



## **SAN MATEO COUNTY LAW LIBRARY**

### **RESEARCH GUIDE #1**

## **MOTION AND ORDER TO VACATE A DEFAULT JUDGMENT**

This resource guide only provides guidance, and does not constitute legal advice. If you need legal advice you need to speak with an attorney. To find an attorney to assist you, you may contact the San Mateo County Lawyer Referral Service at (650) 369-4149.

### **WHAT IS A DEFAULT JUDGMENT?**

A Default Judgment is a judgment obtained by the plaintiff against the defendant in a case when the defendant does not appear at a hearing or does not file an Answer to the Plaintiff's Summons and Complaint.

In the case of traffic violations, the Traffic Court is the plaintiff and it obtained a Default Judgment against you, the defendant, when you did not appear, for whatever reason, at the Traffic Court hearing.

### **WHAT HAPPENS WHEN A DEFAULT JUDGMENT IS ENTERED AGAINST ME?**

In the case of Traffic Court, the Court sends the Default Judgment to the County Collection office for collection of the traffic violation fine. The County Collection office adds its own fines and assessments as well. In addition, the Traffic Court may send the Default Judgment to DMV for suspension of your driving license.

### **WHAT DO I DO WHEN A DEFAULT JUDGMENT IS ENTERED AGAINST ME?**

You essentially have two choices:

1. You can pay the fines against you. This is the easiest way to remove the judgment against you. But, it can be expensive!

or,

2. You can try to reduce or eliminate the fines against you by having the Default Judgment vacated. To do so, you must file two documents with the Traffic Court:
  - a. A 'Motion to Set Aside and Vacate Default Judgment and Enter Another and Different Judgment,' and
  - b. An 'Order to Set Aside and Vacate Default Judgment and Enter Another and Different Judgment.'

## **HOW DO I FILE THE MOTION AND ORDER TO VACATE DEFAULT JUDGMENT?**

**STEP 1:** The first step is to create both the Motion to Vacate Default Judgment as well as the Order to Vacate Default Judgment. To do so, follow the following instructions for each document.

### THE MOTION TO VACATE DEFAULT JUDGMENT

**STEP A:** From a computer with an internet connection, go to [www.smclawlibrary.org/forms/MotionToVacateDefaultJudgment.docx](http://www.smclawlibrary.org/forms/MotionToVacateDefaultJudgment.docx). When you click this link, it should open the Motion as a Word Document.

**PLEASE NOTE:** If you are working on a computer at the Law Library, you will see a dialogue box asking you if you want to open or save the document. SAVE THE DOCUMENT to the computer's desk top. Once you have saved the document to the computer's desk top, you can close the internet browser. Now, open the document on the computer's desk top by double clicking it.

**STEP B:** Fill out the Motion by following the comment instructions, 1 through 11, on the right hand side of the document.

**If you are using Microsoft Word 2010 on the Law Library computer, than:**

**STEP C:** Click on 'Review' tab at the very top, middle part of the document.

**STEP D:** Right below the Review tab you will see the words 'Final: Show Markup.' Change this to 'Final.'

**STEP E:** Print the document by clicking on the 'File' tab at the very top left part of the document. Click on 'Print' halfway down on the left

**If you are using Microsoft Word 2003, than:**

**STEP C:** Click on 'View' at the very top part of the document.

**STEP D:** Uncheck 'Markup'

**STEP E:** Print the document by clicking on the 'File' tab at the very top left part of the document. Click on 'Print.' If you print here in the Law Library, the cost is 25 cents per page. Please go to the circulation to pick up and pay for your document.

#### THE ORDER TO VACATE DEFAULT JUDGMENT

**STEP A:** From a computer with an internet connection, go to [www.smclawlibrary.org/forms/OrderToVacateDefaultJudgment.docx](http://www.smclawlibrary.org/forms/OrderToVacateDefaultJudgment.docx). When you click this link, it should open the Order as a Word Document.

**PLEASE NOTE:** If you are working on a computer at the Law Library, you will see a dialogue box asking you if you want to open or save the document. SAVE THE DOCUMENT to the computer's desk top. Once you have saved the document to the computer's desk top, you can close the internet browser. Now, open the document on the computer's desk top by double clicking it.

**STEP B:** Fill out the Order by following the comment instructions, 1 through 18, on the right hand side of the document.

**If you are using Microsoft Word 2010 on the Law Library computer, than:**

**STEP C:** Click on 'Review' tab at the very top, middle part of the document.

**STEP D:** Right below the Review tab you will see the words 'Final: Show Markup.' Change this to 'Final.'

**STEP E:** Print the document by clicking on the 'File' tab at the very top left part of the document. Click on 'Print' halfway down on the left

**If you are using Microsoft Word 2003, than:**

**STEP C:** Click on 'View' at the very top part of the document.

**STEP D:** Uncheck 'Markup'

**STEP E:** Print the document by clicking on the 'File' tab at the very top left part of the document. Click on 'Print.' If you print here in the Law Library, the cost is 25 cents per page. Please go to the circulation to pick up and pay for your document.

**STEP 2:** Sign the Motion (as well as the Declaration and Memorandum of Points and Authorities in the Motion).

**STEP 3:** Take both the Motion and Order to the Traffic Court and fill them with the Clerk.

**STEP 4:** A hearing time will be set when a judge will hear your case.

**STEP 5:** Go to the hearing and tell the judge what happened and why you did not appear at the initial Traffic Court hearing as well as why the Default Judgment should be vacated and a new judgment entered.