§ 660.40 Examination of witnesses conditionally; application and notice.

1. An application to examine a witness conditionally must be made in writing, must be subscribed and sworn to, and must contain:

(a) The title of the action, the offense or offenses charged, the nature and status of the action, and the name and residential address of the witness sought to be examined; and

(b) A statement that there is reasonable cause to believe that grounds for such an examination, as specified in section 660.20, exist, together with allegations of fact supporting such statement. Such allegations of fact may be those of the applicant, or those of another person in an accompanying deposition, or of both. They may be based either upon personal knowledge of the deponent or upon information and belief, provided that in the latter event the sources of such information and the grounds of such belief are stated.

2. The application may also contain a request that the examination, in addition to its being recorded in the same manner as would be required were the witness testifying at trial, also be recorded by videotape or other photographic method approved by and subject to standards and administrative policies promulgated pursuant to section twenty-eight of article six of the constitution.

3. A copy of the application, with reasonable notice and opportunity to be heard, must be served upon the other party to the action. If the defendant is the applicant, such service must be upon the district attorney. If the people are the applicant, such service must be upon the defendant and upon his attorney if any. The respondent party may file and serve a sworn written answer to the application.