

**SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA**

CRIMINAL RULES

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**SUPERIOR COURT FOR THE STATE OF CALIFORNIA
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CRIMINAL RULES

RULE 1 GENERAL

A. SUPERVISING JUDGE – CRIMINAL

The Criminal Division of the Superior Court shall be supervised by a judge appointed by the Presiding Judge and designated as the Supervising Judge – Criminal.

B. CALENDAR CALL – HALL OF JUSTICE COURTHOUSE

The Supervising Judge – Criminal or designee shall call the Felony Master Trial Calendar, Felony Arraignment Calendar, Felony After-Arraignment Calendar and any other calendar he/she designates. These calendars shall be called in Department 24 at the Hall of Justice located at 190 West Hedding Street, San José, California.

C. MASTER TRIAL CALENDAR MOTIONS

Motions to restore, motions to advance, uncontested motions to consolidate and other motions pertaining to the Felony Master Trial Calendar shall be set and heard in the department of the Supervising Judge – Criminal.

D. MOTIONS TO CONSOLIDATE

Contested motions to consolidate shall be heard in the appropriate Law and Motion Department.

E. CALENDAR SCHEDULE

(1) HALL OF JUSTICE COURTHOUSE

The Felony Master Trial Calendar shall be called at 8:30 a.m. on Monday. The Felony Arraignment Calendar shall be called on Monday at 1:30 p.m. If Monday is a holiday, these 2 calendars shall be called on Tuesday at the above times. The Felony After-Arraignment Calendar shall be called at 1:30 p.m. on Wednesday. The deadline to place matters on the Felony After-Arraignment Calendar is noon on the Thursday immediately before the calendar is called, except for motions pursuant to Penal Code § 1050 which are governed by Rule 2.

(2) OTHER COURTHOUSES

Specific calendars for other courthouses will be as specified in the “Santa Clara County Superior Court Protocol” on file in the Clerk’s Office of each courthouse and available in each courtroom in these facilities.

(Eff. 1/01/06)

**RULE 1 – con’t SUPERIOR COURT FOR THE STATE OF CALIFORNIA
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(3) DRUG COURT CALENDARS

- a.** The presiding judge shall assign to the Criminal Division of the Superior Court a sufficient number of judges to serve at a designated courthouse to process all felony drug cases. Judges at this facility shall conduct all felony arraignments, pre-trial proceedings, settlement conferences, pleas and

sentencing proceedings as well as the assignment of dates for preliminary examinations.

(Eff. 1/01/06)

- b.** The establishment of the drug court calendars is based upon the following statements:

(1) The Court receives a substantial number of narcotic cases each year that are recognized as a distinct subject within the Criminal Division.

(2) The establishment of the drug court calendars recognizes the need to incorporate substance abuse treatment programs where appropriate with criminal case processing in a timely and efficient manner.

(Eff. 7/26/00)

(3) The drug treatment court as approved in September of 1995 by the judges of the former Municipal and Superior Courts of Santa Clara County is recognized as a component of the drug court calendars.

- c.** Schedules for the drug court calendars will be specified in the Santa Clara County Superior Court Protocol on file in the Clerk’s Office.

- d.** Criteria for the assignment of cases to the drug court calendars, including the drug treatment court, shall be specified in the Santa Clara County Superior Court Protocol on file in the Clerk’s Office.

(Eff. 7/26/00)

(4) DOMESTIC VIOLENCE CALENDARS

The presiding judge shall assign to the Criminal Division of the Superior Court a sufficient number of judges to preside over felony and misdemeanor domestic violence cases in the Domestic Violence Court. The Domestic Violence Court will hear felony and misdemeanor domestic violence cases from arraignment through disposition and sentencing, and will hold hearings to monitor treatment progress and probation compliance.

(Eff. 1/1/08)

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F. READINESS CONFERENCE

In order to foster the most efficient use of judicial resources, a Readiness Conference for felony cases on the Master Trial Calendar shall be conducted at 9:00 a.m. on the judicial day immediately proceeding the day the Master Trial Calendar is called. The Readiness Conference shall be held in the chambers of the Supervising Judge – Criminal. A representative of the District Attorney’s Office, Public Defender’s Office, Alternative Defender’s Office, and Legal Aid is required to be present. Counsel is required to notify the Court of their trial readiness status at the Readiness Conference. This notification shall be made as follows:

(Eff. 7/26/00)

- (1) Representative of the various law offices mentioned above shall notify the Supervising Judge of the status of those attorneys in their office. Trial Counsel is therefore expected to communicate their status to those representatives in advance of the Conference.
- (2) All counsels shall notify the Criminal Calendar Secretary of their trial readiness status no later than 3:30 p.m. on the day before the Readiness Conference.

(Eff. 7/26/00)

G. MISDEMEANORS – TRIALS AND PRETRIALS

- (1) All cases, whether in-custody or out-of-custody, shall be set for a mandatory pretrial conference before being set on a jury trial calendar.
- (2) The presence of counsel on all sides shall be mandatory at the pretrial conference.
- (3) All discovery and all pretrial motions shall be completed before the matter is set for trial.

(Eff. 7/01/02)

H. COURTHOUSES

Adult criminal matters are filed and heard in the courthouses indicated below. Any case may be assigned to another courthouse for discussion, hearing and/or trial at the discretion of the Supervising and/or Presiding Judge.

(Eff. 1/01/06)

(1) HALL OF JUSTICE COURTHOUSE

All misdemeanor, felony, and Municipal Code matters arising within Campbell, Los Gatos, Milpitas, Monte Sereno, San José, Santa Clara, and Saratoga and adjacent unincorporated areas are filed and heard in this courthouse, except drug offenses that are heard in the Terraine Courthouse.

(Eff. 1/01/06)

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(2) TERRAINE COURTHOUSE

No criminal matters are filed in this Courthouse. All felony and misdemeanor drug offenses that would otherwise be heard in the Hall of Justice are heard in this Courthouse, except misdemeanor arraignments, preliminary hearings and trials.

(Eff. 1/1/06)

(3) SOUTH COUNTY COURTHOUSE

All misdemeanor, felony, and Municipal Code matters and traffic infractions arising in Gilroy, Morgan Hill, and San Martin and adjacent unincorporated areas are filed and heard in this courthouse.

(Eff. 1/01/06)

(4) SUNNYVALE COURTHOUSE

No matters are filed in this courthouse. Felony matters arising within Cupertino and Sunnyvale and adjacent unincorporated areas are heard in this courthouse.

(Eff. 1/01/06)

(5) PALO ALTO COURTHOUSE

All misdemeanor, felony, and Municipal Code matters and traffic infractions arising within Cupertino, Los Altos, Los Altos Hills, Mountain View, Sunnyvale and Palo Alto and adjacent unincorporated areas are filed in this courthouse. All such matters are heard in this courthouse except felony matters arising within Cupertino and Sunnyvale and adjacent unincorporated areas, which are heard at the Sunnyvale Courthouse.

(Eff. 1/01/06)

(6) SANTA CLARA COURTHOUSE

All traffic infractions arising within Campbell, Los Gatos, Milpitas, Monte Sereno, San José, Santa Clara, and Saratoga are heard in this courthouse.

(Eff. 1/01/09)

RULE 2 CONTINUANCES

All requests to continue the trial of matters on the Master Trial Calendar shall only be heard by the Supervising Judge – Criminal on the After-Arraignment Calendar. Unless good cause is shown, requests to continue shall be heard on the After Arraignment Calendar before the matter’s appearance on the Master Calendar. Unless good cause is shown, the deadline for placing Penal Code § 1050 requests on the After Arraignment calendar is noon on the Monday immediately preceding the calling of that After Arraignment Calendar.

(Eff. 7/01/02)

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RULE 3 APPEARANCES

A. APPEARANCE OF COUNSEL

- (1) Counsel must appear at all hearings, unless other counsels appear for them or prior arrangements are made with the Court.
- (2) Counsel shall advise the Court of any conflicting appearance in the court of another county prior to requesting or agreeing to any hearing date. Furthermore, counsel shall not request or agree to any hearing date in another county that conflicts with a hearing date previously set by the Court.

(Eff. 7/26/00)

B. ATTORNEY OF RECORD

In compliance with California Penal Code § 987.1, all counsel who represented a defendant at the preliminary examination or at the time the defendant was otherwise held to answer shall appear and represent the defendant at the time of arraignment on the Information. Any request to be relieved as attorney of record should be made at this first appearance.

(Eff. 7/26/00)

C. APPEARANCE OF DEFENDANT

- (1) Consistent with California Penal Code § 977, the defendant must be present each time his/her matter is called in court, including when matters are submitted, unless a written waiver is on file. Absent a written waiver of appearance, failure of the defendant to appear will result in the issuance of a bench warrant. A written waiver of appearance shall not relieve a defendant from appearing at the Master Trial Calendar (MTC), Felony Advanced Resolution hearing (FAR), motions per Penal Code § 1050, or Narcotics Case Review (NCR).
- (2) In misdemeanor cases, defendants may appear in person or by counsel. However, a defendant must be present in court if specifically ordered by the Court or required by statute.

(Eff. 7/01/02)

D. REQUESTS FOR INTERPRETERS

Prosecution and defense requests for interpreters for trial, preliminary hearings, motions, or any other appearances, must be made in open court at the time these matters are set.

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RULE 4 DOCUMENTS PRESENTED FOR FILING

A. SECURING OF DOCUMENTS

All papers and documents presented for filing shall have 2 standard pre-punched holes approximately 2 ¾” on center apart centered approximately 5/8” from the top of the paper or document.

B. THICKNESS OF DOCUMENTS

All papers and documents presented for filing shall not exceed 1 ½” in thickness, unless approved by the Judge in whose Court the matter is to be heard.

RULE 5 LAW AND MOTION

A. DEPARTMENTS

Law and Motion matters shall be heard as follows:

(1) MISDEMEANOR CASES

All motions shall be heard in the pretrial department to which that misdemeanor case is assigned.

(2) FELONY DRUG/NARCOTIC CASES (NON-THREE STRIKE CASES)

All motions shall be heard by the Judge specifically assigned to hear such motions.

(3) DOMESTIC VIOLENCE CASES

All motions shall be heard in the pretrial department to which that domestic violence case is assigned.

(4) OTHER MOTIONS

Motions in all other cases shall be heard by the Judge assigned to the Criminal Law and Motion department in the designated courthouse.

(Eff. 1/01/06)

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B. FILING

Unless indicated otherwise, the following shall apply to ALL law and motion matters:

(1) COURT FILING

The party filing any motion paper must file the original in the Criminal Court Clerk's office in which the case is to be heard and on general jurisdiction matters provide a courtesy copy for the research attorney/law clerk of the Court assigned to hear the matter. A courtesy copy is not required on limited jurisdiction matters.

(Eff. 7/26/00)

(2) SERVICE OF COPIES

A copy of all moving and responding papers must be served upon opposing counsel, co-counsel and counsel for all co-defendants the same day that the originals are filed, unless previously served. Service upon the District Attorney and Public Defender can be accomplished by depositing the documents in those offices' mail boxes located in the Criminal Court Clerk's office at the Hall of Justice.

(3) LAST DAY TO FILE

The last day to file and hear motions shall be set or can be obtained at the time of arraignment in Superior Court, unless otherwise agreed to by the Court hearing the motion. (See also Criminal Rule 5(B) (4) below.)

(4) UNLESS OTHERWISE ORDERED BY THE COURT

a. All motions and applications, together with supporting papers, documents and Points and Authorities, must be filed with the Criminal Court clerk in the appropriate courthouse no later than 15 full calendar days prior to the date set for hearing. This requirement applies except where inconsistent with a state rule of court or statute. (See e.g. CCP § 1005 requiring 16 court days for a *Pitchess*/EC § 1043 motion.)

(Eff. 1/01/06)

b. Unless waived by the Court, or unless the party that would respond to the motion plans on conceding it, a written opposition, together with supporting papers, documents, and Points and Authorities must be filed.

c. All written responses, together with supporting papers, documents and Points and Authorities, must be filed with the Criminal Court clerk no later than 5 full Court days prior to the date set for hearing.

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- d.** Failure of the moving or responding party to comply herewith shall be sufficient grounds for the Court to refuse to consider the matters contained in such moving or responding papers, as the case may be.
- e.** Any motion to be filed containing a requested hearing date on or after the trial date must have the approval initials of the Law and Motion judge or his/her designee.

(5) CONTINUANCES AND RE-SETTING

- a.** Except in unusual or exigent circumstances, any party intending to request a continuance or not to proceed in any matter set for hearing shall promptly so inform opposing counsel, counsel for co-defendant(s) and co-counsel and THEN inform the Court assigned to hear the motion. This notification must be at least 2 court days preceding the hearing. It will be counsel's responsibility to place the case on the After-Arrestment Calendar if continuing the motion will require re-setting the trial date. Continuing the trial date will not be allowed in the Law and Motion department. (See 2, *supra*.)
- b.** The Court shall have complete discretion concerning continuances, including the authority to deny any continuance and to rule in the absence of counsel, or to order the matter off calendar, notwithstanding any stipulation of counsel.

(6) REQUESTS FOR ORDERS SHORTENING TIME

All requests for Orders Shortening Time shall be signed only by the Judge hearing the motion or his/her designee.

(7) NOTICE OF MOTION AND RESPONSE

- a.** Except for motions brought pursuant to California Penal Code § 995, if the motion is to be submitted in whole or in part on the transcript of the preliminary examination, or the transcript of any prior proceeding, the Notice of Motion and/or the Response must so state.
- b.** In any Motion brought pursuant to California Penal Code § 538.5(i) that is to be presented *de novo*, notice of this fact must also be set out on the first page of the moving and responding papers.

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- c. Failure to comply with any portion of this Criminal Rule 5(B) shall be sufficient cause for the Court to refuse to consider any transcript of a prior proceeding, allow the calling of additional witnesses or to allow a *de novo* hearing.

(8) MOTIONS TO SUPPRESS EVIDENCE

The notice of a motion brought pursuant to California Penal Code § 1538.5 shall describe and list the evidence which is the subject of the motion to suppress and shall be served with a Memorandum of Points and Authorities.

(Eff. 7/01/02)

(9) ORAL TESTIMONY

In all matters, oral testimony shall not be permitted unless the Court orders otherwise, except *de novo* hearings brought pursuant to California Penal Code § 1538.5. The Court shall have complete discretion as to the necessity for, nature and extent of oral argument. Notice of intent to call witnesses must be specifically set out on the first page of the moving and/or responding papers.

(10) EX PARTE MATTERS

Except as otherwise provided by law, for any application involving *ex parte* relief, reasonable advance notice must be given to opposing counsel, co-counsel and counsel for co-defendants. The presence of counsel or the applicant shall be required in any such matter.

(11) COMPLIANCE WITH RULES OF COURT

- a. All papers filed in Law and Motion matters, and all proceedings thereunder, shall be in accordance with the applicable statutes, California Rules of Court and these Criminal Court Rules.
- b. A mere citing of code sections which authorize the filing of a motion is not in compliance with the California Rules of Court or these Rules. Except as otherwise authorized by statute or Rule of Court, application for any relief, or any opposition to relief sought, shall be supported by a Memorandum of Points and Authorities.
- c. All case citations must include the official report volume, page number, and year of decision.
- d. In any matter where a party is relying on out-of-state or federal authority, a copy of the entire authority must be provided.

(Eff. 7/01/08)

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- e.** Unless prior authorization is obtained from the Law and Motion Judge, all Memoranda of Points and Authorities shall be no longer than 15 pages.

(12) MEMORANDUM OF POINTS AND AUTHORITIES

A Memorandum of Points and Authorities shall contain a concise statement of facts, a concise statement of the law, evidence and arguments relied upon, a discussion of the statutes, cases and textbooks cited in support of the position advanced. When a party intends to rely on a transcript, the page number of the transcript must be cited.

(13) MOTION TO JOIN

Any party seeking to join in any motion shall set out the relevant facts and law as it relates to that joining party in particular.

(14) ESTIMATE OF TIME

All moving, responding and joining papers must set out an accurate time estimate on the first page. If the time estimate is in excess of 2 hours or cannot be heard on a regular Law and Motion calendar, the motion may be reset on the Master Trial Calendar.

(15) SEARCH WARRANTS

When a defendant is seeking to quash or traverse a search warrant, a copy of the search warrant affidavit must be provided and attached to the moving papers.

(16) MOTIONS FOR REINSTATEMENT

When moving to reinstate a complaint, the prosecuting attorney must provide a copy of the preliminary examination transcript.

(17) POST-TRIAL MOTIONS

- a.** Post-trial motions, motions for new trial and other matters related to contested cases shall be set and heard in the department where the Judge who heard the matter is currently sitting. The time and date of the hearing shall be set only by the Judge of such department.
- b.** In the event that the original trial Judge is retired or no longer available, matters in Criminal Rule 5(B) (17) (a) will be assigned out for hearing by the Supervising Judge – Criminal.

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(18) SENTENCE MODIFICATION

Motions for modification of sentence shall be heard as set out in Criminal Rule 5 (B) (17) (a), *supra*. For all requests for modification of sentence, notice must be sent to the District Attorney's Office as well as the Adult Probation Department (in cases in which formal probation has been granted) before such request will be considered or calendared for hearing. Proof of such notice must be attached to the original request filed with the Court. Failure to do so will result in the request being treated as an improper *ex parte* communication with the Court and will be discarded.

RULE 6 WRITS

A. CRIMINAL COURT CLERK'S OFFICE FILING

Petitions for Writs of Habeas Corpus, Coram Nobis, etc., in criminal cases shall be filed in the Criminal Division at the Hall of Justice.

B. CIVIL COURT CLERK'S OFFICE FILING

Petitions for Writs of Mandate and/or Prohibition shall be filed in the Civil Division of the Downtown Superior Courthouse located at 191 North First Street, San José, California.

(Eff. 1/01/06)

RULE 7 SUBPOENAS DUCES TECUM

All subpoenas duces tecum in criminal cases must comply with Penal Code § 1326 and Evidence Code § 1560, and when applicable CCP § 1985.3, and shall be returnable to the court. In the event materials which are the subject of a subpoena are received by a party, an attorney, or an attorney's agent or investigator directly from the subpoenaed party, the person receiving such materials shall immediately lodge such materials with the clerk of the court. The materials shall not be opened, reviewed or copied by the recipient without a prior court order.

(Eff. 7/01/05)

**RULE 8 REQUEST FOR COPY/TRANSCRIPT OF ELECTRONIC SOUND
RECORDING FOR RECORD ON APPEAL, WRITS, OR OTHER
HEARINGS FOR MISDEMEANORS OR INFRACTIONS**

(1) The courthouse supervisor or his/her designee shall retain custody of the original sound recording, unless ordered to deliver it to the reviewing court. Tapes shall be under the control of the Court Services Manager.

(Eff. 1/01/08)

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- (2) The Court Services Manager or his/her designee shall make the original sound recording available to the parties and counsel for listening in courthouses during normal business hours within 72 hours of submission of a request to the Court Services Manager.

(Eff. 1/01/08)

- (3) At the time of filing of a Notice of Appeal, Notice of Petition for Writ or Notice of Motion, or within 10 days of the filing of such notice, counsel for the appellant, petitioner or moving party (or by the party if unrepresented by counsel), shall advise the Court if there is a request for a copy of the recording or its transcript. Such request shall be made in writing to the clerk at the courthouse in which the appeal/petition/notice is filed.

(Eff. 1/01/08)

- (4) Courthouse staff shall inform the requesting party of the current cost per recording and collect the fees at the time the request is submitted.

(Eff. 1/01/08)

- (5) Within 48 hours of receipt of the request, the clerk of the courthouse shall forward the request to the Court Services Manager or his/her designee.

(Eff. 1/01/08)

- (6) When a request is made for a copy of the recording of the proceedings, the following shall apply:

(Eff. 1/01/08)

- a. Within 10 days of receipt of the request, the Court Services Manager or his/her designee shall prepare and label one copy of the original sound recording for each requesting party. The copies shall be playable at 1 7/8” per second.

(Eff. 1/01/08)

- b. The Court Services Manager or his/her designee shall promptly contact the appropriate parties to arrange for them to pick up their copy of the recording.

(Eff. 1/01/08)

- c. In all cases involving appeals, the applicable California Rules of Court shall then apply regarding the settlement of a statement of proceedings.

- d. In cases involving appeals, counsel for the moving party shall serve opposing counsel or party, if unrepresented, with either a transcript or a copy of the recording requested within 10 days of receipt of the copy of the recording.

(Eff. 1/01/08)

- (7) If the request is for a transcript of the proceedings, the following shall apply:

- a. The Court Services Manager shall refer the requesting party to seek his/her own transcription services through the phone book or through the internet.

(Eff. 1/01/08)

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b. The requesting party shall notify the Court Services Manager within 5 calendar days of his/her choice of transcription services and pay the recording fee for each recording.

(Eff. 1/01/08)

c. The Court Services Manager shall promptly send a copy of the original tape to the transcriber with the name and address of the requesting party.

(Eff. 1/01/08)

d. The transcriber shall notify the requesting party in writing of the estimated costs for the transcript and all necessary copies (in the same manner as a court reporter would and with the same time constraints as in the appeal process).

e. In appeal proceedings, the California Rules of Court shall apply.

(Eff. 1/01/08)

RULE 9 TRIAL JURORS

A. Release of Juror Information shall be allowed only as provided in CCP § 237.

(Eff. 7/01/02)

RULE 10 COURT COMMUNICATION REGARDING RESTRAINING ORDERS

A. CRIMINAL COURT PROCEDURE

(1) When the Criminal Court issues Criminal Protective Orders protecting victims, the Criminal Court shall inquire of the defendant/restrained person whether there are any children of the relationship between the defendant/restrained person and the victim/protected person, and whether there are any court orders for custody/visitation for those children. If there are children, the Criminal Court shall consider whether peaceful contact with the victim/protected person should be allowed for the purpose of allowing defendant/restrained person to visit the children. The Court shall give the defendant/restrained person the Restrained Person Packet concerning his or her rights to request custody and/or visitation through the Family or Juvenile Court, along with directions to the Self-Service Center. The Criminal Court shall also inquire of the defendant/restrained person whether there are any existing protective/restraining orders involving the defendant/restrained person, the victim/protected person, and/or the children. Subject to available resources, the Court shall examine available databases for existing protective or restraining orders before issuing permanent Criminal Protective Orders.

(2) When the Criminal Court issues Criminal Protective Orders which list the defendant/restrained person’s minor children as protected persons, the Criminal Court shall fax a copy of its Order to the Supervising Judge of the Family Court, unless the Criminal Court is aware that a Juvenile or

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Probate Court proceeding concerning the family is pending, in which case a copy of the order shall be faxed to the applicable Juvenile or Probate Court.

B. MODIFICATION OF CRIMINAL PROTECTIVE ORDERS

- (1) Any Court responsible for issuing custody or visitation orders involving minor children of a defendant/restrained person subject to a Criminal Protective Order may modify the Criminal Protective Order if all of the following circumstances are satisfied:

(Eff. 1/01/06)

a. Both the defendant/restrained person and the victim/protected person are subject to the jurisdiction of the Family, Juvenile, or Probate Court, and both parties are present before the Court.

b. The defendant/restrained person is on probation (formal or court) for a domestic violence offense in Santa Clara County or is currently charged with a domestic violence related offense in Santa Clara County and a Criminal Protective Order has issued.

(Eff. 1/01/06)

c. The Family, Juvenile, or Probate Court identifies a Criminal Protective Order issued against the defendant, which is inconsistent with a proposed Family, Juvenile, or Probate Court Order, such that the Family, Juvenile, or Probate Order is/will be more restrictive than the Criminal Protective Order or there is a proposed custody or visitation order which requires recognition in the Criminal Protective Order (Boxes 12 or 13 or both on the Criminal Protective Order form).

(Eff. 1/01/07)

d. The defendant signs an appropriate waiver of rights form or enters a waiver of rights on the record.

e. Both the victim/protected person and the defendant/restrained person agree that the Criminal Protective Order may be modified to a more restrictive order or to add Box 12 or 13 or both to the Criminal Protective Order.

(Eff. 1/01/07)

- (2) The Family, Juvenile, or Probate Court may not modify existing Criminal Protective Orders to be less restrictive. Only if children are not listed as protected persons, a modification of the Criminal Protective Order to check Box 12 or 13 or both shall not be considered less restrictive.

(Eff. 1/01/07)

- (3) The Family, Juvenile, or Probate Court may on its own motion or at the request of a defendant, protected person or other interested party, calendar a hearing before the Criminal Court on the issue of whether a Criminal Protective Order should be modified. The Family, Juvenile, or Probate Court shall provide the Criminal Court with copies of existing or proposed

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Orders relating to the matter. Notice of the hearing will be provided to all counsel and parties.

(Eff. 1/01/07)

RULE 11 TRAFFIC DIVISION – TRIAL BY DECLARATION

The Court adopts the trial by declaration process defined in Vehicle Code § 40902. Additionally, pursuant to Vehicle Code § 40903, any person who fails to appear as provided by law may be deemed to have elected to have a trial by written declaration upon any alleged infraction, as charged by the citing officer, involving a violation of the Vehicle Code or any local ordinance adopted pursuant to the code. In eligible cases the Court will conduct the trial in absentia and it will be adjudicated on the basis of the notice to appear issued pursuant to Vehicle Code § 40500 and any business record or receipt, sworn declaration of the arresting officer, or written statement or letter signed by the defendant that is in the file at the time the trial by declaration is conducted.

If there is a guilty finding, the conviction shall be reported to the DMV and the defendant notified of the disposition of the case, the amount of imposed fines and fees, and the defendant’s right to request a trial de novo within a specified period of time. If there is no timely request for a trial de novo and the fines and fees are not paid by the due date, the case will proceed to civil assessment pursuant to Penal Code § 1214.1. Additionally, the DMV will be notified of the failure to pay pursuant to Vehicle Code § 40509.5(b), which can result in a suspension of the defendant’s driver’s license pursuant to Vehicle Code § 13365(a) (2) until all obligations to the Court are satisfied.

(Eff. 1/01/08)