

## **Proposed Revisions to Napa Superior court Local Rules – January 2012**

The Napa Superior court proposes to adopt the following revisions to its Local Rules, to be effective January 1, 2012. We welcome your comments, which should be submitted by November 15, 2011, to:

Connie R. Brennan, CCLS  
Napa County Superior court  
825 Brown Street  
Napa, California 94559  
[connie.brennan@napa.courts.ca.gov](mailto:connie.brennan@napa.courts.ca.gov)

- **Rule 2.1** – Policy Making Authority – defines makeup of court’s Executive Committee.
- **Rule 2.14** – court Reporting Services – revises rule regarding those proceedings in which the court will provide court reporters at its expense.
- **Rule 3.1** – Form and Filing of Documents – revised to reflect revision to rule 4.3 and addition of rule 3.10.
- **Rule 3.10** – Lodging of Non-California Authority – directs that parties lodge copies of non-California authorities only if requested to do so by the court.
- **Rule 4.3** – Criminal Law Motions – revised to provide timing of filings by court days rather than calendar days.
- **Rule 10** – Juvenile court Rules – complete revision to eliminate redundancies with statewide rules, to clarify counsel’s duty to confer with clients, and to add new rule regarding administration of psychotropic medication to wards and dependents of the court.
- **Rule 11** – Appellate Division Rules – Minor revisions to align with statutory language, to allow for quarterly sessions, and to specify that the presiding judge may hear infraction appeals.

### **Text of proposed rules:**

**Rule 2.1** – Policy Making Authority – defines makeup of court’s Executive Committee.

#### **2.1 Policy Making Authority**

Responsibility for formulating policy, including regulations concerning court administration, is vested in the Executive Committee of the court system with advice from all judges of the court. The Executive Committee is comprised of the Presiding Judge, the Assistant Presiding Judge, and the court Executive Officer. (Effective 1/1/99; revised 1/1/11; revised 1/1/12)

---

**Rule 2.14 – Court Reporting Services** – revises rule regarding those proceedings for which the court will provide court reporters at its expense.

**2.14 Court Reporting Services**

- A. General Provisions.** The Napa Superior court provides court reporting services at the court’s expense in all proceedings for which such services are required by law. Official court reporters will not be provided in proceedings for which such services are not legally mandated. The following chart sets forth the types of proceedings for which official court reporters will be provided by the court. For all other proceedings, if a party wishes the matter to be reported, the party shall be required to arrange for the attendance of a pro tem reporter. It will be that party’s responsibility to pay the pro tem reporter’s fee.

<b>Case Type</b>	<b>Shorthand Reporter Provided by court?</b>
<b>Felony Case</b>	Yes
<b>Misdemeanor Case</b>	No
<b>Infraction Case</b>	No
<b>Juvenile 300</b>	Yes
<b>Juvenile 602</b>	Yes
<b>Unlimited Civil Including Unlimited UDs</b>	No
<b>Limited Civil Including Limited UDs</b>	No
<b>Small Claims</b>	No
<b>Family Law</b>	No
<b>Adoption</b>	No
<b>Probate</b>	No
<b>Guardianship</b>	No
<b>Conservatorships</b>	No
<b>Civil Ex Parte</b>	No
<b>Domestic Violence</b>	No
<b>Civil Harassment</b>	No

- B. Court Reporting Services Requested by Parties for Civil Trials.** A party in any type of civil case must file a statement prior to the Case Management Conference date indicating whether the party requests the presence of an official court reporter. Parties should be aware that, as set forth in subsection A above, such services will generally not be available.

(Effective 7/1/04; revised 1/1/06; revised 1/1/07; renumbered 1/1/11; revised 1/1/12)

-----

**Rule 3.1** – Form and Filing of Documents – revised to reflect revision to rule 4.3 and addition of rule 3.10.

**3.1 Form and Filing of Documents, Generally**

All documents filed with the court must conform to the rules established by the Judicial Council. Refer to California Rules of court, rules 2.100-2.119 and 3.1110-3.1116, for form and format of documents presented for filing. Unless otherwise ordered or specifically provided by law, all moving and supporting papers filed with the court in civil cases must be in conformance with California Code of Civil Procedure section 1005. The court, in its discretion, may refuse to consider any paper not filed in conformance with this rule.

The Napa Superior court specifically exempts motions filed in criminal cases from the requirements of Code of Civil Procedure section 1005. In criminal cases only, the court will accept moving papers ten (10) court days before the date set for hearing, opposition five (5) court days before the hearing, and reply papers two (2) court days before the hearing.

All California citations must be to the Official Reports. Parallel citations may be included. Unpublished or depublished cases may not be cited, and the court will treat any argument relying upon such citations as unsupported.

(Effective 7/1/02; revised 1/1/07; revised 1/1/12)

-----

**Rule 3.10** – Lodging of Non-California Authority – directs that parties lodge copies of non-California authorities only if requested to do so by the court.

**3.10 Lodging of Non-California Authority**

Pursuant to California Rules of court, rule 3.1113(i)(1), parties shall not lodge copies of cited non-California authorities unless specifically requested by the court. (Effective 1/1/12)

-----

**Rule 4.3** – Criminal Law Motions – revised to provide timing of filings by court days rather than calendar days, so as to align with California Rules of court.

### **4.3 Motions**

Unless otherwise provided by law or these rules, all motions must be in writing, and must be filed and served no later than ten (10) court days prior to the hearing. Responsive pleadings must be filed and served no later than five (5) court days prior to the hearing. Reply papers must be filed and served no later than two (2) court days prior to the hearing. (Effective 7/1/02, revised 1/1/12)

-----

**Rule 10** – Juvenile court Rules – complete revision to eliminate redundancies with statewide rules, to clarify counsel’s duty to confer with clients, and to add new rule regarding administration of psychotropic medication to wards and dependents of the court.

## **RULE 10: JUVENILE COURT RULES**

### **10.1 Competency Requirements for Counsel**

- A.** All attorneys who represent parties in juvenile court dependency proceedings shall meet the minimum standards of training and/or experience set forth in California Rules of Court, rule 5.660(d)(3). Each attorney of record for a party to a dependency matter who has not been previously certified under these rules, and who believes that he or she meets the minimum standards of competency, shall, within ten (10) days of his or her first appearance in a dependency matter, complete and submit to the Court Executive Officer of the court a memorandum certifying that he or she meets the standards of competence as set forth in California Rules of Court, rule 5.660(d)(3).
- B.** Attorneys who meet the minimum standards of training and/or experience as set forth here and as confirmed by the memorandum of certification submitted to the court shall be deemed competent to practice before the juvenile court in dependency cases except as provided in subdivision C of this rule.
- C.** Notwithstanding the submission of a memorandum certifying that the attorney has met the minimum standards for training and/or experience, the court may determine, based on conduct or performance of counsel before the court in a dependency case, that a particular attorney does not meet minimum competency standards. In such a case, the court will proceed under Rule 10.2(D).
- D.** The Court Executive Officer is responsible for maintaining and monitoring memoranda of certification for accuracy and compliance with renewal requirements and for maintaining a roster of attorneys who meet the requirements of this rule. Appointments may only be made from the most up-to-date roster. Attorneys must submit updated certification attesting to completion of continuing education as required by California Rules of Court, rule 5.660(d)(3).

- E.** In the case of an attorney who maintains his or her principal office outside of this county, proof of certification by the juvenile court of the California county in which the attorney maintains an office shall be sufficient evidence of competence to appear in a juvenile proceeding in this county.

(Effective 7/1/02; revised 7/1/05; revised 1/1/07; revised and renumbered 1/1/12)

## **10.2 Minimum Standards of Education and Training**

- A.** Attorneys appearing in a dependency matter before the juvenile court shall not seek certification and shall not be certified by the court as competent until the attorney has completed the minimum training and educational requirements set forth in California Rules of Court, rule 5.660(d)(3), including continuing education as required, and provided evidence of completion to the Court Executive Officer as provided in rule 10.1(A).
- B.** When a certified attorney fails to submit evidence that he or she has completed at least the minimum required training and education to the court by the due date, the court must notify the attorney that he or she will be decertified. That attorney shall have 20 days from the date of the mailing of the notice to submit evidence of his or her completion of the required training or education.
- C.** After initial certification by the court, attorneys shall submit a new certificate of competence to the court at least every three (3) years. The attorney shall attach to the renewal certificate of competence evidence that he or she has satisfied the continuing education requirements of California Rules of Court, rule 5.660(d)(3).
- D.** If the attorney fails to submit the required evidence or fails to complete the required minimum hours of continuing training or education, or the court makes a finding under rule 10.1(C), the court must order, except in cases where a party is represented by retained counsel, that certified counsel be substituted for the attorney who fails to complete the required training. In the case of retained counsel, the court must notify the party that his or her counsel has failed to meet the minimum standards required by these rules. The determination whether to obtain substitute counsel shall be solely within the discretion of the party so notified, except for child's counsel, who may be removed by the court.

(Effective 7/1/02; revised and renumbered 1/1/12)

### **10.3 STANDARDS OF REPRESENTATION**

- A.** Attorneys are expected to meet with the client(s) in person before each substantive hearing, including the attorney for a child who is at least four (4) years old, unless this is impracticable. The meeting with the child should, unless impracticable due to distance from Napa, take place at the child's placement. The attorney for a child is also expected to contact the child's caretaker (if other than a parent) before each substantive hearing. Periodic review hearings are substantive.
- B.** Attorneys are expected to complete, file, and serve all necessary forms, including health questionnaire, ICWA, paternity, and waiver of rights (if appropriate), before, or the same day as, the jurisdictional hearing, and to promptly file and serve change of address and contact information for the client.

(Effective 7/1/02; revised and renumbered 1/1/12)

### **10.4 Caseload Standards**

Every attorney appointed to represent children must take care to ensure that he or she can adequately and competently represent all of the attorney's clients in a manner consistent with the requirements of Welfare and Institutions Code section 317(c), California Rules of Court, rule 5.660, and these rules. Any attorney who is unable to meet these requirements because of the size of the attorney's caseload or the demands of a particular case or cases, must notify the juvenile court judge that the attorney is unable to accept any new cases. Further, said attorney must move to be relieved as attorney of record in any existing case in which the attorney cannot provide adequate and competent representation. Upon an adequate showing, the court must appoint substitute counsel for the child. (Effective 7/1/02; revised 1/1/07; renumbered 1/1/12)

### **10.5 Procedures for Reviewing and Resolving Complaints**

- A.** Any party to a juvenile court proceeding may lodge a written complaint with the court concerning the performance of his or her appointed attorney in a juvenile court proceeding. In the case of a complaint concerning the performance of an attorney appointed to represent a child, the complaint may be lodged on the child's behalf by the social worker, a caretaker relative, or a foster parent, or CASA.
- B.** The court shall review a complaint within ten (10) days of receipt. If the court determines that the complaint presents reasonable cause to believe that the attorney may have failed to act competently or has violated local rules, the court shall notify the attorney in question of the complaint, shall provide the attorney with a copy of the complaint, and shall give the attorney 20 days from the date of the notice to respond to the complaint in writing.
- C.** After a response has been filed by the attorney or the time for submission of a response has passed, the court shall review the complaint and the response if any

to determine whether the attorney acted contrary to local rules or has acted incompetently. The court may ask the complainant or the attorney for additional information prior to making a determination on the complaint.

- D.** If, after reviewing the complaint, the response, and any additional information, the court finds that the attorney acted contrary to the rules of the court, the court may reprove the attorney, either privately or publicly, and may, in cases of willful or egregious violations of local rules, issue such reasonable monetary sanctions against the attorney as the court may deem appropriate.
- E.** If, after reviewing the complaint, the response, and any additional information, the court finds that the attorney acted incompetently, the court may order that the attorney practice under the supervision of a mentor attorney for a period of at least six (6) months, or that the attorney complete a specified number of hours of training or education in the area in which the attorney was found to have been incompetent, or both. In cases in which the attorney's conduct caused actual harm to his or her client, the court shall order that competent counsel be substituted for the attorney found to have been incompetent, and may, in the court's discretion, refer the matter to the State Bar of California for further action.
- F.** The court shall notify the attorney and the complaining party in writing of its determination of the complaint. If the court makes a finding under subdivision E or F, the attorney shall have ten (10) days after the date of the notice to request a hearing before the court concerning the court's proposed action. If the attorney does not request a hearing within that period of time, the court's determination shall become final.
- G.** If the attorney requests a hearing, the attorney shall serve a copy of the request on the complaining party. The hearing shall be held as soon as practicable after the attorney's request therefore, but in no case shall it be held more than 30 days after it has been requested except by stipulation of the parties. The complainant and the attorney shall each be given at least ten (10) days' notice of the hearing. The hearing may be held in chambers. The hearing shall not be open to the public. The court may designate a commissioner, referee, judge pro tempore, or any qualified member of the bar to act as hearing officer.
- H.** At the hearing, each party shall have the right to present arguments to the hearing officer with respect to the court's determination. Such arguments shall be based on the evidence before the court at the time the determination was made. No new evidence may be presented unless the party offering such evidence can show that it was not reasonably available to the party at the time that the court made its initial determination with respect to the complaint. Within ten (10) days after the hearing, the court or hearing officer shall issue a written determination upholding, reversing, or amending the court's original determination. The hearing decision

shall be the final determination of the court with respect to the matter. A copy of the hearing decision shall be provided to both the complainant and the attorney.

(Effective 7/1/02; revised and renumbered 1/1/12)

## **10.6 Court-Appointed Special Advocate (CASA)**

The juvenile court may appoint a Court-Appointed Special Advocate (CASA) to represent the interests of dependent or delinquent children. In order to qualify for appointment, the CASA representative must be trained by and function under the auspices of the CASA program formed and operating under the guidelines established by the California Judicial Council, as consistent with those guidelines established by the National court Appointed Special Advocate Association and California law. (Welf. & Inst. Code § 100; Cal. Rules of Court, rule 5.655) The CASA program shall report regularly to the presiding judge of the juvenile court with evidence that it is operating pursuant to these guidelines. (Effective 7/1/05; revised 1/1/07; renumbered 1/1/12)

## **10.7 CASA Reports**

In any case in which the court has ordered the appointment of a CASA representative, CASA must file reports with the court and serve counsel and CPS at least two (2) court days before each of the following hearings: six-month review; twelve-month review (permanency hearing); eighteen-month review (permanency review hearing); selection and implementation hearing (366.26 hearing); and post-permanency planning reviews. If CASA was appointed before the establishment of jurisdiction, CASA may submit a report to the court at least two (2) court days before the jurisdiction/disposition hearing. The content of the report must be limited to the current condition of the child and needed services; jurisdictional issues must not be addressed. (See, Cal. Rules of Court, rule 5.655(k)(5)) Only counsel and assigned social workers are entitled to receive copies of CASA reports. Relatives, de facto parents, foster parents, and service providers are not entitled to receive copies of CASA reports. The reports will be copied and distributed by CASA. (Effective 7/1/05; revised 1/1/07; renumbered 1/1/12)

## **10.8 Administration of Psychotropic Medication for Dependents or Wards of the Court**

- A.** Upon the initial filing of a Judicial Council Application Regarding Psychotropic Medication and Judicial Council Order Regarding Application for Administration of Psychotropic Medication, the clerk shall immediately send a copy of the Application to the consulting psychiatrist who is a member of the consulting group authorized by the Administrative Office of the Courts. The court shall, upon request, provide the consulting physician's report to those persons or agencies listed in California Rule of Court, rule 5.640.
- B.** For dependents and wards, Child Welfare Services or probation shall send notices of the Application in a manner conforming to California Rules of Court, rule 5.640, to the persons or agencies listed therein.

- C.** Upon receipt of the Application, the court within seven (7) court days shall approve, or set a hearing if the court disapproves or provisionally approves, the Application. The hearing shall be scheduled within ten (10) court days of the denial or provisional approval of the Application, with written, electronic, or telephonic notice at least two (2) calendar days before the hearing to the persons and agencies listed in California Rules of Court, rule 5.640.
- D.** Any objections to the Application must be lodged by submission of a Judicial Council Opposition to Application regarding Psychotropic Medication within two (2) court days of receiving notice. Upon receipt of any opposition, the court may in its discretion deny the opposition and approve the Application without a hearing, or provisionally approve the Application, or deny the Application. If the court provisionally approves or denies the Application, the court will set the matter for a hearing within ten (10) court days, providing written, telephonic, or electronic notice to those listed in California Rules of Court, rule 5.640, at least two (2) calendar days before the hearing.
- E.** Any approved Application will remain in effect for 180 days, or unless modified or terminated by the court prior to the expiration of the court order to administer the psychotropic medication.
- F.** A new Application Regarding Psychotropic Medication, deemed an initial Application, must be filed if a physician prescribes a new medication, or a dosage for the same medication listed in the initial Application that exceeds the variance permitted by the initial prescription. The rules pertaining to an initial Application will apply.
- G.** The clerk shall, for all approved initial Applications (and those under subdivision F) calendar the matter for a court oral report from the social worker or probation officer for review of any adverse reaction to the medication(s), the child's view of the effects, and the effectiveness of the medication in treating the child's symptoms. The oral report calendar setting will take place no later than 45 days after the court's approval of the Application.
- H.** An Application that renews the medication with the same prescription will follow the procedures stated for an initial Application, including notice and referral to a consulting physician, but will not be calendared for the 45-day review.
- I.** The clerk shall send notice of the court oral report calendar setting to those persons or agencies stated in California Rules of Court, rule 5.640, after the initial Application is approved and at least ten (10) days before the oral report hearing.
- J.** In an emergency, the treating physician may prescribe psychotropic medication without prior court authorization, but the treating physician must submit an initial Judicial Council Order Regarding Application for Psychotropic Medication within two (2) court days following administration of the medication. Thereafter, the

court and other agencies will follow the procedures in California Rules of Court, rule 5.640, and this local rule as for an initial Application.

- K.** The court may contact the prescribing or consulting physician to obtain additional information. The court will upon request inform all persons and agencies listed in California Rules of Court, rule 5.640, as to any additional information obtained.
- L.** The prescribing physician may terminate the prescription at any time, without further notice to the court. The prescribing physician shall immediately notify the child's social worker or probation officer when the medication is discontinued.
- M.** The prescribing and consulting physicians are encouraged to communicate with each other to offer or receive additional information and to resolve any disagreements.

(Effective 1/1/12)

---

**Rule 11** – Appellate Division Rules – Minor revisions to align with statutory language, to allow for quarterly sessions, and to specify that the presiding judge may hear infraction appeals.

### **11.2 Presiding Judge**

The presiding judge of the appellate division is designated annually by the chairperson of the Judicial Council. (Effective 7/1/93; renumbered 1/1/06; renumbered 7/1/09; revised 1/1/12)

### **11.3 Sessions**

Appeals will be heard at least once each quarter at a time and place designated by the presiding judge of the appellate division. (Effective 7/1/93; renumbered 1/1/06; renumbered 7/1/09; revised 1/1/12)

### **11.8 Participating Judges**

Pursuant to the Code of Civil Procedure section 77, appellate division cases will be heard and decided by a three-judge panel, except for appeals from convictions of traffic infractions, which will be heard and decided only by the presiding judge of the appellate division. (Effective 1/1/12)