
CRIMINAL RULES**RULE 1 GENERAL****A. SUPERVISING JUDGE – CRIMINAL**

The Criminal Division of the Superior Court shall be supervised by a judge appointed by the Presiding Judge and designated as the Supervising Judge – Criminal.

B. ASSISTANT SUPERVISING JUDGES

The Presiding Judge may designate one or more Assistant and/or facility Supervising Judges, including Assistant Supervising Judges – Criminal, Assistant Supervising Judge – Family Violence, Assistant Supervising Judge – Misdemeanor Division, Assistant Supervising Judge – Drug Court, Facility Supervising Judge – North County, and Facility Supervising Judge – South County.

(Effective 1/1/2019)

RULE 2 APPEARANCES**A. APPEARANCE OF DEFENDANT****(1) FELONY CASES**

Consistent with Penal Code § 977, in felony cases, the defendant must be present each time his or her matter is called in court, including when matters are submitted, unless a written waiver is on file. Absent a written waiver of appearance, failure of the defendant to appear will result in the issuance of a bench warrant. A written waiver of appearance shall not relieve a defendant from appearing at the Arraignment, Preliminary Examination, at the time of Plea, Master Trial Calendar, motions under Penal Code § 1050, and sentencing.

(2) MISDEMEANOR CASES

In misdemeanor cases, defendants may appear in person or by counsel. However, a defendant must be present in court if specifically ordered as allowed by Penal Code § 977 or otherwise required by statute. In misdemeanor domestic violence cases as defined in Penal Code § 977(a)(2), the defendant shall be present for arraignment and sentencing, and at any time during the proceedings when ordered by the Court for the purpose of being informed of the conditions of a protective order issued pursuant to § 136.2.

B. APPEARANCE OF COUNSEL

- (1) Counsel of record must appear at all hearings, unless other counsel appear for them or prior arrangements are made with the court. Counsel of record shall ensure that attorneys appearing “specially” have sufficient knowledge of the case, the schedule of the attorney of record, and/or settlement authority to ensure that all court appearances are meaningful and productive.
- (2) Counsel shall advise the court of any conflicting appearance in the court of another county prior to requesting or agreeing to any hearing date. Furthermore, counsel shall not request or agree to any hearing date in another county that conflicts with a hearing date previously set by the court.

(Effective 1/1/2019)

RULE 3 COURTHOUSES & CALENDARS

Adult criminal matters are filed and heard in the courthouses indicated in these rules. However, any case may be assigned to any courthouse for any purpose at the direction of the Presiding Judge, Supervising Judge – Criminal, or their designees.

(Effective 1/1/2019)

RULE 4 HALL OF JUSTICE COURTHOUSE

All misdemeanor and felony matters arising within Campbell, Los Gatos, Milpitas, Monte Sereno, San José, Santa Clara, Saratoga and adjacent unincorporated areas are filed and heard in this courthouse, except misdemeanor narcotic/drug offenses which shall be filed and heard at the Family Justice Center Courthouse.

A. FELONY MASTER TRIAL CALENDAR

The Felony Master Trial Calendar shall be called at 8:30 a.m. on Monday each week or as designated by the Supervising Judge - Criminal and shall consist of non-family violence felony matters set for trial. If Monday is a court holiday, this calendar shall be called on Tuesday. No probation violation, sentencing, misdemeanor, or pre-information/indictment felony matters shall be set on the Master Trial Calendar without authorization of the Supervising Judge – Criminal.

(1) Readiness Conference

Except for cases assigned to one judge for all purposes, a Readiness Conference for cases on the Master Trial Calendar shall be conducted at 8:45 a.m. on the court day immediately preceding the Master Trial Calendar or as designated by the Supervising Judge - Criminal. The Readiness Conference shall be held in the chambers of the Supervising Judge – Criminal or at another location designated by the Supervising Judge - Criminal. A representative of the District Attorney, Public Defender, Alternate Defender, and Independent Defender are required to be present. Trial counsel is required to notify the Court of trial readiness at the Readiness Conference as follows:

- a. The representatives of the law offices mentioned above shall notify the Supervising Judge – Criminal of the status of the attorneys and cases of their offices. Trial counsel shall communicate detailed information regarding status to their representatives in advance of the conference.

- b. Privately retained counsel shall provide the Criminal Calendar Secretary detailed information regarding their trial readiness by telephone or email no later than 3:30 p.m. on the court day preceding the Readiness Conference.

(2) Motions to Continue

All motions to continue matters on the Master Trial Calendar shall be heard by the Supervising Judge – Criminal on the After-Arraignment Calendar or otherwise at the discretion of the Supervising Judge – Criminal. Motions to continue brought in a trial department shall immediately be sent back to the Supervising Judge – Criminal for hearing.

B. FELONY ARRAIGNMENT ON INFORMATION / INDICTMENT CALENDAR

The Felony Arraignment on Information/Indictment Calendar shall be called on Monday at 1:30 p.m. and shall consist of non-family violence felony matters. If Monday is a court holiday, this calendar shall be called on Tuesday.

No probation violation, sentencing, misdemeanor, or pre-information/indictment felony matters shall be set on the Arraignment on Information/Indictment Calendar without authorization of the Supervising Judge – Criminal.

(1) Attorney of Record

Pursuant to Penal Code § 987.1, counsel who represented a defendant at the preliminary examination or at the time the defendant was otherwise held to answer shall appear with the defendant at the time of arraignment on the information. Any request to be relieved as attorney of record should be made at this appearance. An attorney seeking to be relieved shall bring with him or her all previously received discovery material, or otherwise be prepared to deliver such material forthwith to new counsel, or to the court, upon the substitution of counsel.

(2) Entry of Plea

A plea of not guilty must be entered if a defendant represented by counsel fails to plead or demur.

(3) Setting of Dates

The following dates shall be set after a plea of not guilty, including a plea of not guilty by reason of insanity, unless good cause is found pursuant to Penal Code § 1049.5:

- a. Trial, giving priority to any case entitled to priority under law;
- b. Filing and service of motions and responses and hearing thereon.
- c. In cases where a good cause finding has been made under Penal Code § 1049.5, the court may consider setting the matter on the Trial Status Conference Calendar. The purpose of the trial status conference calendar is for the court to insure that matters proceed in a manner mindful of the Pace of Litigation (Standards of Judicial Administration 2.1, 2.2(j)). This calendar will be heard in Department 24 every Wednesday at 1:35 p.m. or at such other time as designated by the Supervising Judge - Criminal.

(4) Pace of Litigation (Standards of Judicial Administration 2.1, 2.2(j))

In requesting and setting court dates, the parties and the court shall be mindful of the felony case processing time goals set forth in the Standards for Judicial Administration.

C. FELONY “AFTER ARRAIGNMENT” CALENDAR AND TRIAL STATUS CONFERENCE CALENDAR

(1) Felony After Arraignment Calendar

The Felony After-Arraignment Calendar shall be called at 1:30 p.m. on Wednesday or at such other time as designated by the Supervising Judge - Criminal and shall consist of non-family violence felony matters, including post-indictment/preliminary hearing bail motions.

No probation violation, sentencing, misdemeanor, or pre-information/indictment felony matters shall be set on the After-Arraignment Calendar without authorization of the Supervising Judge – Criminal.

(a) Time for Filing

The filing deadline to place matters on the Felony After-Arraignment Calendar is noon on the Thursday immediately before the calendar is called, except for motions pursuant to Penal Code § 1050. If Thursday is a court holiday, the deadline for placing matters on the Felony After Arraignment Calendar is on the Wednesday immediately before the calendar is called.

(b) Motions to Continue Master Trial Calendar Cases

- i. Unless good cause is shown, motions to continue matters on the Master Trial Calendar shall be heard on the After Arraignment Calendar before the pending trial date.
- ii. Unless good cause is shown, the deadline for placing Penal Code § 1050 motions on the After-Arraignment calendar is noon on the court day immediately preceding the calling of that After-Arraignment Calendar.

(2) Trial Status Conference Calendar

(a) The parties may request that a matter be placed on the Trial Status Calendar in lieu of being set for trial. The parties shall be prepared to articulate good cause to not set a trial date under Penal Code § 1049.5.

(b) Counsel shall meet and confer prior to each Trial Status Conference date and discuss, at a minimum, proposed trial date(s), whether resolution discussions would be beneficial, a plan to fully exchange discovery and whether there are any outstanding motions which need to be filed and heard. Counsel shall be prepared to meaningfully discuss these issues at each Trial Status Conference date and shall be mindful of the Pace of Litigation (Standards of Judicial Administration 2.1, 2.2(j))

D. FELONY CASE MANAGEMENT DEPARTMENTS

The Felony Case Management judges and departments shall be responsible for non-family violence felony matters from arraignment on the complaint through sentencing pursuant to Penal Code § 859a(a) or a holding order pursuant to § 872(a) and any other related matters at the discretion of the court to promote global disposition and efficiency.

(1) Pleas, Preliminary Examination Setting and Motions

- a. Pre-Hearing Communication Between Counsel (Meet & Confer)
 - i. Prior to each court appearance in the Case Management Department, counsel for the parties shall meet and confer to discuss the exchange of discovery, proposals for early resolution of the case and issues in dispute, and any good cause for delay of entry of plea and/or setting a preliminary examination.
 - ii. Counsel shall utilize the period between hearings to communicate with their client(s), alleged victims, and witnesses regarding ongoing investigations and offer(s) for disposition. Counsel must be prepared at each hearing to discuss any matter relating to the disposition of the case, including but not limited to preliminary examination readiness, estimated length of a preliminary examination or other hearing, identity of anticipated witnesses and the substance of their testimony, special problems, and whether a disposition without preliminary examination or trial is feasible.
 - b. Motions
 - i. General

All motions made prior to the filing of an information will be heard by the Felony Case Management judge assigned to the case, including motions to set or reduce bail or for pretrial release, motions related to pre-preliminary examination discovery, and amendment and consolidation of complaints.
 - ii. Motions to Amend the Complaint

A complaint may not be amended to add a defendant who has not previously been charged in the case.
 - iii. Motions and Responses shall comply with Rule 9.
- (2) Preliminary Examinations
- a. Preliminary Examinations Calendars

In the Felony Case Management Departments preliminary examinations will be set at 8:30 a.m. unless set otherwise by the Felony Case Management judge.
 - b. Readiness Notice

Each party in cases set for preliminary examination must inform the Felony Case Management department at least forty-eight hours prior to the time set for the examination whether the party will be ready to proceed, whether a continuance pursuant to Penal Code Section 1050 will be sought and whether an objection will be made, and whether an interpreter is needed. Each party must also provide an updated and accurate time estimate for the determination of the presence or absence of probable cause to hold the defendant(s) to answer. Each Felony Case Management department may designate how it wishes to receive such notice. If no such designation is made, notice shall be provided by electronic mail to the courtroom clerk.
 - c. Motions at Preliminary Examination

Any motions to be brought at the preliminary examination shall comply with Rule 9.
 - d. Scope of Examination

The court and the parties shall be mindful of the mandates of Penal Code section 866 in conducting preliminary examinations. Any issues related to the scope of the hearing should be brought to the attention of the court prior to the commencement of the preliminary examination.
- E. FELONY LAW AND MOTION CALENDAR-POST INDICTMENT/INFORMATION**
- (1) General

Post Indictment/Information motions in non-family violence felony cases shall be heard by the judge assigned to the Criminal Law and Motion department, except as follows:

 - a. Motions to quash or traverse a search warrant shall be heard before the judge who signed the warrant, if available (Penal Code § 1538.5(a)(2)(b)). If that judge is not available, the motion shall be set in accordance with these rules.
 - b. If an All Purpose Judge has been assigned by the Supervising Judge – Criminal for a particular matter, then all motions associated with that case shall be litigated in front of the all purpose judge assigned.
 - c. If the time estimate for hearing a motion is in excess of two hours or cannot be heard on a regular Law and Motion calendar, the motion may be set on the Master Trial Calendar as a long cause matter.
 - d. Any motion to be filed containing a requested hearing date on or after the Master Trial Calendar date must have the approval initials of the Supervising Judge–Criminal or his/her designee.
 - (2) Notice of Motion and Response
 - a. All Motions and Responses shall comply with Rule 9.
 - b. Except for motions brought pursuant to Penal Code § 995, if the motion is to be submitted in whole or in part on the transcript of the preliminary examination, or the transcript of any prior proceeding, the Notice of Motion and/or the Response must so state.
 - c. In any motion brought pursuant to California Penal Code § 1538.5(i) that is presented *de novo*, notice of this fact must also be set out on the first page of the moving and responding papers.
 - d. In any motion brought pursuant to California Penal Code § 1538.5(i) where additional live testimony is anticipated, notice of this fact must be set out on the first page of the moving or responding papers.
 - e. Failure to comply with any portion of this Rule shall be sufficient cause for the court to refuse to consider any transcript of a prior proceeding, to allow the calling of additional witnesses or to allow a *de novo* hearing.
 - (3) Motions to Continue Hearing

- a. Except in unusual or exigent circumstances, any party intending to request a continuance or not to proceed in any matter set for hearing shall promptly inform all other counsel and THEN inform the court assigned to hear the motion. This notification must be at least two court days preceding the hearing. It is counsel's responsibility in felony cases to place the case on the After-Arrestment Calendar if continuing the motion will require re-setting the trial date. The provisions of Penal Code §1050 shall be followed.
- b. The court shall have complete discretion concerning continuances, including the authority to deny any continuance and to rule in the absence of counsel, or to order the matter off calendar, notwithstanding any stipulation of counsel.

F. FAMILY VIOLENCE COURT

The Family Violence Court will hear felony and misdemeanor family violence matters from arraignment through disposition and sentencing, and will hold hearings as necessary to monitor treatment progress and probation compliance.

(1) Pre-Hearing Communication Between Counsel (Meet & Confer)

- a. Prior to each court appearance, counsel for the parties shall meet and confer to discuss the exchange of discovery, proposals for early resolution of the matter and issues in dispute, and any good cause for delay of entry of plea, setting or conducting a preliminary examination, trial or other hearing.
- b. Counsel shall utilize the period between hearings to communicate with their client(s), alleged victims, and witnesses regarding ongoing investigations and offer(s) for disposition. Counsel must be prepared at each hearing to discuss any matter relating to the disposition of the case, including but not limited to readiness, estimated length of a trial or other hearing, identity of anticipated witnesses and the substance of their testimony, special problems, and whether a disposition without preliminary examination or trial is feasible.
- c. Felony Cases
 1. Pleas/Preliminary Examination Setting
 - i. All defendants are expected to enter a plea upon the earliest opportunity after retention or appointment of counsel. Any request to delay entry of plea must be approved by the court. Unless good cause is shown to delay the entry of plea on or after arraignment, the court will enter a plea of not guilty pursuant to Penal Code § 1024.

2. Preliminary Examinations

i. Readiness Notice

Each party in cases set for preliminary examination must inform the court at least forty-eight hours prior to the time set for the examination whether the party will be ready to proceed, whether a continuance pursuant to Penal Code Section 1050 will be sought and whether an objection will be made, and whether an interpreter is needed.

Each party must also provide an updated and accurate time estimate for the determination of the presence or absence of probable cause to hold the defendant(s) to answer. Each Family Violence department may designate how it wishes to receive such notice. If no such designation is made, notice shall be provided by electronic mail to the courtroom clerk.

ii. Motions at Preliminary Examination

Any motions to be brought at the preliminary examination shall comply with Rule 9.

iii. Scope of Examination

The court and the parties shall be mindful of the mandates of Penal Code section 866 in conducting preliminary examinations. Any issues related to the scope of the hearing should be brought to the attention of the court prior to the commencement of the preliminary examination.

(4) Motions

a. General

All motions will be heard by the judge assigned to the case, including motions to set or reduce bail or for pretrial release, motions related to discovery, and amendment and consolidation of complaints.

b. Motions to Amend the Complaint

All motions to amend the Complaint must be noticed ten (10) calendar days before the scheduled hearing and filed with the Clerk's office. All opposition papers must be filed no later than five (5) calendar days prior to the hearing and filed with the Clerk's office.

A complaint may not be amended to add a defendant who has not previously been charged in the case.

c. Motions and Responses shall comply with Rule 9.

(5) Protective Orders

The issuance of protective orders in family violence cases shall be in accordance with Rule 17.

G. MISDEMEANOR DIVISION

The Misdemeanor Division will hear non-family violence misdemeanor matters from arraignment through disposition and sentencing.

(1) Pretrial Calendars

All cases shall have a mandatory and meaningful pretrial conference before being set for jury trial.

All discovery and all pretrial motions must be completed before the matter is set for trial.

(2) Trials

Readiness Conference

When a case is set for trial, the court will also set a readiness conference the Thursday before the trial date. The readiness conference will be set at 1:35 p.m. in the pretrial department. All counsel must be present at the readiness conference. In order to facilitate resolution, unless waived by the court, the defendant must be present at the readiness conference unless defense counsel has the proper and necessary authorization from his or her client to settle the case.

(3) Motions

a. Location of Filing

- i. All pretrial motions shall be heard in the pretrial department to which the case is assigned.
- ii. Post-trial motions, motions for new trial and other matters related to contested cases shall be set and heard in the department of the trial judge. The time and date of the hearing shall be set only by the judge of such department. In the event that the original trial judge is unavailable, such matters will be assigned for hearing by the Supervising Judge-Criminal.
- iii. Sentence Modification

For all requests for modification of sentence, notice must be sent to the District Attorney's Office as well as the Adult Probation Department (in cases in which formal probation was granted) before such request will be considered or calendared for hearing. Proof of such notice must be attached to the original request filed with the court. Failure to do so will result in the request being treated as an improper *ex parte* communication and the request will not be considered by the court until proper notice is given.

b. Last Day to File Motions

Unless the court selects another date at arraignment, the last day to file motions is 90 calendar days after the date of arraignment.

c. All Motions and Responses shall comply with Rule 9.

d. Motions to Continue

- i. Any party seeking a continuance or intending not to proceed in any matter set for hearing shall promptly inform all other counsel and thereafter inform the court.
- ii. The court shall have complete discretion pursuant to Penal Code § 1050 to grant or deny any continuance, to rule in the absence of counsel, or to order the matter off calendar, regardless of any stipulation of counsel.

(Effective 1/1/2019)

RULE 5 FAMILY JUSTICE CENTER COURTHOUSE DRUG TREATMENT COURT

Judges and departments at this facility shall be responsible for misdemeanor narcotic/drug related matters from arraignment through disposition and sentencing, and will hold hearings as necessary to monitor treatment progress and probation compliance.

(Effective 1/1/2019)

RULE 6 SOUTH COUNTY FACILITY

All misdemeanor and felony matters arising in Gilroy, Morgan Hill, San Martin and adjacent unincorporated areas are filed in this courthouse.

(Effective 1/1/2019)

RULE 7 NORTH COUNTY FACILITY

All misdemeanor and felony matters arising within Cupertino, Los Altos, Los Altos Hills, Mountain View, Sunnyvale and Palo Alto and adjacent unincorporated areas are filed in this courthouse.

(Effective 1/1/2019)

RULE 8 SANTA CLARA FACILITY

All traffic infractions and Municipal Code matters designated in the Traffic Local Bail Schedule arising in the County of Santa Clara are filed in this courthouse.

(Effective 1/1/2019)

RULE 9 PLEADINGS AND FILING OF DOCUMENTS

A. FORMAT OF DOCUMENTS SUBMITTED FOR FILING

- (1) Documents that exceed 20 pages shall be submitted held by binder clips or two prong fasteners.
- (2) All papers and documents presented for filing shall not exceed 1 ½" in thickness, unless approved by the Judge in whose Court the criminal matter is to be heard.
- (3) Exhibit attachments to pleadings shall be separated by a standard size sheet of paper with a title identifying the sequence of the exhibit.
- (4) No tabs shall be included in any documents submitted for filing.
- (5) Memoranda of points and authorities shall not exceed 15 pages, unless an order signed by the assigned judge or the supervising judge accompanies the motion when filed.

B. LOCATION OF FILING

- (1) The party filing any motion must file the original in the Criminal Court Clerk's office in which the case is to be heard.

- (2) The party must provide a single courtesy copy for the judge/research attorney/law clerk assigned to hear the matter.
- (3) A drop box is available outside of the clerk's office to receive filings in all matters. The drop box will be checked one time per court day at 4:00 p.m. All pleadings placed in the drop box will be filed and deemed received at 4:00 p.m. the day they are retrieved from the drop box. Filings that need to be received prior to 4:00 p.m. should be done in person at the clerk's office to insure that any filing deadline is met.

C. SERVICE OF COPIES

- (1) A copy of all moving and responding papers must be served upon opposing counsel, co-counsel and counsel for all co-defendants the same day that the originals are filed, unless previously served.
- (2) Service upon the District Attorney and Public Defender can be accomplished by depositing the documents in those offices' mail boxes located in the Criminal Court Clerk's office at the Hall of Justice, subject to the approval of the clerk's office.

D. LAST DAY TO FILE

Any request to file a motion beyond a previously declared last day to file must be accompanied by an affidavit stating good cause for the motion to be filed past the deadline.

E. REQUESTS FOR ORDERS SHORTENING TIME

- (1) All requests for Orders Shortening Time shall be signed only by the judge hearing the motion or his/her designee. The declaration in support of the request for an Order Shortening Time must set forth good cause and must state the facts concerning notice to, and the position of, opposing counsel, co-counsel, and counsel for co-defendants.
- (2) Notice of intent to request an *ex parte* Order Shortening Time must be given to all parties no later than 10:00 a.m. the court day before the *ex parte* appearance, absent a showing of exceptional circumstances that justify a shorter time for notice.

F. TIME ESTIMATE

All moving, responding and joining papers must set out an accurate time estimate on the first page.

G. REQUEST FOR ORAL TESTIMONY

In all matters, oral testimony shall not be permitted unless the court orders otherwise, except properly noticed *de novo* hearings brought pursuant to Penal Code § 1538.5. The court shall have complete discretion as to the necessity for, nature and extent of oral argument. Notice of intent to call witnesses must be specifically set out on the first page of the moving and/or responding papers.

H. UNLESS OTHERWISE ORDERED BY THE COURT

- (1) All motions and applications, together with supporting papers, documents and Points and Authorities, must be filed with the Criminal Court clerk in the appropriate courthouse no later than 15 calendar days prior to the date set for hearing. This requirement applies except where inconsistent with a state rule of court or statute. (See e.g. CCP § 1005 requiring 16 court days for a *Pitchess*/EC § 1043 motion.)
- (2) Unless waived by the court, or unless the party who would respond to the motion plans on conceding it, a written opposition, together with supporting papers, documents, and Points and Authorities must be filed.
- (3) All written responses, together with supporting papers, documents and Points and Authorities, must be filed with the Criminal Court clerk no later than five court days prior to the date set for hearing. The reply must be filed two court days prior to the date set for the hearing.
- (4) Failure of the moving or responding party to comply herewith shall be sufficient grounds for the court to refuse to consider the matters contained in such moving or responding papers.

I. MOTIONS TO SUPPRESS EVIDENCE

The notice of a motion brought pursuant to California Penal Code § 1538.5 shall describe with particularity the evidence which is the subject of the motion to suppress and shall be served with a Memorandum of Points and Authorities.

J. EX PARTE MATTERS

- (1) Except as otherwise provided by law, for any application involving *ex parte* relief, including a request for an Order Shortening Time, advance notice must be given to opposing counsel, co-counsel and counsel for co-defendants. The presence of the moving party shall be required in any such matter.
- (2) Notice of intent to request an *ex parte* Order Shortening Time must be given to all parties no later than 10:00 a.m. the court day before the *ex parte* appearance, absent a showing of exceptional circumstances that justify a shorter time for notice.

K. SUBPOENAS DUCES TECUM

All subpoenas duces tecum in criminal cases must comply with Penal Code § 1326 and Evidence Code § 1560, and when applicable CCP § 1985.3, and shall be returnable to the court. In the event materials which are the subject of a subpoena are received by a party, an attorney, or an attorney's agent or investigator directly from the subpoenaed party, the person receiving such materials shall immediately lodge such materials with the clerk of the court. The materials shall not be opened, reviewed or copied by the recipient without a prior court order.

L. COMPLIANCE WITH STATUTES AND RULES OF COURT

- (1) All papers filed in law and motion matters, and all proceedings thereunder, shall be in accordance with the applicable statutes, California Rules of Court and these Criminal Court Rules.
- (2) A mere citing of code sections which authorize the filing of a motion is not in compliance with the California Rules of Court or these Rules. Except as otherwise authorized by statute or Rule of Court, application for any relief, or any opposition to relief sought, shall be supported by a Memorandum of Points and Authorities.
 - a. All case citations must include the official report volume, page number, and year of decision.

- b. In any matter where a party is relying on out-of-state or federal authority, a copy of the entire authority must be provided.
- c. A Memorandum of Points and Authorities shall contain a concise statement of facts, a concise statement of the law, evidence and arguments relied upon, and a discussion of the statutes, cases and textbooks cited in support of the position advanced. When a party intends to rely on a transcript, the page number of the transcript must be cited.

M. MOTIONS TO JOIN

Any party seeking to join in any motion shall set out the relevant facts and law as it relates to that joining party in particular.

N. SEARCH WARRANTS

When a defendant is seeking to quash or traverse a search warrant, a copy of the search warrant affidavit must be provided and attached to the moving papers.

O. MOTIONS FOR REINSTATEMENT

When moving to reinstate a complaint, the prosecuting attorney must provide a copy of the preliminary examination transcript.

P. POST-TRIAL MOTIONS

- (1) Post-trial motions, motions for new trial and other matters related to contested cases shall be set and heard in the department where the judge who heard the matter is currently sitting. The time and date of the hearing shall be set only by the judge of such department.
- (2) In the event that the original trial judge is retired or no longer available, matters will be assigned out for hearing by the Supervising Judge – Criminal.

(Effective 1/1/2019)

Q. ELECTRONIC FILING AND SERVICE

Refer to Rule 6(C) and (D)(1) and (2) of the General Court and Administration Rules.

(Effective 7/1/2019)

RULE 10 USE OF JUVENILE RECORDS

Attorneys or defendants who are involved in a criminal proceeding in the Superior Court of California, County of Santa Clara, and who seek juvenile records for use in the pending criminal action shall, in addition to filing a W&I Code § 827 Petition in the Juvenile Court, concurrently file a Declaration of Filing of Juvenile Court 827 Petition in the criminal case (Attachment CR-6082).

(Effective 1/1/2019)

RULE 11 REQUESTS FOR INTERPRETERS

Prosecution and defense requests for interpreters for trial, preliminary examinations, motions, or any other appearances, must be made in open court at the time these matters are set. A defendant who requires the assistance of an interpreter for his or her first appearance in a criminal proceeding may submit a written request for interpreter in advance of the first appearance on Judicial Council Form INT-300 by e-mail sent via the court's Language Access webpage or to interpreterrequest@scscourt.org.

(Effective 1/1/2019)

RULE 12 REQUESTS FOR CALENDAR SETTING

A party who wishes to add a case to a calendar must file a Request for Calendar Setting (form CR-6008) signed by the judicial officer presiding over that calendar, or in their absence another judicial officer, with the Clerk's Office at least 48 hours before the requested court date.

(Effective 1/1/2019)

RULE 13 PROPOSED ORDERS

Any proposed order submitted to the court for signature must contain a footer with the title of the order on every page, including the signature page, unless it is a Judicial Council form. In addition, the court signature and date lines must not be on a page by themselves; the signature page must contain some text of the order.

(Effective 1/1/2019)

RULE 14 WRITS

A. CRIMINAL COURT CLERK'S OFFICE FILING

Petitions for writs such as Writs of Habeas Corpus, Writs of Mandate or Writs of Coram Nobis in criminal cases shall be filed in the Criminal Division at the Hall of Justice.

B. CIVIL COURT CLERK'S OFFICE FILING

- (1) Petitions for Writs of Mandate and/or Prohibition shall be filed in the Civil Division of the Downtown Superior Courthouse located at 191 North First Street, San José, California.
- (2) Petitions for Writs of Habeas Corpus Re: Quarantine Detention shall be filed in the Probate Division of the Downtown Superior Courthouse located at 191 North First Street, San José, California.

(Effective 1/1/2019)

RULE 15 REQUEST FOR COPY/TRANSCRIPT OF ELECTRONIC SOUND RECORDING FOR RECORD ON APPEAL, WRITS, OR OTHER HEARINGS FOR MISDEMEANORS OR INFRACTIONS

- A.** The courthouse supervisor or his/her designee shall retain custody of the original sound recording, unless ordered to deliver it to the reviewing court. Tapes shall be under the control of the Court Services Manager.
- B.** The Court Services Manager or his/her designee shall make the original sound recording available to the parties and counsel for listening in courthouses during normal business hours within 72 hours of submission of a request to the Court Services Manager.
- C.** At the time of filing of a Notice of Appeal, Notice of Petition for Writ or Notice of Motion, or within 10 calendar days of the filing of such notice, counsel for the appellant, petitioner or moving party (or by the party if unrepresented by counsel), shall advise the court if there is a request for a copy of the recording or its transcript. Such request shall be made in writing to the clerk at the courthouse in which the appeal/petition/notice is filed.
- D.** Courthouse staff shall inform the requesting party of the current cost per recording and collect the fees at the time the request is submitted.
- E.** Within 48 hours of receipt of the request, the clerk of the courthouse shall forward the request to the Court Services Manager or his/her designee.
- F.** When a request is made for a copy of the recording of the proceedings, the following shall apply:
- (1) Within 10 calendar days of receipt of the request, the Court Services Manager or his/her designee shall prepare and label one copy of the original sound recording for each requesting party. The copies shall be playable at 1 7/8" per second.
 - (2) The Court Services Manager or his/her designee shall promptly contact the appropriate parties to arrange for them to pick up their copy of the recording.
 - (3) In all cases involving appeals, the applicable California Rules of Court shall then apply regarding the settlement of a statement of proceedings.
 - (4) In cases involving appeals, counsel for the moving party shall serve opposing counsel or party, if unrepresented, with either a transcript or a copy of the recording requested within 10 calendar days of receipt of the copy of the recording.
- G.** When a request is made for a transcript of the proceedings upon filing of Notice of Appeal (CR-142) the following shall apply:
- (1) Upon filing Notice of Appeal (Judicial Council form CR-142) the Traffic Appeals Clerk shall notify Court Services that appellant has selected paragraph 4(b) entitled "Transcript from Official Electronic Recording" in form CR-142.
 - (2) Court Services shall determine length and cost of transcript from official recording.
 - (3) Court Services shall notify appellant of the estimated costs for the transcript and all necessary copies (in the same manner as a court reporter would and with the same time constraints as in the appeal process).
 - (4) Court Services shall notify appellant of the estimated costs for the transcript and all necessary copies (in the same manner as a court reporter would and with the same time constraints as in the appeal process).
 - (5) After receipt of appellant's payment at the facility of their appeal, the Traffic Appeals Clerk will notify Court Services to prepare transcript.
 - (6) The Court Services Manager or his/her designee shall promptly send a copy of the original recording to the transcriptionist.
 - (7) In appeal proceedings, the California Rules of Court shall apply.

(Effective 1/1/2019)

RULE 16 TRIAL JURORS

Release of Juror Information shall be allowed only as provided in CCP § 237.

(Effective 1/1/2019)

RULE 17 SPECIAL CONSIDERATION IN DOMESTIC VIOLENCE CASES**A. CRIMINAL COURT PROCEDURE ON PROTECTIVE ORDERS - COURT COMMUNICATIONS**

- (1) When the Criminal Court issues Criminal Protective Orders protecting victims, the Criminal Court shall inquire of the defendant/restrained person whether there are any minor children of the relationship between the defendant/restrained person and the victim/protected person, and whether there are any court orders for custody/visitation for those children. If there are children, the Criminal Court shall consider whether peaceful contact with the victim/protected person should be allowed for the purpose of allowing defendant/restrained person to visit the children. At the time the Court issues the Criminal Protective Order, the Court shall give the defendant/restrained person the Restrained Person Packet concerning his or her rights to request custody and/or visitation through the Family or Juvenile Court, along with directions to the Self Help Center. The Criminal Court shall also inquire of the defendant/restrained person whether there are any existing protective/restraining orders involving the defendant/restrained person, the victim/protected person, and/or the children.

(Effective 1/1/2019)

- (2) When the Criminal Court issues Criminal Protective Orders which list the defendant/restrained person's minor children as protected persons, the Criminal Court shall fax a copy of its Order to the Supervising Judge of the Family Court, unless the Criminal Court is aware that a Juvenile or Probate Court proceeding concerning the family is pending, in which case a copy of the order shall be faxed to the applicable Juvenile or Probate Court.

B. MODIFICATION OF CRIMINAL PROTECTIVE ORDERS – COURT COMMUNICATIONS

- (1) Any court responsible for issuing custody or visitation orders involving minor children of a defendant/restrained person subject to a Criminal Protective Order (Judicial Council Form CR-160) may modify the Criminal Protective Order if all of the following circumstances are satisfied:
 - a. Both the defendant/restrained person and the victim/protected person are subject to the jurisdiction of the Family, Juvenile, or Probate Court, and both parties are present before the court.
 - b. The defendant/restrained person is on probation (formal or court) for a domestic violence offense in Santa Clara County or is currently charged with a domestic violence related offense in Santa Clara County and a Criminal Protective Order has issued.
 - c. The Family, Juvenile, or Probate Court identifies a Criminal Protective Order issued against the defendant, which is inconsistent with a proposed Family, Juvenile, or Probate Court Order, such that the Family, Juvenile, or Probate Order is/will be more restrictive than the Criminal Protective Order or there is a proposed custody or visitation order which requires recognition in the Criminal Protective Order (item 16 on the Criminal Protective Order form).
 - d. The defendant signs an appropriate waiver of rights form or enters a waiver of rights on the record.
- (2) The Family, Juvenile, or Probate Court may not modify existing Criminal Protective Orders to be less restrictive. Only if children are not listed as protected persons, a modification of the Criminal Protective Order to check item 16 shall not be considered less restrictive.
- (3) The Family, Juvenile, or Probate Court may on its own motion or at the request of a defendant, protected person or other interested party, calendar a hearing before the Criminal Court on the issue of whether a Criminal Protective Order should be modified. The Family, Juvenile, or Probate Court shall provide the Criminal Court with copies of existing or proposed Orders relating to the matter. Notice of the hearing will be provided to all counsel and parties.

C. PROPERTY REMOVAL ORDERS

In cases where the court allows the Restrained Person to remove his/her “necessary personal property” from the Protected Person’s residence as a onetime exception to the Protective Order, Attachment CR-6072 (Property Removal Orders) shall be completed by and filed by the court and each party shall be provided with one certified copy of the same.

(Effective 1/1/2019)

RULE 18 TRAFFIC DIVISION – TRIAL BY DECLARATION

The Court adopts the trial by declaration process defined in Vehicle Code § 40902.

Additionally, pursuant to Vehicle Code § 40903, any person who fails to appear as provided by law may be deemed to have elected to have a trial by written declaration upon any alleged infraction, as charged by the citing officer, involving a violation of the Vehicle Code or any local ordinance adopted pursuant to the code. In eligible cases the Court will conduct the trial in absentia and it will be adjudicated on the basis of the notice to appear issued pursuant to Vehicle Code § 40500 and any business record or receipt, sworn declaration of the arresting officer, or written statement or letter signed by the defendant that is in the file at the time the trial by declaration is conducted.

If there is a guilty finding, the conviction shall be reported to the DMV and the defendant notified of the disposition of the case, the amount of imposed fines, and fees, and the defendant’s right to request a trial de novo within a specified period of time. If there is no timely request for a trial de novo and the fines and fees are not paid by the due date, the case will proceed to civil assessment pursuant to Penal Code § 1214.1. Additionally, the DMV will be notified of the failure to pay pursuant to Vehicle Code § 40509.5(b), which can result in a suspension of the defendant’s driver’s license pursuant to Vehicle Code § 13365(a)(2) until all obligations to the Court are satisfied.

(Effective 1/1/2019)

RULE 19 ANCILLARY DEFENSE EXPENSES

A. SCOPE

This rule states the requirements for the payment of reasonably necessary expenses that appointed counsel, retained counsel, and self-represented litigants incur in defending persons who are indigent. This rule will refer to these reasonably necessary expenses as “ancillary defense expenses.” All funds expended for ancillary defense expenses must have prior approval by Court order. Funds approved for a specific purpose, moreover, may not be expended for another use without prior Court approval.

B. REQUIRED SUBMISSION

All initial applications for the authorization of ancillary defense expenses shall be submitted by ex parte motion to the clerk of the Criminal Division Supervising Judge. The application shall be accompanied by: (1) a completed and signed Defendant’s Financial Statement in Support of Ancillary Fees Request (Attachment CR-6089) OR a Declaration signed under penalty of perjury, which includes all of the information requested in Attachment CR-6089 and (2) a declaration with the information described in subdivision C below. The application and supporting declarations shall be marked “Confidential,” and shall be kept in a confidential section of the Court file.

C. REQUIRED DECLARATION

All applications for ancillary defense expenses shall be supported by a declaration setting forth:

- (1) A summary of the circumstances of the charged offense or facts that demonstrates why the funding of ancillary defense expenses is necessary in the interests of justice;
- (2) The status of the case;

- (3) The specific purpose for the funds, including the nature of the services to be rendered and an explanation why those services are reasonably necessary for the defense of the case; and
- (4) The name and title of each appointed service provider (investigator, expert, or other) for whom funds are being sought, the hourly rate and maximum amount expected to be charged for the service, travel-related expenses other than mileage, and any other special expenses. If a self-represented defendant has not suggested a particular investigator, the Court will select one from the rotational investigator list. The maximum hourly billing rates, as well as the maximum initial authorizations, for all investigators and legal runners shall be set by the Presiding Judge of the Superior Court. Legal runner services, when approved by the Court, are limited to photocopying, and transporting materials, orders, and motions. Visits and phone calls to the County's detention centers must be associated with an allowable billable activity, and will be subject to the Court's discretion.

D. TRAVEL EXPENSES

- (1) No funds may be expended for overnight travel by investigators, experts, or others without prior court approval. Pre-approved hourly investigation expenses may not be applied to overnight or airline travel costs unless expressly designated by the court for travel after an appropriate request.
- (2) Applications that include a request for travel expenses to interview witnesses must contain, in addition to the requirements above, a declaration setting forth:
 - a. The relevance and materiality of the witness's proposed testimony;
 - b. An explanation why a telephone interview or an interview conducted through the Internet or other forms of electronic communication would not suffice instead of a face to face interview.
An explanation why it would not be practical to utilize the services of an investigator in the area where the witness lives to conduct the interview;
 - d. Whether it would be feasible to fly the witness to the San Jose airport for an interview, with a return flight the same day, to avoid the expense of overnight travel for the investigator; and
 - e. A representation that the applicant has endeavored to secure the lowest possible airfare.

E. EXPENSES FOR MEDICAL AND MENTAL HEALTH PROFESSIONALS

On initial applications for authorizing expenses for doctors, psychologists, psychiatrists, and similar experts, the maximum amount allowed by the court will be an amount sufficient to procure an initial written report from the expert. This report should describe the need, if any, for further services at an approved rate. The defense must endeavor to negotiate the lowest hourly rate. If the defense retains an expert from outside the Bay Area, the declaration shall explain in detail why local experts could not be employed to provide similar services. Expenses for supplemental reports by experts or investigators may not be paid by the Court without prior Court approval.

F. ADDITIONAL FUNDING

After the initial funding approved by the declaration described in subsection C above has been exhausted, no additional work may be performed or compensated without first obtaining Court approval by submitting a supplemental funding request under this subsection. Each application for additional funding for a previously authorized service provider (investigator, expert, or other) shall state, in the heading of the pleading, that it is a supplemental request, and shall include a declaration setting forth:

- (1) The date and amount of previous funding authorizations for the service provider
- (2) The amount of any billings for services completed by the service provider and a general summary of those completed services;
- (3) The remaining balance from funds previously authorized for the service provider; and
- (4) A detailed description of the services remaining to be performed. Any additional request for the services of an expert must be accompanied by a report or declaration of the expert explaining the need for the additional services.

G. CLAIMS FOR THE PAYMENT OF ANCILLARY DEFENSE EXPENSES

Claims for the payment of ancillary defense expenses must have prior Court authorization as described above; without prior authorization, claims will not be paid. Claims for payment of ancillary defense expenses shall be submitted to the Director, Independent Defense Counsel Office, 373 West Julian Street, Suite 300, San José, CA 95110, and shall comply with the requirements of that Office, including any requirements for supporting documents.

(Effective 1/1/2019)

RULE 20 PROTOCOL FOR SEALING OF RECORDS-CRIMINAL DIVISION

In proceedings for requests for the sealing of Court records in the Criminal Division, California Rules of Court, Rules 2.550 and 2.551 et seq. shall apply. All judicial officers have the responsibility and authority to decide sealing requests. The Supervising Judge of the Criminal Division may designate the judges in each Criminal Courthouse to hear sealing requests in accordance with this protocol.

A. COURT RECORDS PRESUMED TO BE OPEN

Unless confidentiality is required by law, Court records are presumed to be open. (California Rules of Court, Rule 2.550(c).)

B. DEFINITIONS

- (1) "Record" means all or a portion of any document, paper, exhibit, transcript, or other thing filed or lodged with the court. (California Rules of Court, Rule 2.550(b)(1).)
- (2) A "sealed" record is a record that, by Court order, is not open to inspection by the public. (California Rule of Court 2.550(b)(2))

C. SCOPE OF PROTOCOL

- (1) These rules do not apply to records that are required to be kept confidential by law, e.g., search warrant records which are sealed pursuant to *People v. Hobbs* (1994) 7 Cal.4th 948, 963. (California Rules of Court, Rule 2.550(a)(2).)

- (2) No action taken under this protocol, including the sealing of any records, shall affect the criminal discovery process, including any protective orders or actions pursuant to Penal Code § 1054.7.

D. EXPRESS FACTUAL FINDINGS REQUIRED TO SEAL RECORDS

Pursuant to California Rules of Court, Rule 2.550(d), the Court may order that a record be filed under seal only if it expressly finds facts that establish:

- (1) There exists an overriding interest that overcomes the right of public access to the records;
- (2) The overriding interest supports sealing the record;
- (3) A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed;
- (4) The proposed sealing is narrowly tailored; and
- (5) No less restrictive means exist to achieve the overriding interest.

E. APPLICATION, FILING AND SERVICE REQUIREMENTS

- (1) A party seeking an order to seal a record shall comply with the requirements of California Rules of Court, Rule 2.551.
- (2) Except as provided in E(3), any motion or application to seal a record shall be filed with the Court at least four Court days prior to the time set for the hearing of the motion or application. Records that are the subject of a motion or application to seal shall be provisionally sealed pending the determination of the motion to seal. Such records may be considered by the Court for any purpose, including a finding of probable cause, pending the determination of the motion or application to seal. The Clerk's Office shall post the motion or application and any attachments (except for attachments containing information sought to be sealed), case name and docket number on the Court website no later than 5 p.m. of the second Court day after filing.
- (3) If a sealing order is issued pursuant to an *ex parte* application, the Clerk's Office shall post the motion or application and any attachments (except for attachments containing information sought to be sealed), case name and docket number on the Court website no later than 5 p.m. of the second Court day after filing. If the Court issues a sealing order following an *ex parte* application, that order shall be deemed to be a provisional order and subject to a *de novo* court review upon the request of any interested person.

F. Notice of Sealing Order

In every matter in which a record has been ordered sealed, the requesting party shall file in the Clerk's Office a written notice of the sealing order prior to the date of arraignment, or if arraignment has already taken place, no later than 5 p.m. of the second Court day after the sealing order.

G. UNSEALING OF RECORDS

- (1) In misdemeanor matters, if any record has been ordered sealed, the Court shall order that the record be unsealed at the time of arraignment unless a party to the proceedings requests that the record remain sealed and the Court makes express findings pursuant to Section D above to permit the continued sealing of the record. Notice of any request that the record remain sealed shall be provided in accordance with Section E. If notice is provided in accordance with Section E, a motion or application to seal may be heard at the Court's next motion calendar.
- (2) In felony matters, if any record has been ordered sealed, the Court shall order that the record be unsealed no later than the completion of the preliminary examination unless a party to the proceedings requests that the record remain sealed and the Court makes express findings pursuant to Section D above. Notice of any request that record remain sealed shall be provided in accordance with section E and shall be filed and served on all parties who have appeared in the proceedings at least three Court days prior to the first date scheduled for the preliminary examination. The hearing on the request for the record to remain sealed will be heard at the conclusion of the preliminary examination.
- (3) In all matters, any person may bring a motion or application pursuant to California Rules of Court, Rule 2.551(h) for the unsealing of any Court record previously sealed, and the Court may order the unsealing of any record previously sealed in accordance with that rule.

(Effective 1/1/2019)

RULE 21 REQUESTS UNDER PROPOSITION 47 (PENAL CODE § 1170.18)

A. PETITIONS FOR RESENTENCING (PENAL CODE § 1170.18(a))

A person currently serving a sentence for a conviction of a felony who requests a recall of the sentence and resentencing as a misdemeanor under Penal Code § 1170.18(a) shall file a Petition for Resentencing with the Criminal Clerk's office at the Hall of Justice in San José, and shall serve a copy on the Santa Clara County District Attorney's Office, 70 West Hedding St., West Wing, San José, CA 95110. An attorney representing a person shall file the Petition for Resentencing on Attachment CR-6086, with a proof of service. On the Petition, the attorney shall set a date for the resentencing at 9:00 a.m. in Department 29(b) at the Hall of Justice or in such other department as designated by the Supervising Judge – Criminal on a date at least 35 days after the Petition is filed. A self-represented person shall file the Petition for Resentencing on Attachment CR-6087. The self-represented person shall then be notified whether the person is eligible for resentencing and, if eligible, shall receive information concerning the resentencing hearing. The back of the self-represented Petition, Attachment CR-6087, contains additional information about the procedures following the filing of the Petition.

B. PETITIONS FOR REDESIGNATION (PENAL CODE § 1170.18(f))

A person who has completed a sentence for a conviction of a felony who requests a redesignation as a misdemeanor under Penal Code § 1170.18(f) shall file a Petition to Redesignate Felony Conviction as Misdemeanor with the Criminal Clerk's office at the Hall of Justice in San José, and shall serve a copy on the Santa Clara County District Attorney's Office, 70 West Hedding St., West Wing, San

José, CA 95110. An attorney representing a person shall file the Petition to Redesignate Felony Conviction as Misdemeanor on Attachment CR-6086, with a proof of service. A self-represented person shall file the Petition to Redesignate Felony Conviction as Misdemeanor on Attachment CR-6087. A hearing is not required to decide the Petition. If the attorney or self-represented person does, however, request a hearing, or requests a hearing only if the Petition is opposed, the appropriate box must be checked on Attachment CR-6086 or Attachment CR-6087. If the Petition is granted, the attorney or self-represented person will receive a copy of the order. If the person is not eligible for redesignation, the attorney or self-represented person will receive further notice. The back of the self-represented Petition, Attachment CR-6087, contains additional information about the procedures following the filing of the Petition.
(Effective 1/1/2019)

RULE 22 POSTING OF PROPERTY BOND

Any person(s) pledging real property as security for a property bond shall complete Attachment CR-6014 (Affidavit/Undertaking for Justification of Bail and Acknowledgement).
(Effective 1/1/2019)