

4. JUVENILE DEPENDENCY COURT RULES

4.1 CITATION

These juvenile dependency court rules should be cited as "Marin County Rule, Juvenile Dependency" or "MCR Juv Dep" followed by the rule number (e.g. Marin County Rule, Juvenile Dependency 4.1 or MCR Juv Dep 4.1).

[Rule 4.1 adopted effective 1/1/15]

4.2 GENERAL COMPETENCY REQUIREMENT

A. Right to Competent Counsel. Every party in a dependency hearing shall have a right to competent counsel as defined in CRC 5.660(d).

B. Minimum Standards Applicable to All Counsel. All attorneys appearing in juvenile dependency proceedings, including attorneys representing public agencies, attorneys appointed by the Court, and privately retained attorneys, must meet the minimum standards of competence set forth in these rules.

[Rule 4.2 adopted effective 5/1/98; amended 7/1/07]

4.3 SCREENING FOR COMPETENCY

A. Requirements for Court Appointments for Dependency Representation. All attorneys who represent parties in juvenile dependency proceedings shall meet the minimum standards of training and/or experience set forth in these rules. Pursuant to an agreement between the Court and the Judicial Council Staff (JCS), the JCS is responsible for contracting with court appointed counsel in dependency matters. From time to time the JCS engages in a competitive procurement process for attorneys interested in representing parties in dependency cases. Certification and verification that attorneys have met the minimum standards of competency are required as part of that procurement process. The JCS has also established procedures to determine the appropriate caseloads and compensation for attorneys representing parties in dependency cases.

B. Admission for Private Counsel to Practice Before the Juvenile Court. Any attorney appearing in a dependency matter for the first time who was retained privately by a party to a dependency case shall complete and submit an Application for Membership to the Court within five (5) days of his or her appearance.

Attorneys who meet the minimum standards of training and/or experience as set forth in MCR Juv. 4.4, as demonstrated by the information contained in the Application for Membership submitted to the Court, shall be deemed admitted to practice before the Court in juvenile dependency cases except as provided in subdivision C of this rule.

C. Court's Discretion. Notwithstanding compliance with the standards enunciated in Rule 4.4, the Court may refuse to allow an attorney to practice dependency law before the Court if, in the opinion of the presiding judicial officer, the attorney has demonstrated actual incompetence in handling dependency cases.

D. Out of County Attorneys. If an attorney maintains his or her principal office outside of Marin County, proof of certification by the Juvenile Court of the county in which

the attorney maintains an office shall be sufficient evidence of compliance to appear in a juvenile proceeding in this county.

[Rule 4.3 adopted effective 5/1/98; amended 1/1/15]

4.4 MINIMUM STANDARDS OF EDUCATION AND TRAINING

A. Minimum Requirements. An attorney certified to practice before the Juvenile Court shall, within the 12 months immediately preceding appointment or appearance, have completed at least eight hours of training or education in juvenile dependency law, which training or education shall have included coverage of applicable statutory and case law, Rules of Court and Judicial Council forms, and concepts of child development, abuse and neglect, and family reunification planning. The attorney shall also have completed additional training and education in the areas of substance abuse and domestic violence, as required. Evidence of completion of the required number of hours of training or education may include a copy of a certification of attendance issued by a California MCLE provider or proof of attendance at a program sponsored by a professional organization which provides training and/or education for its members, together with a copy of the training or education program schedule or curriculum. Attendance at a Court- or JCS-sponsored or approved program also will fulfill this requirement.

B. Renewal of Certification – Continuing Education. To maintain certification to practice dependency before the Juvenile Court, an attorney who previously has been certified by the Court shall submit evidence that he or she has completed at least eight hours of continuing training or education related to dependency proceedings since the attorney was last certified. Attorneys' continuing training or education as required in this subdivision may be in the areas set forth in subdivision A. of this rule or in other areas and/or disciplines generally recognized as having a direct or significant relationship to juvenile dependency practice.

[Rule 4.4 adopted effective 5/1/98; amended 1/1/15]

4.5 STANDARDS OF REPRESENTATION

A. Investigation. Attorneys in dependency proceedings are expected to thoroughly investigate the allegations of the petition or other moving papers and the reports filed in support thereof; conduct comprehensive interviews of their clients to ascertain their knowledge of and/or involvement in the matters alleged and reported; contact social workers and other professionals associated with the case to determine whether or not the allegations and/or reports are supported by competent evidence; consult with and, if necessary, seek appointment of experts to advise the attorney or the Court on matters which are beyond the expertise of the attorney or the Court; and secure such other evidence or information as is available and may be necessary effectively to present the client's position to the Court.

B. Interests of Client. Attorneys shall ascertain their clients' interests and wishes. If a client is a minor child who is placed out of home, the attorney shall interview the child's caretaker. Minors' counsel (or his or her agent) shall make at least one visit to each child at the child's placement prior to the jurisdiction hearing. Thereafter, the attorney (or the attorney's agent) should make at least one visit to the child at the child's placement prior to each review hearing.

C. Advising the Client. Attorneys shall advise their clients of the possible courses of action and of the risks and benefits of each. This shall include the risks and benefits of

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resolving disputes without hearing and of the necessity of adhering to Court mandated actions, efforts and time limits.

D. Cooperation. Attorneys shall represent their clients within applicable legal and ethical boundaries and shall work cooperatively with the other attorneys and the Court, explore ways to resolve disputed issues without hearing if it is possible to do so without compromising their clients' interests, and observe state and local rules and mandated timelines.

E. Duty to Continue Representation Unless Relieved by the Court. Counsel appointed to represent a parent, guardian or child in a juvenile dependency proceeding *shall* continue to represent that party unless relieved by the Court. Any request to withdraw or to be relieved shall be in writing and must be served on all interested parties.

F. Procedures for Reviewing and Resolving Complaints Concerning Attorneys.

1. *Lodging of Complaints.* Any party to a juvenile dependency proceeding may lodge a written complaint with the Court concerning the performance of his or her attorney. A complaint concerning the performance of an attorney appointed to represent a minor may be lodged on the child's behalf by the social worker, Court Appointed Special Advocate (CASA), guardian *ad litem*, a caretaker relative, or a foster parent.

2. *Court Review and Resolution.* The Court shall review the complaint and, if it appears that the attorney may have failed to act competently, shall provide a copy of the complaint to the attorney and allow a reasonable opportunity for the attorney to respond in writing. The Court shall consider the complaint and the response, if any, and issue such orders as it deems appropriate, on a case by case basis. Should the Court determine that an attorney has acted incompetently, the Court shall order that the attorney be discharged and that competent counsel be substituted. Notice of substitution of counsel shall be served on counsel for all parties of record.

G. Informing the Court of a Dependent Child's Interest in Another Proceeding, Court or Forum. At any time during the pendency of a dependency proceeding, any interested person may notify the Court that a child who is the subject of the dependency proceeding may have an interest or right which needs to be protected or pursued in another proceeding, court or forum. If the child's attorney becomes aware that the child may have a right or interest which requires protection in another proceeding, court or forum, the attorney shall notify the Court of such right or interest at the earliest reasonable opportunity.

1. *Content and Form of Notice.* Notice to the Court may be given by the filing of Judicial Council form JV-180 or by the filing of a declaration. In either case, the person giving notice shall set forth the nature of the right or interest to be pursued or protected, the name and address, if known, of the agency or judicial forum in which the right or interest may be affected and the nature of the proceedings being contemplated or conducted there.

a. *Child's Attorney Filing Notice.* If the person filing the notice is the child's attorney, the document shall state what action on the child's behalf the attorney believes is necessary, whether the attorney is willing or able to pursue the matter on the child's behalf, whether the association of counsel specializing in practice before the agency or court may be necessary or appropriate, whether the appointment of a guardian *ad litem* may be necessary to initiate or pursue

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the proposed action, whether joinder of an administrative agency to the Juvenile Court proceedings pursuant to Welfare & Institutions Code §362 may be appropriate or necessary to pursue or protect the child's interests, and whether further investigation may be necessary.

b. Filing of Notice by Person Other than Child's Attorney. If the person filing the notice is not the child's attorney, a copy of the notice shall be served on the child's attorney.

2. *Hearing.* The Court may set a hearing on the notice if the Court deems it necessary in order to determine the nature of the child's right or interest and whether such interest should be pursued or protected. If the Court determines that further action on behalf of the child is required, the Court shall do one or more of the following:

a. Authorize the child's attorney to pursue the matter on the child's behalf;

b. Appoint an attorney for the child if the child is unrepresented in the other proceeding, court or forum;

c. Notice a joinder hearing pursuant to Welfare & Institutions Code §362 compelling the responsible agency to report to the Court regarding performance of its statutory duties to the child;

d. Appoint a guardian *ad litem* for the child for the purpose of initiating or pursuing appropriate action in the other proceeding, court or forum;

e. Take such other action as the Court deems necessary or appropriate to protect the welfare, rights and interests of the child.

[Rule 4.5 adopted effective 5/1/98; amended 1/1/15]

4.6 GENERAL RULES FOR DEPENDENCY CASES (W&I §300 ET SEQ.)

A. Calendars and Case Assignments. In general:

1. The Court shall attempt to group hearings by hearing type and calendar them so as to minimize the time parties and other participants must wait. The Judicial Officer shall determine, prior to calling the calendar, the order in which the cases will be called, applying principles that minimize waiting time. Whenever a child who is the subject of a dependency petition is present, the child's case shall take priority on the calendar and be heard first.

2. To the extent possible, juvenile dependency cases shall be assigned to one Judicial Officer for all purposes. All siblings' cases should be calendared together and heard by the same Judicial Officer.

3. Every time a juvenile is declared a dependent, the Court orders a Court Appointed Special Advocate (CASA) for the juvenile. Requirements for CASA programs are described in CRC 5.655.

4. Attorneys for parties shall provide accurate time estimates for contested hearings. The Court will calendar contested hearings whenever possible on consecutive days.

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5. Upon request of counsel for the parent, guardian, minor or petitioner, the Court may continue any hearing beyond the time limit within which the hearing is otherwise required to be held, provided that no continuance shall be granted that is contrary to the interest of the minor. The Court shall give substantial weight to a minor's need for prompt resolution of his or her custody status, the need to provide a minor with a stable environment, and the potential adverse consequences to a minor of prolonged temporary placements.

Continuances shall be granted only upon a showing of good cause and only for the period of time shown to be necessary by the evidence presented at the hearing on the motion for continuance. Continuance requests shall be submitted to the Court on a local Ex Parte Motion and Order form or by other ex parte application submitted by Children and Family Services.

Neither a stipulation between counsel, nor the convenience of the parties, nor a pending criminal prosecution, nor a family law matter shall be considered, in and of themselves, as good cause for a continuance.

As required in Welfare & Institutions Code §352, to obtain a motion for a continuance of the hearing, written notice shall be filed at least two (2) court days prior to the date set for hearing, together with declarations detailing specific facts showing that a continuance is necessary, unless the Court, for good cause, entertains an oral motion for continuance.

6. Prior to any contested hearing throughout all the stages of a juvenile dependency case, informal dispute resolution processes and/or other problem solving forums shall be available to the parties, attorneys, and Children and Family Services. The terms agreed upon at any dispute resolution process shall be placed in writing and all parties and attorneys participating in such process must sign the proposed resolution.

7. Counsel shall be responsible for arranging coverage of conflicting, calendared events. Calendared juvenile proceedings will not be continued because an attorney is unavailable except in extraordinary circumstances. Unavailable counsel must arrange appropriate, alternative coverage.

B. Availability for Contested Hearing. Contested hearings, including those in which time has been waived, will be set for hearing at the earliest date consistent with the best interests of the child. With the exception of previously scheduled contested Juvenile Court hearings, the hearing will have priority over all other matters and commitments of the Court, counsel and witnesses.

C. Adding Matters to Calendar. Any party wishing to add a matter to the calendar must file a calendar request. A calendar request must be filed at least two (2) court days before the calendar in question, setting forth the reason the matter is sought to be calendared and showing that the attorneys for all other parties and all self-represented parties have been contacted and agree that the matter may be calendared on the desired date. The names of the persons contacted and the name of the party represented by each shall be set forth in the calendar request. A copy of the calendar request shall be faxed, mailed or delivered to the Superior Court Juvenile Desk for filing, to CASA and to all parties by the deadline and a proof

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of service must be attached to the calendar request. No other filings will be accepted by fax. Attorneys are responsible for notifying their clients of such calendaring.

Unless all parties agree that a matter may be added to calendar in this fashion and to the date proposed, the matter must be brought before the Court by way of a properly noticed motion and, if necessary, an order shortening time.

D. Interpreters. If and when a party or attorney becomes aware of the need for an interpreter, he or she shall promptly notify the Superior Court Juvenile Desk Clerk that an interpreter will be required and shall specify the language (and dialect where applicable) of the party or witness for whom the interpreter is needed and of the date, time and place where the interpreter's services will be required. The Court will arrange for the attendance of an appropriate interpreter or interpreters. All interpreters for parties must be present before the case in which they are to interpret will be called. An interpreter for a witness must be immediately available at the time the witness is called to testify.

E. In-Custody Parents. An in-custody parent who has made known his or her desire to attend a dependency proceeding must be present in court before the case will be called. Counsel for an in-custody parent is responsible for notifying the jail and other appropriate authorities of the need to produce the parent in court and, if applicable, for securing an appropriate transportation order. If the parent is in custody in the Marin County Jail, counsel shall telephone the Bailiff's Station at the earliest possible time, but no later than 24 hours prior to the scheduled court appearance, to arrange for the parent's presence in court.

F. Confidentiality. In accordance with Welfare & Institutions Code §346, unless requested by a parent or guardian and consented to or requested by a minor concerning whom the petition has been filed, the public shall not be admitted to a juvenile court hearing. The judge may nevertheless admit such persons as he/she deems to have a direct and legitimate interest in the particular case or the work of the Court. Accordingly, relatives, foster parents, and other support persons for the child or family may be present when appropriate.

As provided in Evidence Code §777, except for a party to the action, the Court may exclude any witness from the courtroom in order to prevent such witness hearing the testimony of other witnesses.

All documents filed with the Court, including, but not limited to, petitions, psychological assessments, social workers' reports, and any attachments thereto, are confidential. No participant in a dependency proceeding may give or show copies of any document filed in the proceeding to anyone who is not a party or attorney for a party to the proceeding unless the release of a particular document to a non-party is authorized by law, court rule or the express permission of the presiding judicial officer.

It shall be the duty of counsel to advise their clients of all confidentiality requirements and of the prohibition against disclosing confidential information to third parties and that violation of confidentiality is a misdemeanor, punishable by fine, imprisonment or both, and may also be punished as a contempt of court.

G. Psychological and Psychiatric Evaluations. In cases in which the court has ordered the preparation of a psychological or psychiatric assessment of a parent or child, the parties shall confer and attempt to agree on an evaluator and on the scope of the evaluation.

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The Court shall maintain a list of psychologists and other professionals who are willing to accept appointment in Juvenile Court proceedings. Said list and curriculum vitae will be made available to counsel upon request. The parties shall first attempt to agree on a professional from the Court's list. If the parties cannot agree to a listed professional, the Court will select the evaluator from the Court's list. The evaluator selected or appointed pursuant to this rule is the Court's expert under Evidence Code §730.

Before the issuance of the evaluation report, no person shall initiate *ex parte* communications with the evaluator on any subject related to the evaluation. Nothing in the rule shall prevent a party or his or her attorney from communicating with the evaluator in any fashion when such communication is in direct response to a request from the evaluator.

No recipient of such an evaluation shall provide a copy of any such report to anyone unless specifically authorized to do so by the Court.

H. Authorization to Administer Psychotropic Medication. The procedures for completing and filing the forms and for the provision of notice to obtain authorization to administer psychotropic medication are as specified in CRC 5.640.

I. CASA Report Procedure. CASA may submit to the Court a written report in advance of any hearing pertaining to the child. At least two (2) court days before the hearing, CASA will distribute the report to the attorney for each party (or the parties themselves if self-represented), and the social worker and/or probation officer.

[Rule 4.6 adopted effective 5/1/98; amended 1/1/15]

4.7 DISCOVERY

All parties are encouraged to cooperate in the free exchange of discoverable information. If a party is dissatisfied with another party's voluntary discovery compliance, he or she shall contact the opposing party and make a good faith attempt to resolve the discovery dispute informally. If the dispute cannot be resolved informally, the party seeking discovery shall file and serve a noticed motion to compel discovery or, upon written agreement of the parties, add the case to calendar for resolution of the discovery dispute. Discovery motions may be set and heard on a date assigned at the Court's discretion.

[Rule 4.7 adopted effective 5/1/98; amended 1/1/15]

4.8 PERIODIC JUVENILE DEPENDENCY MEETINGS

A. Juvenile Dependency Team Meetings. Team meetings to encourage open communication, with discussion and focus on best practices and procedural and other service issues, shall be convened regularly by the Court.

B. Juvenile Dependency Court Inter-Agency Meetings. Every six months, the Presiding Judge of the Juvenile Court along with Children and Family Services shall convene a meeting with stakeholders involved in juvenile dependency issues. The purpose of these meetings is to review, develop and incorporate best practices, system wide, for adjudicating dependency cases and addressing other social service and educational needs of children in the dependency system. In addition, these meetings will provide a forum for stakeholders to share information and feedback about issues affecting children in the dependency system.

[Rule 4.8 adopted 5/1/98; amended 1/1/15]

4.9 TRIAL

A. Attendance of Assigned Social Workers. Assigned social workers shall be present at all contested hearings and prepared to be cross-examined. The social workers' files shall be present in court and, if required by law, these rules, or order of Court, shall have been provided to all counsel in advance of the hearing. If reference is made to a social worker's notes or file, a copy of each referenced document shall be made available to the Court for reference.

B. Elective Trial by Declaration. Upon agreement of the parties, contested dependency hearings, including jurisdiction, disposition, review, and selection and implementation hearings under Welfare & Institutions Code §366.26, may be heard upon declaration and written offers of proof subject to cross-examination, as follows:

1. *Court-Appointed Experts.* A court-appointed expert's report shall be his or her direct testimony. A party who wishes to cross-examine or present additional evidence through the expert shall be responsible for subpoenaing the witness.

2. *Other Witnesses.* The declarations of all other witnesses and the reports of privately retained expert witnesses will be deemed their direct testimony. If the party proffering the witness declaration or expert report wishes to offer additional information through the witness, he or she must provide such information by supplemental declaration.

3. *Declaration Deadlines and Cross-Examination Demands.* Witness declarations and offers of proof shall be produced at least five (5) court days prior to the hearing. At least two (2) court days prior to the hearing, a party who wishes to cross-examine a witness must notify the proponent of the witness's declaration or report that the party intends to cross-examine the witness.

4. *Producing Witness for Cross-Examination.* Upon timely notification of another party's intention to cross-examine a witness, the proponent of the witness's declaration or report must produce the witness in court for cross-examination. If the proponent of the declaration or report fails to produce the witness pursuant to this rule, the court will not consider the witness's declaration or report.

5. *Discretion to Allow "Live" Testimony.* For good cause, the Court may allow "live," direct testimony.

6. *Documentary Evidence.* Except when properly offered in rebuttal, copies of any documentary evidence a party intends to introduce shall be attached to and served upon all other parties with his or her witness declarations and offers of proof.

7. *Welfare & Institutions Code §355 Applicable.* Nothing in these rules shall be construed to modify or limit the applicability of Welfare & Institutions Code §355 at jurisdiction hearings.

C. Trials Other Than by Declaration – Witness Testimony. Attorneys seeking to introduce witnesses at trials and contested hearings shall have prepared and submitted to all counsel and the Court a written summary of the testimony of each anticipated witness at least three (2) court days prior to the first day of hearing, or as soon thereafter as possible if counsel cannot, with reasonable diligence, meet such deadline.

[Rule 4.9 adopted effective 1/1/04]