Courtroom Clerking

21st Annual AB 1058 Child Support Training Conference September 12-15, 2017

Kathryn Whitney

Court Clerk III
Calaveras Superior Court

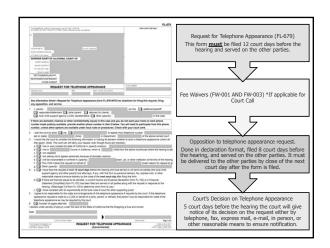
kwhitney@Calaveras.courts.ca.gov (209) 754-5967

Please feel free to contact me.

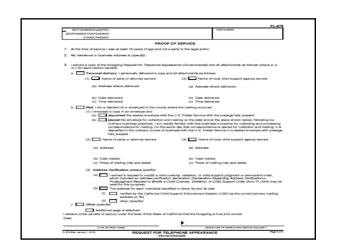
TELEPHONE APPEARANCES

- Governmental Request for Telephone Appearance
- ❖ California Rules of Court §5.324
- ❖ Judicial Council Form FL-679

REQUEST TO APPEAR TELEPHONICALLY must be filed by a party, attorney, witness, or parent wishing to appear via telephone. It must be filed twelve (12) court days before the hearing and served on the other * Note – there is no Judicial Council order form. OPPOSITION TO TELEPHONE APPEARANCE REQUEST. This must be complete in a declaration format and is to be filed eight (8) court days before the hearing and served on the other parties. COURT'S DECISION ON TELEPHONE APPEARANCE. Five (5) court dates before the hearing, the Court will give notice of its decision on the request either by telephone, fax, express mail, e-mail, in person or other reasonable means to ensure notification. * The time requirements set forth in the rule can always be shortened by the court. What are your Court's guidelines for persons wishing to appear telephonically? How do your Courts handle telephonic appearance requests? ❖ How are these cases handled in your Courtroom? How does this process compare with the code sections? **Request for Telephonic Appearance** FL-679 CRC 3.760 and 5.324 All relevant participants may request to appear telephonically · Adopted Mandatory Use * Note: Commissioner advisement * Note: Courts may choose to is stated on the form use their own forms and/or Page 2, item 11: If financial issues to be decided, party practices Some Court Call Vendors may acknowledges filing all "necessary pleadings" charge/waive fee. Issues with Fee Waiver * Response, I&E; etc. Collections Not Allowed: . How does your court deal Contested Trials;
 Contempts, with fee waivers? For convenience, does your court OEXs,
Under Subpoena send copy to vendor? Does your vendor accept an e-mail from the Court as * As ordered by Court proof?







Opposing Telephonic Appearances Party Objecting Court * NO Exclusive Form (see * Remember: Flag to Court examples next two slides) Court Issues Decision on May Use Declaration MC-030 Objections at least 5 Court Days Before Hearing Must be Signed "Under Penalty Parties Noticed:TelephoneIn Person of Perjury" Filed at Least 8 Court Days Before Hearing ♦ Fax Served on All Parties by Next Express Mail Day EmailOther *Court Practices may vary · Certificate of Notice Example from Kern Court (order only) DENED. Pieue be advised that if you do not appear personally at the hearing, the court may make orders based upon the information presented at the hearing.

	SUPERIOR COURT OF THE STATE OF CALIFORNIA, CO	CNTY OF PLACER
	ATTORISTY OR PARTY WITHOUT ATTORNEY Offices, South De Number, and Address) TELEPHONE NO. FAX	FOR COURT USE ONLY
 Example from Placer 	10020 Junes Center Drive 2001 N. Lake Blod. P.O. Ber 54997 P.O. Ber 54997 P.O. Ber 5499 P.O. Ber 5	CASE NUMBER
Court (Request and	REQUEST FOR TELEPHONIC APPEARANCE (FAMILY LAW)	DE DEPT
Order all in one	I. I so the [] petitioner [] petitioner's council [] respondent [] respondent [] respondent [].	
	2. I request the court to allow me to appear from the following telephone number: (
document)	I request to appear telephonically for the following reason:	
,		
	4. Three filed this request at least five (5) court days point to the hearing and will serve within one (1) court day after filing the form.	
	I understand that the court, in its discretion, may decide to terminate the telephone a heaving that I am not evalible at the calendar call or delay due to disruption, noise, a technical problem, or other turne.	oppearance if it determines during the misconduct, a communication problem,
	6. I understand the court may decide at any time to require a personal appearance and	
	I assume the risks of cost, time, delay, repeated telephone calls, technical failure, as may arise out of this telephone appearance.	wrong number, and/or other somes that
	 I understand that except as provided in California Eules of Court, rule 1.150, court preceded, or broadcast. 	proceedings shall not be photographed,
	I have read the advicements of this form and Local Rules $50.14-50.17$, and I understand	
	I decline under the penalty of perjury under the laws of the State of California that the DATE	firegoing is true and correct.
	PRENTED NAME	SIGNATURE
	FOR COURT USE ONLY	
	By Judicial Officer: The request is GRANTED DENIED	
	Date:	Judicial Officer
	For Calment in Concepts, the beaver Calment of Calments, County of Faces Agent for No. April 10 (Section 10 County)	man of the

Minutes The clerk's minutes is the official record of the Court's proceedings, required by law, showing who was present at the hearing and what happened, as well as what findings and orders the court made. Meskell v. Culver City Unified School District (1970) 12 Cal.App.3d 815, 821) **Government Code §69844** The clerk of the superior court shall keep the minutes

and other records of the court, entering at length within the time specified by law, or forthwith if no time is specified, any order, judgment, and decree of the court which is required to be entered and showing the date when each entry is made. Failure so to enter the date or failure to enter the order, judgment, or decree within the time specified in this section shall not affect the validity or effectiveness of the entry.

Mandatory items needed on minutes: * Date of hearing * Family Law Code §4251 Advisement (if case * Judicial Officer heard by Commissioner) * Court Clerk * Findings made by judge * Court Reporter (if any) * Orders made by judge ♦ Bailiff (if any) * Future hearing dates (if ❖ Type of Hearing any) * Parties who are present * Exhibits (if any) * Note the clerk's minutes is not a detailed word-forword description of the court hearing, but rather an outline of the important components of the court hearing * Not all information needs to be in the body of the minutes – it may be in the heading **Guidelines for Minutes** Use complete sentences. Present tense or past tense (need to be consistent) * Better to say too much than too little * Chronological record of events Do not use abbreviations (i.e. OSC, FTA, BW, NRPS) Keep in mind your minutes may be read by Judicial Officers, counsel, the public, the Appellate Court, and possibly the Supreme Court ❖ Judicial Council Form FL-692, adopted for <u>alternative</u> mandatory use.

Family Code §4057

- ❖Deviations to Guideline
- May be downward (less than guideline) or upward (more than guideline)
- Must include Court's findings as to why deviation is in the best interest of the child(ren)

FAMILY CODE - 4057 (excerpts)

- (a) The amount of child support established by the formula provided in subdivision (a) of Section 4055 is presumed to be the correct amount of child support to be ordered.
- (b) The presumption of subdivision (a) is a rebuttable presumption affecting the burden of proof and may be rebutted by admissible evidence showing that application of the formula would be unjust or inappropriate in the particular case, consistent with the principles set forth in Section 4053, because one or more of the following factors is found to be applicable by a preponderance of the evidence, and the court states in writing or on the record the information required in subdivision (a) of Section 4056:
- (1) The parties have stipulated to a different amount of child support under subdivision (a) of Section 4065.

Family Code §4057(b)(3)

*(3) The parent being ordered to pay child support has an extraordinarily high income and the amount determined under the formula would exceed the needs of the children.

Marriage of Cryer, Jon & Sarah Court of Appeal, Second District, California Case No. B222906 ❖ Mom originally had custody; Dad paid \$10,000/month child support per stipulation ❖ Due to CPS case, Dad got full custody and requested reduction to zero ❖ Per child support calculator, guideline child support should be \$1,141 from Dad to Mom Marriage of Cryer, Jon & Sarah Court of Appeal, Second District, California Case No. B222906 ❖ Court deviated UPWARD per Family Code §4057 (b) and ordered Dad to pay Mom child support of \$8,000 due to the disparity in their incomes ❖ Dad ordered to pay \$40,000 for Mom's attorneys' fees (she had requested \$90,000) ❖ Court of Appeal upheld trial court's orders **Group discussion...**

Examples of minute orders from Odyssey

	400 Government Center Drive San Andreas. CA 95249	SUPERIOR COURT OF CALIFORNIA IN AND FOR THE COUNTY OF CALAVERAS	Phone: 209-754-9800 www.calaveras.courts.ca.gov
	County of Cala	veras	9:00 AM Review Hearing
			08/10/2017
Only the	Heard By: Sanders, David Location: Courtroom 4	M. Courtroom Clerk: K. Whitn Bailiff: J. Jorgen	
Child	Parties Present:	Future Hearings:	
Support	Central Sierra Child Support Agency	Attorney	
Agency			
Attorney is			
	Matter is regularly called at 9:00	a.m.	
present	Commissioner gives Family Cod	e Section 4251 advisement. There are no objections.	
•		t on behalf of Central Sierra Child Support Agency.	
	Ms. Miller states Agency s moti appear at time noticed.	on show the hearing at 10:00 a.m. Matter is trailed to	10:00 a.m. to allow parties to
	Matter is recalled at 10:25 a.m.		
	Ms. Miller reviews motion and p		
	various declaration s as submitt that custody did not change for	al equitable adjustment with regard to when Joseph re ing the matter on the pleadings. Court finds burden of a full month and therefore denies any equitable adjust d in a visitation percentage in determining guideline su	proof was not met to establish ment; Court states the three
	Court orders child of \$296 for the 5/1/17.	ne period of 2/1/17 through 4/30/17; and child support	\$675 per month effective

The Child
Support
Agency
Attorney and
both Defendant
and Other
Parent are
present

Other present

Example of minute order form FL-692

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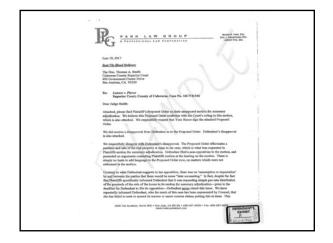
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The Notice of Rights and Responsibilities (Health-Care Costs and Reimbursement Procedures) and Information Sheet on Changing a Child Support Order (from Pt192) are attached and incorporated. The Notice of Rights and Responsibilities (Responsibilities) as a party to this action (name).	C I would be a construction of the constructio
The Notice of Rights and Responsibilities (Health-Care Costs and Reimbursement Procedures) and Information Sheet on Changing a Child Signord Order (from Pt102) are attached and incorporated.	
Changing a Child Support Order (form FL-192) are attached and incorporated. 33. The following person (the "other parent/party") is added as a party to this action (name):	
23. The following person (the "other parent/party") is added as a party to this action (name):	

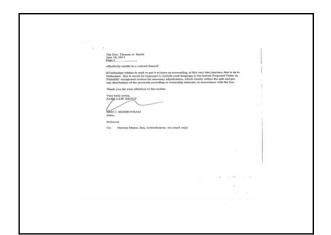
Questions & Comments

Oaths Witness Do you solemnly state under penalty of perjury, that the evidence that you shall give in this issue or matter shall be the truth, the whole truth, and nothing but the truth? Please be seated, state your full name, and spell your last name for the record. [CCP §2094(2)] **Hearing Impaired Interpreter** Do you solemnly state under penalty of perjury, that you will and truly interpret the spoken language into the sign language, and the sign language into the spoken language, in the case now pending before this court?

Order of Examination (OEX) Do you solemnly state that you will truthfully answer such questions as may be asked of you by the Judgment Creditor concerning your employment, wages, assets or your financial ability to pay this debt?	
Interpreter Do you solemnly state that you will interpret the language into the English language, and the English language into the language, to the best of your skill and judgment?	
EXHIBITS	

 Before a document is presented to a witness or referred to, it should be "marked for identification". The clerk will place a tag or label to the exhibit according to their court's procedure. Do not place exhibit tags on any printed portion of documents or front of pictures. Exhibits that are marked for identification only cannot be considered by a Judicial Officer as evidence. Only exhibits that have been admitted (received) into evidence may be considered by a Judicial Officer. Plaintiff/Petitioner's exhibits generally marked with 	
Numbers.	-
 Defendant/Respondent's exhibits generally marked with Letters. 	-
The minutes must include that the exhibit was marked, if it was received into evidence, the number/letter assigned to it, and a brief description.	-
 Once the exhibit is introduced, marked for identification only, or received/admitted into evidence, it becomes the sole responsibility of the clerk. (PC §1417) 	
 If the exhibit is returned to the submitting party during the hearing, so indicate on the minutes. 	
The clerk must not release any exhibit except on order of the court. The clerk must require a signed receipt for a released exhibit [CRC 2.400(c)(1)].	
Example of Exhibit	-
❖ Letter submitted by Defendant's Counsel	
 Marked as Defendant's Exhibit A – with date of hearing and case number on Exhibit Tab. 	
 Enter in Minutes as "two-page letter from Paar Law Group dated June 19, 2017, which is marked as Defendant's Exhibit A". If the exhibit is accepted 	
and entered into evidence later in the hearing, make sure to note in the minutes.	





TIMECARDS

Any emp	oloyee wh	nose tir	ne is charg	e to	a grant progi	am of
Judicial	Council	shall	complete	the	mandatory	grant
timeshee	et.					

Per Federal regulations, all hours worked must be accounted for, regardless if reimbursable by grant or not.

*

The timesheet must include "I hereby certify under penalty of perjury that the information provided here accurately represents official records and any leave time charged or authorized to any grant included does not exceed leave time earned while working on the grant." This certification may not be removed or modified.

- When any IV-D matters are heard by a Judge (not a Commissioner), that time may not be counted as AB1058 time on the timesheets for the court, judge, or clerk.
- Clerks need to track their time and complete the timesheet accordingly.
 - Example in Section D of clerk's training manual.

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04/12/17	4.00		_			_		4.00	8.00		8.00
04/13/17	6.00			_	_	_		2.00	8.00		8.00
11/14/10	2.00							6.00	8.00		8.01
04/15/17	8.00								8.00		8.01
04/14/17	3.00							5.00	8.00	200	8.0
04/14/17	5.00							3.00	9.00	2.00	9.0
04.42.9517	4.00				-	_		5.00	3.00		9.0
14/22/17	5.00		_		_	_	_	2.25	8.25	-	8.2
14423417	4.00					_		175	5.75		5.7
1114574	4.00							4.25	8.25		8.2
HAZTPIT	6.00							2.00	8.00		8.0
14.7211/17	4.00							4.00	8.00		8.01
1144574	6.00							1,75	1.75		7.7
1110(1)	6.00					_		2.00	8.00		8.0
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Heur	108.50							73.00	181.50	18.50	200.0