

# SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

## Summary of Proposed Amendments to Title 5, Division 1: Chapter 1, rule 5.45 to the Local Rules

### Conduct of case resolution conferences and settlement conferences

The proposed amendments to rule 5.45 to the court's Local Rules ("Rules") entitled ***Conduct of case resolution conferences and settlement conferences*** are part of the court's continuing effort to review, correct, and update its Rules as needed.

The proposed amendments to rule 5.45 are summarized below.

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#### SUMMARY

The proposed amendments are to support implementation of what is commonly referred to as the Elkins Task Force recommendations.

Below is the full text of proposed local rule 5.45 with deletions in **strikeout** and additions noted in underline.

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#### Rule 5.45. Conduct of **status** case resolution conferences and settlement conferences

Unless otherwise ordered by the court, the following provisions apply to all **status**-case resolution conferences and settlement conferences held in family law cases.

(a) **Status** Case resolution conferences

Four days prior to any **status** case resolution conference, each party must serve and file a description of the current status of the matter. The parties must use the **Status Case Resolution** Conference Questionnaire (Local Form ALA FL-041) form for this purpose. At the **status** case resolution conference, the court may set the matter for further **status** case resolution conference, for settlement conference and trial, or make such other orders the judge determines are appropriate.

(b) **Settlement conference (voluntary and mandatory)**

At least 15 days before any settlement conference, all attorneys and all parties must conduct a face-to-face meeting to confer in good faith in an effort to settle all issues in the case. This meeting must be scheduled by counsel or self-represented parties at the time the settlement conference is set to assure that the meeting takes place in a timely manner. If a restraining order prohibits face-

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to-face contact between the parties, the parties may attend the meeting by telephone or in separate locations.

At least ten days before any settlement conference, each party must provide the other party a written offer of sufficient specificity to be enforceable that, if accepted, would resolve all issues remaining in dispute; a copy of this offer must be brought to the settlement conference.

At least five days before any settlement conference, each party must serve and file a settlement conference statement that must contain the information set forth below:

**(1)** A summary of all contested and uncontested issues, including a brief description of the terms of any stipulations, agreements, or settlements.

**(2)** A statement describing all efforts made by the parties prior to the settlement conference to settle the remaining contested issues, including a summary of the face-to-face settlement meeting or a detailed statement indicating why the face-to-face meeting did not occur.

**(3) Statistical facts:**

- (a) Date of marriage or registration of domestic partnership; date of separation; length of marriage or partnership in years and months.
- (b) Names and ages of minor children.
- (c) Ages of parties.
- (d) Disputed issues as to statistical facts.
- (e) All material facts upon which a party relies regarding any disputed issues as to statistical facts.

**(4) Child custody and visitation:**

- (a) Terms of existing custody and visitation orders and agreements.
- (b) A detailed proposal for custody and visitation orders and all material facts in support of the proposal.

**(5) Child support:**

- (a) Terms of existing child support orders and agreements.
- (b) Proposal for child support orders.

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- (c) All material facts in support of any special circumstances regarding income, expenses, ability to earn, or other facts relevant to child support.
- (d) A DissoMaster or other approved printout setting forth all proposed findings regarding child support.

### **(6) Spousal support:**

- (a) Terms of existing spousal support orders.
- (b) Proposal for spousal support orders.
- (c) A full item-by-item analysis of all material facts as they relate to the factors set forth in Family Code section 4320.
- (d) A DissoMaster or other approved printout showing the tax consequences of the party's proposed spousal support order.

### **(7) Contested assets:**

- (a) The date the asset was acquired.
- (b) The manner in which title of the asset is currently vested and, if different, was vested at time of acquisition.
- (c) The character of the asset as community, separate, or quasi-community property, or a combination thereof.
- (d) All material facts in support of the party's characterization of the asset.
- (e) The current fair market value, the nature, extent, and terms of any encumbrances against the asset, and the current net equity in the asset.
- (f) A complete statement setting forth the factual and legal basis for apportionment or reimbursement, the formula for apportionment or reimbursement, and the calculated value of each party's community and separate interests in the asset.

### **(8) Debts or obligations:**

- (a) A list of all debts or obligations of the parties that are claimed to be community liabilities or separate liabilities of the parties with a

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description of all facts and legal authority that support the claim that each such debt or obligation is community or separate.

- (b) For each such debt or obligation, the name of the creditor, the balance due on the date of separation, the current balance due, and the nature, extent, and terms of any security for the debt.
- (c) If there is a claim for reimbursement, the name of the creditor, the total amount paid on the debt, and the date and source of each payment for which reimbursement is sought.
- (d) A summary of existing orders regarding payment of debts or obligations and reimbursement thereof.

### **(9) Attorney's fees, expert's fees, and costs:**

- (a) A summary of existing orders.
- (b) A list of all amounts paid by each party on account of the other party's attorney's fees, expert's fees, and costs, and the balance due, if any.
- (c) A list of all amounts paid by each party on account of his or her own attorney's fees, expert's fees, and costs, and the balance due, if any.

### **(10) Documents, schedules, summaries, appraisals, and expert reports:**

- (a) Copies of all appraisals and reports of experts that will or may be offered at trial.
- (b) A list with a description and summary of the contents of all documents, schedules, and summaries that will or may be offered at trial with copies attached if relevant to any significant contested issues.
- (c) The name, business address, and telephone number of any expert witness whom a party intends to call as a trial witness, with a brief statement setting forth the substance of the expert's testimony.

### **(11) Other witnesses:**

The name, address, and telephone number of any non-expert witness, other than the parties, whom a party intends to call as a trial witness, and a brief summary of the anticipated testimony of the witness.

### **(12) Points and authorities:**

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All points and authorities and legal argument upon which a party intends to rely must be set forth in the appropriate section of the settlement conference statement.

### **(13) Income and expense declaration:**

A current Income and Expense Declaration on the appropriate Judicial Council form, with all required attachments, must be attached. A party may not rely on a previously filed Income and Expense Declaration.

### **(14) Schedule of Assets and Debts:**

A current Schedule of Assets and Debts on the appropriate Judicial Council form, with all required attachments, must be attached. A party may not rely on a previously filed Schedule of Assets and Debts.

### **(15) Settlement proposals:**

Each party must bring to the settlement conference a written offer that would settle all issues remaining in dispute. The parties may request that such written offers be held in confidence by the court.

### **(c) Consequences of noncompliance**

In the discretion of the trial judge, the consequences of noncompliance with this rule may include imposition of any sanction or order authorized by law including, without limitation, restricting evidence, continuing the trial, excluding an exhibit, precluding the testimony of a witness, or imposing monetary sanctions.