

Butte County Superior Court Local Rules
Proposed Rule Changes
Effective January 1, 2017

LOCAL RULE 9 CUSTODY/VISITATION MEDIATION *(Effective 7-1-90, as amended 1-1-04, as amended 7-1-04, as amended 1-1-07, as amended 7-1-08, as amended 1-1-09, as amended 1-1-11, as amended 1-1-12, as amended 7-1-12, as amended 1-1-13, as amended 7-1-14, as amended 1-1-15, as amended 1-1-17)*

9.12 MEDIATION PURSUANT TO FC §3170 *(Effective 7-1-90, as amended 1-1-04, as amended 7-1-08, as amended 1-1-11, as amended 1-1-12, as amended 1-1-13, as amended 7-1-14, as amended 1-1-15, as amended 1-1-17)*

(a) In all matters involving initial mediation of child custody disputes pursuant to FC §3170:

1. The assigned child custody recommending counselor shall have the absolute duty to disclose to both parties any prior or current, personal or professional, contact said mediator may have had with either party or members of their immediate families, and the particulars thereof, as well as any prior or current, personal or social, relationship with the attorney representing either party, if any. The assigned child custody recommending counselor shall also disclose to both parties any other factors which might tend to affect said mediator's professional objectivity. After such disclosures, but prior to the commencement of the mediation session, the parties to the mediation shall be given the opportunity to request a different mediator, and any requests in this regard shall be honored. Only one preemptory challenge per party to the assigned child custody recommending counselor shall be permitted.

2. In the event all professional employees of Family Court Services are disqualified or disqualify themselves pursuant to this rule, the parties shall select a private mediator or evaluator immediately, and such disqualification(s) shall be reported to the Court prior to the time set for hearing. Should the parties be unable to select a private mediator or evaluator, the Court shall make such selection of such private mediator or evaluator. Costs or fees shall be paid as may be determined by the Court.

(b) In those matters in which a written recommendation pursuant to FC §3183 has been ordered, such recommendation shall be prepared by the child custody recommending counselor who most recently conducted mediation with the parties.

(c) In those matters referred to the Family Court Services for a child custody investigation, report, and recommendation pursuant to FC §3111, such report and recommendation shall be completed by a different individual than the one who has conducted mediation between the parties within the previous twelve (12) months. This provision may be waived by the parties to the action subject to approval of counsel, if any. Such waiver, if entered, shall be either in written form, or stipulated in open court.

(d) Notwithstanding the above provisions, any professional staff member of the Family Court Services may, at any time, recuse him or herself from a given mediation, child custody evaluation, or recommendation if [s]he believes that professional objectivity has been compromised. [FC §3163]

(e) Complaints concerning Family Court Services professional personnel shall be dealt with as follows:

1. Parents, parties and/or attorneys desiring to file a complaint regarding the mediation process or an individual mediator/child custody recommending counselor may submit a written complaint to the Family ~~& Children's Services Director~~ **Court Services Manager** utilizing the Complaint Form. This form is available in the Court Clerk's and Self-Help Assistance & Referral Program (S.H.A.R.P.) Offices. Complaints pertaining to the Family & Children's Services Director may be submitted to the Court Executive Officer.

2. Written acknowledgement that the Court has received the complaint will be sent to the complainant. Within twenty (20) court days an appropriate investigation of the matter will be conducted. If warranted, the person identified in the complaint will be given notice of the complaint and an opportunity to respond. At the conclusion of the investigation a written notice of the final action shall be sent to the complainant.

(f) After the child custody/parenting time issues raised by the last filed Request for Order have been mediated and resolved by court order, should there be a subsequent court proceeding involving court ordered mediation, either party may at the time of the assignment of the mediator, request a different mediator/child custody recommending counselor without a showing of good cause. *(Effective 7-1-90, as amended 1-1-04, as amended 7-1-08, as amended 1-1-11, as amended 1-1-12, as amended 1-1-13, as amended 7-1-14, as amended 1-1-15, as amended 1-1-17)*

LOCAL RULE 16 FAMILY LAW *(Effective date 7-1-90, as amended 1-1-04, as amended 7-1-04, as amended 7-1-05, as amended 1-1-07, as amended 7-1-07, as amended 7-1-08, as amended 1-1-09, as amended 7-1-09, as amended 1-1-10, as amended and renumbered 1-1-11, as amended 7-1-11, as amended 1-1-12, as amended 7-1-12, as amended 7-1-14, as amended 1-1-15, as amended 7-1-15, **as amended 1-1-17**)*

16.17 APPROVAL OR INCORPORATION OF PROPERTY SETTLEMENT AGREEMENT

*(Effective date 7-1-90, as amended 1-1-04, renumbered 1-1-04, **as amended 1-1-17**)*

No property settlement agreement shall be approved by the Court or incorporated by reference in a judgment unless:

- (a) The petition refers to the property settlement agreement, or the agreement or a separate stipulation signed and filed by the parties and their respective attorneys provides that the agreement may be presented for Court approval and incorporation, or both parties and their attorneys have endorsed approval of the agreement on the form of the stipulation for judgment;
- (b) The agreement is signed and acknowledged, before ~~separate notaries~~ **a notary**, by the parties; and
- (c)
 1. If both parties are represented by counsel, the agreement is signed by both attorneys, or
 2. If only one party is represented by counsel, the attorney for that party signs the agreement and the other party signs a statement in the agreement or a declaration or affidavit that that party has been advised to consult an attorney regarding the agreement, but declined to do so; or
 3. If neither party is represented by counsel, any party not appearing at the hearing acknowledges in the agreement that [s]he is aware of the right to consult an attorney.
- (d) If either or both parties have applied for and/or are receiving public assistance, or have requested enforcement, then the proposed Property Settlement Agreement shall be presented to the Butte County Department of Child Support Services for approval prior to its presentation to the Court for approval. *(Effective date 7-1-90, as amended 1-1-04, renumbered 1-1-04, **as amended 1-1-17**)*

16.18 DEFAULT OR UNCONTESTED JUDGMENT *(Effective 7-1-90, as amended 1-1-04, renumbered 1-1-04, as amended 7-1-04, as amended 7-1-08, as amended 1-1-10, as amended 7-1-12, as amended 7-1-14, as amended 1-1-15, **as amended 1-1-17**)*

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A. GENERAL POLICY

1. Where a Judgment of Dissolution, Nullity or Legal Separation of spouses in a marriage or partners in a domestic partnership is sought to be obtained by written agreement of the parties after a response has been filed (uncontested), or by default, the affidavit provisions of the Family Code may be used.

NOTE: Judgments of Nullity of Marriage or Nullity of a Domestic Partnership require a Court hearing.

2. Generally uncontested and default family law Judgments shall be obtained by declaration. However, a hearing may be set upon request of a party or by a Court order.

3. Any written agreement between the parties which is submitted to the Court as part of a Judgment shall have the signatures of both parties notarized ~~by separate notaries~~.

B. JUDGMENT BY DEFAULT

1. Unless the Court orders otherwise, a default will not be entered based on notice and acknowledgement of receipt signed by a person other than the party to whom it is directed.

C. DOCUMENTS

1. A *Judgment Checklist: Dissolution/Legal Separation* (Judicial Council form FL-182) or *Family Law Parentage Judgment Checklist* (form FL.050) should be completed and filed with any proposed default or uncontested Judgment that is submitted to the Clerk's Office pursuant to Family Code §2336. All documents described in those checklists should also be submitted.

D. CHILD CUSTODY AND VISITATION

1. If Petitioner is asking for a default Judgment in a dissolution, legal separation, or nullity of a marriage or domestic partnership, or in a parentage or custody and support case, and has a child with the other parent and one or more of the following apply:

a. does not already have a custody and visitation order,

b. did not file a Child Custody and Visitation Application Attachment (Judicial Council Form FL-311) or a specific proposed order with the Petition,

c. does not already have a Marital Settlement Agreement or Stipulated Judgment,

then the Petitioner shall complete, file and serve by mail or in person a *Declaration for Default Custody and Visitation Orders* (form FL.030) at least fifteen (15) calendar days before the Judgment is submitted.

2. A copy of the filed Declaration and proof of service (Judicial Council Form FL-330/FL-335) shall be submitted to the Court with any proposed Judgment.

3. If Petitioner is obtaining the Judgment by default hearing, the Petitioner does not have to file and serve the *Declaration for Default Custody and Visitation Orders* (form FL.030) but must be prepared to talk about the factors requested in the Declaration at the default Court hearing.

E. CHILD SUPPORT

1. Where Judgment is obtained by default and there is no attached written agreement concerning child support, an attached Declaration shall state the effective date of the order sought, the amount of support sought per child and in total, the gross and net income of each party, the name and birth date of each child, and the amount of support for each child as calculated according to California child support guidelines. A computerized printout of the guideline calculations, including the findings page, may be substituted for the support portion of this Declaration.

2. Where a child support order is sought and the party to whom support is to be paid is receiving public assistance or the Department of Child Support Services (DCSS) is enforcing existing child support orders, that fact shall be set out in the Judgment and the issue shall be reserved for enforcement by DCSS. The party shall further list the court case number on the DCSS action.

F. SPOUSAL OR PARTNER SUPPORT

1. The issue of spousal or partner support for each party must be addressed in the Judgment. A support amount may be requested, spousal or partner support may be terminated, or the issue of spousal or partner support may be reserved.

2. If a request is made for:

a. establishing by default a permanent spousal or partner support for Petitioner or Respondent, or

b. terminating by default spousal or partner support for the Respondent, in a "marriage of long duration" (as defined in Family Code §4336(b)).

and there is no attached written agreement concerning spousal or partner support, Petitioner shall file and serve by mail a Declaration at least fifteen (15) calendar days before filing the Judgment stating the following:

1. The effective date of the order sought

2. The proposed duration of support sought

3. The amount of support sought
4. The gross and net income of both parties
5. Information regarding relevant factors under Family Code §4320

The Proof of Service by mail form (Judicial Council Form FL-335) for service of this Declaration shall be filed with the Court before filing the proposed Judgment.

This section does not apply to requests for termination of permanent spousal support in marriages not of long duration under Family Code §4336(b).

G. REAL PROPERTY

All real property referred to in a Judgment shall be described by its complete common address and/or legal description.

H. RESTORATION OF NAME

Restoration of a party's former name shall be ordered in a Judgment only upon that party's written request or request in open Court.

I. FORMAT OF JUDGMENT

1. All orders concerning child custody, child visitation, child support, spousal support and attorney fees, as applicable, shall be set forth in the body of the judgment. As to these specific matters, reference to an attached written agreement of the parties is not acceptable.

2. The division of the community estate and confirmation of separate property, as applicable, may be set forth either in the body of the judgment or in an attached agreement incorporated in the judgment by reference.

3. Any jointly agreed-upon judgment or marital settlement agreement shall have the signatures of both parties notarized ~~by a separate notary and the notary seal attached by those separate notaries.~~

J. PREPARATION AND SUBMISSION OF PROPOSED ORDER AFTER HEARING

1. The preparation and submission of the proposed Order After Hearing shall be pursuant to California Rule of Court 3.1312.

K. RESTRAINING ORDERS. All restraining orders in a judgment issued pursuant to FC §§2045(a) and 6322 must be followed by the date of expiration of such order.

L. FINALITY OF JUDGMENT OF DISSOLUTION

1. No Judgment for the dissolution of marriage shall be final until six (6) months have expired from date of service of summons and petition or date of appearance of respondent. The Judgment shall specify the date on which the Judgment is finally effective for the purpose of terminating the marriage relationship of the parties. (FC §§2338 and 2339).

2. Upon noticed motion and good cause shown, or stipulation of the parties, the Court may retain jurisdiction over the date of termination of the marital status, or order the marital status terminated at a future specified date (FC §2340).

M. NUNC PRO TUNC JUDGMENTS. To be entered nunc pro tunc, a Judgment must comply with FC §2346.

N. FEE WAIVERS AT TIME OF ENTRY OF A JUDGMENT

Pursuant to Government Code section 68637, subsections (d) and (e), all fee waivers will be subject to review by a judicial officer at the time a Judgment is submitted for signature and entry. At such time, the judicial officer may specify at his/her discretion that a Judgment not be entered except upon payment of all outstanding fees or upon the granting of a new fee waiver upon submission of a new application. Nothing in this rule limits the Court's ability to review fee waivers during the proceeding per Government Code section 68636.

O. RELIEF INCONSISTENT WITH PETITION

Except by written agreement or as may be permitted by law, the Court will not grant relief that is inconsistent with the relief requested in the Petition. The Court on its own motion may require the party to appear to justify the relief requested. *(Effective 7-1-90, as amended 1-1-04, renumbered 1-1-04, as amended 7-1-04, as amended 7-1-08, as amended 1-1-10, as amended 7-1-12, as amended 7-1-14, as amended 1-1-15, as amended 1-1-17)*

16.23 ACCESS TO VISITATION *(Effective date 1-1-10, as amended and renumbered 1-1-11, as amended 1-1-12, as amended 1-1-17)*

(A) Complaints concerning services provided as part of the Access to Visitation (All About Kids) Program shall be dealt with as follows:

1. Parents, parties and/or attorneys desiring to file a complaint regarding the Access to Visitation (All About Kids) Program process or an individual provider may submit a written complaint to the Family ~~& Children's Services Director~~ **Court Services Manager** utilizing the Court's Complaint Form. This form is available in the Court Clerk's and Self Help Assistance & Referral Program (S.H.A.R.P.) Offices.
2. Written acknowledgment that the Court has received the complaint will be sent to the complainant. Within twenty (20) court days an appropriate investigation of the matter will be conducted. The investigation may include consultations and/or a written response

from the Access to Visitation Program staff including the Executive Director, Supervised Visitation Director, Coordinator and the Supervised Visitation Provider. At the conclusion of the investigation a written notice of the final action shall be sent to the complainant. *(Effective 1-1-10, as amended and renumbered 1-1-11, as amended 1-1-12, **as amended 1-1-17**)*

LOCAL RULE 20 CRIMINAL LAW (Effective 1/1/17)

20.1 FELONY TRIAL ASSIGNMENT CALENDAR (TAC) (Effective 1-1-17)

Trial counsel is required to be present at the felony trial assignment calendar (TAC). All in limine motions, trial motions, trial briefs, jury instructions, witness lists and evidence lists are to be on file by 12:00 pm on the date of the TAC. Trial motions and motions in limine, will be heard at 1:30 pm on the TAC date unless otherwise ordered by the Court. Witness lists and evidence lists are to be filed separately from the trial brief. All items of evidence are to be shown to opposing counsel no later than the TAC date.

At TAC, the Court will state on the record the dates the trial will be heard. Jury trials will begin on Mondays at 8:00 a.m. (Effective 1-1-17)