B) Who should be present when the testimony is taken, such as: both parents and their attorneys, only attorneys in the case in which both parents are represented, the child's attorney and parents, or only a court reporter with the judicial officer;

(C) How the child will be questioned, such as whether only the judicial officer will pose questions that the parties have submitted, whether attorneys or parties will be permitted to cross-examine the child, or whether a child advocate or expert in child development will ask the questions in the presence of the judicial officer and parties or a court reporter; and

(D) Whether a court reporter is available in all instances, but especially when testimony may be taken outside the presence of the parties and their attorneys and, if not, whether it will be possible to provide a listening device so that testimony taken in chambers may be heard simultaneously by the parents and their attorneys in the courtroom or to otherwise make a record of the testimony.

(4) In taking testimony from a child, the court must take special care to protect the child from harassment or embarrassment and to restrict the unnecessary

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

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

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

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

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

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

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

(e) Responsibilities of court-connected or appointed professionals

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

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

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

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

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

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

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

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

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

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

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

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

(g) Education and training

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

Title 5. Family and Juvenile Rules

Division 1. Family Rules

Chapter 9. Child, Spousal, and Domestic Partner Support

Article 1. General Provisions

Rule 5.260. General provisions regarding support cases

(a) Income and expense declarations

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

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

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

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

(b) Deviations from guideline child support

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

(c) Request to change prior support orders

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

(d) Notification to the local child support agency

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

(e) Judgment for support

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

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

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

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

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

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

Drafters' Notes:
Existing rule 5.128 would be repealed and renumbered as rule 5.260(a) with changes to reflect requirements for support hearings.

Article 2. Certification of Statewide Uniform Guideline Support Calculators

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

(a)—(j) ***

Title 5. Family and Juvenile Rules

Division 1. Family Rules

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

Rule 5.300. Purpose, authority, and definitions

(a)—(c) ***

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

(a)—(c) ***

Rule 5.310. Use of existing family law forms

***

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

(a)—(b) ***

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

(a)—(k) ***

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

(a)—(e) ***

Rule 5.330. Procedures for child support case registry form

(a)—(g) ***

Rule 5.335. Procedures for hearings on interstate income withholding orders

(a)—(g) ***

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

(a)—(f) ***

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

(a)—(b) ***

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

(a) ***

(b) Procedure for filing motion in superior court

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

Drafters' Notes:
Exising rule 5.375(b) would be amended to reference the proposed name change to form FL-301.

Title 5. Family and Juvenile Rules

Division 1. Family Rules

Chapter 11. Domestic Violence Cases

Article 1. Domestic Violence Prevention Act Cases

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

(a) Stipulated judgment filed on Judicial Council form

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

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

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

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

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

(a) Application of Rule

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

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

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

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

(c) Forms

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

Drafters' Notes:
Rule 5.381 is included only for context. Commentators who wish to provide comments on proposed new rule 5.381 should read and reply to the proposal titled "Domestic Violence: Family Law – 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

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

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

(b) Process for registration of order

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

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

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

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

(b) No filing fee required

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

(c) Facsimile coversheet

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

Drafters' Notes:
Rule 5.386 is included only for context. 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."

Title 5. Family and Juvenile Rules

Division 1. Family Rules

Chapter 12. Separate Trials (Bifurcation) and Interlocutory Appeals

Article 1. Separate Trials

Rule 5.390. Bifurcation of issues

(a) Motion to bifurcate

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

(b) When to bifurcate

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

(1) Validity of a postnuptial or premarital agreement;

(2) Date of separation;

(3) Date to use for valuation of assets;

(4) Whether property is separate or community;

(5) How to apportion of increase in value of a business;

(6) Existence or value of business or professional goodwill;

(7) Termination of status of a marriage or domestic partnership;

(8) Child custody and parenting time;

(9) Child, spousal, or domestic partner support;

(10) Attorney fees and costs;

(11) Division of property and debts;

(12) Reimbursement claims; or

(13) Other issues specific to a family law case.

(c) Alternate date of valuation

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

(1) The proposed alternate valuation date;

(2) Whether the proposed alternate valuation date applies to all or only a portion of the assets and, if the motion is directed to only a portion of the assets, the declaration must separately identify each such asset; and

(3) The reasons supporting the alternate valuation date.

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

(1) All pension plans that have not been divided by court order that require joinder must be joined as a party to the case before a petitioner or respondent may file a request for a separate trial to terminate marital status or the domestic partnership. Parties may refer to *Retirement Plan Joinder—Information Sheet* (form FL-318-INFO) to help determine whether their retirement benefit plans must be joined.

(2) The party not requesting termination of status may ask the court:

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

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

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

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

(e) Notice by clerk

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

Drafters' Notes:
Existing rule 5.175(a) would be renumbered as 5.390(a) and amended to include a third sentence referencing use of mandatory form FL-315. Existing rule 5.175(b) would be renumbered to rule 5.390(e). Existing rule 5.175(c) would be renumbered 5.390(b) and amended to include new provisions (b)(7)-(13). Existing rule 5.126 would be renumbered as rule 5.390(c).

Article 2. Interlocutory Appeals

Rule 5.392. Interlocutory appeals

(a)–(h) ***

Drafters' Notes:
Existing rule 5.180 would be renumbered as rule 5.392 without change to content.

Title 5. Family and Juvenile Rules

Division 1. Family Rules

Chapter 13. Trials and Long-Cause Hearings

Rule 5.393. Setting trials and long-cause hearings

(a) Definitions

For purposes of this rule:

(1) A "trial day" is defined as a period no less than two and a half hours of a single court day.

(2) A "long cause hearing" is defined as a hearing on a request for order that extends over a single court day.

(3) A "trial brief" or "hearing brief" is a written summary or statement submitted by a party that explains to a judge the party's position on particular issues that will be part of the trial or hearing.

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

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

(1) Time estimates

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

(2) Trial or hearing brief

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

(c) Sequential days

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

(d) Intervals between trial or hearing days

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

Rule 5.394. Trial or hearing brief

(a) Contents of brief

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

(1) The statistical facts and any disputes about the statistical facts. Statistical facts that may apply to the case could include:

(A) Date of the marriage or domestic partnership;

(B) Date of separation;

(C) Length of marriage or domestic partnership in years and months; and

(D) Names and ages of parties' children.

(2) A brief summary of the case;

(3) A statement of any issues that need to be resolved at trial;

(4) A brief statement summarizing the contents of any appraisal or expert report to be offered at trial;

(5) A list of all witnesses to be called at trial and a brief summary of their testimony, as well as name, business address, and statement of qualifications of any expert witness;

(6) Any legal arguments upon which a party intends to rely; and

(7) Any other matters determined by the judge to be necessary and provided to the parties in writing.

(b) Service of brief

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

Title 5. Family and Juvenile Rules

Division 1. Family Rules

Chapter 14. Default Proceedings and Judgments

Rule 5.401. Default

(a) Entry of default

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

(1) Make an appearance as stated in rule 5.62;

(2) File a notice of motion to quash service of summons under section 418.10 of the Code of Civil Procedure; or

(3) File a petition for writ of mandate under section 418.10 of the Code of Civil Procedure.

(b) Proof of facts

(1) The petitioner may apply to the court for the relief sought in the petition at the time default is entered. The court must require proof to be made of the facts stated in the petition and may enter its judgment based on that proof.

(2) The court may permit the use of a completed *Income and Expense Declaration* (form FL-150) or *Financial Statement (Simplified)* (form FL-155) *and Property Declaration* (form FL-160) for all or any part of the proof required or permitted to be offered on any issue as to which they are relevant.

Drafters' Notes:
Existing rule 5.122 would be renumbered as rule 5.401 with minor changes to (a)(1) to reference a new rule number.

Rule 5.402. Request for default; forms

(a) Forms

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

(b) Service address required

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

Drafters' Notes:
Existing rule 5.124 would be amended and renumbered as rule 5.402 with minor changes to titles and formatting.

Rule 5.405. Judgment checklists

Drafters' Notes:
The text of rule 5.405 is not included with this proposal. Commentators who wish to provide comments to rule 5.405 should read and 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.

Rule 5.407. Review of default and uncontested judgments submitted on the basis of declaration under Family Code section 2336

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

(a) Court review

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

(b) Notice of errors and omissions

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

Drafters' Notes:
Rule 5.407 is included in this proposal only for context. Commentators who wish to provide comments to rule 5.407 should read and 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.

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

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

Drafters' Notes:
Rule 5.409 is included in this proposal only for context. Commentators who wish to provide comments to rule 5.409 should read and 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.

Rule 5.411. Stipulation for judgment

(a) Format

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

The foregoing is agreed to by

_____ (Petitioner)	_____ (Respondent)
_____ (Attorney for Petitioner)	_____ (Attorney for Respondent)

(b) Disposition of all matters required

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

Drafters' Notes:
Existing rule 5.116 above would be renumbered as rule 5.411 with minor changes to formatting.

Rule 5.413. Notice of entry of judgment

(a) Notice by clerk

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

(1) A judgment of legal separation;

(2) A judgment of dissolution;

(3) A judgment of nullity;

(4) A judgment establishing parental relationship (on form FL-190); or

(5) A judgment regarding custody or support.

(b) Notice to local child support agency form

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

Drafters' Notes:
Existing rule 5.134 above would be renumbered as rule 5.413 with minor changes to formatting.

Rule 5.415. Completion of notice of entry of judgment

(a) Required attachments

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

(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.

Title 5. Family and Juvenile Rules

Division 1. Family Rules

Chapter 15. Settlement Services

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

(a) Purpose

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

(b) Definitions

(1) "Domestic violence" is used as defined in Family Code sections 6203 and 6211.

(2) "Protective order" is synonymous with "domestic violence restraining order" as well as the following:

(A) "Emergency protective order" under Family Code section 6215;

(B) "Protective order" under Family Code section 6218; and

(C) "Orders by court" under Penal Code section 136.2.

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

(c) Duties of settlement service providers

All settlement services must:

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

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

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

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

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

(d) Domestic violence procedures

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

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

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

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

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

(e) Safety issues

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

(2) Each settlement service provider should develop safety procedures for handling domestic violence cases.

(3) Where appropriate, settlement service staff must make reasonable efforts to keep residential addresses, work addresses, and contact information—including, but not limited to, telephone numbers and e-mail addresses—confidential in all cases and on all documents.

(f) Support persons

(1) Settlement service providers must advise the party protected by a protective order of the option of having a support person attend any sessions, including separate sessions.

(2) Settlement service providers may exclude a domestic violence support person from a session if the support person participates in the sessions or acts as an advocate or if the presence of a particular support person disrupts the settlement process. The presence of the support person does not waive the confidentiality of the process, and the support person is bound by the confidentiality of the process.

(g) Training and education

(1) All settlement service providers must participate in programs of continuing instruction in issues related to domestic violence, including child abuse, as may be arranged for and provided to them.

(2) Settlement services should, where possible, enable support staff, including but not limited to clerical staff, to participate in training on domestic violence and in handling domestic violence cases appropriately.

Title 5. Family and Juvenile Rules

Division 1. Family Rules

Chapter 16. Limited Scope Representation; Attorney Fees and Costs

Article 1. Limited Scope Representation

Rule 5.425. Limited scope representation; application of rules

(a) Definition

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

(b) Application

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

(c) Types of limited scope representation

These rules recognize two types of limited scope representation:

(1) *Noticed representation*

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

(2) *Undisclosed representation*

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

(d) Noticed limited scope representation

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

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

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

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

(1) *Application*

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

(2) *Filing and service of application*

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

(3) *No objection*

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

(4) *Objection*

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

(5) *Service of the order*

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

(f) Nondisclosure of attorney assistance in preparation of court documents

(1) *Nondisclosure*

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

(2) *Attorney fees*

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

(3) *Applicability*

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

Drafters' Notes:
Existing rules 5.70 and 5.71 would be renumbered as rule 5.425 (e) and (f), respectively, with minor changes to formatting.

Article 2. Attorney Fees and Costs

Rule 5.427. Attorney fees and costs

(a) Request

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

(b) Response to request

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

(c) Income and expense declaration

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

(1) "Current" is defined as being completed within the past three months, provided that no facts have changed. The form must be sufficiently completed to allow determination of the issues.

(2) A *Financial Statement (Simplified)* (form FL-155) is not appropriate for use in proceedings to determine or modify attorney fees and costs.

(3) When attorney fees are requested by either party, the section on the *Income and Expense Declaration* (form FL-150) related to the amount in savings, credit union, certificates of deposit, and money market accounts must be fully completed, as well as the section related to the amount of attorney fees incurred, currently owed, and the source of money used to pay such fees.

(d) Court findings and order

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

Drafters' Notes:
Rule 5.427 is included in this proposal only for context. Commentators who wish to provide comments to rule 5.427 should read and reply to the proposal titled "Family Law: Attorney Fees and Costs."

Title 5. Family and Juvenile Rules

Division 1. Family Rules

Chapter 17. Family Law Facilitator

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

(a)—(h) ***

Drafters' Notes:
Existing rule 5.35 would be renumbered as 5.430 without change to content.

Title 5. Family and Juvenile Rules

Division 1. Family Rules

Chapter 18. Court Coordination Rules

Article 1. Related Cases

Rule 5.440. Related cases

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

(a) Definition of "related case"

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

(1) Involve the same parties or the parties' minor children;

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

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

(b) Confidential information

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

(c) Coordination of Title IV-D cases

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

Rule 5.445 ~~5.450.~~ Court communication protocol for domestic violence and child custody cases.

(a)—(c) ***

Drafters' Notes:

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

Title 5. Family and Juvenile Rules

Division 2. Rules Applicable in Family and Juvenile Proceedings

Chapter 1. Contact and Coordination

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

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

***

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

***

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

***

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

***

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

***

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

***

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

***

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

***

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

***

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

***

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

***

Drafters' Notes:
Existing rule 5.400 would be renumbered as rule 5.451 and amended by striking code sections as indicated in the rule.

Rule ~~5.410~~ 5.460. Request for sibling contact information ~~under Family Code section 9205~~

(a)—(b)

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

***

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

***

Drafters' Notes:
Existing rule 5.410 would be renumbered as rule 5.460 and amended by deleting code sections as indicated in the above text.

Rule 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)~~

(a)—(c) ***

Drafters' Notes:
Existing rule 5.475 would be amended by deleting code sections as indicated in the above text.

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

***

Drafters' Notes:
Existing rule 5.480 would be amended by deleting code sections as indicated in the above text.

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

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

***

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

(1)–(4) ***

Drafters' Notes:
Existing rule 5.481 would be amended by deleting code sections as indicated in the above text.

Rule 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)~~)

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

***

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

***

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

***

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

***

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

***

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

***

(g) Consultation with tribe

***

Drafters' Notes:
Existing rule 5.482 would be amended by deleting code sections as indicated in the above text.

Rule 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)~~

(a)—(c) ***

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

***

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

***

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

***

(g)-(h) ***

Drafters' Notes:
Existing rule 5.483 would be amended by deleting code sections as indicated in the above text.

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

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

***

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

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

***

Drafters' Notes:
Existing rule 5.484 would be amended by deleting code sections as indicated in the above text.

Rule 5.485. Termination of parental rights ~~(Fam. Code, § 7892.5; Welf. & Inst. Code, §§ 361.7, 366.26(c)(2)(B))~~

(a)—(b) ***

Drafters' Notes:
Existing rule 5.485 would be amended by deleting code sections as indicated in the above text.

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

(a)—(c)

Drafters' Notes:
Existing rule 5.483 would be amended by deleting code sections as indicated in the above text.

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

(a)—(b) ***

Drafters' Notes:
Existing rule 5.483 would be amended by deleting code sections as indicated in the above text.

~~Title 5. Family and Juvenile Rules~~

~~Division 1. Family Rules~~

~~Chapter 1. General Provisions~~

~~Rule 5.1. Title~~

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

Drafters' Notes:
Existing rule 5.1 would be amended to combine existing rules 5.5, 5.10, 5.15, 5.20, 5.21, 5.22, and 5.140.

~~Rule 5.5. Division title~~

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

Drafters' Notes:
Existing rule 5.5 would be repealed and renumbered as rule 5.1(a).

~~Rule 5.10. Definitions and use of terms~~

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

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

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

~~(3) "Property" includes assets and obligations.~~

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

Drafters' Notes:
Existing rule 5.10 would be repealed and renumbered as rule 5.1(b).

~~**Rule 5.15. Extensions of time**~~

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

Drafters' Notes:
Existing rule 5.15 would be repealed and renumbered as 5.1(f).

~~**Rule 5.20. Application of rules**~~

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

Drafters' Notes:
Existing rule 5.20 would be repealed and renumbered as rule 5.1(c).

~~**Rule 5.21. General law applicable**~~

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

Drafters' Notes:
Existing rule 5.21 would be repealed and renumbered as 5.1(d).

~~**Rule 5.22. Other proceedings**~~

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

Drafters' Notes:
Existing rule 5.22 would be repealed and renumbered as 5.5(e).

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

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

Drafters' Notes:
Existing rule 5.25 would be repealed and renumbered as 5.7(a).

~~**Rule 5.26. Use of forms in nonfamily law proceedings**~~

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

Drafter's Notes:
Existing rule 5.26 would be repealed and renumbered as rule 5.7(b).

~~**Rule 5.27. Use of interstate forms**~~

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

Drafter's Notes:
Existing rule 5.27 would be repealed and renumbered as rule 5.7(c).

~~**Rule 5.28. Domestic partnerships**~~

~~**(a) Procedures for obtaining a dissolution, a legal separation, or an annulment of a domestic partnership**~~

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

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

~~**(b) Terminology for rules and forms**~~

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

~~"parent." The terms "marriage" and "marital status" encompass "domestic partnership" and "domestic partnership status," respectively.~~

Drafter's Notes:
Existing rule 5.28(a) would be repealed and renumbered as rule 5.76. Existing rule 5.28(b) would be repealed as the proposed rules have been drafted using gender neutral terms or specifically stating that the rules apply to spouses or domestic partners.

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

~~(a) Authority~~

~~These standards are adopted under Family Code section 10010.~~

~~(b) Family law facilitator qualifications~~

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

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

~~(2) Knowledge of family law procedures;~~

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

~~(4) Knowledge of child support law and the operation of the uniform state child support guideline; and~~

~~(5) Basic understanding of law and psychological issues related to domestic violence.~~

~~(c) Substituted experience~~

~~Courts may substitute additional experience, skills, or background appropriate to their community for the qualifications listed above.~~

~~**(d) Desirable experience**~~

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

~~**(e) Service provision**~~

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

~~**(f) Protocol required**~~

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

~~**(g) Grievance procedure**~~

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

~~**(h) Training requirements**~~

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

Drafter's Notes:
Existing rule 5.35 would be repealed and renumbered as rule 5.430.

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

~~**(a) Nondisclosure**~~

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

~~**(b) Attorney's fees**~~

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

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

~~(c) Applicability~~

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

Drafter's Notes:
Existing rule 5.70 would be repealed and renumbered as rule 5.425(e).

~~Rule 5.71. Application to be relieved as counsel on completion of limited scope representation~~

~~(a) Applicability of this rule~~

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

~~(b) Notice~~

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

~~(c) Service~~

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

~~(d) No objection~~

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

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

~~**(e) Objection**~~

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

~~**(f) Service of the order**~~

~~After the order is signed, a copy of the signed order must be served by the attorney who has filed the *Application to Be Relieved as Counsel Upon Completion of Limited Scope Representation* (form FL-955) on the client and on all parties who have appeared in the case. The court may delay the effective date of the order relieving counsel until proof of service of a copy of the signed order on the client has been filed with the court.~~

Drafter's Notes:
Existing rule 5.71 would be repealed and renumbered as rule 5.425(f).

~~Chapter 2. Procedural Rules~~

~~Rule 5.100. Designation of parties~~

~~In proceedings filed under the Family Code, except for local child support agency actions, the party initiating the proceeding is the petitioner, and the other party is the respondent. In local child support agency actions, the responding party is the defendant and the parent who is not the defendant is referred to as the "Other Parent." Every other proceeding must be prosecuted and defended in the names of the real parties in interest.~~

Drafters' Notes:
Existing rule 5.100 would be repealed and renumbered as rule 5.16(a).

~~Rule 5.102. Parties to proceeding~~

~~**(a)** Except as provided in (c) or in rules 5.150 through 5.160, the only persons permitted to be parties to a proceeding for dissolution, legal separation, or nullity of marriage are the husband and wife.~~

~~**(b)** Except as provided in (c) or in rules 5.150 through 5.160, the only persons permitted to be parties to a proceeding for dissolution, legal separation, or nullity of domestic partnership are the domestic partners.~~

~~**(c)** In a nullity proceeding commenced by a person specified in Family Code section 2211, other than a proceeding commenced by or on behalf of the husband or wife in a marriage or one of the domestic partners in a domestic partnership, the person initiating the proceeding is a party and the caption on all papers must be suitably modified to reflect that fact.~~

Drafters' Notes:
Existing rule 5.102 would be repealed and renumbered as rule 5.16(b).

~~Rule 5.104. Other causes of action~~

~~Neither party to the proceeding may assert against the other party or any other person any cause of action or claim for relief other than for the relief provided in these rules, Family Code sections 17400, 17402, and 17404, or other sections of the Family Code.~~

Drafters' Notes:
Existing rule 5.104 would be repealed and renumbered as rule 5.17.

~~Rule 5.106. Injunctive relief and reservation of jurisdiction~~

~~**(a)** Upon application as set out in rule 5.118, the court may grant injunctive or other relief against or for the following persons to protect the rights of either or both parties to the proceeding under the Family Code:~~

~~(1) A person who has or claims an interest in the controversy;~~

~~(2) A person who but for rule 5.102 would be a necessary party to a complete adjudication of the controversy; or~~

~~(3) A person who is acting as a trustee, agent, custodian, or similar fiduciary with respect to any property subject to disposition by the court in the proceeding, or other matter subject to the jurisdiction of the court in the proceeding.~~

~~**(b)** If the court is unable to resolve the issue in the proceeding under the Family Code, the court may reserve jurisdiction over the particular issue until such time as the rights of such person and the parties to the proceeding under the Family Code have been adjudicated in a separate action or proceeding.~~

Drafters' Notes:
Existing rule 5.106 would be repealed and renumbered as rule 5.18.

~~**Rule 5.108. Pleadings**~~

~~**(a) The forms of pleading and the rules by which the sufficiency of pleadings is to be determined are solely those prescribed in these rules. Demurrers must not be used.**~~

~~**(b) Amendments to pleadings, amended pleadings, and supplemental pleadings may be served and filed in conformity with the provisions of law applicable to such matters in civil actions generally, but the petitioner is not required to file a reply if the respondent has filed a response. If both parties have filed initial pleadings (petition and response), there may be no default entered on an amended pleading of either party.**~~

Drafters' Notes:

Existing rule 5.108 would be repealed and renumbered as rule 5.74.

~~**Rule 5.110. Summons; restraining order**~~

~~**(a) Issuing the summons; form**~~

~~Except for support proceedings initiated by a local child support agency, the procedure for issuance of summons in the proceeding is that applicable to civil actions generally. The clerk must not return the original summons, but must maintain it in the file.~~

~~**(b) Standard family law restraining order; handling by clerk**~~

~~Notwithstanding Family Code section 233, a summons (form FL-110 or FL-210) with the standard family law restraining orders must be issued and filed in the same manner as a summons in a civil action and must be served and enforced in the manner prescribed for any other restraining order. If service is by publication, the publication need not include the restraining orders.~~

~~**(c) Individual restraining order**~~

~~On application of a party and as provided in the Family Code, a court may issue any individual restraining order that appears to be reasonable or necessary, including those restraining orders included in the standard family law restraining orders. Individual orders supersede the standard family law restraining orders on the Family Law and Uniform Parentage Act summons.~~

Drafters' Notes:

Existing rule 5.110(a) and (b) would be repealed and renumbered as rule 5.50; rule 5.110(c) would be repealed and renumbered as 5.91.

~~Rule 5.112. Continuing jurisdiction~~

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

Drafters' Notes:
Existing rule 5.112 would be repealed and included in rule 5.68.

~~Rule 5.114. Alternative relief~~

~~A party seeking alternative relief must so indicate in the petition or response.~~

Drafters' Notes:
Existing rule 5.114 would be repealed and renumbered as rule 5.60.

~~Rule 5.116. Stipulation for judgment~~

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

~~The foregoing is agreed to by~~

_____ (Petitioner)	_____ (Respondent)
_____ (Attorney for Petitioner)	_____ (Attorney for Respondent)

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

Drafters' Notes:
Existing rule 5.116 would be repealed and renumbered as part of rule 5.411.

~~**Rule 5.118. Application for court order**~~

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

~~**(b)** A completed *Income and Expense Declaration* (form FL-150) or *Financial Statement (Simplified)* (form FL-155), *Property Declaration* (form FL-160), and *Application for Order and Supporting Declaration* (form FL-310) must be attached to an application for an injunctive or other order when relevant to the relief requested.~~

~~**(c)** A copy of the *Application for Order and Supporting Declaration* with all attachments and a blank copy of the *Responsive Declaration* (form FL-320) must be served on the person against whom relief is requested. The original application and order must be retained in the court file.~~

~~**(d)** If relief is sought by an *Order to Show Cause*, a copy of the order endorsed by the clerk must be served.~~

~~**(e)** Blank copies of the *Income and Expense Declaration* or *Financial Statement (Simplified)* and the *Property Declaration* must be served when completed declarations are among the papers required to be served.~~

~~**(f)** The court may grant or deny the relief solely on the basis of the application and responses and any accompanying memorandum of points and authorities.~~

Drafters' Notes:
Existing rule 5.118 would be repealed and renumbered as part of rule 5.92.

~~**Rule 5.120. Appearance**~~

~~**(a)** Except as provided in Code of Civil Procedure section 418.10, a respondent or defendant is deemed to have appeared in a proceeding when he or she files:~~

~~(1) A response or answer;~~

~~(2) A notice of motion to strike, under section 435 of the Code of Civil Procedure;~~

~~(3) A notice of motion to transfer the proceeding under section 395 of the Code of Civil Procedure; or~~

~~(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~~

~~motion has been sustained with leave to amend and the amendment is not made within the time permitted by the court.~~

Drafters' Notes:
Existing rule 5.121 would be repealed and renumbered as rule 5.63.

~~Rule 5.122. Default~~

~~(a)~~ ~~Upon proper application of the petitioner, the clerk must enter the respondent's default if the respondent or defendant fails within the time permitted to:~~

~~(1) Make an appearance as stated in rule 5.120;~~

~~(2) File a notice of motion to quash service of summons under section 418.10 of the Code of Civil Procedure; or~~

~~(3) File a petition for writ of mandate under section 418.10 of the Code of Civil Procedure.~~

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

Drafters' Notes:
Existing rule 5.122 would be repealed and renumbered as rule 5.401.

~~Rule 5.124. Request for default~~

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

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

Drafters' Notes:
Existing rule 5.124 would be repealed and renumbered as rule 5.402.

~~**Rule 5.126. Alternate date of valuation**~~

~~**(a) Notice of motion**~~

~~An *Application for Separate Trial* (form FL-315) must be used to provide the notice required by Family Code section 2552(b).~~

~~**(b) Declaration accompanying notice**~~

~~Form FL-315 must be accompanied by a declaration stating the following:~~

~~(1) The proposed alternate valuation date;~~

~~(2) Whether the proposed alternate valuation date applies to all or only a portion of the assets and, if the motion is directed to only a portion of the assets, the declaration must separately identify each such asset; and~~

~~(3) The reasons supporting the alternate valuation date.~~

Drafters' Notes:
Existing rule 5.126 would be repealed and renumbered as part of rule 5.390(c).

~~**Rule 5.128. Financial declaration**~~

~~**(a)** A current *Income and Expense Declaration* (form FL-150) or a current *Financial Statement (Simplified)* (form FL-155), when such form is appropriate, and a current *Property Declaration* (form FL-160) must be served and filed by any party appearing at any hearing at which the court is to determine an issue as to which such declarations would be relevant. "Current" is defined as being completed within the past three months providing no facts have changed. Those forms must be sufficiently completed to allow determination of the issue.~~

~~**(b)** When a party is represented by counsel and attorney's fees are requested by either party, the section on the *Income and Expense Declaration* pertaining to the amount in savings, credit union, certificates of deposit, and money market accounts must be fully completed, as well as the section pertaining to the amount of attorney's fees incurred, currently owed, and the source of money used to pay such fees.~~

~~**(c)** *A Financial Statement (Simplified)* is not appropriate for use in proceedings to determine or modify spousal support or to determine attorney's fees.~~

Drafters' Notes:
Existing rule 5.128 would be repealed and renumbered as rule 5.260(a) with changes to reflect requirements for support hearings.

~~**Rule 5.130. Summary dissolution**~~

~~**(a) Declaration of disclosure**~~

~~For the purposes of a proceeding for summary dissolution under chapter 5 (beginning with section 2400) of part 3 of division 6 of the Family Code, attachment to the petition of completed worksheet pages listing separate and community property and obligations as well as an *Income and Expense Declaration* (form FL-150) or *Financial Statement (Simplified)* (form FL-155) constitutes compliance with the disclosure requirements of chapter 9 (beginning with section 2100) of part 1 of division 6 of the Family Code.~~

~~**(b) Fee for filing**~~

~~The fee for filing a *Joint Petition for Summary Dissolution of Marriage* (form FL-800) is the same as that charged for filing a *Petition–Marriage* (form FL-100). No additional fee may be charged for the filing of any form prescribed for use in a summary dissolution proceeding, except as required by Government Code section 26859.~~

Drafters' Notes:
Existing rule 5.130 would be repealed and renumbered as rule 5.77.

~~**Rule 5.134. Notice of entry of judgment**~~

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

~~(1) A judgment of legal separation;~~

~~(2) A judgment of dissolution;~~

~~(3) A judgment of nullity;~~

~~(4) A judgment establishing parental relationship (on form FL-190); or~~

~~(5) A judgment regarding custody or support.~~

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

Drafters' Notes:
Existing rule 5.134 would be repealed and renumbered as part of rule 5.413.

~~**Rule 5.136. Completion of notice of entry of judgment**~~

~~**(a) Required attachments**~~

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

~~(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 repealed and renumbered as rule 5.415.

~~Rule 5.140. Implied procedures~~

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

Drafters' Notes:
Existing rule 5.140 would be repealed and renumbered as rule 5.1(g).

~~Chapter 3. Joinder of Parties~~

~~Rule 5.150. Joinder of persons claiming interest~~

~~Notwithstanding any other rule in this division, a person who claims or controls an interest subject to disposition in the proceeding may be joined as a party to the proceeding only as provided in this chapter. Except as otherwise provided in this chapter, all provisions of law relating to joinder of parties in civil actions generally apply to the joinder of a person as a party to the proceeding.~~

Drafters' Notes:
Existing rule 5.150 be repealed and renumbered as rule 5.24 (first subparagraph) and 5.24(a)(1).

~~Rule 5.152. "Claimant" defined~~

~~As used in this chapter, "claimant" means a person joined or sought or seeking to be joined as a party to the proceeding.~~

Drafters' Notes:

Existing rule 5.152 would be renumbered as 5.24(b).

~~**Rule 5.154. Persons who may seek joinder**~~

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

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

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

Drafters' Notes:
Existing rule 5.154 would be renumbered as 5.24(c).

~~**Rule 5.156. Form of joinder application**~~

~~**(a)** All applications for joinder other than for an employee pension benefit plan must be made by serving and filing form a *Notice of Motion and Declaration for Joinder* (form FL-371). The hearing date must be less than 30 days from the date of filing the notice. The completed form must state with particularity the claimant's interest in the proceeding and the relief sought by the applicant, and it must be accompanied by an appropriate pleading setting forth the claim as if it were asserted in a separate action or proceeding.~~

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

Drafters' Notes:
Existing rule 5.156 would be amended and renumbered as rule 5.24(d).

~~**Rule 5.158. Determination on joinder**~~

~~**(a) Mandatory joinder**~~

~~The court must order joined as a party to the proceeding any person the court discovers has physical custody or claims custody or visitation rights with respect to any minor child of the marriage.~~

~~**(b) Permissive joinder**~~

~~The court may order that a person be joined as a party to the proceeding if the court finds that it would be appropriate to determine the particular issue in the proceeding and that the person to be joined as a party is either indispensable to a determination of that issue or necessary to the enforcement of any judgment rendered on that issue.~~

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

~~(1) Whether the determination of that issue will unduly delay the disposition of the proceeding;~~

~~(2) Whether other parties would need to be joined to render an effective judgment between the parties;~~

~~(3) Whether the determination of that issue will confuse other issues in the proceeding; and~~

~~(4) Whether the joinder of a party to determine the particular issue will complicate, delay, or otherwise interfere with the effective disposition of the proceeding.~~

~~**(c) Procedure upon joinder**~~

~~If the court orders that a person be joined as a party to the proceeding under subdivision (a) of rule 5.154, the court must direct that a summons be issued on *Summons (Joinder)* (form FL-375) and that the claimant be served with a copy of *Notice of Motion and Declaration for Joinder* (form FL-371), the pleading attached thereto, the order of joinder, and the summons. The claimant has 30 days after service within which to file an appropriate response.~~

Drafters' Notes:

Existing rule 5.158 would be renumbered as rule 5.24(e) with a minor change to the title.

~~**Rule 5.160. Pleading rules applicable**~~

~~Except as otherwise provided in this chapter or by the court in which the proceeding is pending, the law applicable to civil actions generally governs all pleadings, motions, and other matters pertaining to that portion of the proceeding as to which a claimant has been joined as a party to the proceeding in the same manner as if a separate action or proceeding not subject to these rules had been filed.~~

Drafters' Notes:
Existing rule 5.160 would be amended and renumbered as rule 5.24(a)(2).

~~**Rule 5.162. Joinder of employee pension benefit plan**~~

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

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

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

Drafters' Notes:
Existing rule 5.162 would be repealed and renumbered as rule 5.29.

~~Chapter 4. Bifurcation and Appeals~~

~~**Rule 5.175. Bifurcation of issues**~~

~~**(a) Bifurcation of issues**~~

~~On noticed motion of a party, the stipulation of the parties, or its own motion, the court may bifurcate one or more issues to be tried separately before other issues are tried. The motion must be heard not later than the trial-setting conference.~~

~~**(b) Notice by clerk**~~

~~The clerk must mail copies of the order deciding the bifurcated issue and any statement of decision under rule 3.1591 to the parties within 10 days of their filing and must file a certificate of mailing.~~

~~**(c) When to bifurcate**~~

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

~~(1) Validity of a postnuptial or premarital agreement;~~

~~(2) Date of separation;~~

~~(3) Date to use for valuation of assets;~~

~~(4) Whether property is separate or community;~~

~~(5) How to apportion increase in value of a business; or~~

~~(6) Existence or value of business or professional goodwill.~~

Drafters' Notes:
Existing rule 5.175 would be repealed and renumbered as part of rule 5.390.

~~**Rule 5.180. Interlocutory appeals**~~

~~**(a) Applicability**~~

~~This rule does not apply to appeals from the court's termination of marital status as a separate issue, or to appeals from other orders that are separately appealable.~~

~~**(b) Certificate of probable cause for appeal**~~

~~(1) The order deciding the bifurcated issue may include an order certifying that there is probable cause for immediate appellate review of the issue.~~

~~(2) If it was not in the order, within 10 days after the clerk mails the order deciding the bifurcated issue, a party may notice a motion asking the court to certify that there is probable cause for immediate appellate review of the~~

~~order. The motion must be heard within 30 days after the order deciding the bifurcated issue is mailed.~~

~~(3) The clerk must promptly mail notice of the decision on the motion to the parties. If the motion is not determined within 40 days after mailing of the order on the bifurcated issue, it is deemed granted on the grounds stated in the motion.~~

~~**(c) Content and effect of certificate**~~

~~(1) A certificate of probable cause must state, in general terms, the reason immediate appellate review is desirable, such as a statement that final resolution of the issue:~~

~~(A) Is likely to lead to settlement of the entire case;~~

~~(B) Will simplify remaining issues;~~

~~(C) Will conserve the courts' resources; or~~

~~(D) Will benefit the well-being of a child of the marriage or the parties.~~

~~(2) If a certificate is granted, trial of the remaining issues may be stayed. If trial of the remaining issues is stayed, unless otherwise ordered by the trial court on noticed motion, further discovery must be stayed while the certification is pending. These stays terminate upon the expiration of time for filing a motion to appeal if none is filed, or upon the Court of Appeal denying all motions to appeal, or upon the Court of Appeal decision becoming final.~~

~~**(d) Motion to appeal**~~

~~(1) If the certificate is granted, a party may, within 15 days after the mailing of the notice of the order granting it, serve and file in the Court of Appeal a motion to appeal the decision on the bifurcated issue. On ex parte application served and filed within 15 days, the Court of Appeal or the trial court may extend the time for filing the motion to appeal by not more than an additional 20 days.~~

~~(2) The motion must contain:~~

~~(A) A brief statement of the facts necessary to an understanding of the issue;~~

~~(B) A statement of the issue; and~~

~~(C) A statement of why, in the context of the case, an immediate appeal is desirable.~~

~~(3) The motion must include or have attached:~~

~~(A) A copy of the decision of the trial court on the bifurcated issue;~~

~~(B) Any statement of decision;~~

~~(C) The certification of the appeal; and~~

~~(D) A sufficient partial record to enable the Court of Appeal to determine whether to grant the motion.~~

~~(4) A summary of evidence and oral proceedings, if relevant, supported by a declaration of counsel may be used when a transcript is not available.~~

~~(5) The motion must be accompanied by the filing fee for an appeal under rule 8.100(c) and Government Code sections 68926 and 68926.1.~~

~~(6) A copy of the motion must be served on the trial court.~~

~~**(c) Proceedings to determine motion**~~

~~(1) Within 10 days after service of the motion, an adverse party may serve and file an opposition to it.~~

~~(2) The motion to appeal and any opposition will be submitted without oral argument, unless otherwise ordered.~~

~~(3) The motion to appeal is deemed granted unless it is denied within 30 days from the date of filing the opposition or the last document requested by the court, whichever is later.~~

~~(4) Denial of a motion to appeal is final forthwith and is not subject to rehearing. A party aggrieved by the denial of the motion may petition for review by the Supreme Court.~~

~~**(f) Proceedings if motion to appeal is granted**~~

~~(1) If the motion to appeal is granted, the moving party is deemed an appellant, and the rules governing other civil appeals apply except as provided in this rule.~~

~~(2) The partial record filed with the motion will be considered the record for the appeal unless, within 10 days from the date notice of the grant of the motion is mailed, a party notifies the Court of Appeal of additional portions of the record that are needed for a full consideration of the appeal.~~

~~(3) If a party notifies the court of the need for an additional record, the additional material must be secured from the trial court by augmentation under rule 8.155, unless it appears to the Court of Appeal that some of the material is not needed.~~

~~(4) Briefs must be filed under a schedule set for the matter by the Court of Appeal.~~

~~**(g) Review by writ or appeal**~~

~~The trial court's denial of a certification motion under (b) does not preclude review of the decision on the bifurcated issue by extraordinary writ.~~

~~**(h) Review by appeal**~~

~~None of the following precludes review of the decision on the bifurcated issue upon appeal of the final judgment:~~

~~(1) A party's failure to move for certification under (b) for immediate appeal;~~

~~(2) The trial court's denial of a certification motion under (b) for immediate appeal;~~

~~(3) A party's failure to move to appeal under (d); and~~

~~(4) The Court of Appeals denial of a motion to appeal under (d).~~

Drafters' Notes:
Existing rule 5.180 would be repealed and renumbered as rule 5.392 without change to 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.