

MAR 08 2021

JAMES M. KIM, Court Executive Officer  
MARIN COUNTY SUPERIOR COURT

SUPERIOR COURT OF CALIFORNIA

COUNTY OF MARIN

ORDER RE:

CONDUCT OF TRAFFIC TRIALS.

**ORDER RE:  
CONDUCT OF TRAFFIC TRIALS**

Since March 16, 2020 the Court has issued a series of Administrative Orders implementing emergency relief in response to the COVID-19 pandemic—most recently Administrative Order 21-01. Similarly, the President of the United States, Governor of California, California Judicial Council, and the Chief Justice of the California Supreme Court all have issued orders that recognize the continued need to protect the health and safety of the public and court personnel. In addition, the Judicial Council passed temporary Emergency Rules related to the Covid-19 pandemic. This includes Emergency Rule of Court, Rule 3 which authorizes the use of remote court proceedings in lieu of in-person appearances.

1 Pursuant to the authority granted under Government Code section 68115, issued in response  
2 to the renewed request for an emergency order made by the Superior Court of Marin County  
3 (“Court”), the February 4, 2021, Order (“Order”) of Chief Justice Tani G. Cantil-Sakauye, Chair  
4 of the Judicial Council of California; and based on the Court’s inherent authority to control its  
5 own calendars and the Presiding Judge’s duty to take into account the needs and safety of the  
6 public and the Court as they relate to the efficient and effective management of the Court’s  
7 calendar (California Rules of Court, rule 10.603(c)), this Court hereby orders as follows:

- 8 1. This Order supplements, but does not replace or supersede any provisions of Administrative  
9 Order 21-01, and its predecessors, which remain in full force and effect;
- 10 2. The judicial officer presiding over the Traffic Court is hereby authorized to make use of  
11 available technology, when possible, to conduct judicial proceedings and court operations  
12 remotely, in order to protect the health and safety of the public, court personnel, judicial  
13 officers, litigants, and witnesses. This includes the use of video, audio, and telephonic means  
14 for remote appearances, reporting, and interpreting in judicial proceedings, and the electronic  
15 exchange and authentication of documentary evidence. Any rule in the California Rules of  
16 Court, to the extent such rule would prevent a court from using technology to conduct judicial  
17 proceedings and court operations remotely, is suspended (See March 30, 2020 Statewide  
18 Emergency Order by Chief Justice, paragraph C);
- 19 3. Because of the ongoing COVID-19 pandemic, in response to the prevailing public health risk,  
20 and consistent with the directives of the Chief Justice, this Court has established numerous  
21 remote video and teleconferencing courtrooms to maximize the ability of litigants to  
22 adjudicate their matters in a safe manner, and through the use of remote live streaming  
23 capability to permit simultaneous public access to court proceedings.  
24  
25  
26  
27  
28

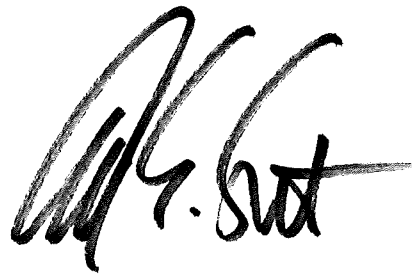
- 1 4. This Court acknowledges the presumption in favor of universal access to the courts, and  
2 the rights of the public and press to attend both civil and criminal trials. However, that  
3 access is not absolute and may be limited where there is a compelling interest that cannot  
4 be achieved through less restrictive means. (See e.g., *Globe Newspaper Co. v. Superior*  
5 *Court* (1982) 457 U.S. 596, 607; *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court*  
6 (1999) 20 Ca1.4th 1178, 1181-1182.)  
7
- 8 5. Further, the Court acknowledges that Article VI of the U. S. Constitution (“Confrontation  
9 Clause”) provides that in criminal prosecutions, the defendant enjoys certain rights that  
10 include being confronted with the witnesses against them, allowing the defendant to cross-  
11 examine witnesses who testify against them; and allowing the trier of fact to assess the  
12 credibility of a witness by observing that witness’s behavior. (See *Mattox v. United States*,  
13 156 U.S. 237 (1895).)  
14
- 15 6. Although the Confrontation Clause reflects a preference for face-to-face confrontation at  
16 trial, that preference occasionally must give way to considerations of public policy and the  
17 necessities of the case. The right to confront accusatory witnesses may be satisfied absent  
18 a physical, face-to-face confrontation at trial only where denial of such confrontation is  
19 necessary to further an important public policy, and only where the testimony's reliability  
20 is otherwise assured. (See *Maryland v. Craig*, 497 U.S. 836 (1990)).  
21
- 22 7. The Court expressly finds that the use of video, audio and telephonic methods does not: (1)  
23 violate the defendant's right to a fair and impartial trial (*People v. Lucero*, (2000) 23 Cal.4th  
24 692); (2) deny them the opportunity for confrontation and effective cross-examination, for  
25 purposes of the Confrontation Clause; (3) negatively impact the trial's fairness in any  
26 marginal way, for purposes of the Due Process clause; (4) or impermissibly interfere with  
27  
28

1 their opportunity to defend against the charges for purposes of Section 15 of Article I of the  
2 California Constitution. (*People v. Virgil (2011) 51 Cal.4th 1210*).

- 3 8. All proceedings in matters pertaining to the traffic court--including arraignment, mandatory  
4 appearances, and trial--shall be conducted through the use of remote technology. In-person  
5 appearances, unless otherwise noted, are prohibited.
- 6
- 7 9. If at the time of defendant's appearance for trial, defendant raises an objection to being  
8 present by Zoom (or other video method), the trial court shall weigh the compelling health  
9 risks of the ongoing national pandemic, the risks to the parties, counsel, the court and its  
10 attachés, and all others present in the courthouse, against the Constitutional Rights of  
11 defendant. The trial court then shall decide whether there is good cause to continue the matter,  
12 conduct the trial by video conference, or take any further action;
- 13
- 14 10. The limitation of Court operations, including the requirement that all proceedings will be  
15 through the use of remote technology, are to protect the health and safety of the public, court  
16 personnel, judicial officers, counsel, litigants and witnesses in connection with the COVID-19  
17 threat while at the same time protecting individual and procedural constitutional and civil  
18 rights protections.
- 19

20 IT IS SO ORDERED.

21 DATED: March 8, 2021



---

ANDREW E. SWEET  
Presiding Judge