



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF TUOLUMNE**
Jeanine D. Tucker, Court Executive Officer
41 W. Yaney Avenue
Sonora, CA 95370

October 2, 2018

Proposed Amendments to Local Rules and Forms to Become Effective January 1, 2019

Pursuant to California Rules of Court, rule 10.613, subdivision (g), the following proposed amendments to the local rules and forms are hereby distributed for comment.

Public comments must be submitted in writing and directed to Jeanine D. Tucker, Court Executive Officer, Superior Court of California, County of Tuolumne, 41 W. Yaney Avenue, Sonora, CA 95370. Comments must be received no later than 3:00 p.m. on Friday, November 16, 2018.

During this cycle, we propose amendments affecting five existing local rules. We also propose adoption of one new local rule. A high-level summary of the proposed amendments, along with brief explanations of the reasons for the proposals, is provided in the first table below. Attached to this document is the text of each rule as it would appear if the proposals are adopted, accompanied by redlined changes to the existing rules that reflect exactly how the existing rules would change.

In addition, we propose amendment of one local form. This form is addressed in the second table below, and the revised form is attached to this document following the text of rule 1.07.0.

Rule	Proposed Action	Explanation
1.07.0	Amend	(1) Comply with <i>Jameson v. Desta</i> (2018) 5 Cal.5th 594, which addresses the availability to in forma pauperis litigants of official court reporters or other valid means to create an official verbatim record for purposes of appeal. (2) Update the normal schedule of official court reporter availability.
3.05.0	Amend	Update procedures re requests to present oral testimony in civil law and motion matters.
5.04.5	Add	Provide basic information re probate hearings, including reservation and assignment of hearing dates and the difference between review hearings and substantive hearings on a request.

Rule	Proposed Action	Explanation
5.18.0	Amend	<ul style="list-style-type: none"> (1) Make nonsubstantive revisions to the title of this local rule. (2) In subdivision (e) of this local rule, adjust the citations to the Probate Code to be more relevant to the subject matter of the rule. (3) Also in subdivision (e), change the pleading in which a personal representative of a decedent's estate includes allegations re notice to specified public entities, from the first report of administration to all petitions for distribution. (4) Make subdivision (q) of this local rule consistent with California Rules of Court, rule 7.705, subdivision (b), which governs requests for statutory compensation in decedent's estate cases when the beneficiaries have waived an accounting.
6.02.0	Amend	Acknowledge exceptions to and provisions for waiver of the requirement of an investigation when a petition for appointment of a guardian or conservator is filed. Prescribe procedures for applying an exception or seeking a waiver.
6.14.0	Amend	<ul style="list-style-type: none"> (1) Clarify that trustees who file accountings in guardianship and conservatorship cases must comply with certain local requirements that already apply to guardians and conservators who prepare and file the accountings themselves. (2) Provide for lodging rather than filing of certain original account statements by professional fiduciaries who prepare accountings in guardianship and conservatorship cases.

Form	Proposed Action	Explanation
TUO-CS-150	Amend	Modify for use in all types of proceedings in which court reporter services may be requested, in conjunction with the amendment to local rule 1.07.0.

Finally, the table below alerts litigants and counsel to one new local form that was adopted in August 2018 for optional use. The form is attached to this document following the text of the rules.

Form	Action Taken	Explanation
TUO-CR-230	Adopted	"Waiver of Defendant's Personal Presence" is a form that has been used in the courtrooms since 2009. This newly adopted form contains identical language to the old form; it simply has been updated to mirror the format of our other local forms.

Rule 1.07.0

Proposed rule as amended

1.07.0 Court Reporters

a. Court Reporter Availability:

The Court schedules court reporting services for the following proceedings:

1. Criminal: preliminary hearings and all other felony proceedings;
2. All juvenile matters;
3. In-chambers meetings with minor children;
4. Civil proceedings in which a party that has been granted a fee waiver under Government Code section 68631 files a request pursuant to subdivision (b) of this rule (Gov. Code, § 68086, subd. (b); *Jameson v. Desta* (2018) 5 Cal.5th 594); and
5. Any other proceedings that the Court, in its discretion, orders to be reported.

The Court does not normally have the services of official court reporters available for civil trials or civil law-and-motion matters.

Dept. 1: A court reporter is normally assigned to report all felony and juvenile matters.

Dept. 2: A court reporter is normally assigned Monday through Friday if a felony jury trial is being held; on Tuesday afternoons for preliminary hearings and other felony criminal proceedings; and on Fridays.

Dept. 3: A court reporter is not normally assigned.

Dept. 4: A court reporter is normally assigned on Wednesday afternoons for felony criminal proceedings.

Dept. 5: A court reporter is not normally assigned.

(See Cal. Rules of Court, rule 2.956 [requiring local policy re official court reporters].)

b. Court Reporter Services in Civil Matters: A party requesting court reporter services from the Court for a civil matter shall file the request pursuant to California Rules of Court, rule 2.956 using local form TUO-CS-150.

If the requesting party has been granted a fee waiver under Government Code section 68631, the Court will provide the services of an official court reporter, and the fee for such services will be waived. (Gov. Code, § 68086, subd. (b); *Jameson v. Desta* (2018) 5 Cal.5th 594.) The request shall be filed as soon as practicable in order to maximize the time available to the Court to arrange court reporter services. For civil trials, the request shall be filed no later than 10 court

days prior to the commencement of trial. If the Court is unable to arrange court reporter services in the time between the filing of the request and the commencement of the proceedings for which court reporter services are requested, the proceedings may be continued to a different date in order to allow the Court additional time to arrange court reporter services.

For all other requesting parties, the following provisions shall apply:

1. The Court may provide the services of an official court reporter if the reporters are not required for the duties listed above.
2. A fee shall be charged for the reasonable cost of the court reporting services provided at the expense of the Court by an official court reporter pursuant to Code of Civil Procedure section 269. The fee shall be calculated as set forth in Government Code section 68086.
3. Fees for court reporter services shall be due each day prior to commencement of proceedings.
4. If the Court's reporters are not available for the date requested, the clerk shall notify the parties of that fact so that other reporting services may be obtained and paid for by the requesting party.
5. If a party arranges and pays for the attendance of a certified shorthand reporter because an official court reporter is unavailable, none of the parties shall be charged the reporter's attendance fee provided for in Government Code section 68086, subdivision (a)(1) or (a)(2).

c. Transcripts: Transcripts of proceedings that have been reported at the direction of the Court shall not be made available to any party unless that party pays to the Court, at the time the request for transcripts is made, the reporter's fees for reporting services in addition to the cost of the transcription. However, a party that has been granted a fee waiver under Government Code section 68631 will not be required to pay the fee for reporting services. (Gov. Code, § 68086, subd. (b); *Jameson v. Desta* (2018) 5 Cal.5th 594.)

Current rule with redlined amendments

1.07.0 Court Reporters

a. Court Reporter Availability:

The Court schedules court reporting services for the following proceedings:

1. Criminal: preliminary hearings and all other felony proceedings;
2. All juvenile matters;
3. In-chambers meetings with minor children;

- 3.4. Civil proceedings in which a party that has been granted a fee waiver under Government Code section 68631 files a request pursuant to subdivision (b) of this rule (Gov. Code, § 68086, subd. (b); *Jameson v. Desta* (2018) 5 Cal.5th 594); and
- 4.5. Any other proceedings that the Court, in its discretion, orders to be reported.

The Court does not normally have the services of official court reporters available for civil trials or civil law-and-motion matters.

- Dept. 1:** A court reporter is normally assigned to report all felony and juvenile matters.
- Dept. 2:** A court reporter is normally assigned Monday through Friday if a felony jury trial is being held; on Tuesday afternoons for preliminary hearings and other felony criminal proceedings; and on Fridays ~~afternoons for the drug court calendar.~~
- Dept. 3:** A court reporter is not normally assigned, ~~unless requested specifically by the sitting judge. A party, at his or her own expense, may obtain the services of a court reporter.~~
- Dept. 4:** A court reporter is normally assigned on Wednesday afternoons ~~and Fridays~~ for preliminary hearingsfelony criminal proceedings.
- Dept. 5:** A court reporter is not normally assigned. ~~A court reporter shall be assigned for all in-chambers meetings with minor children.~~

(See Cal. Rules of Court, rule 2.956 [requiring local policy re official court reporters].)

b. Civil-Court Reporter Services in Civil Matters: ~~When a party requires court reporter services in a civil matter, the Court may provide those services if the reporters are not required for duties listed above. The A party requesting court reporter services from the Court for a civil matter shall file the requestnotify the clerk, in writing, of the request pursuant to California Rules of Court, rule 2.956 using local form TUO-CS-150.~~

If the requesting party has been granted a fee waiver under Government Code section 68631, the Court will provide the services of an official court reporter, and the fee for such services will be waived. (Gov. Code, § 68086, subd. (b); *Jameson v. Desta* (2018) 5 Cal.5th 594.) The request shall be filed as soon as practicable in order to maximize the time available to the Court to arrange court reporter services. For civil trials, the request shall be filed no later than 10 court days prior to the commencement of trial. If the Court is unable to arrange court reporter services in the time between the filing of the request and the commencement of the proceedings for which court reporter services are requested, the proceedings may be continued to a different date in order to allow the Court additional time to arrange court reporter services.

For all other requesting parties, the following provisions shall apply:

1. The Court may provide the services of an official court reporter if the reporters are not required for the duties listed above.
2. A fee shall be charged for the reasonable cost of the court reporting services provided at the expense of the Court by an official court reporter pursuant to Code of Civil Procedure section 269. The fee shall be calculated as set forth in Government Code section 68086.
3. Fees for court reporter services ~~are shall be~~ due each day prior to commencement of proceedings.
4. If the Court's reporters are not available for the date requested, the clerk shall notify the parties of that fact so that other reporting services may be obtained and paid for by the requesting partyies.
5. If a party arranges and pays for the attendance of a certified shorthand reporter ~~at a hearing in a civil case~~ because ~~of the unavailability of the services of~~ an official court reporter is unavailable, none of the parties shall be charged the reporter's attendance fee provided for in Government Code section 68086, subdivision (a)(1) or (a)(2).

c. Transcripts: Transcripts of proceedings that have been reported at the direction of the Court shall not be made available to any party unless that party pays to the Court, at the time the request for transcripts is made, the reporter's fees for reporting services in addition to the cost of the transcription. However, a party that has been granted a fee waiver under Government Code section 68631 will not be required to pay the fee for reporting services. (Gov. Code, § 68086, subd. (b); Jameson v. Desta (2018) 5 Cal.5th 594.)

Attorney or Unrepresented Party (Name, address, phone number, and Bar number): Attorney for (name):	Space below for use of Court Clerk only
<p style="text-align: center;">SUPERIOR COURT OF CALIFORNIA, COUNTY OF TUOLUMNE</p> [] 60 N. Washington Street, Sonora, CA 95370; (209) 533-5563 [] 41 W. Yaney Avenue, Sonora, CA 95370; (209) 533-5555	
Petitioner/Plaintiff: Respondent/Defendant:	Case Number:
<h3>REQUEST FOR COURT REPORTER</h3>	

Party requesting court reporter: _____

Requested for the following date(s): _____

Type of hearing or trial: _____

Date: _____

Signature of requesting party

The procedures governing requests for a court reporter are located at local rule 1.07.0.

If the requesting party has been granted a fee waiver under Government Code section 68631, the Court will provide the services of an official court reporter, and the fee for such services will be waived. (Gov. Code, § 68086, subd. (b); *Jameson v. Desta* (2018) 5 Cal.5th 594.) If the Court is unable to arrange court reporter services in the time between the filing of the request and the commencement of the proceedings for which court reporter services are requested, the proceedings may be continued to a different date in order to allow the Court additional time to arrange court reporter services.

For all other requesting parties, a fee of \$200.00 (half day) or \$400.00 (full day) will be assessed for court reporter services pursuant to Government Code section 68086, subdivision (a). Fees shall be due and payable each day prior to the commencement of proceedings. If a court reporter will not be available for the date requested, the requesting party will be notified promptly.

Rule 3.05.0

Proposed rule as amended

3.05.0 Argument and Oral Testimony at Law and Motion Calendar:

- b. Oral testimony is not allowed on the law and motion calendar. If oral testimony is desired, a request must be made to the judicial officer hearing the matter pursuant to California Rules of Court, rule 3.1306. The judicial officer will either (1) grant the request and direct that the matter be specially set or (2) deny the request and direct that the matter be heard based on declarations.

Current rule with redlined amendments

3.05.0 Argument and Oral Testimony at Law and Motion Calendar:

- b. Oral testimony ~~ordinarily~~ is not allowed on the law and motion calendar. If oral testimony is desired, a request must be made to the judicial officer hearing the matter pursuant to California Rules of Court, rule 3.1306. The judicial officer will either (1) grant the request and leave the matter on the law and motion calendar, 2) grant the request and direct that the matter be specially set with the calendar coordinator, or (23) deny the request and insist direct that the matter be heard in based on declarations.

Rule 5.04.5

Proposed new rule

5.04.5 Probate hearing dates: The Court may limit the number of matters heard on a given probate calendar, such as the number of accounting hearings. Parties are encouraged to call the clerk's office in advance of filing their papers in order to reserve a hearing date if they have a preferred hearing date. If a party's papers reflect a hearing date that was not reserved in advance and is not available, the clerk's office may assign a different hearing date.

Parties should note that review hearings are hearings set by the Court for its own monitoring of a case and do not constitute a reservation of that date for a substantive hearing on a request. For example, the Court regularly sets review hearings to ensure timely filing of inventories and appraisals, investigation reports, status reports, petitions for final distribution, and accountings, but the substantive hearing on a status report, petition for final distribution, or accounting will not automatically be held on the same day as the review hearing that was set only to ensure that paper was filed.

Rule 5.18.0

Proposed rule as amended

5.18.0 Petitions for Distribution:

- e. **Compliance with Probate Code Sections 9201 and 9202:** All petitions for distribution shall contain allegations addressing the notice requirements of Probate Code section 9201 and 9202, either that notice has been given as required by law or that no such notice is required.

- q. **Waiver of Accounting on Final Distribution:** The waiver generally makes a listing of the details of receipts and disbursements unnecessary. (Cal. Rules of Court, rule 7.550, subd. (a).) All other matters (e.g., the reporting of creditor claims, sales and purchases, and changes in the form of assets) must be presented in the report. (*Id.*, rule 7.550, subd. (b).) Detailed schedules of receipts and gains and losses on sales must be included notwithstanding the waiver if the petition for final distribution requests statutory compensation based on an amount other than the amount reflected in the Inventory and Appraisal form(s). (*Id.*, rule 7.705, subd. (b).)

Current rule with redlined amendments

5.18.0 Petitions for Distributions:

- e. **Compliance with Probate Code Sections 9201 and 9202 ~~and 215~~:** All petitions for distribution ~~The first report of administration of a decedent's estate~~ shall contain allegations addressing either the ~~that~~ notice requirements of Probate Code section 9201 and 9202, either that notice of the decedent's death ~~has been given as required by law provided to the Director of Health Care Services pursuant to Probate Code sections 9202 and 215~~ or that no such notice is required.

- q. **Waiver of Accounting on Final Distribution:** The waiver generally makes a listing of the details of receipts and disbursements unnecessary. (Cal. Rules of Court, rule 7.550, subd. (a).) All other matters (e.g., the reporting of creditor's claims, sales and purchases, and changes in the form of assets ~~or other transactions~~) must be presented in

the report. (*Id.*, rule 7.550, subd. (b).) Detailed schedules of receipts and gains and losses on sales must be included notwithstanding the waiver if the petition for final distribution requests statutory compensation based on an amount other than the amount reflected in the Inventory and Appraisal form(s). (*Id.*, rule 7.705, subd. (b).)

Rule 6.02.0

Proposed rule as amended

6.02.0 Investigations: On all petitions for appointment of a conservator or guardian, an investigation shall be conducted pursuant to Probate Code section 1826 or 1513 unless the investigation is excused or waived. Notice of at least twenty-five (25) calendar days is required in order for the court investigation to be completed. The petitioner shall provide the form of order for appointment of the court investigator at the time the petition is filed and shall promptly notify the investigator of the appointment. The petitioner is required to provide an additional copy of the petition and any other required documents to the clerk for use by the court-appointed investigator.

Where the petitioner asserts that an investigation is not required or should be waived by the Court, he or she shall present the specific legal authority for that assertion, as well as supporting facts. (See, e.g., Prob. Code, § 1513, subd. (a) [guardianship investigation]; *id.*, § 1826, subds. (d)-(e) [conservatorship investigation].)

Current rule with redlined amendments

6.02.0 Investigations: On all petitions for appointment of a conservator or guardian, an investigation shall be conducted pursuant to Probate Code section 1826 or 1513 unless the investigation is excused or waived. Notice of at least twenty-five (25) calendar days is required in order for the court investigation to be completed. The petitioner shall provide the form of order for appointment of the court investigator at the time the petition is filed and shall promptly notify the investigator of the appointment. The petitioner is required to provide an additional copy of the petition and any other required documents to the clerk for use by the court-appointed investigator.

Where the petitioner asserts that an investigation is not required or should be waived by the Court, he or she shall present the specific legal authority for that assertion, as well as supporting facts. (See, e.g., Prob. Code, § 1513, subd. (a) [guardianship investigation]; *id.*, § 1826, subds. (d)-(e) [conservatorship investigation].)

Rule 6.14.0

Proposed rule as amended

6.14.0 Accountings:

- b. The conservator, guardian, or trustee who prepares the accounting shall comply with local rule 5.17.1.
- c. For purposes of ensuring proper notice, the conservator, guardian, or trustee who prepares the accounting shall state in the accounting or accompanying petition and report whether the conservatee or ward (1) has a spouse or domestic partner, (2) is or has been during the conservatorship or guardianship proceedings a patient in or on leave from a state hospital, and (3) has, in his or her estate, money, revenue, profit, or property that entitles the Veterans Administration to notice. (See Prob. Code, §§ 2621, 1460, 1461, 1461.5.)

- e. **Account statements:** Instead of *filing* all original account statements showing the balance for *all* periods covered by the accounting pursuant to Probate Code section 2620, subdivision (c)(3), a professional fiduciary shall *file only* the account statements described by subdivision (c)(2) and shall *lodge* the account statements for all other periods covered by the accounting. Once the accounting is approved, the Court will return the lodged account statements to the depositor.

f. **Waiving of Accounts**

Current rule with redlined amendments

6.14.0 Accountings:

- b. The conservator, ~~or~~ guardian, or trustee who prepares the accounting shall comply with local rule 5.17.1.
- c. For purposes of ensuring proper notice, the conservator, ~~or~~ guardian, or trustee who prepares the accounting shall state in the accounting or accompanying petition and report whether the conservatee or ward (1) has a spouse or domestic partner, (2) is or has been during the conservatorship or guardianship proceedings a patient in or on

leave from a state hospital, and (3) has, in his or her estate, money, revenue, profit, or property that entitles the Veterans Administration to notice. (See Prob. Code, §§ 2621, 1460, 1461, 1461.5.)

e. Account statements: Instead of *filing* all original account statements showing the balance for *all* periods covered by the accounting pursuant to Probate Code section 2620, subdivision (c)(3), a professional fiduciary shall *file only* the account statements described by subdivision (c)(2) and shall *lodge* the account statements for all other periods covered by the accounting. Once the accounting is approved, the Court will return the lodged account statements to the depositor.

ef. **Waiving of Accounts**

<p>SUPERIOR COURT OF CALIFORNIA COUNTY OF TUOLUMNE 60 North Washington Street Sonora, CA 95370 (209) 533-5563</p>	<p>Space below for use of Court Clerk only</p>
<p>The People of the State of California,</p> <p style="text-align: center;">Plaintiff,</p> <p>vs.</p> <p style="text-align: center;">Defendant.</p>	<p>Case Number:</p>
<p>WAIVER OF DEFENDANT’S PERSONAL PRESENCE [Penal Code § 977]</p>	

The undersigned defendant, having been advised of his/her right to be present at all stages of the proceedings, including, but not limited to, presentation of and arguments on questions of fact and law, and to be confronted by and cross-examine all witnesses, hereby waives the right to be present at the hearing of any motion or other proceeding in this cause.

The undersigned defendant hereby requests the court to proceed during every absence of the defendant that the court may permit pursuant to this waiver, and hereby agrees that his/her interest is represented at all times by the presence of his/her attorney the same as if the defendant were personally present in court, and further agrees that notice to his/her attorney that his/her presence in court on a particular day at a particular time is required is notice to the defendant of the requirement of his/her appearance at that time and place.

DATED: _____

Defendant

Approved.

DATED: _____

JUDGE OF THE SUPERIOR COURT

WAIVER OF DEFENDANT’S PERSONAL PRESENCE [PENAL CODE § 977]