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(d). Motion excluding offers to settle and/or settlement discussions.

(2). All other motions in limine shall be filed and served on opposing counsel no later than 4:00 p.m., six (6) court days prior to the trial call date. Written opposition to in limine motions, if any, shall be filed and served on opposing counsel no later than 4:00 p.m., three (3) court days prior to the initial trial call date. Failure to submit written opposition to in limine motions will not preclude oral opposition to the motions at the time of trial.

(3). (RESERVED).

(4). Motions in limine shall be prepared in the form prescribed as follows: The title of each in limine motion shall identify the moving party and describe the nature of the motion, and shall be numbered sequentially, indicating the total number of in limine motions submitted by the moving party. Example: “Plaintiff JANE DOE’S Motion In Limine to Exclude the Testimony of Joe Expert [No. 1 of 6].” Written opposition to in limine motions, if any, shall identify both the party filing the opposition, and the specific motion which is being opposed by name of moving party and motion number. Example: “Defendant RICHARD ROE’S Opposition to Plaintiff JANE DOE’S Motion In Limine No. 1.” (*Effective July 1, 2004*).

RULE 10: JURY INSTRUCTIONS (Civil)

a. Use of Pre-Approved Instructions

To the extent possible parties must use instructions promulgated or sponsored by the California Judicial Council.

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b. Service of Jury Instructions

At the commencement of trial in all civil jury matters, counsel shall serve upon all other parties participating in the trial and deliver to the trial judge a written request captioned in the action and entitled “Instructions Requested by (name of party),” to which shall be attached an edited copy of all instructions requested, with one instruction per page and a five-inch margin at the top of the page which may, however, include typical CACI headings, which will not be read to the jury. The parties may submit additional typewritten or printed instructions which shall contain the authorities relied upon, shall be sequentially numbered and shall follow standard CACI format. The parties should be prepared to provide to all jurors and alternates a copy of all written instructions, if so required by the trial judge.

(Effective July 1, 2004).

RULE 11-12: RESERVED

RULE 13: TOXIC AND HAZARDOUS MATERIALS

Prior to bringing any toxic hazardous or potentially hazardous materials into the courtroom, counsel shall provide to the court a written statement containing information as hereinafter set forth:

- (1) A list of the technical and street names of the said materials.
- (2) The types and sizes of the containers to be utilized for the materials.
- (3) The name of the person who will transport the materials into the courtroom.
- (4) Where the materials will be stored and the conditions, under which the materials will be stored, viewed or handled.
- (5) The name of the person who will remove the materials.
- (6) An explanation as to why the material is hazardous or potentially hazardous and the remedies to be followed in the event of a spill, leak or other accident.

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- (7) An explanation as to why the introduction of the materials into evidence must be accomplished by their physical presence in the courtroom, rather than proof of their existence by any other method.

Toxic, hazardous or potentially hazardous materials shall include, but not be limited to, all chemicals, pesticides, and explosives, other than ammunition. A comprehensive list of these materials is contained in the California Code of Regulations, Title 8, Section 339(3), entitled The Hazardous Substance List. Any further information concerning the list of materials provided in the aforementioned California Code of Regulations or additional information concerning other hazardous materials may be obtained by contacting the Merced County Department of Environmental Health.

This rule is made for the protection of the public and all persons involved in the processes of the justice system of Merced County.

(Effective July 1, 2004).

RULE 14: DOMESTIC VIOLENCE PROTOCOL

This rule is adopted in conformity with Penal Code 136.2 and California Rule of Court 5.450.

A. DEFINITIONS

For purposes of this rule:

- (1). “Criminal court protective order” means any court order issued under California Penal Code § 136.2 arising from a complaint, information, or an indictment charging a crime of domestic violence as defined in California Penal Code § 13700.
- (2). “Court” means all divisions of the Superior Court of the County of Merced.

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(3). “Cases involving child custody and visitation” include family (dissolutions, legal separations, nullities, Domestic Violence Prevention Act, parentage, petition for custody and support, Title IV-D child support matters where custody or visitation is an issue, and any other Family Law matters related to custody or visitation is an issue and any other family law matters related to custody or visitation), juvenile and probate guardianship proceedings.

(4). All references in the Protocol to Family Court, include any division of the Superior Court, hearing matters involving child custody and visitation, including Juvenile Court and Probate Court.(5).

“CLETS Civil Restraining Orders” include personal conduct, residence exclusion, stay away, and other orders issued under the Domestic Violence Prevention Act in the Family Code or Section 213.5 of the Welfare & Institutions Code.

B. PURPOSE

This protocol is intended to set forth the procedures for communication between the Courts about the issuance of Criminal Court protective orders and civil restraining orders including those orders involving child custody and visitation, where the same restrained person and protected person are involved in both orders. It is important to permit appropriate visitation between a criminal defendant and his or her children_pursuant to civil court orders, but at the same time provide for the safety of the victim or witness by ensuring that a criminal court protective order is not violated. Since there are large numbers of cases in

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the criminal courts that have related matters in the Family, Juvenile, or Probate Courts, it is vital that there be a process for communication between the divisions of the court dealing with the same parties and families, and a process for the modification of orders to insure consistency between various court protective orders.

C. PROCEDURE IN THE CRIMINAL DOMESTIC VIOLENCE COURT

(1). Where the Restrained and Protected Persons have Children Together

When the Criminal Court issues Criminal Protective Orders protecting Victim(s), the Criminal Court shall inquire of the defendant (restrained person) whether there are any children of the relationship between the defendant and the victim (protected person), and whether there are any Court Orders for custody/visitation of those children. If there are children, the Criminal Court shall consider whether peaceful contact should be allowed for purposes of visitation of the defendant with the children. The Criminal Court shall also inquire as to whether there are any other protective/restraining orders involving the defendant and the victim. Subject to available resources, including the court's Lotus Notes Domestic Violence Program, the court shall examine available data bases for existing protective or restraining orders, before issuing permanent orders.

(2). When the Protected Persons Include Minor Children of the Restrained Person

When the Criminal Court issues No Contact and/or Stay Away Orders from the minor children of the defendant:(a). The Criminal Court shall:

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- (1). Promptly send a copy of its Order to the Family Court.
- (2). Notify the defendant of his or her rights to seek a modification and of the necessity of returning to the Criminal Court to modify the Criminal Court protective order.

(3). When the Victim is Present in the Criminal Court

If the victim is present in Criminal Court when the Criminal Protective Order is issued, the Court shall provide the victim with a copy of the Criminal Protective Order. If the victim is not present in Court, the Court will provide the victim with a copy of the Criminal Protective Order.

(4). Modification of Criminal Protective Orders in Criminal Court.

Because Criminal Protective Orders supercede Civil Protective Orders, to the extent they are inconsistent, it is important that the process of modification be easily available.

- (a). The District Attorney's Office may, at any time, place the issue before the court at the request of a victim or the Family, Juvenile or Probate Court.
- (b). The Probation Department may place the issue before the court at the request of a defendant, victim, or the Family, Juvenile or Probate Court.
- (c). The defendant or his/her counsel may place the issue before the court.

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- (d). Upon a proper request pursuant to this protocol, the Criminal Domestic Violence Court shall place the matter on calendar on its own motion. The Court, in its discretion, may prepare a Standing Order for this purpose.
- (e). Copies of any applicable CLETS civil restraining orders and custody and visitation orders shall be attached to the Application to Modify Criminal Protective Order. The Application shall have the case numbers of both the Criminal Court case and any Family, Juvenile, or Probate cases involving the defendant and the victim on it. Copies of the application shall be placed in the applicable court files. The requesting person will be responsible for personal service 5 days before the hearing on the defendant and all other appropriate parties and agencies, including the District Attorney's Office, the Probation Department (if the defendant's on formal probation), the Public Defender's Office, and the defendant or victim. A copy of the Application to Modify Criminal Protective Orders shall be served on the District Attorney and the Probation Department at least 5 days in advance of the scheduled hearing date. The District Attorney shall send a copy of the Application to the victim at his or her last known address. The Sheriff's Office shall include service of these documents with their current process for civil restraining order service.

(5). Procedure After the Criminal Court Hearing on Modification.

After the hearing on Modification of the Protective Order, the Criminal Court shall send to the applicable Family, Juvenile, or Probate Court for inclusion

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in its files, a copy of the Modified Protective Order or Order Denying Motion to Modify Criminal Protective Order (or Minute Order). The District Attorney shall send a copy of the new Criminal Protective Order, or the Order Denying the Motion to Modify Criminal Protective Order (Or Minute Order) to the victim at his or her last known address.

(D). Procedure in Family, Juvenile and Probate Courts

(1). Criminal Record Information to be made Available to the Family Court.

Subject to available resources, the Family, Juvenile, and Probate Courts or their designee(s) shall review appropriate databases for existing restraining/protective orders involving the same restrained and protected parties, before issuing permanent CLETS Civil Restraining Orders.

(2). Provisions For Safe Access to Children

Any order of the Family, Juvenile, or Probate Court that permits contact between a restrained person subject to CLETS restraining orders and his or her children shall contain specific language setting forth the schedule for such contact and the safe exchange of the children. Such an order shall not contain language that conflicts with a Criminal Protective Order that provides for no contact, or limits access to, the other parent.

(E). Communication between the Courts and Related Agencies

(1). Subject to available resources, any Court issuing protective/restraining orders must make reasonable inquiries to determine the

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existence of other protective/restraining orders involving children of the protected and restrained parties.

(2). Any division of the Superior Court may provide copies of Criminal Protective Orders, CLETS Civil Restraining Orders, Court Minutes, and applicable custody and visitation orders to other divisions of the Court.

(F). Request to modify a Criminal Restraining Order

(1). The Family Law Commissioner may recommend a modification by utilizing the Request for Hearing Form. The Commissioner may direct an attorney or party to complete the Request for Hearing Form and attach a copy of a Minute Order reflecting the Commissioner's recommendation to the Criminal Court.

(2). A Defendant, protected person, deputy district attorney, criminal defense attorney, probation officer, attorney for the defendant, or attorney for the protected person may request a modification of a restraining order by utilizing the form "Request for Hearing on Protective Order Modification." The form is available at the Merced County Superior Court.

(Effective January 1, 2009)

RULE 15: WITHDRAWAL OF STIPULATION TO COMMISSIONER

Any withdrawals of a stipulation to a Commissioner must be made five (5) days prior to a hearing or trial if the Commissioner is known at least ten (10) days before such hearing or trial. (Also refer to Rule 16:a).

(Effective July 1, 2004).