

**SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA**

CRIMINAL RULES

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RULE 1

**SUPERIOR COURT OF CALIFORNIA
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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. CALENDAR CALL

(Eff. 1/01/11)

Except in Direct Calendar Departments, the Supervising Judge – Criminal or his/her designee shall call the Felony Master Trial Calendar, Felony Arraignment Calendar, Felony After-Arraignment Calendar and any other calendar he/she designates. These calendars shall be called in Department 24 at the Hall of Justice located at 190 West Hedding Street, San José, California. No probation violation matters, trailing sentencing matters, trailing misdemeanor cases, felonies still in limited jurisdiction or pretrial conference matters shall be set on the Master Trial Calendar, Arraignment Calendar or After Arraignment Calendar.

At the arraignment on the information or indictment regardless of location or calendar type, the following dates must be set after a plea of not guilty, including a plea of not guilty by reason of insanity, unless otherwise ordered for good cause:

- (1) Trial, giving priority to a case entitled to it under law, and
- (2) Filing and service of motions and responses and hearing thereon.

At the arraignment on the information or indictment regardless of location or calendar type, plea of not guilty must be entered if a defendant represented by counsel fails to plead or demur; and an attorney may not appear specially.

(Eff. 1/01/11)

C. MASTER TRIAL CALENDAR MOTIONS

Motions to restore, motions to advance, uncontested motions to consolidate and other motions pertaining to the Felony Master Trial Calendar shall be set and heard in the department of the Supervising Judge – Criminal.

D. MOTIONS TO CONSOLIDATE

Contested motions to consolidate shall be heard in the appropriate Law and Motion Department.

E. CALENDAR SCHEDULE

(1) HALL OF JUSTICE COURTHOUSE

The Felony Master Trial Calendar shall be called at 8:30 a.m. on Monday.

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The Felony Arraignment Calendar shall be called on Monday at 1:30 p.m. If Monday is a holiday, these two calendars shall be called on Tuesday at the above times. The Felony After-Arraignment Calendar shall be called at 1:30 p.m. on Wednesday. The 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 which are governed by Rule 2.

(2) OTHER COURTHOUSES

Specific calendars for other courthouses will be as specified in the “Santa Clara County Superior Court Protocol” on file in the Clerk’s Office of each courthouse and available in each courtroom in these facilities.

(Eff. 1/01/06)

(3) DRUG COURT CALENDARS

a. The Presiding Judge shall assign to the Criminal Division of the Superior Court a sufficient number of judges to serve at a designated courthouse to process all felony drug cases. Judges at this facility shall conduct all felony arraignments, pre-trial proceedings, settlement conferences, pleas and sentencing proceedings as well as the assignment of dates for preliminary examinations.

(Eff. 1/01/06)

b. The establishment of the Drug Court calendars is based upon the following statements:

(1) The Court receives a substantial number of narcotic cases each year that are recognized as a distinct subject within the Criminal Division.

(2) The establishment of the drug court calendars recognizes the need to incorporate substance abuse treatment programs where appropriate with criminal case processing in a timely and efficient manner.

(Eff. 7/26/00)

(3) The drug treatment court as approved in September of 1995 by the judges of the former Municipal and Superior Courts of Santa Clara County is recognized as a component of the Drug court calendars.

c. Schedules for the Drug Court calendars will be specified in the Santa Clara County Superior Court Protocol on file in the Clerk’s Office.

d. Criteria for the assignment of cases to the Drug Court calendars, including the Drug Treatment Court, shall be specified in the Santa

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Clara County Superior Court Protocol on file in the Clerk's Office.

(Eff. 7/26/00)

(4) DOMESTIC VIOLENCE CALENDARS

The Presiding Judge shall assign to the Criminal Division of the Superior Court a sufficient number of judges to preside over felony and misdemeanor domestic violence cases in the Domestic Violence Court. The Domestic Violence Court will hear felony and misdemeanor domestic violence cases from arraignment through disposition and sentencing, and will hold hearings to monitor treatment progress and probation compliance.

(Eff. 1/1/08)

F. READINESS CONFERENCE

Except for those cases assigned to one judge for all purposes, a Readiness Conference for felony cases on the Master Trial Calendar shall be conducted at 9:00 a.m. on the judicial day immediately proceeding the day the Master Trial Calendar is called. The Readiness Conference shall be held in the chambers of the Supervising Judge – Criminal. A representative of the District Attorney's Office, Public Defender's Office, Alternative Defender's Office, and Independent Defender's Office is required to be present. Counsel is required to notify the Court of their trial readiness status at the Readiness Conference. This notification shall be made as follows:

(Eff. 1/01/11)

(1) Representatives of the various law offices mentioned above shall notify the Supervising Judge - Criminal of the status of those attorneys in their office. Trial Counsel is therefore expected to communicate their status to those representatives in advance of the Conference.

(Eff. 1/01/11)

(2) All counsel shall notify the Criminal Calendar Secretary of their trial readiness status no later than 3:30 p.m. on the day before the Readiness Conference.

(Eff. 1/01/11)

G. MISDEMEANORS – TRIALS AND PRETRIALS

(1) All cases, whether in-custody or out-of-custody, shall be set for a mandatory pretrial conference before being set on a jury trial calendar.

(2) The presence of counsel on all sides shall be mandatory at the pretrial conference.

(3) All discovery and all pretrial motions shall be completed before the matter is set for trial.

(Eff. 7/01/02)

CRIMINAL RULES

H. COURTHOUSES

Adult criminal matters are filed and heard in the courthouses indicated below. Any case may be assigned to another courthouse for discussion, hearing and/or trial at the discretion of the Supervising - Criminal and/or Presiding Judge. If a Court employee or deputy sheriff working at a facility, or a member of his or her family, is a party to a case, the clerk or Supervising Judge - Criminal Division shall transfer the case to another facility, unless a statute specifies the location for the initial appearance and the party has not yet attended that initial appearance.

(Eff. 1/01/11)

(1) HALL OF JUSTICE COURTHOUSE

All misdemeanor, felony, and Municipal Code matters arising within Campbell, Los Gatos, Milpitas, Monte Sereno, San José, Santa Clara, and Saratoga and adjacent unincorporated areas are filed and heard in this courthouse, except drug offenses that are heard in the Terraine Courthouse.

(Eff. 1/01/06)

(2) TERRAINE COURTHOUSE

No criminal matters are filed in this Courthouse. All felony and misdemeanor drug offenses that would otherwise be heard in the Hall of Justice are heard in this Courthouse, except misdemeanor arraignments and trials.

(Eff. 7/01/12)

(3) SOUTH COUNTY COURTHOUSE

All misdemeanor, felony, and Municipal Code matters designated in the Criminal Local Bail Schedule arising in Gilroy, Morgan Hill, and San Martin and adjacent unincorporated areas are filed and heard in this courthouse.

(Eff. 11/24/14)

(4) PALO ALTO COURTHOUSE

All misdemeanor, felony, and Municipal Code matters designated in the Criminal Local Bail Schedule arising within Cupertino, Los Altos, Los Altos Hills, Mountain View, Sunnyvale and Palo Alto and adjacent unincorporated areas are filed in this courthouse.

(Eff. 11/24/14)

(5) SANTA CLARA COURTHOUSE

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

(Eff. 11/24/14)

RULE 2

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RULE 2 CONTINUANCES

All requests to continue the trial of matters on the Master Trial Calendar shall only be heard by the Supervising Judge – Criminal on the After-Arrestment Calendar. Unless good cause is shown, requests to continue shall be heard on the After Arrestment Calendar before the matter’s appearance on the Master Calendar. Unless good cause is shown, the deadline for placing Penal Code § 1050 requests on the After Arrestment calendar is noon on the Monday immediately preceding the calling of that After Arrestment Calendar. Requests for continuances in the trial department shall immediately be referred back to the department of the judge supervising the Master Trial Calendar.

(Eff. 1/01/11)

RULE 3 APPEARANCES

A. APPEARANCE OF COUNSEL

- (1) Counsel must appear at all hearings, unless other counsels appear for them or prior arrangements are made with the Court.
- (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.

(Eff. 7/26/00)

B. ATTORNEY OF RECORD

In compliance with California Penal Code § 987.1, all counsel who represented a defendant at the preliminary examination or at the time the defendant was otherwise held to answer shall appear and represent the defendant at the time of arraignment on the Information. Any request to be relieved as attorney of record should be made at this first appearance.

(Eff. 7/26/00)

C. APPEARANCE OF DEFENDANT

- (1) Consistent with California Penal Code § 977, in felony cases, the defendant must be present each time his/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 (MTC), motions under Penal Code § 1050, and Sentencing.

(Eff. 1/01/11)

RULE 5

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- (2) In misdemeanor cases, defendants may appear in person or by counsel. However, a defendant must be present in Court if specifically ordered by the Court as allowed by Penal Code § 977 or required by statute. In misdemeanor domestic violence cases as defined by 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.

(Eff. 1/01/11)

D. REQUESTS FOR INTERPRETERS

Prosecution and defense requests for interpreters for trial, preliminary hearings, motions, or any other appearances, must be made in open court at the time the future appearance is scheduled. 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.

(Eff. 7/01/18)

RULE 4 DOCUMENTS PRESENTED FOR FILING

A. FORMAT OF DOCUMENTS SUBMITTED FOR FILING

Documents that exceed 10 pages shall be submitted held by binder clips or two prong fasteners.

Exhibit attachments to pleadings shall be separated by a standard size sheet of paper with a title identifying the sequence of the exhibit. No tabs shall be included in any documents submitted for filing.

(Eff. 1/01/16)

B. THICKNESS OF DOCUMENTS

All papers and documents presented for filing shall not exceed 1 ½" in thickness, unless approved by the Judge in whose Court the matter is to be heard.

RULE 5 LAW AND MOTION

A. DEPARTMENTS

Law and Motion matters shall be heard as follows:

(1) MISDEMEANOR CASES

All motions shall be heard in the pretrial department to which that misdemeanor case is assigned.

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(2) FELONY DRUG/NARCOTIC CASES (NON-THREE STRIKE CASES)

All motions shall be heard by the Judge specifically assigned to hear such motions.

(3) DOMESTIC VIOLENCE CASES

All motions shall be heard in the pretrial department to which that domestic violence case is assigned.

(4) OTHER MOTIONS

Motions in all other cases shall be heard by the Judge assigned to the Criminal Law and Motion department in the designated courthouse.

(Eff. 1/01/06)

B. FILING

Unless indicated otherwise, the following shall apply to ALL law and motion matters:

(1) COURT FILING

The party filing any motion paper must file the original in the Criminal Court Clerk's office in which the case is to be heard and on general jurisdiction matters provide a courtesy copy for the research attorney/law clerk of the Court assigned to hear the matter.

(Eff. 1/26/11)

(2) SERVICE OF COPIES

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. 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.

(3) LAST DAY TO FILE

The last day to file and hear motions shall be set or can be obtained at the time of arraignment in Superior Court, unless otherwise agreed to by the Court hearing the motion. (See also Criminal Rule 5(B) (4) below.)

(4) UNLESS OTHERWISE ORDERED BY THE COURT

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- a.** 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 full 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.)

(Eff. 1/01/06)

- b.** Unless waived by the Court, or unless the party that would respond to the motion plans on conceding it, a written opposition, together with supporting papers, documents, and Points and Authorities must be filed.

- c.** All written responses, together with supporting papers, documents and Points and Authorities, must be filed with the Criminal Court clerk no later than five full 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.

(Eff. 1/01/11)

- d.** 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, as the case may be.

- e.** Except for limited jurisdiction matters, any motion to be filed containing a requested hearing date on or after the trial date must have the approval initials of the Supervising Judge – Criminal or his/her designee.

(Eff. 1/01/11)

(5) CONTINUANCES AND RE-SETTING, WITHDRAWAL OF TIME WAIVERS

- 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 so 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. Continuing the trial date will not be allowed in the Law and Motion department. (See 2, *supra*.)

(Eff. 1/01/11)

- 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,

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notwithstanding any stipulation of counsel.

- c. If a case has not been set for trial, withdrawal of a defendant's previously entered time waiver of speedy trial shall be by written Notice of Withdrawal of Time waiver filed in the department of the judge supervising the Master Trial Calendar. In the alternative, the withdrawal of time waiver may be made orally on the record by the defendant or his counsel in that department. If the case has been set for trial, the written Notice of Time waiver shall be filed or the oral withdrawal of time waiver shall be made, in the department where the cause is set for trial.

(Eff. 1/01/11)

(6) REQUESTS FOR ORDERS SHORTENING TIME

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.

(Eff. 7/01/15)

(7) NOTICE OF MOTION AND RESPONSE

- a. Except for motions brought pursuant to California 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.
- b. In any Motion brought pursuant to California Penal Code § 1538.5(i) that is to be presented *de novo*, notice of this fact must also be set out on the first page of the moving and responding papers.
- c. Failure to comply with any portion of this Criminal Rule 5(B) shall be sufficient cause for the Court to refuse to consider any transcript of a prior proceeding, allow the calling of additional witnesses or to allow a *de novo* hearing.

(Eff. 1/01/11)

(8) MOTIONS TO SUPPRESS EVIDENCE

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

(Eff. 7/01/02)

(9) ORAL TESTIMONY

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In all matters, oral testimony shall not be permitted unless the Court orders otherwise, except *de novo* hearings brought pursuant to California 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.

(10) EX PARTE MATTERS

Except as otherwise provided by law, for any application involving *ex parte* relief, including a request for an Order Shortening Time, reasonable advance notice must be given to opposing counsel, co-counsel and counsel for co-defendants. The presence of counsel or the applicant shall be required in any such matter.

(Eff. 7/01/15)

(11) COMPLIANCE WITH RULES OF COURT

- a.** 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.
- b.** 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.
- c.** All case citations must include the official report volume, page number, and year of decision.
- d.** In any matter where a party is relying on out-of-state or federal authority, a copy of the entire authority must be provided.
- e.** Unless prior authorization is obtained from the Law and Motion Judge, all Memoranda of Points and Authorities shall be no longer than 15 pages.

(Eff. 7/01/08)

(12) MEMORANDUM OF POINTS AND AUTHORITIES

A Memorandum of Points and Authorities shall contain a concise statement of facts, a concise statement of the law, evidence and arguments relied upon, 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.

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(13) MOTION 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.

(14) ESTIMATE OF TIME

All moving, responding and joining papers must set out an accurate time estimate on the first page. If the time estimate is in excess of two hours or cannot be heard on a regular Law and Motion calendar, the motion may be reset on the Master Trial Calendar.

(15) 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.

(16) MOTIONS FOR REINSTATEMENT

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

(17) POST-TRIAL MOTIONS

- a. 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.
- b. In the event that the original trial Judge is retired or no longer available, matters in Criminal Rule 5(B) (17) (a) will be assigned out for hearing by the Supervising Judge – Criminal.

(18) SENTENCE MODIFICATION

Motions for modification of sentence shall be heard as set out in Criminal Rule 5 (B) (17) (a), *supra*. 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 has been 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 with the Court and will be discarded.

(19) USE OF JUVENILE RECORDS

Attorneys or defendants who are involved in a criminal proceeding in the

RULE 6

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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).

(Eff. 7/01/12)

RULE 6 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.

(Eff. 1/01/10)

RULE 7 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.

(Eff. 7/01/11)

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.

(Eff. 1/01/06)

(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.

(Eff. 7/01/11)

RULE 8 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.

(Eff. 7/01/05)

RULE 9 REQUEST FOR COPY/TRANSCRIPT OF ELECTRONIC SOUND

RULE 9

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**RECORDING FOR RECORD ON APPEAL, WRITS, OR OTHER
HEARINGS FOR MISDEMEANORS OR INFRACTIONS**

- (1) 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.

(Eff. 1/01/08)

- (2) 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.

(Eff. 1/01/08)

- (3) At the time of filing of a Notice of Appeal, Notice of Petition for Writ or Notice of Motion, or within 10 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.

(Eff. 1/01/08)

- (4) Courthouse staff shall inform the requesting party of the current cost per recording and collect the fees at the time the request is submitted.

(Eff. 1/01/08)

- (5) 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.

(Eff. 1/01/08)

- (6) When a request is made for a copy of the recording of the proceedings, the following shall apply:

(Eff. 1/01/08)

- a. Within 10 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.

(Eff. 1/01/08)

- b. 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.

(Eff. 1/01/08)

- c. In all cases involving appeals, the applicable California Rules of Court shall then apply regarding the settlement of a statement of proceedings.

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- d.** 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 days of receipt of the copy of the recording.

(Eff. 1/01/08)

- (7)** When a request is made for a transcript of the proceedings upon filing of Notice of Appeal (CR-142) the following shall apply:
 - a.** 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.
 - b.** Court Services shall determine length and cost of transcript from official recording.
 - c.** 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).
 - d.** After receipt of appellant’s payment at the facility of their appeal, the Traffic Appeals Clerk will notify Court Services to prepare transcript.
 - e.** The Court Services Manager or his/her designee shall promptly send a copy of the original recording to the transcriptionist.
 - f.** In appeal proceedings, the California Rules of Court shall apply.

(Eff. 1/01/11)

RULE 10 TRIAL JURORS

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

(Eff. 7/01/02)

RULE 11 SPECIAL CONSIDERATION IN DOMESTIC VIOLENCE CASES

(Eff. 1/01/10)

A. CRIMINAL COURT PROCEDURE ON PROTECTIVE ORDERS- COURT COMMUNICATIONS

(Eff. 1/01/10)

- (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 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

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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-Service 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

(Eff. 7/01/15)

- (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

(Eff. 1/01/10)

- (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:

(Eff. 1/01/16)

- 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.

(Eff. 1/01/06)

- 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).

(Eff. 1/01/16)

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- d.** The defendant signs an appropriate waiver of rights form or enters a waiver of rights on the record.
- e.** Both the victim/protected person and the defendant/restrained person agree that the Criminal Protective Order may be modified to a more restrictive order or to check item 16 on the Criminal Protective Order.

(Eff. 1/01/16)

- (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.

(Eff. 1/01/16)

- (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.

(Eff. 1/01/07)

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 one time 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.

(Eff. 1/01/11)

RULE 12 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

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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.

(Eff. 1/01/08)

RULE 13 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.

(Eff. 11/05/15)

B. REQUIRED SUBMISSIONS

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.

(Eff. 11/05/15)

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;

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- (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.

(Eff. 11/05/15)

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;
 - (c) 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

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- (e) a representation that the applicant has endeavored to secure the lowest possible airfare.

(Eff. 11/05/15)

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.

(Eff. 11/05/15)

G. CLAIMS FOR THE PAYMENT OF ANCILLARY DEFENSE EXPENSES

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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.

(Eff. (11/05/15))

RULE 14 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;

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- (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.

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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.

(Eff. 1/01/15)

RULE 15 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 31 at the Hall of Justice 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

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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.

(Eff. 7/01/15)

RULE 16 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).

(Eff. 1/01/16)

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ATTACHMENTS

ATTACHMENT CR-6014	Affidavit/Undertaking for Justification of Bail and Acknowledgment Mandatory
ATTACHMENT CR-6072	Property Removal Orders Mandatory
ATTACHMENT CR-6082	Declaration of Filing of Juvenile Court 827 Petition Mandatory
ATTACHMENT CR-6084	Application for Sealing of Documents Mandatory
ATTACHMENT CR-6085	Order re Sealing of Court Records Mandatory
ATTACHMENT CR-6086	Attorney Petition for Resentencing or Redesignation of Offenses and District Attorney Response Mandatory
ATTACHMENT CR-6087	Self-Represented Petition for Resentencing or Redesignation of Offenses Mandatory
ATTACHMENT CR-6088	Waiver and Stipulation for Resentencing or Redesignation of Offenses Mandatory
ATTACHMENT CR-6089	Defendant's Financial Statement in Support of Ancillary Fees Request Mandatory
ATTACHMENT TR-7003	Amnesty Program Mandatory