

FRESNO COUNTY SUPERIOR COURT

FILING INSTRUCTIONS

(July 1, 2008 Revision)

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2.1.15 Signatures on Orders

It is the policy of the court not to sign orders or judgments unless some portion of the text of the order or judgment appears on the page to which the judicial officer's signature is affixed, so that the connection between the signature page and the remainder of the order or judgment is apparent. (Rule 2.1.15 renumbered effective January 1, 2006; adopted as Rule 3.15 effective July 1, 2000)

2.1.16 Designation of Counsel

When a law firm is the attorney of record in a civil action, the attorney who signed the initial pleading shall be designated to receive notices in the case. If, after the filing of the initial pleading, the attorney who is to receive notices changes, then a Designation of Counsel must be filed with the court. The designation must include the name and state bar number of the designated attorney. The designation may be made on a form available from the Clerk's office and on the court's website. (Rule 2.1.16 renumbered effective January 1, 2006; adopted as Rule 3.16 effective May 14, 2001)

(Rule 2.1 renumbered effective January 1, 2006; adopted as Rule 3 effective July 1, 1992)

RULE 2.2 CIVIL LAW AND MOTION

2.2.1 Setting Law and Motion Hearing

Prior to the filing of any law and motion matter, a date and time for hearing shall be reserved with the Clerk. Matters will be set for hearing by the Clerk upon receipt of a duly served notice of motion and supporting documents, with the hearing scheduled in accordance with the date and time reserved. (Rule 2.2.1 renumbered effective January 1, 2006; adopted as Rule 4.1 effective January 1, 1997)

2.2.2 Taking Law and Motion Hearing Off Calendar

A. Any party who reserves a date and time for hearing with the Clerk, but fails to timely file moving papers for a hearing on that date, shall promptly notify the Clerk and request that the hearing be taken off calendar.

B. Unless otherwise ordered by the court, any moving party who wishes to have a law and motion matter taken off calendar after the moving papers have been filed but before a response has been filed, may be required to give written notice to the Clerk, the assigned judge, and all parties at least five (5) court days before the scheduled hearing date. Notice to the Clerk may be sent by facsimile and shall be accompanied by proof that notification was given to all parties. Proof of notification to all parties may be made:

1. By proof of service by mail, or
2. By letter indicating that a copy thereof has been sent by facsimile to all parties, or

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3. By a declaration stating when, and in what manner, notice was given to all parties.

C. A law and motion matter may also be taken off calendar by stipulation of the parties at least five (5) court days before the scheduled hearing, with written notice to the Clerk and assigned judge. Notice to the Clerk and assigned judge may be given by facsimile.

D. Any moving party who wishes to have a law and motion matter taken off calendar after the responsive papers have been filed shall do so by stipulation of the parties or shall obtain the permission of the assigned judge and give written notice to all parties. Proof of notification to all parties shall be made as described in (B) above.

E. Within five (5) court days of the hearing, permission to take the matter off calendar shall be obtained only from the assigned judge. (Rule 2.2.2 renumbered effective January 1, 2006; adopted as Rule 4.2 effective January 1, 2003)

2.2.3 Continuing a Law and Motion Hearing

A. Any request for continuance of a law and motion hearing, may be required to be made in writing to the assigned judge at least five (5) court days before the scheduled hearing with proof of notification to all parties as described in Rule 2.2.2. The request may be submitted by facsimile. The request for continuance shall include a specific date for the continued hearing and a statement indicating whether the other parties consent or object to the continuance and/or the requested new hearing date.

B. If the request is made after the five (5) court day time limit has passed, the request shall contain a detailed factual explanation demonstrating good cause for the delay. (Rule 2.2.3 renumbered effective January 1, 2006; adopted as Rule 4.3 effective January 1, 2003)

2.2.4 Additional Copies

In cases other than limited civil cases, the court requests that any papers filed with the Clerk in connection with a law and motion matter be accompanied by one full set of copies of the original (including exhibits). (Rule 2.2.4 renumbered effective January 1, 2006; adopted as Rule 4.4 effective July 1, 2000)

2.2.5 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 2.2.5 renumbered effective January 1, 2006; adopted as Rule 4.5 effective July 1, 2000)

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2.2.6 Tentative Rulings

A. The court follows the tentative ruling procedure set forth in Rule 3.1308(a)(1) of the California Rules of Court. A tentative ruling on civil law and motion matter may be obtained by:

1. Telephoning the court at (559) 488-6866; or
2. Accessing tentative rulings on the court's website.

B. If a party wishes to appear for oral argument, the notice to be given to the court, as required by Rule 3.1308(a)(1) of the California Rules of Court, must be given by telephone to the clerk in the department to which the matter is assigned for hearing. (Effective January 1, 2008, Rule 2.2.6 renumbered effective January 1, 2006; adopted as Rule 4.6 effective January 1, 2005)

2.2.7 California Environmental Quality Act

Parties requesting or applying for a hearing in a case brought under the California Environmental Quality Act (Pub. Resources Code section 21000 et seq.) shall reserve with the law and motion clerk a date and time for hearing on the request or application. (Effective July 1, 2008, New)

RULE 2.3 EARLY MANDATORY MEDIATION PILOT PROGRAM

Repealed. (Effective January 1, 2007)

RULE 2.4 ALTERNATIVE DISPUTE RESOLUTION (ADR)

2.4.1 ADR Information

Attorneys shall provide their clients with a copy of the ADR information package at the earliest available opportunity. Upon request, the ADR information package may be obtained from the Clerk. Plaintiffs and cross-complainants shall serve a copy of the ADR information package on each defendant or cross-defendant as required by the California Rules of Court. (Rule 2.4.1 renumbered effective January 1, 2006; adopted as Rule 7.1 effective May 14, 2001)

2.4.2 Judicial Arbitration

The provisions of Chapter 2.5, commencing with § 1141.10 of the Code of Civil Procedure and the provisions of California Rules of Court set forth in Title 3, commencing with Rule 3.810, regarding judicial arbitration shall apply to all civil cases as stated therein. It is determined to be in the interest of justice that any at-issue limited civil case pending on or filed after September 1, 1997, may be ordered by the court to arbitration, except as otherwise provided by law. (Effective July 1, 2007, Rule 2.4.2 renumbered effective January 1, 2006; adopted as Rule 7.2 effective May 14, 2001)

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2.4.3 Mediation

The Presiding Judge has elected to apply the provisions of Code of Civil Procedure section 1775, et seq., to eligible cases. Cases eligible for judicial arbitration may be subject to court-ordered mediation. (Rule 2.4.3 renumbered effective January 1, 2006; adopted as Rule 7.3 effective May 14, 2001)

(Rule 2.4 renumbered effective January 1, 2006; adopted as Rule 7 effective July 1, 1992)

RULE 2.5 MANDATORY SETTLEMENT CONFERENCE

2.5.1 Mandatory Settlement Conference

A mandatory settlement conference shall be held pursuant to Rule 2.5 for every civil case set for trial on the master calendar, except as follows:

A. Small claims, unlawful detainers, and family law cases. (For Family Law Department requirements, refer to Rule 5.7.)

B. Short cause cases.

C. In any case where, at least thirty (30) days prior to the date set for trial, all parties have filed a written stipulation that they have previously engaged in one court-supervised settlement conference and do not believe another settlement conference would be productive. Plaintiff shall notify the calendar Clerk of the filing of the stipulation.

D. In any case where, at least thirty (30) days prior to the date set for trial, all parties have filed a written stipulation that they have engaged in mediation, conducted by a neutral mediator, and do not believe a settlement conference would be productive. Plaintiff shall notify the calendar Clerk of the filing of the stipulation.

E. By order of the court for good cause, based upon a petition addressed to the Presiding Judge citing this rule, filed and served on all other parties at least thirty (30) days prior to trial. Opposition to the petition shall be in writing, addressed to the Presiding Judge, filed and served on all parties no later than ten (10) days after service of the petition. There will be no oral argument on such petitions. Parties will be notified of the court's ruling. Good cause requires facts supporting the conclusion that it would be extremely unlikely that a settlement conference will resolve the case. (Rule 2.5.1 renumbered effective January 1, 2006; adopted as Rule 8.1 effective January 1, 1997)

2.5.2 Meet and Confer Prior to Settlement Conference

A. In all cases set for a settlement conference where the parties are not excused from attending the settlement conference, the parties shall meet and confer prior to the date set for the settlement conference in a good faith attempt to settle all issues. The requirement of this rule is met by a face-to-face meeting between the

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parties, or by engaging in mediation before a neutral mediator. If, however, an attorney's office is located outside of Fresno County, or a party in pro per resides outside of Fresno County, that party may meet the requirement of this rule by meeting and conferring telephonically in a good faith attempt to settle all issues. Communication by writing will not suffice.

B. The fact of compliance with this rule, and the results of the meet and confer conference shall be set forth in the settlement conference statement. (Rule 2.5.2 renumbered effective January 1, 2006; adopted as Rule 8.2 effective January 1, 1998)

2.5.3 Further Settlement Conference on Day of Trial

Notwithstanding Rule 2.5.1, the Presiding Judge may order any case to a further settlement conference on the day the case is set for trial. (Rule 2.5.3 renumbered effective January 1, 2006; adopted as Rule 8.3 effective January 1, 1997)

2.5.4 Conflicts in Scheduling and Special Requests

A. Any party who wishes to request a change in a settlement conference date due to a scheduling conflict, or who wishes to make any other special request regarding a settlement conference, shall present that request to the Presiding Judge by letter, with a copy mailed to each party, at least thirty (30) days prior to the date set for the settlement conference. Any party wishing to respond to the request shall respond by letter to the Presiding Judge, with a copy mailed to each party, within two (2) days of receipt of the request letter.

B. If the request is made after the thirty-day limit has passed, the request shall include a detailed factual declaration demonstrating good cause for the delay.

C. The party making the request may submit a stipulation or other paper reflecting the consent of all other parties to the proposed change. The court will generally not grant a request for a change of date for the settlement conference unless all parties have been contacted by the requesting party and have agreed to a new date and time.

D. Parties will be notified of the court's ruling.

E. On the request of an attorney whose office is located outside the County of Fresno, the court will attempt, if possible, to reschedule a settlement conference at a different time, but on the same date, when such request is made pursuant to subparagraph A above. (Rule 2.5.4 renumbered effective January 1, 2006; adopted as Rule 8.4 effective January 1, 1997)

2.5.5 Attendance

A. **Parties.** All parties shall be personally present at the settlement conference except that an insured party is not required to appear where that party's

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insurance carrier admits coverage for all causes of action alleged against that party, full authority has been granted by such insured party to the carrier and attorney to settle within policy limits, and the highest demand for settlement is within policy limits. However, where the carrier assumes the defense pursuant to a reservation of rights, the insured shall attend the settlement conference also.

A party who is not an individual shall appear by a representative who shall be fully familiar with the facts of the case and have full authority to settle. If the party's governing body is a board, council, or committee which is required to approve settlement, the representative attending the settlement conference on behalf of that party shall have authority to recommend approval directly to such governing body, without seeking approval from any other person prior to making such recommendation.

B. **Attorneys.** The trial attorney for the case shall be personally present. The only exception shall be where the trial attorney is engaged in another trial at the same time as the settlement conference, in which case another attorney from the trial attorney's office shall attend, who is fully familiar with the facts of the case and has full authority to settle and who has discussed the case thoroughly with the client prior to the settlement conference.

C. **Insurance Claims' Employee.** In any case which requires consent of an insurance carrier to settle, an employee of the insurance carrier, who is fully familiar with the case and who has full authority to settle, shall be personally present. A claims adjuster retained only for the purpose of attending the settlement conference will not be acceptable. If the insurance carrier has no claims office located in California, and the court has been so notified pursuant to these rules, the personal attendance of an employee of the carrier is not required; provided, however, an employee of the insurance carrier with full authority to settle shall be immediately available by telephone until released by the court, regardless of the time zone.

D. **Consent of Others.** Where the consent of a spouse, business partner or other person is necessary to achieve settlement, even though this person is not a named party, every reasonable effort shall be made to either secure the attendance of such person at the settlement conference or have that person immediately available by telephone until released by the court.

E. **Structured Settlements for Minors.** In any case involving possible settlement for the benefit of a minor, where the settlement value might reasonably exceed \$25,000.00, the defendant seeking settlement with the minor shall bring to the settlement conference, or, throughout the settlement conference shall have immediate access to, a person qualified to compute present values under a structured settlement.

F. **Excused Attendance.** Subject to the above the court will not excuse parties, attorneys, or insurance carrier employees from required attendance except upon a timely showing of good cause by written declaration.

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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 and 4.1.7). The settlement conference shall be subject to the provisions of Local Rule 2.5.5. (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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2.6.2 Trial Readiness Hearing

A. Except for short cause cases, the Presiding Judge shall set and conduct a trial readiness hearing on the Friday prior to the date set for trial. The Presiding Judge, in his or her discretion, may excuse a case from the trial readiness hearing.

B. The attorney trying the case is required to be personally present at this hearing. In the event the trial attorney has a conflict preventing his or her presence, the trial attorney must make arrangements to have another attorney present, who is familiar with the case and its state of readiness for trial, and who has authority to confirm and/or continue the trial date.

C. Any party may appear telephonically with prior approval of the assigned department. (Effective July 1, 2007, Rule 2.6.2 renumbered effective January 1, 2006; adopted as Rule 9.2 effective July 1, 2000)

(Rule 2.6 renumbered effective January 1, 2006; adopted as Rule 9 effective July 1, 1992)

RULE 2.7 EX PARTE APPLICATIONS

2.7.1 Format and Filing

A. All applications for ex parte orders failing to comply with Rules 3.1200 through 3.1207 of the California Rules of Court will be rejected. Parties making ex parte applications shall obtain a date and time for the hearing of the application from the Clerk (Civil Calendar Division).

B. The court requests that the party seeking an ex parte order submit the application and all supporting papers and fees to the Clerk for filing not later than 2:00 p.m. on the day preceding the hearing, if the hearing is set in the morning, and not later than 9:00 a.m. on the date of the hearing, if the hearing is set in the afternoon. (Effective July 1, 2008, Rule 2.7 renumbered effective January 1, 2006; adopted as Rule 10 effective July 1, 2000)

2.7.2 Cases in Which Hearings Not Required

An ex parte application will be considered without a hearing in the following cases:

1. Application to file a memorandum of points and authorities in excess of the applicable page limit;
2. Stipulation by the parties for an order;
3. Application for appointment of a guardian ad litem in a civil case;
4. Application for an order extending time to serve pleading;

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5. Application to serve by publication;
6. Extension of time by the court pursuant to the Superior Court of Fresno County, Local Rules, rule 2.1.6;
7. Motion to continue trial pursuant to the Superior Court of Fresno County, Local Rules, rule 2.1.10;
8. Application to substitute Doe under CCP 474. (Effective July 1, 2008, New)

RULE 2.8 MISCELLANEOUS CIVIL RULES

2.8.1 Civil Jury Fees

A. Trial by jury shall be deemed waived unless jury fees are deposited no later than twenty-five (25) days prior to the trial in any case not entitled to priority setting, or deposited five (5) days prior to trial in any unlawful detainer case or other case entitled to priority setting.

B. Should any party demanding jury trial fail to deposit required fees, the Clerk will notify all other parties who have not previously waived trial by jury. Any such party may preserve its right to trial by jury by depositing the required fees within five (5) court days of mailing of the Clerk's notice.

C. Failure by any party to deposit jury fees as required herein shall constitute waiver of trial by jury. (Rule 2.8.1 renumbered effective January 1, 2006; adopted as Rule 11.1 effective January 1, 1997)

2.8.2 Use of Interpreters

Interpreters will not be provided for civil or small claims matters, unless otherwise ordered by the court. Upon request, the Clerk will provide the names of authorized interpreters with whom a party may make arrangements for interpreting services, or may refer the party to the court's interpreter coordinator. Any party requiring the services of an interpreter is responsible for arranging and paying for the services of such interpreter unless otherwise ordered by the court. (Rule 2.8.2 renumbered effective January 1, 2006; adopted as Rule 11.2 effective January 1, 1997)

2.8.3 Attorney's Fees

A. Attorney's fees in default cases, when allowable in designated cases, shall be fixed in accordance with Appendix A1, except as otherwise ordered by the court.

B. When an attorney is appointed to represent a party in designated cases, the attorneys' fees are governed by the Fresno County Courts Appointed Counsel/Expert General Claim Processing Practices (FCCAC/EGCPP), a copy of which

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is available from the Clerk. (Rule 2.8.3 renumbered effective January 1, 2006; adopted as Rule 11.3 effective January 1, 2005)

2.8.4 Compromise of Claims of Minors or Incompetent Persons

A. Petitions to compromise the claims of minors or incompetent persons shall be made on the appropriate Judicial Council forms, in accordance with Rule 7.950, et seq., of the California Rules of Court. Such petitions must be filed with the court at least 10 court days prior to the hearing date. If the original petition is denied without prejudice and the petitioner wishes to renew the request, the petitioner must file an amended petition, with appropriate supporting papers and proposed orders, and obtain a new hearing date for consideration of the amended petition.

B. If a petition to withdraw from deposit is made:

1. The certificate of deposit must have been completed and filed prior to filing of the petition for withdrawal.

2. In the event the petition to withdraw funds is based upon the denial of a public agency providing public assistance to provide funds because of the existence of the account, a copy of the written notice from the agency concerned, so stating, shall be attached to the petition.

C. If an order for withdrawal of funds is made, within fifteen (15) days from the date of the order, a declaration of expenditures made with the funds shall be filed with the Clerk.

D. Attorney's fees, if awarded, shall be awarded in conformity with Rule 7.955 of the California Rules of Court. In computing fees, parents claiming reimbursement for medical and other expenses shall pay their proportionate share of the attorneys' fees, except in cases of hardship. (Effective July 1, 2007, Rule 2.8.4 renumbered effective January 1, 2006; adopted as Rule 11.4 effective July 1, 2002)

2.8.5 Court Reporter Fees

A. In any civil case in which a trial or hearing is expected to last more than one (1) hour, but not more than four (4) hours, and official reporting services (by court reporter or electronic recording) are required, the parties shall deposit with the Clerk their pro rata shares of the fee for one-half (1/2) day of official reporting services.

B. In any civil case in which a trial or hearing is expected to last more than four (4) hours and official reporting services are required, the parties shall deposit with the Clerk their pro rata shares of the fee for one (1) full day of official reporting services.

C. The fee shall be deposited not later than the conclusion of each day's court session. The fee for any subsequent day of the trial or hearing shall be deposited with the Clerk not later than the conclusion of each day's court session.

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D. Attorneys must be prepared to produce receipts for fees on demand of the court or the trial or hearing may not proceed at the discretion of the Court. (Effective January 1, 2008, Rule 2.8.5 renumbered effective January 1, 2006; adopted as Rule 11.5 effective July 1, 2000)

2.8.6 Filing Limited Civil Cases in Proper Court Division

A. Unless otherwise ordered, limited civil cases, including unlawful detainer cases, shall be filed and litigated in the division of the court designated by this rule. The location that determines the proper venue of a case (e.g., the place of defendant's residence, the place the contract was entered into, etc.) shall also determine the proper court division in which the case is to be filed. If the case is filed in a division other than that specified in this rule, it may be transferred to the proper division on the court's own motion or on motion of any party.

B. The proper court division for the filing of the case shall be determined by the zip code covering the location on which venue is based. A list of the zip codes and the corresponding court divisions in which cases are to be filed may be obtained from the Clerk's office at any division of the court or may be accessed on the court's website. (Effective January 1, 2007, Rule 2.8.6 renumbered effective January 1, 2006; adopted as Rule 11.6 effective January 1, 2005)

2.8.7 Firearms Forfeiture Default

On a petition for order of default regarding a firearms forfeiture pursuant to Welfare and Institutions Code § 8102, subdivision (g), the agency seeking the default shall file their petition for default 10 court days preceding the date set for the hearing. (Effective January 1, 2008, New)

(Rule 2.8 renumbered effective January 1, 2006; adopted as Rule 11 effective July 1, 1992)

RULE 2.9 UNLAWFUL DETAINER CASES

2.9.1 Case Disposition Time

The court shall endeavor to dispose of all unlawful detainer cases as follows: 90% within thirty (30) days after filing; and 100% within forty-five (45) days after filing. (Rule 2.9.1 renumbered effective January 1, 2006; adopted as Rule 12.1 effective July 1, 2000)

2.9.2 Notice of Dismissal Hearing

At the time the complaint is filed, the Clerk will issue a Notice of Dismissal Hearing to plaintiff, designating a date for a Dismissal Hearing that is within 45 days after the filing of the complaint. (Rule 2.9.2 renumbered effective January 1, 2006; adopted as Rule 12.2 effective May 14, 2001)

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2.9.3 Service and Filing of Proof of Service

Within fifteen (15) days from the date the unlawful detainer complaint was filed, plaintiff shall serve all named defendants and file proof of service with the court or shall file an application for a posting order, unless a responsive pleading has been filed. (Rule 2.9.3 renumbered effective January 1, 2006; adopted as Rule 12.3 effective May 14, 2001)

2.9.4 At Issue Memorandum

Within twenty-five (25) days after the date the unlawful detainer complaint was filed, plaintiff shall file an At Issue Memorandum, unless there has been a final disposition of the case or a notice of settlement or stay has been filed. The At Issue Memorandum shall be submitted on a form which is available from the Clerk's office or on the court's website. By filing an At Issue Memorandum a party represents that the case is at issue and will be ready to proceed to trial on the date assigned. (Rule 2.9.4 renumbered effective January 1, 2006; adopted as Rule 12.4 effective May 14, 2001)

2.9.5 Dismissal Hearing

A. Plaintiff shall attend the Dismissal Hearing, either in person or by telephonic appearance. At the hearing, the status of the case will be discussed, including whether the case should be set for trial or dismissed. Appropriate orders will be made.

B. Failure of the plaintiff to appear may result in dismissal of the case.

C. A dismissal hearing will be taken off calendar if a trial date has been set, an At Issue Memorandum has been filed, or there has been a final disposition of the case. A dismissal hearing will be continued if a notice of settlement or stay has been filed with the court prior to the date of the dismissal hearing. If any of these conditions exists, it is the responsibility of the parties to notify the TCDR Clerk in writing and ask that the Conference be taken off calendar or continued. (Rule 2.9.5 renumbered effective January 1, 2006; adopted as Rule 12.5 effective May 14, 2001)

2.9.6 Assignment of Case for Trial

If the At Issue Memorandum complies with these rules in all respects, the Clerk shall assign the case for trial within twenty (20) days after the date the At Issue Memorandum was filed, and mail notice of the trial date to the parties at least ten (10) days before the trial date. (Rule 2.9.6 renumbered effective January 1, 2006; adopted as Rule 12.6 effective May 14, 2001)

2.9.7 Hearing to Prove Damages

A. After a Clerk's judgment for restitution of the premises has been entered, a plaintiff seeking to recover money damages shall set the case for a hearing to prove damages within six (6) months after the judgment is entered.

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B. A personal appearance will not be required if a declaration is submitted pursuant to § 585(b) and (d) of the Code of Civil Procedure. (Rule 2.9.7 renumbered effective January 1, 2006; adopted as Rule 12.7 effective July 1, 2000)

2.9.8 Undertaking for Immediate Possession of Premises

Unless otherwise ordered by the court, the minimum amount of undertaking required for an order for immediate possession of premises, pursuant to § 1166a of the Code of Civil Procedure, shall be 10 times the amount of monthly rental, but not less than \$500.00. (Rule 2.9.8 renumbered effective January 1, 2006; adopted as Rule 12.8 effective July 1, 2000)

2.9.9 Judgment

When a judgment for restitution or possession of the premises under Code of Civil Procedure section 1169 or 1174 is prepared and submitted by plaintiff, it shall describe with reasonable certainty the real property that is the subject of the judgment, giving its street address (including the zip code), if any, or other common designation, if any. (Rule 2.9.9 renumbered effective January 1, 2006; adopted as Rule 12.9 effective January 1, 2003)

2.9.10 Notice of Restricted Access

Each plaintiff who files an action for Unlawful Detainer, for which a Notice of Restricted Access must be mailed to the defendants pursuant to Code of Civil Procedure Section 1161.2(c), must provide to the court at the time of filing the action, (1) a separate stamped, legal-size envelope addressed to each defendant named in the action at the address provided in the complaint, and (2) a stamped, legal-size envelope addressed to "All Occupants" at the subject premises. (Rule 2.9.10 renumbered effective January 1, 2006; adopted as Rule 12.10 effective January 1, 2005)

(Rule 2.9 renumbered effective January 1, 2006; adopted as Rule 12 effective July 1, 1992)

RULE 2.10 SMALL CLAIMS CASES

2.10.1 Case Disposition Time

The court shall endeavor to dispose of all small claims cases as follows: 90% within seventy (70) days after filing; and, 100% within ninety (90) days after filing. (Rule 2.10.1 renumbered effective January 1, 2006; adopted as Rule 13.1 effective July 1, 2000)

2.10.2 Unserviced Defendants

A. If proof of service on the defendant in a small claims case has not been filed by the date set for trial, the case will not be heard on that date. The court or the Clerk may reset the case for trial.

B. If more than one defendant is named in the plaintiff's claim, and proof of service as to some, but not all, of the defendants has been filed prior to the date set for trial, the court may continue the trial of the case as provided in § 116.570 of the Code of

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Civil Procedure, or trial may proceed only as to those defendants who have been served. The court or the Clerk may reset the case for trial as to any remaining defendants. (Rule 2.10.2 renumbered effective January 1, 2006; adopted as Rule 13.2 effective July 1, 2000)

2.10.3 Untimely Small Claims Appeals

No notice of appeal from a small claims judgment shall be accepted for filing after the statutory period for filing such an appeal has expired, unless a writ of mandate ordering the Clerk to file the notice of appeal has been issued. (Rule 2.10.3 renumbered effective January 1, 2006; adopted as Rule 13.3 effective July 1, 2001)

2.10.4 Filing Small Claims Cases in Proper Court Division

Unless otherwise ordered, small claims cases shall be filed and litigated in the division of the court designated by Rule 2.8.6. If the case is filed in a division other than that specified in this rule, it may be transferred to the proper division on the court's own motion or on the request of any party. (Rule 2.10.4 renumbered effective January 1, 2006; adopted as Rule 13.4 effective July 1, 2003)

(Rule 2.10 renumbered effective January 1, 2006; adopted as Rule 13 effective July 1, 1992)

(Chapter 2 amended effective January 1, 2006; adopted as II effective July 1, 1992)

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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 presiding judge of the Criminal Division at the time designated by that judge for motions. No pre-approval of the date is required.

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 subdivision A above. All motions shall contain, in the area below the Motion Title of the first page of 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 pretrial 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

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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 July 1, 2007, Rule 3.5.1 renumbered effective January 1, 2006; adopted as Rule 18.1 effective July 1, 2004)

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."

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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.

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

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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.

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)

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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 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 8.700 through 8.709 and 8.780 through 8.793 of the California Rules of Court. The Notice of Appeal (form TR1-

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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 July 1, 2007, 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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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) 488-3294.

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. (Rule 7.3 renumbered effective January 1, 2006; adopted as Rule 72 effective January 1, 2004)

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