

2003 California Rules of Court

Rule 828. Traffic court-trial by written declaration

(a) [Applicability] This rule establishes the minimum procedural requirements for trials by written declaration under Vehicle Code section 40902. The procedures established by this rule shall be followed in all trials by written declaration under Vehicle Code section 40902.

(b) [Procedure]

(1) (*Definition of due date*) As used in this subdivision, "due date" means the last date on which defendant's appearance is timely.

(2) (*Extending due date*) If the clerk receives defendant's written request for a trial by written declaration by the appearance date indicated on the *Notice to Appear*, the clerk shall, within 15 calendar days after receiving defendant's written request, extend the appearance date 25 calendar days and shall give or mail notice to defendant of the extended due date on the *Request for Trial by Written Declaration* (form TR-205) with a copy of the *Instructions to Defendant* (form TR-200) and any other required forms.

(3) (*Election*) Defendant shall file a *Request for Trial by Written Declaration* (form TR-205) with the clerk by the appearance date indicated on the *Notice to Appear* or the extended due date as provided in subdivision (2). The *Request for Trial by Written Declaration* shall be filed in addition to defendant's written request for a trial by written declaration, unless defendant's request was made on the election form.

(4) (*Bail*) Defendant shall deposit bail with the clerk by the appearance date indicated on the *Notice to Appear* or the extended due date as provided in subdivision (2).

(5) (*Instructions to arresting officer*) If the clerk receives defendant's *Request for Trial by Written Declaration* (form TR-205) and bail by the due date, the clerk shall deliver or mail to the arresting officer's agency *Notice and Instructions to Arresting Officer* (form TR-210) and *Officer's Declaration* (form TR-235) with a copy of the *Notice to Appear* and a specified return date for receiving the officer's declaration. After receipt of the officer's declaration, or at the close of the officer's return date if no officer's declaration is filed, the clerk shall submit the case file with all declarations and other evidence received to the court for decision.

(6) (*Court decision*) After the court decides the case and returns the file and decision, the clerk shall immediately deliver or mail the *Decision and Notice of Decision* (form TR-215) to defendant and arresting agency.

(7) (*Trial de novo*) If defendant files a *Request for New Trial (Trial de Novo)* (form TR-220) within 20 calendar days after the date of delivery or mailing of the *Decision and*

Notice of Decision, the clerk shall set a trial date that shall be within 45 calendar days of receipt of defendant's written request for a trial de novo. The clerk shall deliver or mail to defendant and to the arresting officer's agency the *Order and Notice to Defendant of New Trial* (form TR-225). If defendant's request is not timely received, no trial de novo shall be held and the case shall be closed.

(8) (*Case and time standard*) The clerk shall deliver or mail the *Decision and Notice of Decision* (form TR-215) within 90 calendar days after the due date. Acts for which no specific time is stated in this rule shall be performed promptly so that the *Decision and Notice of Decision* can be timely delivered or mailed by the clerk. Failure of the clerk or the court to comply with any time limit shall not void or invalidate the decision of the court, unless prejudice to the defendant is shown.

(*Subd (b) amended effective July 1, 2000; previously amended effective January 1, 2000.*)

(c) [Due dates and time limits] Due dates and time limits shall be as stated in this rule, unless changed or extended by the court. The court may extend any date, but the court need not state the reasons for granting or denying an extension on the record or in the minutes.

(d) [Ineligible defendants] If defendant requests a trial by written declaration and the clerk or the court determines that defendant is not eligible for a trial by written declaration, the clerk shall extend the due date 25 calendar days and notify defendant by mail of the determination and due date.

(e) [Noncompliance] If defendant does not comply with this rule (including submitting the required bail amount, signing and filing all required forms, and complying with all time limits and due dates), the court may deny a trial by written declaration and may proceed as otherwise provided by statute and court rules.

(f) [Evidence] Testimony and other relevant evidence may be introduced in the form of a *Notice to Appear* issued under Vehicle Code section 40500; a business record or receipt; a sworn declaration of the arresting officer; and, on behalf of the defendant, a sworn declaration of defendant.

(g) [Fines, assessments, or penalties] The statute and the rules shall not prevent or preclude the court from imposing on a defendant who is found guilty any lawful fine, assessment, or other penalty, and the court is not limited to imposing money penalties in the bail amount, unless the bail amount is the maximum and the only lawful penalty.

(h) [Additional forms and procedures] The clerk may approve and prescribe forms, time limits, and procedures that are not in conflict with or not inconsistent with the statute or this rule.

(i) [Forms] The following forms shall be used to implement the procedures under this rule:

- (1) Instructions to Defendant (form TR-200)
- (2) Request for Trial by Written Declaration (form TR-205)
- (3) Notice and Instructions to Arresting Officer (form TR-210)
- (4) Officer's Declaration (form TR-235)
- (5) Decision and Notice of Decision (form TR-215)
- (6) Request for New Trial (Trial de Novo) (form TR-220)
- (7) Order and Notice to Defendant of New Trial (form TR-225)