

FRESNO COUNTY SUPERIOR COURT

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(January 1, 2009 Revision)

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**LOCAL RULES FOR THE
SUPERIOR COURT OF CALIFORNIA
COUNTY OF FRESNO**



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FRESNO COUNTY SUPERIOR COURT

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FRESNO COUNTY SUPERIOR COURT

CHAPTER 1. ADMINISTRATIVE RULES

RULE 1.1 GENERAL

1.1.1 Citation of Rule

These rules shall be known and cited as the "The Superior Court of Fresno County, Local Rules." (Effective January 1, 2008, Rule 1.1.1 renumbered effective January 1, 2006; adopted as Rule 1.1 effective July 1, 1999)

1.1.2 Effective Date of Rules

Repealed. (Effective January 1, 2009, Rule 1.1.2 renumbered effective January 1, 2006; adopted as Rule 1.2 effective January 1, 1997)

1.1.3 Construction, Scope and Effect of Rules

A. These rules shall be construed to secure the efficient administration of the business of the court and to promote and facilitate the administration of justice by the court.

B. These rules shall govern all proceedings in the court.

C. These rules are supplementary and subject to, and at all times shall be construed and applied so as to be compatible with California statutes, the California Rules of Court and other rules adopted by the Judicial Council of California. When a specific California Rule of Court or code section designated in these rules is amended or renumbered, the successor Rule of Court or code section shall be applicable. (Rule 1.1.3 renumbered effective January 1, 2006; adopted as Rule 1.3 effective January 1, 1999)

1.1.4 Definitions

The definitions set forth in the California Rules of Court, or any other rules adopted by the Judicial Council, shall apply with equal force and for all purposes to these rules, unless the context or subject matter herein otherwise requires.

Alternative Dispute Resolution: "Alternative Dispute Resolution" or "ADR" means a process, other than formal litigation, in which a neutral person or persons resolve a dispute or assist parties in resolving their dispute. Examples include mediation, arbitration, neutral evaluation, and mini-trial.

Clerk: The word "Clerk" means the Clerk of the court and any deputy clerks.

Complex Litigation: The words "complex litigation" mean cases that meet the definition of "complex case" found in Rule 3.400 of the California Rules of Court.

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Court: The word "court" means the Superior Court of California, County of Fresno, and includes and applies to any duly appointed or elected judge, to any duly appointed commissioner or referee, to any judge or retired judge who has been assigned by the Chairperson of the Judicial Council to serve, and is serving, as a judge of the court, and to any attorney who is a member of the State Bar of California designated by the Presiding Judge or any other judge as a temporary judge, while the attorney is serving as a judge.

Court's Website: The court's website is <http://www.fresnosuperiorcourt.org>.

Day or Days: The word "day" or "days," unless otherwise specified, shall mean calendar day or days.

Department: The word "department" means either a numbered courtroom or an administrative unit of a division.

Division: The word "division" means any of the following divisions which comprise the court: Archives Division, Central Division, Clovis Division, Coalinga Division, Firebaugh Division, Fowler Division, Juvenile Division, Kerman Division, Kingsburg Division, Reedley Division, Sanger Division, and Selma Division.

General Civil Case: The words "general civil case" mean a limited or unlimited civil case, except probate, guardianship, conservatorship, family law, juvenile proceeding, other civil petition, complex litigation, unlawful detainer, and small claims cases.

Judgment: The word "Judgment" includes and applies to any judgment and to any other order or decree from which an appeal lies.

Judicial Council Rules: The words "Judicial Council Rules" mean any rules heretofore or hereafter adopted by the Judicial Council of the State of California for superior courts.

Judicial Officer: The words "judicial officer" mean any duly appointed or elected judge of the court, any duly appointed commissioner or referee, any judge or retired judge assigned by the Chairperson of the Judicial Council to serve as a judge of the court, and any attorney designated to serve as a temporary judge, while so serving.

Limited Civil Cases: The words "limited civil cases," mean limited civil cases as defined in Code of Civil Procedure § 86.

Meet and Confer: The words "meet and confer" mean a telephone conference between opposing parties or, whenever reasonably possible, a face-to-face meeting. A meet and confer obligation is not satisfied by an exchange of letters.

Paper: The word "paper" includes all pleadings, notices and other documents.

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D. Any check or money order which appears irregular on its face may be refused. Personal checks from persons known to have previously tendered dishonored checks may be refused. Checks returned to the court are subject to applicable fees established by the Fresno County Board of Supervisors.

E. Coinage of more than \$50.00 shall be counted and rolled. (Rule 1.1.11 renumbered effective January 1, 2006; adopted as Rule 1.11 effective July 1, 2001)

1.1.12 Custody of Court Files and Signed Orders

A. No papers, exhibits, or evidence on file with the Clerk in any civil or criminal case shall be taken from the Clerk's office, except by order of the court or in response to a subpoena duces tecum.

B. Orders signed by a judge must be filed immediately in the Clerk's office. An unfiled signed order shall not be taken from the courthouse. (Rule 1.1.12 renumbered effective January 1, 2006; adopted as Rule 1.12 effective January 1, 1997)

1.1.13 Attorney's Duty to Comply with Calendar

An attorney shall not accept representation of a client if the attorney does not have sufficient time to adequately prepare before the next scheduled court appearance, and shall comply with all applicable case disposition standards unless otherwise ordered by the court. (Rule 1.1.13 renumbered effective January 1, 2006; adopted as Rule 1.13 effective January 1, 1997)

1.1.14 Filing and Acceptance of Papers

All papers are to be submitted for filing during normal business hours. For purposes of this section, normal business hours shall be 8:00 a.m. through 4:00 p.m., Monday through Friday, excluding court holidays. Acceptance of papers for filing with the court shall be deemed to occur:

1. On the date the papers were submitted to the clerk for filing if the submission occurred during normal business hours of the clerk's office; and,
2. On the next business day the clerk's office is open for business if the submission occurred after normal business hours of the clerk's office.

To be deemed submitted during the normal business hours of the clerk's office the person submitting the papers for filing must have gained entry to the clerk's office during normal business hours. In the event that the submission or entry to the clerk's office occurred after normal business hours the filing will occur on the next business day. Nothing in this section shall limit the clerk's ability to reject filings.

Any exceptions to these rules can be effected by posting of a policy allowing filing through a drop-box. (Effective January 1, 2009, New)

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(Rule 1.1 renumbered effective January 1, 2006; adopted as Rule 1 effective July 1, 1992)

RULE 1.2 COURT ORGANIZATION

1.2.1 Election, Term and Duties of Presiding Judge

A. Election and Term

The Presiding Judge shall be elected and may be removed by a majority of all judges by secret ballot. The election of the Presiding Judge shall take place at a regular meeting held in the fall of each year in which the term of the prior Presiding Judge expires. Nominations for the position of Presiding Judge shall be made in writing and delivered to the secretary of the Executive Committee no earlier than twenty-one (21) days prior to the meeting and no later than seven (7) days prior to the regular meeting in which the election is to be held. Any Fresno County Superior Court Judge may be nominated by another judge or may nominate himself or herself for the position of Presiding Judge.

The Presiding Judge shall be elected to serve a two-year term commencing the following January 1. The Presiding Judge may be reelected.

B. Powers and Duties

The Presiding Judge shall have those powers and duties conferred on the Presiding Judge as provided by statute, California Rules of Court and rules as adopted by the Fresno County Superior Court.

The Presiding Judge's duties shall include, but are not necessarily limited to, the following:

Selecting the court's Assistant Presiding Judge.

Presiding over regular and special court's meetings.

Presiding over Executive Committee meetings.

Setting and implementing policies and procedures.

Planning for the court's future needs.

Supervising the Executive Officer.

Conducting the day-to-day affairs of the court.

Designating an acting Presiding Judge, when the Presiding Judge is unavailable or absent. *(Rule 1.2.1 renumbered effective January 1, 2006; adopted as Rule 2.1 effective April 6, 2002)*

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1.2.2 Assistant Presiding Judge

A. Selection

The Presiding Judge shall select the Assistant Presiding Judge from among all Fresno County Superior Court Judges.

B. Duties

The duties of the Assistant Presiding Judge shall be the same as the Presiding Judge in his or her absence at the discretion of the Presiding Judge. Other duties may be delegated to the Assistant Presiding Judge by the Presiding Judge. The Assistant Presiding Judge shall be a member of the Executive Committee. (Rule 1.2.2 renumbered effective January 1, 2006; adopted as Rule 2.2 effective January 1, 1999)

1.2.3 Acting Presiding Judge

An Acting Presiding Judge may be designated by the Presiding Judge in the Presiding Judge's absence or unavailability. (Rule 1.2.3 renumbered effective January 1, 2006; adopted as Rule 2.3 effective January 1, 1999)

1.2.4 Regular and Special Meetings

A. Membership

All Fresno County Superior Court Judges created under Article VI of the California Constitution shall be voting members.

The Court Executive Officer shall be a non-voting ex officio member and shall serve as secretary at all judge's meetings.

Court Commissioners may attend all judges' meetings unless otherwise informed.

B. Judges' Meetings

1. Regular Meetings

The judges may hold regular meetings at least once every month unless otherwise determined by the Presiding Judge. The meetings shall be held at a reasonably fixed date, time and location. Agendas for all meetings shall be distributed no less than four (4) working days prior to the meeting. Minutes of all meetings shall be distributed as soon as possible.

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2. Semi-Annual Meetings

The judges shall hold extended meetings two (2) times each calendar year. One of these meetings shall be scheduled during the fall. Biennially, at the fall meeting, one of the agenda items shall be the election of the Presiding Judge. The Executive Committee shall schedule these semi-annual meetings at a reasonably fixed date and location and provide all judges with at least thirty (30) days written notice thereof. These meetings shall be designated as regular meetings. The purpose of these meetings is to discuss and formulate major policies, strategies and other issues which cannot be discussed adequately at a regular meeting.

3. Special Meetings

Special meetings may be called by at least twenty-five percent (25%) of the judges or by the Executive Committee, provided written notice of the date, time and place of the meeting is given to all judges at least seven (7) calendar days prior to the date of the meeting.

C. Voting

Each Judge shall have one (1) vote. Any judge who does not attend a regular or special meeting may authorize another Fresno County Superior Court Judge to exercise a written proxy, general or specific as stated in the proxy, and vote on his or her behalf.

D. Quorum

A quorum for the conduct of business shall require at least fifty percent (50%) of the total number of voting members (inclusive of general, but not of specific proxies) plus one (1). The proxy must be submitted to the secretary prior to the voting on any issue in which a proxy vote is to be cast. (Rule 1.2.4 renumbered effective January 1, 2006, adopted as Rule 2.4 effective January 1, 2002)

1.2.5 Election, Term and Duties of Executive Committee

A. Composition/Selection of Voting Members

There is hereby established an Executive Committee. The committee shall be comprised of seven (7) judges, one of whom must be the Presiding Judge, and one of whom must be an Assistant Presiding Judge. The remaining judge members shall be elected by all Fresno County Superior Court Judges.

In addition, in an effort to ensure leadership continuity and a heightened awareness of court history and decision-making considerations, the immediately preceding Presiding Judge shall occupy an "emeritus" membership position for up to two consecutive one-year terms, at his or her option. The emeritus position shall be a non-voting member.

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The Court Executive Officer shall be a non-voting member and shall serve as secretary of the Executive Committee.

At the fall semi-annual meeting and by written notice to each judge, the secretary of the Executive Committee shall notify each judge that nominations for judge members of the Executive Committee are open and shall close twenty-one days after the date of the written notice. Nominations for Executive Committee judge members shall be made in writing and delivered to the secretary of the Executive Committee. Within three (3) court days after the close of nominations, the secretary shall distribute written ballots to all judges that must be returned to the secretary no later than twenty-one (21) days thereafter. Any judge may be nominated by another judge or by himself or herself for the position of Executive Committee member.

B. Executive Committee Membership

The five (5) judge members shall be elected at large from among all Fresno County Superior Court Judges. Vacancies in any member position, regardless of the reason – elevation, retirement, death, disability, resignation, etc. – shall be filled for the remainder of the term by a majority vote of the remaining members of the Executive Committee, unless just cause to leave the position vacant, such as the limited amount of time left on the departing member's term, is determined by the Executive Committee.

The Executive Committee shall announce the vacancy in writing to all judges. Any judge interested in serving in the vacant position shall have one (1) week to notify the Executive Committee of his or her interest.

C. Term of Office for Voting Members

The term of office for Executive Committee members shall be two (2) years, commencing January 1 of the calendar year following selection.

The terms of the members shall be staggered so that each January 1, no more than four (4) of the seven (7) members change, unless an exception is approved by the Executive Committee.

D. Voting

Each judicial member of the Executive Committee shall have one (1) vote. Any member who does not attend a committee meeting may authorize another judge to exercise a written proxy, general or specific as stated in the proxy, to vote on his or her behalf. No judicial member shall exercise more than two (2) proxies on behalf of other judicial members. The proxy should be provided to the secretary in advance of the meeting. All matters coming before the committee for approval shall require a majority vote of voting members present.

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E. Quorum

At least four (4) voting members of the Executive Committee in attendance are necessary to establish a quorum. Submission of a general proxy shall not constitute presence at the meeting for the purpose of a quorum.

F. Meetings

The Executive Committee shall hold regular meetings at least once every month. Any Fresno County Superior Court Judge may attend any meeting of the committee. Notice of the time, place and agenda for committee meetings shall be provided to all judges at least twenty-four (24) hours before the meeting and minutes of the meeting shall be promptly prepared and immediately distributed to all judges. Voting on issues shall be limited to agenda items except for items designated as emergency items by a majority of the Executive Committee. Meetings of the Executive Committee shall be chaired by the Presiding Judge.

Any member of the Executive Committee, other than the Presiding Judge, who is absent from three (3) consecutive meetings without good cause as determined by the Executive Committee, or who is excessively absent as determined by the Executive Committee, may be removed as a member by majority vote of the Executive Committee. The remaining members of the Executive Committee shall by majority vote elect a replacement member to serve the remainder of the term of the removed member.

G. Duties

The duties of the Executive Committee shall include:

1. Recommending court policy and procedures for implementation by the Presiding Judge.
2. Reviewing, in its discretion, the decisions and actions of the Presiding Judge and Executive Officer and, where appropriate, making recommendations to the Presiding Judge.
3. Establishing budgetary priorities and approving budget for submission to the State Trial Court Budget Commission.
4. Recommending for hire an Executive Officer.
5. Conducting an annual evaluation of the performance of the Executive Officer.
6. Selecting and hiring Court Commissioners. (Effective July 1, 2006; Rule 1.2.5 renumbered effective January 1, 2006; adopted as Rule 2.5 effective January 1, 2002)

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1.2.6 Committee Assignments

All committee members shall be appointed by the Presiding Judge. (Rule 1.2.6 renumbered effective January 1, 2006; adopted as Rule 2.6 effective January 1, 1999)

1.2.7 Court Executive Officer

Pursuant to Government Code § 69898, the Court Executive Officer, under the direction of the Presiding Judge, shall exercise all of the powers, duties and responsibilities as Clerk of the Fresno County Superior Court. These powers, duties and responsibilities shall include all of those previously performed by the County Clerk as Ex Officio Clerk of the Fresno County Superior Court, and those pertaining to the Grand Jury prescribed by Penal Code §§ 900 and 933. Pursuant to Government Code § 26800, the County Clerk is hereby relieved of any obligation imposed by law with respect to these powers, duties and responsibilities. Pursuant to Government Code § 69893 and Code of Civil Procedure § 195, the Court Executive Officer shall also serve as Jury Commissioner.

The duties of the Court Executive Officer shall include, but are not necessarily limited to, those set forth in California Rules of Court, Rule 10.610, and such other duties as may be assigned by the Presiding Judge. The Court Executive Officer shall be responsible for the selection, retention and direction of all non-judicial personnel of the court. The Court Executive Officer shall be an exempt employee whose selection shall be recommended by a majority of the Executive Committee and approved by a majority vote of all Fresno County Superior Court Judges, who may be terminated by a majority vote of all Fresno County Superior Court Judges. The Court Executive Officer shall serve as a non-voting member of the Executive Committee and shall serve as secretary. The secretary is responsible for conducting all elections and counting all VOTES. (Effective July 1, 2007, Rule 1.2.7 renumbered effective January 1, 2006; adopted as Rule 2.7 effective January 1, 1999)

1.2.8 Court Commissioners

Court Commissioners shall be exempt employees who shall serve at the pleasure of the judges of the Fresno County Superior Court. They shall be selected by the Executive Committee and may be terminated by a majority of all Fresno County Superior Court Judges. The court shall conduct at least an annual evaluation of Court Commissioners or additional evaluations as needed. (Rule 1.2.8 renumbered effective January 1, 2006; adopted as Rule 2.8 effective January 1, 1999)

1.2.9 Definition of Judicial Vacation Day

Pursuant to Rule 10.603(c)(2)(E) of the California Rules of Court, the Presiding Judge of each Court is required to allow the judges of that court vacation days according to their number of years of service. Rule 10.603(c)(2)(H) requires each court to define a vacation day, for purposes of the above entitlement.

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A “day of vacation” for a judge of the court shall be defined as an approved absence for one full business day. Consistent with the needs of the court and on approval of the Presiding Judge, a judge may nevertheless use accumulated unused vacation leave in half-day increments. (Effective January 1, 2009, New)

(Rule 1.2 renumbered effective January 1, 2006; adopted as Rule 2 effective July 1, 1992)

(Chapter 1 amended effective January 1, 2006; adopted as I effective July 1, 1992)

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G. **“Full Authority” to Settle Defined.** In the case of a plaintiff or cross-complainant, “full authority” to settle means the attendee shall have the individual discretion and authority to negotiate, without consultation with others, and dismiss the complaint or cross-complaint in return for no consideration from the defendant or cross-defendant. In the case of a defendant or cross-defendant, “full authority” to settle means the attendee shall have the individual discretion and authority to negotiate, without consultation with others, and pay the highest demand made to date by the plaintiff or cross-complainant.

In the case of public entity parties whose elected bodies (e.g., City Council, Board of Supervisors) must approve a settlement, the attendee must be an authorized representative of the public entity who is fully informed as to the parameters under which the entity will approve a settlement. (Rule 2.5.5 renumbered effective January 1, 2006; adopted as Rule 8.5, effective January 1, 2005)

2.5.6 Settlement Conference Statement

A. Each party shall mail to the Presiding Judge and serve on all parties a settlement conference statement, in pleading or letter form, preferably at least ten (10) days prior to the settlement conference, but in no event later than five (5) court days prior to the settlement conference. Settlement conference statements will not be filed or kept in the court file, and must be submitted anew for each additional settlement conference.

B. In addition to the subject matter required by Rule 3.1380(c) of the California Rules of Court, the settlement conference statement shall contain:

1. The names of parties and their attorneys.
2. Whether or not an insurance carrier employee is required to be personally present, and, if so, the identity of the carrier.
3. Whether or not a board, council or other committee must approve of settlement, and, if so, the identity of that body.
4. Whether or not the consent of a person who is not a named party is necessary to achieve settlement, and, if so, the identity of that person.
5. The fact and results of compliance with Rule 2.5.2 and the results of prior mediation or arbitration.
6. Prior settlement negotiations.
7. Code of Civil Procedure § 998 demands.

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8. Whether or not further discovery is contemplated, and, if so, a description of it. (Effective July 1, 2007, Rule 2.5.6 renumbered effective January 1, 2006; adopted as Rule 8.6 effective July 1, 1999)

2.5.7 Further Settlement Conferences Before Trial

To ensure a meaningful settlement conference prior to trial, the court may set the matter for further settlement conferences prior to the date set for trial, or, with the consent of the Presiding Judge, may remove the case from the trial calendar and order the parties to obtain a new settlement conference and trial date. (Rule 2.5.7 renumbered effective January 1, 2006; adopted as Rule 8.7 effective January 1, 1997)

2.5.8 Mandatory Settlement Conferences at Trial Readiness Hearing

All parties to Unlimited and Limited Civil Cases for which a Trial Readiness Hearing has been calendared are required to attend a mandatory settlement conference at the time and place of the Trial Readiness Hearing (see Local Rules 2.6.2). The settlement conference shall be subject to the provisions of Local Rule 2.5.5. (Effective January 1, 2009, Rule 2.5.8 renumbered effective January 1, 2006; adopted as Rule 8.8 effective January 1, 2005)

(Rule 2.5 renumbered effective January 1, 2006; adopted as Rule 8 effective July 1, 1992)

RULE 2.6 TRIAL READINESS

2.6.1 Meet and Confer

In all civil cases, except short cause cases, the attorneys for the parties shall meet and confer at least five (5) days prior to the date set for trial in order to accomplish the following:

A. All in limine motions and motions for judgment on the pleadings shall be in writing and exchanged by the parties. The trial court will not hear oral in limine motions or those not exchanged except for good cause shown.

B. If a jury has been requested, the parties shall prepare and exchange proposed jury instructions and shall prepare a jointly signed neutral statement of the case.

C. If a jury has not been requested, the parties shall prepare and exchange trial briefs. The trial court will not accept trial briefs not exchanged except for good cause shown.

D. The parties shall identify and list the proposed exhibits, and exchange such lists.

E. The foregoing papers shall be submitted to the trial judge on the first day of the trial. (Rule 2.6.1 renumbered effective January 1, 2006; adopted as Rule 9.1 effective January 1, 1998)

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timely appeal, and should not be sought until all legal and administrative remedies have been exhausted.

E. The repeated filing of unmeritorious petitions may be deemed an abuse of process, and may subject the petitioner to appropriate sanctions as ordered by the COURT. (Effective July 1, 2007, Rule 3.1.7 (now 3.1.6) renumbered effective January 1, 2006; adopted as Rule 14.7 effective July 1, 2000)

3.1.7 Writs of Mandate and Prohibition

A. Petitions for extraordinary relief by way of mandamus and/or prohibition shall be filed and processed in the Appellate Division. Such relief should not be sought until all existing legal and administrative remedies have been exhausted.

B. When an emergency situation exists, it is the responsibility of the petitioner to clearly indicate the nature of the emergency in the petition, and to also inform the Clerk at the time the petition is filed. For the purposes of these petitions, emergency situations include actions in which time is of the essence to prevent denial of a fundamental constitutional right or undue hardship.

C. Petitions that are defective, incomplete, lack adequate supporting documentation, or fall outside the scope of the court's jurisdiction may be summarily denied. Abuse of the writ process may subject the petitioner to appropriate sanctions. (Effective July 1, 2007, Rule 3.1.8 (now 3.1.7) renumbered effective January 1, 2006; adopted as Rule 14.8 effective July 1, 2003)

3.1.8 Attorney, Expert and Investigation Fees

The fees for an attorney appointed to represent a defendant in a criminal case, the investigator and interpreter fees and fees for medical, psychological and psychiatric services are governed by the Fresno County Courts Appointed Counsel/Expert General Claim Processing Practices, a copy of which is available from the Clerk. (Effective July 1, 2007, Rule 3.1.9 (now 3.1.8) renumbered effective January 1, 2006; adopted as Rule 14.9 effective July 1, 2000)

3.1.9 Retention of Exhibits Prior to Final Determination of Action or Proceeding

A. Clerk to Retain Custody of Exhibits: The Clerk shall retain custody of any exhibit introduced into evidence in a criminal proceeding, including the preliminary hearing, until the final determination or dismissal of the action or proceeding, or as otherwise required by law. No exhibit, having been introduced into evidence, may be returned absent a court order, consistent with Penal Code section 1417.2.

B. Hazardous Materials: Hazardous materials may only be brought to the courtroom or received into evidence consistent with Penal Code section 1417.3(b). (Effective January 1, 2009, New)

(Rule 3.1 renumbered effective January 1, 2006; adopted as Rule 14 effective July 1, 1992)

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RULE 3.2 MISDEMEANOR CASE RULES

3.2.1 Misdemeanor Filings

The court shall endeavor to dispose of misdemeanor cases as follows: 90% within thirty (30) days after the defendant's first court appearance, 98% within ninety (90) days after the defendant's first court appearance, and 100% within 120 days after the defendant's first court appearance. (Rule 3.2.1 renumbered effective January 1, 2006; adopted as Rule 15.1 effective July 1, 2000)

3.2.2 Continuances

All motions for a continuance of a trial shall be made in the assigned trial department. (Rule 3.2.2 renumbered effective January 1, 2006; adopted as Rule 15.2 effective July 1, 2000)

3.2.3 Misdemeanor Pretrial Hearing

A. **Pretrial Hearing.** At such time as designated by the court, a pretrial hearing (formerly jury motion) will be held. Unless otherwise ordered by the court, the defendant shall personally appear at the hearing, unless appearing by counsel.

B. **Duties at Pretrial Hearing.** All motions for continuance, waiver of jury, change of plea or other procedural matters shall be presented at the hearing. If the case is not settled at the hearing, the court may order the defendant to appear at the trial readiness hearing prior to the trial date. On the date set for trial there shall be no continuances or other delay of the trial, except on a showing of good cause based on facts not known by the moving party at the time of the pretrial hearing. (Rule 3.2.3 renumbered effective January 1, 2006; adopted as Rule 15.3 effective July 1, 2000)

3.2.4 Misdemeanor Trial Readiness

Each week at such time as designated, the court may call a trial readiness calendar consisting of all criminal and traffic jury trials which are scheduled for trial that week. All trial counsel shall appear unless excused by the court. (Rule 3.2.4 renumbered effective January 1, 2006; adopted as Rule 15.4 effective July 1, 2000)

(Rule 3.2 renumbered effective January 1, 2006; adopted as Rule 15 effective July 1, 1992)

RULE 3.3 MOTIONS AND HEARINGS IN MISDEMEANOR CASES

3.3.1 Assignment of Motions

All motions or other matters not connected directly with trial, including, but not limited to motions to suppress, to amend the accusatory pleading, for discovery, dismissal, sanctions, interpreters, or substitution of counsel shall be made in the assigned department. (Rule 3.3.1 renumbered effective January 1, 2006; adopted as Rule 16.1 effective July 1, 2000)

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3.3.2 Filing of Motions

A. Unless otherwise ordered by the court, motions in misdemeanor cases shall be filed in writing no later than ten (10) calendar days before the hearing.

B. Motions shall contain a notice of motion, the motion itself, a declaration or affidavit in support thereof and a memorandum of points and authorities.

C. Responsive pleadings and points and authorities in opposition shall be filed no later than two (2) court days prior to the hearing with proof of service on all parties.

D. Each paragraph of any declaration shall be numbered sequentially. The original and all copies of exhibits and attachments shall be tabbed and shall be referred to in the pleadings or papers by tab identification. (Effective January 1, 2009, Rule 3.3.2 renumbered effective January 1, 2006; adopted as Rule 16.2 effective July 1, 2000)

3.3.3 Motions to Suppress Evidence

A. Motions to suppress evidence and all responses shall comply with Penal Code § 1538.5 and controlling case law. (E.g., for searches allegedly conducted without a warrant, see *People v. Williams* (1999) 20 Cal.4th 119 and its progeny.) If any factual assertions are based on cited documentation (such as a police report) and this documentation has not previously been filed with the court, the party making those assertions shall attach a copy of the cited document.

B. Each party is responsible for insuring that its witnesses are present for the hearing. (Rule 3.3.3 renumbered effective January 1, 2006; adopted as Rule 16.3 effective July 1, 2004)

3.3.4 Renewal of Motions

Motions decided prior to trial shall not be renewed unless the motion could not, with due diligence, have been made earlier. Any renewed motion shall be based upon grounds of new evidence which could not, with due diligence, have been discovered earlier, or if the original motion was denied without prejudice and leave to renew has been granted by the court. (Rule 3.3.4 renumbered effective January 1, 2006; adopted as Rule 16.4 July 1, 2000)

(Rule 3.3 renumbered effective January 1, 2006; adopted as Rule 16 effective July 1, 1992)

RULE 3.4 FELONY CASE RULES

3.4.1 Felony Filings

The court shall endeavor to dispose of felony filings (by plea, finding of probable cause, or dismissal) excluding murder cases in which the prosecution seeks the death penalty as follows: 90% within thirty (30) days after the defendant's first court appearance, 98% within forty-five (45) days after the defendant's first court appearance,

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and 100% within ninety (90) days after the defendant's first court appearance. (Rule 3.4.1 renumbered effective January 1, 2006; adopted as Rule 17.1 effective July 1, 2000)

3.4.2 Designated Department

All proceedings in each felony case, from arraignment through settlement conference shall be heard in one of five felony departments. For each case, the appropriate department shall be known as the "Designated Department." Felony cases shall be assigned to the Designated Department alphabetically by last name of defendant. Multiple defendant cases shall be assigned by last name of the first named defendant. Felony cases from Divisions other than the Central Division shall have the preliminary hearings in those Divisions, but shall be assigned for arraignment on the information, and all subsequent hearings, alphabetically to the Designated Department. (Effective July 1, 2007, New)

3.4.3 Schedule of Hearings

Hearings shall be set in the Designated Departments according to a schedule available from the Clerk's office, or by order of the court if not specifically noted. (Effective July 1, 2007, New)

3.4.4 Certification

A court which has suspended criminal proceedings pursuant to Penal Code § 1368 shall appoint a psychiatrist or licensed psychologist or two such professionals in accordance with Penal Code § 1369(a) and refer the matter to the Designated Department. (Effective July 1, 2007, Rule 3.4.2 (now 3.4.4) renumbered effective January 1, 2006; adopted as Rule 17.2 effective July 1, 2000)

3.4.5 Preliminary Examinations

Except as provided in Rule 3.4.2 A, preliminary examinations shall be calendared in the Designated Department and motions for continuance of a preliminary examination shall be made in the Designated Department. (Effective July 1, 2007, Rule 3.4.3 (now 3.4.5) renumbered effective January 1, 2006; adopted as Rule 17.3 effective July 1, 2000)

3.4.6 Trial Setting

A. At the time of the arraignment and plea, the court will set a date for trial within the statutory period. This is the only notice of the trial date that will be given counsel and the defendant.

B. Reciprocal informal discovery, pursuant to Penal Code § 1054, will be ordered at the time of the arraignment. Any additional discovery requests must be made in a duly filed and noticed written motion, complying with all statutory requirements applying to such motions and Rule 3.5.1. (Effective July 1, 2007, Rule 3.4.5 renumbered effective January 1, 2006; adopted as Rule 17.5 effective July 1, 2000)

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3.4.7 Settlement Conference

A. Trial Confirmations shall be renamed as Settlement Conferences. All felony Settlement Conferences will be set in the Designated Department, on Thursdays. The initial Settlement Conference will be set two (2) weeks before the date set for trial, or on such other date as set by the Designated Department.

B. Trial attorneys who will try the case shall personally appear at the Settlement Conference. In the event a trial attorney has a conflict preventing that attorney's presence, that attorney shall make arrangements to have another attorney present who is familiar with the case. The appearing defense attorney shall have previously conferred with the client. (Effective July 1, 2007, New)

(Rule 3.4 renumbered effective January 1, 2006; adopted as Rule 17 effective July 1, 1992)

RULE 3.5 MOTIONS AND HEARINGS IN FELONY CASES

3.5.1 Motions in General

A. Except for motions to set aside the indictment or information pursuant to Penal Code § 995 and special hearings on motions to suppress under Penal Code § 1538.5, subdivision (i), where a motion to suppress was made at the preliminary hearing, all motions or other matters not connected directly with trial, including, but not limited to, motions to suppress, to amend the accusatory pleading, for discovery, dismissal, sanctions, interpreters, or substitution of counsel shall be made in the Designated Department. Dates and times for hearings shall be cleared with the individual Designated Department, and a cover sheet indicating the pre-approved date shall be attached to the face of the motion.

B. Motions to set aside the indictment or information pursuant to Penal Code § 995, and special hearings on motions to suppress under Penal Code § 1538.5, subdivision (i), where a motion to suppress was made at the preliminary hearing, shall be set in the department of the supervising judge of the Criminal Division at the time designated by that judge for motions. No pre-approval of the date is required. In the event the supervising judge of the Criminal Division acted as the magistrate at the preliminary hearing, the motion to set aside the information, or for renewal of the suppression motion made at the preliminary hearing, shall be set in the Designated Department pursuant to the procedure for other motions set forth in rule 3.5.1A and D.

C. Except as otherwise authorized by the court or required by statute, all motions and accompanying papers must be filed with the Clerk.

D. All motions shall contain a notice of motion, the motion itself, a declaration or affidavit in support thereof, a memorandum of points and authorities, and the face sheet indicating approval by the Designated Department of the date as required by rule 3.5.1A. All motions shall contain, in the area below the Motion Title of the first page of

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the filing party's motion, the hearing date, time, and department number, and the filing party's estimate of the overall time required for the hearing of the matter.

A request for a transportation order should be included if a defendant or necessary witness is in custody. If the court has not previously ordered the defendant to be present at the motion hearing and the defendant is not in custody, counsel for the defendant shall give written notice of the hearing date to the defendant and file proof of service of same at the time the motion is filed. Failure to request a transportation order when one is required or to give such notice to a non-custody defendant may result in the motion being taken off calendar.

E. Motions to suppress that are to be heard at the preliminary hearing must be served and filed at least five court days before the hearing. Unless expressly stated otherwise by the Designated Department, all other motions and accompanying papers shall be filed not less than ten calendar days prior to the hearing, with responsive papers filed not less than five days prior to the hearing.

F. Any papers filed with the Clerk in connection with the motion or response thereto shall be accompanied by two complete copies in addition to the original.

G. Continuances of hearings on motions shall not be granted except for good cause shown and upon the filing of a written notice of intention to move for such continuance with the Clerk, together with proof of service on all other parties two (2) court days prior to the hearing.

H. Motions and accompanying papers pursuant to Penal Code § 995 shall include the following:

1. A brief statement in summary form of the facts as set forth in the preliminary examination transcript;

2. A statement of the issues, specifically identifying why the information or indictment should be set aside;

3. Where defendant intends to rely upon some testimony in the transcript, the moving papers shall contain references to the testimony, identified by page and line number of the transcript; and,

4. A statement of the authorities upon which defendant relies with explanation as to why they are applicable. Mere citation of sections of the California Penal Code and the U.S. Constitution will not be sufficient.

I. Each paragraph of any declaration shall be numbered sequentially. The original and all copies of exhibits and attachments shall be tabbed and shall be referred to in the pleadings or papers by tab identification. (Effective January 1, 2009, Rule 3.5.1 renumbered effective January 1, 2006; adopted as Rule 18.1 effective July 1, 2004)

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3.5.2 Motions to Suppress Evidence

A. In addition to the requirements of Rule 3.5.1, motions to suppress evidence and all responses shall comply with Penal Code § 1538.5 and controlling case law. (See, e.g., *People v. Williams* (1999) 20 Cal.4th 119 and its progeny when a warrantless search is at issue.)

B. Pursuant to Penal Code § 1538.5(b), hearings to challenge searches, based upon a warrant, should first be heard by the issuing magistrate, if available. Defendants seeking to challenge such a warrant shall comply with the procedure in Local Rule 3.5.1 A, in the calendaring and filing of said motion with the issuing magistrate as the “Designated Department.”

In cases where the motion is brought to coincide with the preliminary hearing the hearing on the motion shall instead be heard by the magistrate assigned to conduct the preliminary hearing. (Pen. Code § 1538.5, subd. (f).)

C. All motions to suppress must comply with the filing, notice, and content requirements of Local Rule 3.5.1.

1. Moving papers shall include the following:

a. If factual assertions are based on cited documentation (such as police reports) and this documentation has not previously been filed with the court, the moving party shall attach a copy of the cited document.

b. Where a motion to suppress was made at the preliminary examination, any references in the supporting papers to such testimony shall be identified as to volume number, if more than one volume, and page and line number in the transcript.

c. Where no motion to suppress was made at the preliminary examination and if the moving party requests testimony be received by the court at the hearing, the first page of the notice of motion, or motions, shall so indicate. The failure to so indicate shall be construed by the court as a request by the moving party to submit the matter on the statement or statements of fact and the argument of counsel.

d. Where a motion to suppress was made at the preliminary examination and if the moving party requests additional testimony be received by the court at such hearing, the first page of the notice of motion, or motions, shall so indicate. The failure to so indicate shall be construed by the court as a request on the part of the moving party that the matter be submitted on the transcript(s) of prior proceedings and the argument of counsel.

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2. Responding papers shall include the following:

a. If factual assertions are based on cited documentation and this documentation has not yet been filed with the court, the responding party shall attach a copy of the cited document.

b. If the responding party intends to present testimony at the hearing, the first page of the response shall so indicate. Failure to so indicate may be construed by the court as a waiver of any right to call or recall witnesses.

c. Where no motion to suppress was made at the preliminary hearing and if the responding party requests testimony be received by the court at the hearing, the first page of the notice of motion or motions shall so indicate. The failure to so indicate shall be construed by the court as a request by the responding party to submit the matter on the statement or statements of fact and the argument of counsel.

D. Each party is responsible for insuring that its witnesses are present for the hearing.

E. Motions for Traverse of Search Warrant:

1. In accordance with *Franks v. Delaware* (1978) 438 U.S. 154, 90 S.Ct. 2674, as explained in *People v. Wilson* (1986) 182 Cal.App.3d 742, 227 Cal.Rptr. 528, the moving party must do the following:

a. Make a Penal Code § 1538.5 motion.

b. Establish standing to contest the search.

c. Point to specific portions of the affidavit which contain false information, or demonstrate with specificity what information it is claimed was omitted.

d. Allege that the misstatements or omissions were made by the officer/affiant with the intent to deceive, or were made recklessly (i.e., with utter disregard for the truth). Allegations of negligence, or allegations failing to refer to the state of mind of the affiant, are insufficient.

e. Demonstrate that the alleged misstatements or omissions were material. Materiality in this context means that the affidavit with the objectionable language taken out or omissions added would be lacking sufficient probable cause.

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f. Submit affidavits or other competent evidence demonstrating the probable truth of the defense allegations, or satisfactorily explain the absence of such affidavits.

F. If any motion involves a warrant, the moving papers shall include a copy of the warrant and its affidavit.

G. Failure to comply with the above-stated rules may result in appropriate sanctions. In the case of the moving party, this may include a summary denial of the motion. (Effective July 1, 2008, Rule 3.5.2 renumbered effective January 1, 2006; adopted as Rule 18.2 effective July 1, 2004)

(Rule 3.5 renumbered effective January 1, 2006; adopted as Rule 18 effective July 1, 1992)

RULE 3.6 TRAFFIC INFRACTION CASES

3.6.1 Trial of Traffic Infractions

At the discretion of the court, the court may conduct a trial of the defendant charged with an infraction which is a violation of the Vehicle Code or of a local ordinance adopted pursuant to the Vehicle Code in the following manner, as per Vehicle Code § 40901:

A. If the defendant waives his or her rights to confront and cross-examine witnesses, to subpoena witnesses on defendant's behalf, and to hire counsel at defendant's own expense, the trial may proceed at the time of arraignment before the judge conducting the arraignment. Prior to entry of a waiver of these constitutional rights, the court shall inform the defendant in writing of the nature of the proceedings and of these rights, and ascertain that the defendant knowingly and voluntarily waives these rights before proceeding.

B. If the non-English speaking population of Fresno County which speaks any one language exceeds 5% of the total population of the county, a written explanation of the proceedings and the rights of the defendant referred to in subsection (A) will be available in that language.

C. The court may accept testimony or other relevant evidence introduced in the form of a notice to appear issued pursuant to Vehicle Code § 40500 or any business record or receipt. (Rule 3.6.1 renumbered effective January 1, 2006; adopted as Rule 19.1 effective January 1, 2002)

3.6.2 Trial by Declaration

Pursuant to Vehicle Code § 40902, a defendant charged with Vehicle Code infractions or violations of local ordinances adopted pursuant to the Vehicle Code may waive his or her right to personally appear for trial, and may request trial by written declaration without a personal appearance. Trial by declaration is available to any defendant who wishes to contest the citation and who timely requests trial by

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declaration. Trial by declaration shall be requested and conducted in accordance with Rule 4.210 of the California Rules of Court. Trial by declaration is not available if defendant has been notified that a personal appearance is mandatory. A defendant electing this procedure shall notify the Clerk of his or her current address and of any changes thereof. (Effective July 1, 2007, Rule 3.6.2 renumbered effective January 1, 2006; adopted as Rule 19.2 effective January 1, 2002)

3.6.3 Traffic Infraction Appeals

A party may appeal an unfavorable decision made in the trial court to the Appellate Division of the Superior Court pursuant to Rules 8.800 through 8.821 and 8.60 through 8.880. of the California Rules of Court. The Notice of Appeal (form TR1-55) must be filed with the Clerk of the trial court within thirty (30) CALENDAR DAYS after the rendition of judgment. No extension of time is allowed.

The appeal must be directed toward errors of law only. An appeal is not a retrial, and introduction of new evidence will not be permitted. The forms and instructions on appeal procedures are available in all traffic court locations in Fresno County. (Effective January 1, 2009, Rule 3.6.3 renumbered effective January 1, 2006; adopted as Rule 19.3 effective January 1, 2002)

(Rule 3.6 renumbered effective January 1, 2006; adopted as Rule 19 effective July 1, 1992)

(Chapter 3 amended effective January 1, 2006; adopted as III effective July 1, 1992)

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in the same condition as during trial. In the event further proceedings of any court having jurisdiction of the matter require the presence of the exhibit, the party or agency to whom it was returned shall promptly deliver the exhibit to the appropriate court, with notice to all parties. (Rule 4.1.5 renumbered effective January 1, 2006; adopted as Rule 20.5 effective January 1, 2004)

4.1.6 Facsimile Machine (Fax) Filing and Notification

A. The Superior Court of California, County of Fresno hereby adopts rule 2.300 et seq. of the California Rules of Court, allowing for facsimile filing of civil, probate and family law documents. The Superior Court of California, County of Fresno also allows for facsimile filing of specified documents in juvenile cases as set out in California Rules of Court 5.522. The Superior Court of California, County of Fresno does not allow for facsimile filing of criminal documents including complaints and complaints attached to "Rush Arrest Warrants".

B. Fax filings will be accepted during normal business hours. A document may be faxed to the court at any time of the day. Acceptance of the document for filing with the court shall be deemed to occur:

1. On the date the document was faxed to the court if the submission occurred during normal business hours of the clerk's office; and,
2. On the next business day the clerk's office is open for business if the submission occurred after normal business hours of the clerk's office.

For purposes of this section, normal business hours shall be 8:00 a.m. through 4:00 p.m., Monday through Friday, excluding court holidays. Nothing in this section shall limit the clerk's ability to reject filings.

C. A party who has established a filing fee account in advance may file pleadings and documents by facsimile machine directly with the Clerk. All such filings must fully comply with the provisions of the California Rules of Court. Any party electing to file by facsimile shall be deemed to have consented to service of notices by the court by facsimile machine.

D. In addition to any other fees imposed by law, a party filing by fax directly with the court shall pay a fee of \$1.00 for each page of the paper.

E. Any document received with missing or partial pages, or other facial defects, shall not be filed but shall be returned by the Clerk to the sending party by mail.

F. Where these rules require notification by letter, to court or counsel, such notification may be by fax. The court has several fax numbers, and notification to a specific judge shall be addressed to him or her by name and shall be transmitted to the fax number nearest his or her chambers.

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G. A list of fax numbers may be obtained from the Clerk by a fax request to (559) 488-1976, citing this rule. (Effective January 1, 2009, Rule 4.1.6 renumbered effective January 1, 2006; adopted as Rule 20.6 effective July 1, 2000)

4.1.7 Trial Readiness Hearing

Repealed. (Effective July 1, 2007, Rule 4.1.7 renumbered effective January 1, 2006; adopted as Rule 20.7 effective July 1, 2000)

4.1.8 Identification of Document Preparers

A. In this section:

1. "Document preparer" means a person, other than an attorney or an employee of an attorney, who prepares for compensation a paper for filing; and

2. "Paper for filing" means any paper, as defined in Rule 1.1.4, prepared for filing on behalf of a party.

B. A document preparer who prepares a paper for filing shall print on a separate sheet of paper the preparer's name, address, telephone number, FAX number and e-mail number, if any. This separate paper identifying the preparer shall be served on the opposing party, filed with the court, and identified in the proof of service.

C. An attorney, or an employee of an attorney, who prepares a paper for filing as "in pro per" shall print on a separate sheet of paper the preparer's name, address, telephone number, FAX number and e-mail address, if any. This separate paper identifying the preparer shall be served on the opposing party, filed with the court, and identified on the proof of service.

D. As an additional requirement, document preparers shall type their initials or the initials of their business and the runner numbers in the caption under the heading "Attorney or Party Without Attorney" on the face sheet of the moving papers.

E. A document preparer shall, not later than the time at which a paper for filing is presented for the party's signature, furnish to the party a copy of the paper.

F. A document preparer shall not execute any paper on behalf of a party.

G. Nothing in this rule shall be construed to permit activities that are otherwise prohibited by law, including rules and laws that prohibit the unauthorized practice of law.

H. These requirements are in addition to those regarding legal document assistants set forth in the Business and Professions Code. (Rule 4.1.8 renumbered effective January 1, 2006; adopted as Rule 20.8 effective July 1, 2000)

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4.1.9 Electronic Mail Communication with the Court

Consistent with the Canons of Ethics relating to Ex-Parte Communications with the court, an attorney for a party, or a party appearing in pro per, may direct electronic mail communications to the clerk of the department to which a case has been assigned, relating to a case pending before that court.

However, unless otherwise approved by the court, consistent with the Canons of Judicial Ethics and the California Rules of Professional Conduct, no attorney or party to an action shall, either with or without prior notice to opposing counsel, contact any judge directly by e-mail concerning a case pending before the court, or a matter relating to a case pending before the court. (Rule 4.1.9 renumbered effective January 1, 2006; adopted Rule 20.9 effective January 1, 2005)

(Rule 4.1 renumbered effective January 1, 2006; adopted as Rule 20 effective July 1, 1992)

RULE 4.2 APPEALS TO THE APPELLATE DIVISION

4.2.1 Three Judge Panel

All infraction, misdemeanor, and limited civil case appeals are decided by a majority of a three (3) judge panel of the Appellate Division. (Rule 4.2.1 renumbered effective January 1, 2006; adopted as Rule 21.1 effective July 1, 2000)

4.2.2 Filing of Appeal, Briefing and Hearing Dates

Appeal papers shall be filed with the Clerk. Briefing and hearing dates will be set by the court. Each party shall ensure that complete documentation is submitted in a timely manner. (Rule 4.2.2 renumbered effective January 1, 2006; adopted as Rule 21.2 effective July 1, 2000)

4.2.3 Record on Appeal

A. Pursuant to California Rules of Court, rules 8.830(a)(1)(B), 8.833, 8.860(a)(1)(B), 8.910(a)(1)(B) and 8.914 the court elects to use the original trial court file instead of the clerk's transcript as the record of the written documents from the trial court proceedings.

B. Pursuant to California Rules of Court, rules 8.835(c), 8.868(c) and 8.917(c) on stipulation of the parties or on order of the trial court under rule 8.837(d), 8.869(d) or 8.916(d) the original of an official electronic recording of the trial court proceedings, or a copy made by the court, may be transmitted as the record of these oral proceedings without being transcribed. (Effective January 1, 2009, New)

4.2.4 Briefing Procedure

A. An original and three (3) copies of each brief shall be filed with the Clerk. The original, which will be maintained in the court file, shall have a standard two-hole punch on the top when submitted for filing. Each of the three (3) copies shall have a

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standard three-hole punch on the left side when submitted for filing. Notwithstanding the California Rules of Court, briefs shall not be bound.

B. All briefs shall include appropriate points and authorities, clear identification of the issue(s) being raised and valid proof of service. Because appeals are concerned with issues of law, mere factual arguments will generally be insufficient. If applicable, a reporter's transcript and/or a settled statement on appeal shall be submitted.

C. A party may file a request for an extension of time to comply with the briefing schedule with the Presiding Judge of the Appellate Division. Such request shall include a separate declaration providing good cause for the extension of time, a proposed order and a properly completed checklist for proposed orders form. The checklist for proposed orders form is available from the Clerk's office.

D. Failure of the appellant to file a timely opening brief or to otherwise comply with applicable rules may result in dismissal of the appeal. (Effective January 1, 2009, Rule 4.2.3 renumbered effective January 1, 2006; adopted as Rule 21.3 effective January 1, 1997)

(Rule 4.2 renumbered effective January 1, 2006; adopted as Rule 21 effective July 1, 1992)

(Chapter 4 amended effective January 1, 2006; adopted as IV effective July 1, 1992)

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CHAPTER 7. PROBATE RULES

RULE 7.1 PLEADINGS

7.1.1 Form of Documents Presented for Filing in Probate Matters

A. When printed forms are reproduced on the front and back of a single sheet, the back sheet shall be inverted (tumbled) so that it can be read when affixed at the top in a file folder.

B. All persons filing as self-represented shall file with the court a separate verified declaration regarding his or her residence address, if the residence is not the address of record in the proceeding.

C. When a petition or other request for relief is presented to the court, the Probate Code section that allows the requested relief must appear below the title of the pleading.

D. If a beneficiary, heir, child, spouse, or registered domestic partner in any action before the Probate Court is deceased, that person's date of death shall be included in the petition.

E. When any document is filed for which a hearing is requested, an extra copy of the first page of the pleading shall be provided to the Clerk.

F. A proposed Order shall be submitted with all pleadings that request relief. If the proposed Order is not received in the Probate Filing Clerk's office ten days before the scheduled hearing, a continuance may be required.

G. All documents relating to a matter set for hearing shall have the hearing date, time and department set forth on the face of the document.

H. All documents containing attachments, schedules or exhibits shall be indexed and tabbed at the bottom. Each page shall have page numbers to facilitate review by the Probate Examiner's Office and the court. (Rule 7.1.1 renumbered effective January 1, 2006; adopted as Rule 70.1 effective July 1, 2004)

7.1.2 Filing Fees for Trust Matters

All initial proceedings for court supervision of trusts (including but not limited to testamentary trusts funded by a probate) and Petitions to Establish Special Needs Trusts are new actions, and require assignment of a new case number and payment of a current filing fee. (Rule 7.1.2 renumbered effective January 1, 2006; adopted as Rule 70.2 effective January 1, 2004)

(Rule 7.1 renumbered effective January 1, 2006; adopted as Rule 70 effective July 1, 1992)

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RULE 7.2 PROBATE APPEARANCES

7.2.1 Appearance Requirements

Court appearances are required at all hearings unless the matter has been recommended for approval (see Rule 7.3). When an appearance is required, local attorneys or unrepresented parties are expected to appear in person or by telephone, pursuant to California Rule of Court 3.670. (Effective July 1, 2008, Rule 7.2.1 renumbered effective January 1, 2006; adopted as Rule 71.1 effective January 1, 2004)

7.2.2 Telephonic Appearances

When telephone appearances are allowed, attorneys or parties may appear by "Court Call," by making prior arrangements with the private company that administers the program. Court Call may be arranged by calling (888) 882-6878, or the telephone number of any other vendor as approved by the Court. (Effective July 1, 2008, Rule 7.2.2 renumbered effective January 1, 2006; adopted as Rule 71.2 effective January 1, 2004)

(Rule 7.2 renumbered effective January 1, 2006; adopted as Rule 71 effective July 1, 1992)

RULE 7.3 PRE-APPROVED MATTERS/PROBATE EXAMINERS

A. All matters set for hearing are reviewed in advance by Probate Examiners. If the matter is submitted properly, if all procedural requirements have been satisfied, and if the matter does not require discretionary consideration by the Probate Judge, the matter will be pre-approved, and a court appearance will be unnecessary.

B. The telephone "Hot-Line" is recorded daily at 12 Noon, and contains a list of pre-approved and continued cases on the next day's calendar. The telephone number is (559) 263-8799.

C. Pre-approved matters are called by the court at the time set for hearing. If there are no objections, and if the Probate Judge approves, the Order will be signed at that time. If someone appears at the hearing to object, or if the Probate Judge does not approve the petition, a new hearing date will be set and a copy of the minute order will be mailed to the moving party or attorney.

D. A copy of the Probate Examiner Notes on all non-confidential matters is available upon request.

E. If a matter is not pre-approved due to procedural irregularities, parties may submit to the Probate Filing Clerk additional documents to cure the irregularities or omissions, up to 24 hours before the hearing. Any additional documents received less than 24 hours before the hearing may not be considered by the court, and the matter may need to be continued. (Effective January 1, 2009, Rule 7.3 renumbered effective January 1, 2006; adopted as Rule 72 effective January 1, 2004)

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I. **Court Policy.** Absent a showing of good cause, it is the policy of the court to block all funds in Guardianship Estates. (Rule 7.8.1 renumbered effective January 1, 2006; adopted as Rule 77.1 effective January 1, 2004)

7.8.2 Accounting Requirements for Blocked Accounts

A. If a guardianship of the estate is established and the court orders that all assets are to be deposited in a blocked account, the guardian shall file an inventory and appraisal within ninety (90) days of appointment and thereafter file a first account one (1) year after date of appointment. The petition on the first account may include a request that the court dispense with further accountings until the guardianship is terminated.

B. If the guardian of the estate requests authority to deposit the minor's funds into a blocked brokerage account to allow greater flexibility in investments, the court will not dispense with accountings but will continue to require annual and biennial accountings even though all assets are blocked. (Rule 7.8.2 renumbered effective January 1, 2006; adopted as Rule 77.2 effective January 1, 2004)

7.8.3 Withdrawals from Minor's Blocked Account During Minority

A. With the exception of withdrawals to pay taxes on a minor's funds, requests to withdraw funds will ordinarily be denied if either or both parents are living and financially able to pay the requested expenditure. An application to withdraw funds to pay income taxes on the minor's funds shall include a breakdown of state and federal taxes due and any costs of preparation. An application to withdraw funds for purposes other than payment of taxes shall be accompanied by a financial declaration by the parent or parents describing their income and expenses and, if applicable, other circumstances justifying the use of the minor's assets. A statement regarding the minor's employment and income, if any, shall also be attached. If the request is for multiple items, each item must be listed separately, with its cost.

B. If a withdrawal is requested for the purchase of a car, a copy of the proposed purchase/sale agreement shall be attached to the application showing the type of car, year, purchase price, and whether payment will be made in full or in specified installments. A binding agreement shall not be entered into before obtaining a court order. A casualty insurance quote shall be attached to the application showing public liability coverage for limits of at least \$100,000.00 per person and \$300,000.00 per accident or policy limits equal to the funds which will remain on deposit after the purchase, whichever is greater. The application shall contain an explanation of who will pay for the insurance. A copy of the minor's current report card; a statement as to who will pay for the automobile's maintenance; and a statement of the current availability of public and alternate transportation shall also be submitted.

C. If the request for withdrawal pertains to medical or dental care, including orthodontia, a statement from the doctor, dentist or orthodontist regarding the need for the treatment to be performed and the cost of the treatment shall be submitted, together with a declaration by the applicant explaining why the expense is not covered by insurance.

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D. Requests to pay for educational or recreational programs must describe the program and include a statement as to the necessity or appropriateness of the program for the minor. (Rule 7.8.3 renumbered effective January 1, 2006; adopted as Rule 77.3 effective January 1, 2004)

(Rule 7.8 renumbered effective January 1, 2006; adopted as Rule 77 effective January 1, 2004)

RULE 7.9 PUBLICATION

A. If the decedent resided or owned property within the city limits of the following cities, publication shall be made as follows:

<u>If the residence or property owned was in:</u>	<u>Publish in</u>
Fowler	Fowler Ensign
Fresno	Fresno Bee, or Fresno Business Journal
Kerman	Kerman News
Kingsburg	Kingsburg Recorder
Mendota	Firebaugh Mendota Journal, or Mendota Times
Prather	Mountain Press
Reedley	Reedley Exponent
Sanger	Sanger Herald
San Joaquin	Westside Advance
Selma	Selma Enterprise

B. If the decedent lived outside the city limits of the cities listed above, or anywhere else within the County of Fresno, publication shall be in the Fresno Bee or the Fresno Business Journal. This includes but is not limited to the following areas: Auberry, Big Creek, Biola, Cantua Creek, Caruthers, Centerville, Clovis, Coalinga, Del Ray, Dunlap, Friant, Firebaugh, Five Points, Huron, Kings Canyon, Laton, Miramonte, Orange Cove, Parlier, Piedra, Pinedale, Raisin City, Shaver Lake, Squaw Valley, Tollhouse, or Tranquility. (Effective January 1, 2009, Rule 7.9 renumbered effective January 1, 2006; adopted as Rule 78 effective January 1, 2004)

RULE 7.10 LETTERS FOR MULTIPLE REPRESENTATIVES

When more than one person is appointed as guardian, conservator, or personal representative, the names and signatures of all appointed persons shall appear on each copy of the Letters to be issued by the Clerk. (Rule 7.10 renumbered effective January 1, 2006; adopted as Rule 79 effective January 1, 2004)

7.10.1 Duties and Liabilities

The birth date and driver's license number, if any, of a personal representative (other than public entities or trust companies) shall be provided in the receipt of acknowledgement of duties and liabilities as required by Probate Code section 8404. This information shall be kept confidential and shall not be made available for public inspection without a court order. (Effective January 1, 2006, New)

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(Rule 7.10 renumbered effective January 1, 2006; adopted as Rule 79 effective January 1, 2004)

RULE 7.11 INVENTORY AND APPRAISAL

7.11.1 Definitions

A "Final" Inventory and Appraisal may be submitted as a complete inventory of all estate assets, or may be filed after the filing of a partial inventory.

A "Partial" Inventory describes only a portion of the known estate assets, and should be identified as "Partial #1," #2, etc.

A "Supplemental" Inventory contains assets discovered or received after a Final Inventory and Appraisal has been filed.

A "Corrected" Inventory supersedes and completely restates an original inventory (final, partial or supplemental) and should show the total inventory amount as amended.
(Rule 7.11.1 renumbered effective January 1, 2006; adopted as Rule 80.1 effective January 1, 2004)

7.11.2 Inventory Description of Real Property

The Inventory and Appraisal shall describe real property by legal description, street address (if any), whether improved or unimproved, and any assessor's parcel number. The Inventory must identify the estate's interest in the property by percentage of ownership, and how title was held (i.e., joint tenancy, community property, sole and separate property, etc.) *(Rule 7.11.2 renumbered effective January 1, 2006; adopted as Rule 80.2 effective January 1, 2004)*

(Rule 7.11 renumbered effective January 1, 2006; adopted as Rule 80 effective January 1, 2004)

RULE 7.12 PETITIONS FOR DISTRIBUTION

7.12.1 Listing of Property to be Distributed

A petition for distribution must list and describe in detail all property to be distributed. The description shall include cash on hand. Promissory notes must be described as secured or unsecured. If secured, the security interest must be described. The legal description and APN of all real property must be included. Description in the petition of any asset by reference to the inventory is not acceptable.
(Rule 7.12.1 renumbered effective January 1, 2006; adopted as Rule 81.1 effective January 1, 2004)

7.12.2 Characterization of Property to be Distributed

A petition for distribution must describe the character of the property, whether separate or community. If some portion of the estate consists of community property, the petition must show whether the interest to be distributed is the decedent's one-half (1/2) interest in the community property or the community property of both spouses.
(Rule 7.12.2 renumbered effective January 1, 2006; adopted as Rule 81.2 effective January 1, 2004)

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7.12.3 Distribution of Personal Effects

The court will not order distribution of personal property, such as furniture, vehicles, or appliances, in undivided interests without the written consent of all distributees. (Rule 7.12.3 renumbered effective January 1, 2006; adopted as Rule 81.3 effective January 1, 2004)

7.12.4 Distribution of Real Property

A. The court will not order distribution of real property in undivided interests absent the written consent of all distributees.

B. Parties requesting distribution of real or personal property in undivided interests to a minor must first submit a detailed declaration documenting the need therefore and why it would be in the child's best interest. (Effective January 1, 2008, New)

7.12.5 Distribution to Inter Vivos Trusts

If property in the estate is to be distributed to a pre-existing trust, the current trustee must file a declaration setting forth the name of the trust, its establishment date, taxpayer identification number, verifying that the trust is in full force and effect, and that the trustee has an executed copy of the trust in possession. (Effective January 1, 2008, Rule 7.12.4 effective January 1, 2006; adopted as Rule 81.4 effective January 1, 2004)

(Rule 7.12 renumbered effective January 1, 2006; adopted as Rule 81 effective January 1, 2004)

RULE 7.13 WAIVER OF ACCOUNTING IN PROBATE ESTATES

A petition requesting distribution on a waiver of accounting shall include the current status of all inventoried items. The petition must include a list of the property on hand for distribution as it exists at the time of the petition and not merely as shown on the inventory and appraisal, unless there has been no change. (Rule 7.13 renumbered effective January 1, 2006; adopted as Rule 82 effective January 1, 2004)

RULE 7.14 DISCLAIMERS AND ASSIGNMENTS IN PROBATE ESTATES

A copy of a disclaimer must be on file prior to the hearing on a petition for distribution of an affected asset. An assignment of a beneficiary's interest in a probate estate shall be filed prior to the hearing on a petition for distribution of the beneficiary's interest. (Rule 7.14 renumbered effective January 1, 2006; adopted as Rule 83 effective January 1, 2004)

RULE 7.15 CONSERVATORSHIPS AND GUARDIANSHIPS

7.15.1 Investigation Costs

Unless investigation fees are waived due to hardship per Probate Code section 1851.5 or 1513.1, the court will assess fees for the cost of investigations in guardianship and conservatorship cases. Investigation fees in guardianship matters will usually be waived if the fee for filing the initial petition was waived. Petitioners in

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guardianship cases who do not qualify for waiver of investigation fees may request permission from the managing investigator to make monthly payments due to hardship. Bills will be sent to conservators and guardians or parents, and copies will be sent to their attorneys.

Upon receipt of the bill, payment is required within thirty days to:

Fresno County Superior Court
1999 Tuolumne Street, Suite 501
Fresno, CA 93721
Attention: Probate

(Effective January 1, 2009, Rule 7.15.1 renumbered effective January 1, 2006; adopted as Rule 84.1 effective January 1, 2004)

7.15.2 Independent Powers

It is the policy of the court to grant a guardian or conservator only those independent powers necessary in each case to administer the estate. A request for all powers described in Probate Code § 2591 will not be granted by the court. Each independent power requested must be justified by, and narrowly tailored to the specific circumstances of that case. Any powers so granted must be specified in the order and in the Letters of Guardianship or Conservatorship. (Rule 7.15.2 renumbered effective January 1, 2006; adopted as Rule 84.2 effective January 1, 2004)

7.15.3 Temporary Conservatorships and Guardianships

A. **Filing Procedure.** The original and three (3) copies of the Petition for Appointment of Temporary Guardian or Conservator shall be presented to the Clerk for filing.

B. **Hearings.** The court may require that a hearing be held on any Petition for Appointment of a Temporary Guardian or Conservator, even if submitted ex parte. In each instance, the court will advise counsel or the self-represented petitioner of the need for a hearing.

C. **Requirements.** The court will generally deny requests for ex-parte appointment of a temporary guardian unless the application establishes that a present emergency exists and that the minor is currently residing with the petitioner. If the minor is residing with a parent and the petitioner believes the child is in danger, a referral should be made to Child Protective Services.

D. **Length of Appointment.** When granted, ex parte Temporary Guardianships and Conservatorships expire within thirty days, or on the first hearing date, whichever occurs first. If the temporary appointment is extended by the court, amended letters may be issued upon the request of the temporary guardian or conservator. (Rule 7.15.3 renumbered effective January 1, 2006; adopted as Rule 84.3 effective January 1, 2004)

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7.15.4 Receipt of Public Benefits

When the only asset or income of a proposed conservatee or ward is the receipt of public assistance benefits, the court does not require appointment of a conservator or guardian of the estate. (Rule 7.15.4 renumbered effective January 1, 2006; adopted as Rule 84.4 effective January 1, 2004)

7.15.5 Consents by Non-English Speaking Persons

Consents signed by non-English speaking persons must be translated into the person's own language, signed, and filed. A translator certification stating that the translation is an accurate representation of the contents of the consent must accompany the foreign language consent. (Rule 7.15.5 renumbered effective January 1, 2006; adopted as Rule 84.5 effective January 1, 2004)

7.15.6 Guardianship of the Estate

Where appointment of a guardian of the estate is sought for more than one related minor, a separate case number shall be assigned for each minor. If the minors are from the same immediate family, only one filing fee shall be charged. If the petition requests appointment as guardian of the person only, a single petition shall be filed for all sibling minors. (Rule 7.15.6 renumbered effective January 1, 2006; adopted as Rule 84.6 effective January 1, 2004)

7.15.7 Guardianship Filing Requirements

A. When a Petition for Appointment of a Guardian is filed, the court will retain the original copy of all documents (except the Notice of Hearing), and will require the following additional copies:

1. Face page and two additional copies of the Petition.
2. Two additional copies of the Guardianship Questionnaire.
3. Two additional copies of the Declaration Under Uniform Child Custody and Jurisdiction Act (UCCJEA).

B. The Guardianship Questionnaire is a local form which is available at 1999 Tuolumne Street, Suite 501, Fresno, CA., or on the court's website. (Effective January 1, 2009, Rule 7.15.7 renumbered effective January 1, 2006; adopted as Rule 84.7 effective January 1, 2005)

7.15.8 Effect of Other Pending Proceedings Regarding the Child

A Petition for Appointment of a Guardian of a minor will not ordinarily be considered if any of the following circumstances exist:

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