

Proposed Amendments to the Tulare County Superior Court Local Rules to be effective January 1, 2016:

Rule 101 — Objectives and Availability of Local Rules

The Tulare County Superior Court Local Rules are adopted pursuant to Code of Civil Procedure section 575.1. These rules set forth specific local policies and procedures and are intended to promote the efficient disposition of the business of the court. The rules are intended to augment, but not restate or summarize, statutory California Rules of Court, existing statutes, or applicable case law. The rules, although binding on attorneys and support personnel, may be departed from in the sound discretion of the court. Any judge may dispense with strict compliance with any provision of these rules in the interest of justice and upon a showing of good cause.

~~upon a showing of good cause.~~

A loose-leaf version of these rules is available for purchase from the superior court clerk's office at the price of \$10.00. They are also available on the court's website at www.tularesuperiorcourt.ca.gov. (01/01/03, Revised 01/01/16)

Rule 102 — Amendment of Rules

~~The judges may make an amendment~~ court periodically reviews Local Rules for their continuing necessity and consistency with statewide rules and statutes. Amendments to Local Rules are considered and adopted by the rules only if it relates court in accordance with the requirement of California Rules of Court, rule 10.613. Procedures related to the internal management of court. ~~Any other amendment must~~ may be adopted from time to time and are not required to comply with California Rules of Court, rule 10.613. Any proposed changes in the rules must in the form of a noticed agenda item. Both the present rule as well as the proposed change must be submitted in writing. Rule 10.613. (07/01/00), (Revised 01/01/16)

Rule 104 - Weapons and *Oleoresin capsicum* (Pepper Spray)

All persons entering a Tulare County court facility are subject to search by court security personnel. No firearms, explosives, weapons, or pepper spray will be permitted within any of the courthouses. This provision relating to firearms specifically includes parties court facility. Other items determined to pose a safety hazard may also be excluded as determined by security personnel. The firearm exclusion applies to persons who are holders of a concealed weapons permit but does not include applicable to peace officers or judicial officers who are in the performance of their official duties. (07/01/97), (Revised 01/01/16)

Rule 201 - Departments of the Court

There will be as many departments of this court as there are judicial officers of the court. The presiding judge will designate specific departments to hear juvenile matters, probate matters, criminal matters, civil matters, and family law matters.

Tulare Superior Court has elected to be a direct calendar court in all civil matters, family law, and juvenile matters. The trial judge can be determined pursuant to the Judicial Assignment Order (available on the court's website at www.tularesuperiorcourt.ca.gov) according to the alphabet as set forth in the order. As a direct calendar court in these matters any challenges to Limited Civil, Unlimited Civil, and Family Law matters filed in any division of the court shall be assigned, at the direction of the Presiding Judge, to a judge for all purposes, including trial upon filing of the initial pleading or upon notice of transfer from another county or division. Notice of the all- purpose judicial assignment will be provided by the clerk by entering the assignment on the face page of the initial pleading at the time of filing and on all copies submitted. Any challenge to a judge must be made within 15 days of the filing of the initial pleading and/or first appearance pursuant to California Code of Civil Procedure (hereinafter CCP) section 170.6(a)(2) under the all-purpose assignment rule.

All Juvenile matters shall be assigned for all purposes as of the date of filing the initial pleading based on the alphabetical assignment specified in the court's Judicial Assignments Order (available on the court's website at www.tularesuperiorcourt.ca.gov) according to the last nar

of the first plaintiff or petitioner. Any challenge to a judge must be made within 15 days of the filing of the complaint/petition and/or first appearance pursuant to California Code of Civil Procedure (hereinafter CCP) section 170.6(a)(2) under the all-purpose assignment rule.

~~In felony criminal cases, the Judicial Assignments Order designates the judge for trial after the preliminary hearing pursuant to the alphabet as set forth in the order. Thus, it requires a litigant to file any challenges to a judge within 10 days after the defendant is held to answer pursuant to CCP section 170.6(a)(2).~~

~~The court is not a direct calendar court in criminal misdemeanor cases, thus a case is not assigned for all purposes, and any challenge to a judge is to be made in accordance with CCP section 170.6(a)(2) upon any hearing and/or trial.~~

The presiding judge will appoint one judge to be the presiding judge of the juvenile court who, to the extent possible, will remain in that position for at least three years. ~~(01/01/07)(Revised 01/01/09)(Revised 01/01/11)(Revised 01/01/14)~~

All misdemeanor cases in any division of the court shall be assigned for all purposes pursuant to the Judicial Assignments Order from the date of filing the initial pleading. Judicial challenge must be made within 10 days of filing the complaint and/or first appearance pursuant to CCP 170.6(a)(2) under the all-purpose assignment rule.

In felony cases in any division of the court, the Judicial Assignments Order designates the judge for trial after the preliminary hearing pursuant to the alphabet as set forth in the order. Any judicial challenge must be made within 10 days after the defendant is held to answer pursuant to CCP section 170.6(a)(2) under the all-purpose assignment rule. (01/01/07), (Revised 01/01/09), (Revised 01/01/11), (Revised 01/01/14), (Revised 01/01/16)

Rule 402 – Statement on Appeal or Reporter’s Transcript– Record of Oral Proceedings

Except where the appeal is on the judgment ~~role~~, no appeal will be set for hearing unless and until the ~~reporter’s transcript~~ electronic record of ~~the oral~~ proceedings in the trial court or ~~at the~~ statement on appeal has been filed. It is the responsibility of appellant to see that the ~~clerk and~~

~~judge of the lower court perform their duty and forward a statement on appeal, or in the alternative, obtain a transcript of the appropriate record of oral proceedings and lodge it in a timely fashion lodged with the clerk. Appellant Parties must comply with all applicable statutes, codes, and rules including but not limited to, of court in preparing the record of oral proceedings. Where a court reporter was present, a reporter's transcript of the proceedings may be obtained. Where trial court proceedings are electronically recorded, the court elects to permit the use of a copy of the electronic recording, made by the court, to be utilized in the appellate division without being transcribed (California Rules of Court, rules 8.800-835, 8.93 for appeals generally; rules 868, and 8.820-8.843 for 917). Infraction proceedings are not electronically recorded and limited civil cases; rules 8.850-8.891 for limited civil and misdemeanor cases; and rules 8.900-8.929 for infraction proceedings may not be recorded. In such cases, a statement on appeal will be required.~~

In the event ~~such~~the statement on appeal, electronic recording, or transcript has not been filed and appellant has not commenced appropriate proceedings to mandate compliance with this requirement, the appellate division of this court may dismiss the appeal, after the court clerk has mailed notice pursuant to California Rules of Court, rule 8.842 for limited civil cases, rule 8.869(b)(3) for misdemeanor cases and rule 8.916(b)(3) for infraction cases.

If appellant fails to perform any act necessary to procure the preparation or filing of the record on appeal or shall otherwise fail to prosecute his appeal with diligence, the appeal may be dismissed by the appellate division on its own motion and/or on respondent's motion (Cal. Rules of Court, rule 8.842). ~~(01/01/07)~~, (Revised 01/01/09), (Revised 01/01/16)

Rule 408 - Writs and/or Need for Ex Parte Hearing

All matters, including writs that require emergency action by the appellate division, must be submitted to the court administrator in Room 201 of the Visalia courthouse with proof of service, informing the court staff that it requires immediate attention. The court staff will immediately contact the presiding judge of the appellate division. The presiding judge will determine what action should be taken, and the parties will be notified by court staff. Parties should never to directly contact an appellate judge and/or his personal staff. Writ petitions shall com

with Cal. Rules of Court rules 8.930-8.936. This rule 408 is not applicable to petitions for habeas corpus relief. (01/01/07~~;~~), (Revised 01/01/09)), (Revised 01/01/16).

Rule 606 - Settlement Conference

Settlement conferences are mandatory in every case except trials de novo in small claims cases. Counsel for each party must comply with California Rules of Court, rule 3.1380, and deliver to the civil calendar clerk and all other counsel, no later than 5 court days prior to the conference a written statement including:

- (a) Contentions as to what counsel believes are the specific material facts. In a personal injury case, copies of the official accident report, all relevant medical reports, and a summary of expected medical testimony with identification of each witness must be attached;
- (b) Legal and factual contentions set forth with particularity;
- (c) Citation of authority for all legal contentions;
- (d) An itemized list of special damages claimed. If earnings loss is claimed, a copy of Employer's Wage Loss Statement must be attached. If a wage loss statement is not available, method of computation of claimed loss of earnings, earning capacity, or loss of profits must be attached; and,
- (e) Any other information that counsel feels may be helpful to the court in familiarizing the court with the case. Counsel should be prepared to respond to the "Settlement Conference Check List" in Appendix 1 of these rules. A statement that the information required is unknown will be cause for imposition of sanctions unless good cause is shown for failure to respond. Since these statements are to be used by the court and counsel solely for the purpose of the settlement conference, they will not be filed in the action. Therefore, counsel should feel entirely free to set forth all matters they deem necessary to facilitate the conference. A specific

settlement amount may be included. Nothing contained in any pretrial statement or any statement made by any party at the settlement conference will be received in evidence in the proceeding.

Since any settlement requires the consent of all the interested parties, all interested parties or their representatives with authority to bind the parties must be present in the courtroom. In the cases which require consent of an insurance carrier to arrive at a settlement, an authorized claims or insurance representative of the carrier, who is fully familiar with the case and who has full authority to settle the case, must also be present in the courtroom.

“Full Authority” is defined as authority to pay the last settlement demand. The insurance carrier’s attendance ~~will be excused only~~ may, at the discretion of the judge, be excused upon prior written application to the court if, (1) the carrier has no California claims office or representative, and (2) the carrier has an authorized claims or insurance representative with full authority to settle available by telephone during the settlement conference. Counsel attending the conference must be completely familiar with the facts of the case and the law applicable thereto.

It is the intent of the court to explore the case in depth; therefore, counsel will be expected to be fully prepared on all aspects of the litigation. Compliance with these requirements and full cooperation between counsel and the court are essential to make the settlement conference productive. (07/01/97) ~~(, Revised 01/01/09,~~ Revised 01/01/16)

Rule 902 - Presentation of Documents

All documents submitted in family law matters must comply with California Rules of Court and local court motion practice, as well as the following:

(a) Without prior approval, the court will not consider more than 10 typewritten, double-spaced pages of declarations including attachments but excluding financial, medical, psychological, and educational documentation. No reply or closing declaration shall exceed ~~10~~ 5 pages.

(b) Photocopies of forms adopted by the Judicial Council and used in family law matters must be legible and tumbled if two sided. (01/01/07)~~(-), (Revised 07/01/11)~~, (Revised 01/01/16).

Rule 906.1 – Service of Case Information Sheet

Upon the filing of a first paper in all dissolution of marriage, legal separation, and nullity of marriage cases, the clerk shall provide Petitioner with two (2) copies of the court's Case Information Sheet. Petitioner shall serve one copy of the Case Information Sheet on the Respondent with the initial pleadings. Petitioner must include the Case Information Sheet on the Proof of Service of the Summons and Petition. (01/01/2016)

Rule 1000 - Calendar and Procedural Matters

(a) Probate Calendar - All probate matters and adoptions will be assigned as set forth in the annual order of the court pursuant to The Superior Court of Tulare County, Local Rules, rule 300. Conservatorships under the Lanterman-Petris-Short Act (hereinafter "LPS"; Welf. & Ins Code, § 5150 et seq.) will be set only on Tuesdays, and adoption proceedings only on Fridays

(b) Filing Deadlines - All required moving pleadings in probate matters must be filed with the superior court clerk at least 15 days prior to the hearing date. All Probate Code and court ordered due dates for filing will be strictly observed (e.g., inventory and appraisements, accountings, status reports, receipts on blocked accounts, and receipts from personal representatives on deceased conservatees). Failure to comply with statutory or court requirements may result in imposition of surcharges, or other sanctions, without a showing of good cause.

(c) Filing of Documents and Proposed Orders - All probate documents in decedent's estate must be captioned as required by California Rules of Court, rule 201, and other applicable codes, except that the hearing date and time must be all in upper case.

(1) Supporting Papers - Supporting papers must be filed at least 10 days in advance of the scheduled hearing date. Proofs of publication may be filed within two days of the scheduled hearing date.

(2) Orders - Except in the case of confirmation of sales and contested matters, proposed orders should be lodged in the court case file at least five days in advance of the scheduled hearing date unless authorized by the court.

(3) Continuance on Untimely Filing - For failure to file supporting papers or other documents necessary to allow the court to rule on the particular matter, the court will automatically continue the matter for two weeks, without a showing of good cause for such failure.

(4) Duties and Liabilities of Personal Representative - As authorized by Probate Code section 8404(b), these rules require the personal representative's birth date and driver's license number on the Acknowledgment of Receipt of the Statement of Duties and Liabilities of Personal Representative. The Receipt shall be maintained in a confidential envelope in the court case and will not be released for viewing by the public.

(5) Inventory Form - All inventory and appraisals must be filed with the Judicial Council form caption page printed on pink paper and attachments on white paper.

(d) Disposition Requirements - In probate matters involving a decedent's estate where a personal representative has been appointed, the court will issue an Order to Show Cause (OSC) regarding the status of the case if a Judgment of Final Distribution, or a Report of Status of Administration, has not been filed within 12 months after probate letters issued in cases where federal estate tax return is not required. In an estate for which a federal estate tax return is required, the Judgment of Final Distribution or Report of Status of Administration is to be filed within 18 months from the issuance of letters. At the OSC hearing, the court will establish appropriate time limits to accomplish a prompt disposition of the matter.

(e) Special Notice Situations

(1) Special Letters - Except in unusual cases, a party seeking special letters of administration, temporary letters of guardianship or conservatorship, must give notice of the application to the surviving spouse, proposed ward, domestic partner, conservatee, or other persons who seek or might be expected to seek letters, and any other person who appears to be equitably entitled to notice. This notice must be given as required for other ex parte orders. (See California Rules of Court, rule 3.1200-3.1207.)

(2) Publication of Notice of Death - The published notice of death is sufficient to include only those instruments that are offered for probate and specifically referred to in the petition for which the notice is given. Any other will or codicil not specifically mentioned in such petition

must be presented to the court in an amended petition or a second petition, and notice of that hearing must also be published.

(3) Mailing of Notice of Administration/Notice to Creditors - Notice to known creditors, apart from that published as otherwise prescribed by law, is required under Probate Code section 9050, and proof of said mailing must be filed with the court prior to the filing of any petition for final distribution. "Notice to Creditors" is a Judicial Council form bearing a proof of service on the reverse for completion and filing with the court. (01/01/07), (Revised 01/01/16)

Rule 1007 - Procedures for Temporary and General Guardianships

All persons petitioning the court for a general guardianship must do the following:

- (a) Purchase the guardianship packet from the clerk of the court.
- (b) Attend the court's guardianship orientation and receive a certificate of completion.
- (c) All self-represented petitioners must make an appointment with the self-help attorney resource center at (559) 737- 5500 to have the court documents reviewed. More than one appointment may be necessary to ensure the documents are complete and correct before filing with the clerk of the court.
- (d) File the petition and all supporting documents, including the "Certificate of Completion of the Guardianship Orientation and Guardianship Checklist."
- (e) If the court refers the petition to Family Court Services for investigation, the court, prior to the commencement of the investigation, must sign an order appointing the investigator.
- (f) An order appointing a general guardian may not be issued before each of the petitioners has completed all of the following:
 - (1) Attended the guardianship orientation;
 - (2) Filed the "Certificate of Completion of the Guardianship Orientation";
 - (3) Signed the "Authorization to Release Department of Justice Information" to the court;
 - (4) Paid \$42.00 in check or money order for the Department of Justice LiveScan

~~fingerprinting~~Fingerprinting process.

(g) An order appointing a general guardian may not be issued until a fingerprint clearance has been received from the Department of Justice.

(h) An order appointing a general guardian must not be issued before every person over the age of 18 residing in the proposed guardian's home has completed the fingerprint process and clearance has been received.

(i) An order appointing guardian will not be issued before the petitioner(s) has signed and filed all of the following documents with the clerk of the court:

(1) "Consent to Serve as Guardian";

(2) "Duties of Guardian";

(3) "Guardianship Questionnaire";

(4) "Proper Notice of Hearing/Citation," if appropriate;

(5) "Uniform Child Custody Jurisdiction and Enforcement Act" form (UCCJEA);

(6) "Confidential Guardianship Screening" form; and

(7) "Orders Appointing Guardian and Letters of Guardianship" (lodged with the clerk of the court).
~~clerk of the court~~.

(j) If the court refers a guardianship petition to the court investigator, the investigator must interview the proposed guardian(s) and ward(s), and complete and file a report prior to the general hearing for guardianship. The court investigator has discretion regarding collateral contacts and review of records at the direction of the court for each case.

(k) All parties seeking an ex parte temporary guardianship must do the following:

(1) Set an appointment with the probate judge's clerk at least 24 hours prior to the hearing;

(2) Comply with all statutory notice requirements;

(3) File the petition for temporary and general guardianship and all supporting documents, including the guardianship checklist; and

(4) Secure a hearing date from the clerk of the court for the general hearing, and enter the hearing date on the proposed temporary order as the date of expiration of the temporary order. No temporary orders will be signed without an expiration date.

(l) If a referral is made by the court for an investigation, the court will calendar the hearing for no less than 45 days from the date the investigation was ordered.

(m) If the temporary letters of guardianship expire prior to the hearing for general guardianship, the letters must be renewed. This may be done by submitting an order and "Temporary Letter of Guardianship" to the clerk of the court. The clerk of the court will send the documents to the judge for approval.

(n) All confidential documents will be maintained in a confidential envelope in the court case file and will not be released for viewing by the public.

(o) Unless otherwise notified by the court, appearance of counsel and/or parties is required at the time of hearing in the following matters:

(1) Appointment of guardian;

(2) Termination of guardianship other than by death of a ward or by the ward attaining majority;

(3) Confirmation of sale of real or personal property; and

(4) All contested matters

(p) All guardians of the estate must either (1) Petition the court for waiver of accountings if the estate meets the requirements of the Probate Code, or (2) file an annual accounting within 60 days after the anniversary date of the issuance of Letters of Guardianship. The court investigator must be served conformed copies of any accounting documents on the day it is filed.

(q) Complaints Regarding Minor's Counsel in Probate Guardianship Cases - The court maintains a list of attorneys who may be appointed counsel for children in guardianship matters. These attorneys have completed the required training and have filed the required judicial council form with the court. The court uses a rotation system to appoint the attorneys.

In a guardianship proceeding in which the court has appointed counsel for minor children, any party or counsel or minor child may present a written complaint about the performance of appointed counsel pursuant to Probate Code section 1470. The complaint must be filed and served on all counsel and self-represented parties, and a copy must be delivered to the courtroom clerk for the Presiding Family Law Judge. The court will respond to the complaint within 30 days, either by setting the matter for hearing or by issuing a written response. (Cross reference

Local Rule 932) (01/01/07)(Revised 01/01/09)(Revised 01/01/10)(Revised 01/01/16)

Rule 1018 - Accountings for Conservatorships and Guardianships

Accountings of conservators and guardians must follow the format prescribed in these rules for decedents' estates and in Probate Code section 2620. Reports of conservators and guardians must contain the current address and phone number of the conservatee or ward, as well as of the conservator or guardian. Any change of address should also be noted in the petition, or in any separate pleading, at the time the change is made.

(a) Adequacy of Bond - Reports of conservators and guardians, at the annual and biannual reviews, must state the amount of the current bond (or bonds in the event two or more bonds on file) and state whether any additional bonds are necessary to protect unblocked personal property plus one year's estimated income. Each report should also show any blocked bank accounts or assets impounded with a depository. Any significant changes in the value of assets should be reported, together with the effect on the adequacy of the bond. The conservator must consider the possible need for reappraisal and inform the court of any such need.

(b) The Inventory and Appraisal and the Final Accounting of the estate – The I&A and Final accounting must be filed (Probate Code ~~2601a~~2610(a)) and are not waived with a Waiver of Accounting unless otherwise ordered by the Court.

(c) Accounting Deadlines - A final accounting should be filed consistent with Probate Code section 2620, subdivision (a). If the document examiner has reviewed the accounting and submitted comments to the court, that review shall be provided to the public guardian no later than five days prior to the scheduled or continued hearing date. If an accounting is not filed as required, the court will issue and serve an Order to Show Cause why the accounting has not been filed.

(d) Waiver of Accountings - Except as expressly provided in the Probate Code, the probate court will not approve any request or petition for waiver of any accounting or of a final

accounting upon the death of the conservatee or ward, termination of conservatorship or if the conservator resigns or is removed.

(e) An accounting waiver in conservatorships and guardianships for small estates may be approved at the court's discretion under the provisions of Probate Code section 2628, provided that (1) such waiver was previously approved in an initial filing; or (2) a verified petition in support of the waiver is filed and noticed for hearing.

(f) If accountings have been waived, the court will require that they be reinstated if circumstances of the estate change. (01/01/07) (Revised 01/01/09) (Revised 01/01/16)