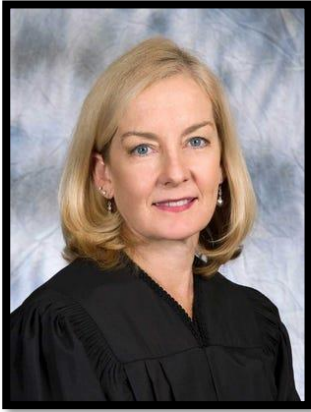




FAMILY LAW BAR ASSOCIATION – MARCH 15, 2023

## Honorable JoAnn Johnson



Former Governor Edmund G. Brown, Jr., appointed Ventura County Superior Court commissioner to a judgeship on November 2, 2017. She filled the vacancy created by the retirement of Judge Donald Coleman.

Judge Johnson had been a Commissioner with the Ventura Superior Court since January 2010, hearing family law, child support and domestic violence matters. Previously, she was a Supervising Court Attorney with the Ventura Superior Court Family Law Self-Help Center from 2002 to 2010. Prior to that, she was the sole

practitioner in the Law Offices of JoAnn Johnson from 1993 to 2002. Her primary areas of practice included civil law, as well as bankruptcy and worker's compensation.

Judge Johnson is a former director for the Family Law Bar Association and the Family Law Facilitator's Association. She has served on several statewide committees associated with the California Judicial Council, including the Domestic Violence Task Force. She is a frequent presenter at various Judicial Council sponsored trainings for facilitators and AB 1058 commissioners. She had been an adjunct professor for summer family law courses at the Ventura and Santa Barbara Colleges of Law and taught community property through 2019. Judge Johnson earned her Juris Doctorate degree from Ventura College of Law and a certificate in mediation from the Straus Institute at Pepperdine University. She earned her bachelor's degree from CSU Northridge.

# FLBA March 15, 2023 Handout

## RULES FOR 217 HEARINGS AND TRIALS

### **C.R.C. Rule 5.111. Declarations supporting and responding to a request for court order**

Along with a *Request for Order* (form FL-300) or a *Responsive Declaration* (form FL-320), a party must file a supporting declaration with the court clerk and serve it on the other party. The declarations must comply with the following requirements:

**(a) Length of declarations** A declaration included with a request for court order or a responsive declaration must not exceed 10 pages in length. A reply declaration must not exceed 5 pages in length, unless:

- (1) The declaration is of an expert witness; or
- (2) The court grants permission to extend the length of a declaration.

**(b) Form, format, and content of declarations**

- (1) The form and format of each declaration submitted in a case filed under the Family Code must comply with the requirements set out in California Rules of Court, rule 2.100 et seq.
- (2) A declaration must be based on personal knowledge and explain how the person has acquired that knowledge. The statements in the declaration must be admissible in evidence.

**(c) Objections to declarations**

- (1) If a party thinks that a declaration does not meet the requirements of (b)(2) the party must file their objections in writing at least 2 court days before the time of the hearing, or any objection will be considered waived, and the declaration may be considered as evidence. Upon a finding of good cause, objections may be made in writing or orally at the time of the hearing.
- (2) If the court does not specifically rule on the objection raised by a party, the objection is presumed overruled. If an appeal is filed, any presumed overrulings can be challenged.

**NOTE: Declarations are not automatically received into evidence at a live hearing.**

In light of the requirement of live testimony for motions in family law matters, declarations under Cal R of Court 5.111, 5.92(g)(1), supporting a request for an order terminating spousal support were not automatically in evidence. *In re Marriage of Shimkus* (2016) 244 Cal App 4th 1262,

Two other cases of note: *Marriage of Binette* (2018) 24 Cal.App.5th 1119, 1127 and *Marriage of Swain* (2018) 21 Cal.App.5th 830, 836.

### **§ 217. Finding of good cause to refuse to receive live testimony; Adoption of statewide rule of court regarding factors a court shall consider**

**(a)** At a hearing on any order to show cause or notice of motion brought pursuant to this code, absent a stipulation of the parties or a finding of good cause pursuant to subdivision (b), the court shall receive any live, competent testimony that is relevant and within the scope of the hearing and the court may ask questions of the parties.

**(b)** In appropriate cases, a court may make a finding of good cause to refuse to receive live testimony and shall state its reasons for the finding on the record or in writing. The Judicial Council shall, by January 1, 2012, adopt a statewide rule of court regarding the factors a court shall consider in making a finding of good cause.

**(c)** A party seeking to present live testimony from witnesses other than the parties shall, prior to the hearing, file and serve a witness list with a brief description of the anticipated testimony. If the witness list is not served prior to the hearing, the court may, on request, grant a brief continuance and may make appropriate temporary orders pending the continued hearing.

**Cal Rules of Court, Rule 5.113(b); Factors the court must consider if denying a request for live hearing**

**(b)** In addition to the rules of evidence, a court must consider the following factors in making a finding of good cause to refuse to receive live testimony under Family Code section 217:

**(1)** Whether a substantive matter is at issue--such as child custody, visitation (parenting time), parentage, child support, spousal support, requests for restraining orders, or the characterization, division, or temporary use and control of the property or debt of the parties;

**(2)** Whether material facts are in controversy;

**(3)** Whether live testimony is necessary for the court to assess the credibility of the parties or other witnesses;

**(4)** The right of the parties to question anyone submitting reports or other information to the court;

**(5)** Whether a party offering testimony from a non-party has complied with Family Code section 217(c); and

**(6)** Any other factor that is just and equitable.

**BEFORE THE 217 HEARING OR TRIAL:**

**C.R.C. Rule 5.98. Meet-and-confer requirements; document exchange**

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**(a) Meet and confer Request for Order** All parties and all attorneys are required to meet and confer in person, by telephone, or as ordered by the court, before the date of the hearing relating to a *Request for Order* (FL-300). During this time, parties must discuss and make a good faith attempt to settle all issues, even if a complete settlement is not possible and only conditional agreements are made. The requirement to meet and confer does not apply to cases involving domestic violence.

**(b) Document exchange** Before or while conferring, parties must exchange all documentary evidence that is to be relied on for proof of any material fact at the hearing. At the hearing, the court may decline to consider documents that were not given to the other party before the hearing as required under this rule. The requirement to exchange documents does not relate to documents that are submitted primarily for rebuttal or impeachment purposes.

**Rule 5.394. Trial or hearing brief**

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**(a)** For cases in which the judge orders each party to complete a trial or hearing brief or other pleading, the contents of the brief must include at least:

**(1)** The statistical facts and any disputes about the statistical facts. Statistical facts that may apply to the case could include:

**(A)** Date of the marriage or domestic partnership;

**(B)** Date of separation;

**(C)** Length of marriage or domestic partnership in years and months; and

**(D)** Names and ages of the parties' minor children;

**(2)** A brief summary of the case;

**(3)** A statement of any issues that need to be resolved at trial;

**(4)** A brief statement summarizing the contents of any appraisal or expert report to be offered at trial;

(5) A list of the witnesses to be called at trial and a brief description of the anticipated testimony of each witness, as well as name, business address, and statement of qualifications of any expert witness;

(6) Any legal arguments on which a party intends to rely; and

(7) Any other matters determined by the judge to be necessary and provided to the parties in writing.

**(b) Service of brief** The parties must serve the trial or hearing brief on all parties and file the brief with the court a minimum of 5 court days before the trial or long-cause hearing.

**NOTE:** There is a separate witness list requirement in FC 217 and for expert designation if requested per CCP 2034.210.

Please refer to Ventura Superior Court Local Rule 9.19(C) for additional information.

Please refer to Ventura Superior Court Local Rule 9.15 – 9.18 for information required if child or spousal support is requested.

### **REMOTE APPEARANCES AT HEARING OR TRIAL:**

Evidentiary Hearings and Trials are IN-PERSON, however each judicial officer has the discretion to allow / disallow remote appearances. In the event a request for a remote appearance must be made, i.e. witness out of state, limited ability to travel to court, etc., the following procedure must be followed. (See generally, CRC Rule 3.672)

#### **(h) Remote proceedings for an evidentiary hearing or trial**

##### **(C) Hearings or trials with at least 15 court days' notice:**

**(i) Time of notice** A party choosing to appear remotely at an evidentiary hearing or trial for which a party gives or receives notice of the proceeding at least 15 court days before the hearing or trial date must provide notice of the party's intent to appear remotely at least 10 court days before the hearing or trial.

**(ii) Notice of Remote Appearance** Notice to the court must be given by filing a *Notice of Remote Appearance* (form RA-010). Notice to the other parties may be in writing, electronically, or orally in a way reasonably calculated to ensure notice is received at least 10 court days before the proceeding. A party may use *Notice of Remote Appearance* (form RA-010) to provide proof to the court that notice to other parties was given.

**(D) Hearings or trials held on less than 15 court days' notice** A party choosing to appear remotely in an evidentiary hearing or trial for which a party gives or receives notice of the proceeding less than 15 court days before the hearing or trial date, including hearings on restraining orders or protective orders, must provide notice of the party's intent to appear remotely in one of the following ways:

**(i)** As provided in (g)(2)(B); or

**(ii)** By filing a *Notice of Remote Appearance* (form RA-010) and providing notice to the other parties in writing, electronically, or orally in a way reasonably calculated to ensure notice is received at least five court days before the proceeding.

**(3) Opposition to remote proceedings**

**(A) Filing and serving Opposition to Remote Proceedings at Evidentiary Hearing or Trial**

In response to notice of a remote proceeding for an evidentiary hearing or trial, whether set by local rule or otherwise noticed under (h)(1) or (2), or to obtain a court order for in-person appearance, a party may make a showing to the court as to why a remote appearance or remote testimony should not be allowed, by serving and filing an *Opposition to Remote Proceedings at Evidentiary Hearing or Trial* (form RA-015) by:

**(i)** At least five court days before the proceeding if for an evidentiary hearing or trial for which a party gives or receives at least 15 court days' notice; or

**(ii)** At least noon the court day before the proceeding if for an evidentiary hearing or trial for which a party gives or receives less than 15 court days' notice.

**(iii)** If required by local rule, a party must ensure a copy of any opposition is received in the department in which the proceeding is to be held.

**(B) Court determination on opposition:** In determining whether to conduct an evidentiary hearing or trial in whole or in part through the use of remote technology over opposition, the court must consider the factors in section 367.75 (b) and (f), and any limited access to technology or transportation asserted by a party. The court may not require a party to appear through remote technology.

To give notice of a remote appearance for a non-evidentiary hearing or trial please see CRC Rule 3.672(g) AND please use the email address below:

[familylawzoomappearances@ventura.courts.ca.gov](mailto:familylawzoomappearances@ventura.courts.ca.gov)

For emergency notice. i.e. illness or other unexpected event preventing you or a party from appearing in person, please use the email address. Do not call the judicial secretary unless you cannot access the email.