
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 COUNSEL**

(Effective 1/1/2023)

- (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 must 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 must advise the court of any conflicting appearance in the court of another county before requesting or agreeing to any hearing date. Furthermore, counsel must not request or agree to any hearing date in another county that conflicts with a hearing date previously set by this court.

B. REMOTE APPEARANCES

(Effective 1/1/2023)

- (1) Attorneys may appear remotely in proceedings in criminal cases if permitted by the judge presiding over the proceeding. Individual judges have the discretion to determine how attorneys seek approval to appear remotely. Individual judges have the discretion to determine the scope of any approval they grant for remote attorney appearances (i.e., approval may be granted for an attorney to appear only for a specific hearing, for all attorneys to appear remotely on particular calendars, or otherwise). When seeking approval to appear remotely, attorneys should be prepared to advise if an attorney’s client — whether an accused, a witness, an alleged victim, or other individual — will appear personally in court for the proceeding. Approval for a remote appearance is unlikely to be granted if an attorney’s client will appear personally in court for the proceeding.
- (2) Conduct of remote appearances:
 - (a) No proceeding may be photographed, recorded (audio or video), or re-broadcast by any person who is personally present or who is appearing, participating, or observing remotely without prior written order of the court. (Cal. Rules of Court, rule 1.150; Super. Ct. Santa Clara County, General Local Rules, rule 2.)
 - (b) A remote appearance is a court appearance and must be conducted consistently with the court’s Standing Order Regarding the Santa Clara County Bar Association Code of Professionalism.
 - (c) Attorneys must appear in professional business attire from a quiet, stationary location with minimal background noise or visual distractions, an adequate Wi-Fi connection, and using working microphones and headphones/speakers.
 - (d) For purposes of this rule, a “participant” includes an accused, a party, an attorney, an alleged victim, or a witness.
 - i. Unless approved by the court, participants must appear with their camera turned on. If a participant has security concerns about appearing on camera, this concern should be brought to the court’s attention before the hearing.
 - ii. If a participant is able to appear only by telephone, that participant must identify themselves when requested by the court and thereafter when speaking during the hearing. Participants appearing by telephone may not place the Court on hold or use a speakerphone. Participants may turn off “caller ID” when appearing by telephone.
 - iii. All participants must ensure there are no interruptions or distractions for the duration of their appearance at the hearing. No other individual (including a minor child) may appear with the participant or be heard during the hearing without prior court approval, other than when an attorney appears with their client from a common remote location.
 - iv. All participants must place their microphones on mute unless they are speaking. All participants must refrain from speaking unless addressed or otherwise allowed by the court.
 - v. Individual judges have the discretion to allow remote observation by persons who are not participants and the authority to manage remote observation, including by requiring the identification of an observer and/or requiring observers to have cameras turned on.

(Effective 1/1/2023)

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 the Hall of Justice.

A. MASTER TRIAL CALENDAR

The Master Trial Calendar is called on Monday each week or as designated by the Supervising Judge – Criminal and, unless otherwise designated by the Presiding Judge, Supervising Judge – Criminal, or their designees, will include all felony and misdemeanor matters set for trial. If Monday is a court holiday, this calendar will be called on Tuesday. No probation violation, sentencing, misdemeanor pre-trial conference, or pre-information/indictment felony matters will be set on the Master Trial Calendar without authorization of the Supervising Judge – Criminal.

(Effective 1/1/2023)

(1) Readiness Conference

Except for cases assigned to one judge for all purposes, a Readiness Conference for cases on the Master Trial Calendar will be conducted on the court day immediately preceding the Master Trial Calendar or as designated by the Supervising Judge – Criminal. Privately retained counsel and a representative of the District Attorney, Public Defender, Alternate Defender, and Independent Defender are required to be present. For each case set on the Master Trial Calendar for the following Monday, trial counsel must notify the court of trial readiness at the Readiness Conference, including matters of attorney availability, compliance with Penal Code section 1054 and sections (A)(3) and (A)(4) of this rule (below), exhaustion of settlement negotiations between trial counsel, and preparedness to argue motions in limine and conduct jury selection without delay upon assignment to a trial department.

(2) Motions to Continue

All motions to continue matters set on the Master Trial Calendar are heard by the Supervising Judge – Criminal at or before the Readiness Conference.

(3) Trial Assignments, Trial Briefs, Motions in Limine, and Settlement Discussions

(a) **Trial Assignments:** It is the court's goal that less time be spent negotiating and discussing cases in the trial departments and that more time be spent with those resources conducting trial proceedings. It is also the court's goal to utilize all trial departments for trials as available. Cases will be assigned to trial departments for trial, not for protracted settlement discussions. The trial judge will have all in limine motions and witness lists available in the court file and will have the ability to review them immediately upon assignment of a case to that department.

The court will attempt to balance the seriousness of charges, custodial status, Penal Code section 1048 considerations, the age of case, and any other relevant factors in prioritizing and making assignments to trial departments. Input from the parties is welcome and helpful at the weekly Readiness Conference. When parties have particular readiness issues (illness, witness unavailability, attorney engaged in another trial or otherwise unavailable, etc.) the court will note these issues on the record and consider them when trialing cases on standby for trial.

The parties must give trial matters extremely high, if not the highest, priority. The court will look to assign cases at the earliest possible time of day or day of the week when trial department resources are available. Attorneys should not expect the court to accommodate an attorney's schedule for lower priority court matters or non-court conflicts.

(b) **Felony Trial Settings:** When a felony case is set for trial time-not-waived, the court will set the trial date on, or on the week of, the statutory last day for trial (Penal Code section 1382). The cases and the parties must be trial ready on the trial date in recognition of the statutory last day. For all felony trial settings (time-waived and time-not-waived), the court will also set the following dates, subject to any case-specific factors, which factors will be reflected in the minutes:

i. Absent case-specific factors dictating otherwise, all pretrial motions will be heard: (a) not later than 15 calendar days before the trial date, (b) at the direction of the Law & Motion department not later than the date of the Readiness Conference, or (c) at another time as directed by the court upon a showing of good cause. (Cal. Rule of Court, rule 4.112(b).)

ii. The last date for filing pretrial motions will be 30 calendar days before the trial date, absent a request for an order shortening time providing case-specific factors not previously raised or considered, signed by the Supervising Judge – Criminal. (Cal. Rule of Court, rule 4.100(1)(B).) Motions will be filed with, and scheduling of hearing on the motion(s) will be done by, the Law and Motion department consistently with that department's calendaring protocol and Local Rule 7(H).

iii. The date for filing in limine motions, witness lists, and a required Readiness brief, which date will be 5 calendar days before the trial date. (Cal. Rules of Court, rule 4.112(a); Pen. Code section 1204.5, subd. (b).) Readiness briefs must include, but need not be limited to:

a. **Prosecution:** a statement of facts expected to be shown by the evidence; perceived factors in aggravation; factors in mitigation; criminal history information, including prior performance on probation and/or parole; other pending cases and their status; the history of prosecution settlement offers; the history of defense settlement proposals; any indicated sentences previously given by the court; whether collateral consequences have been considered; three strikes review, if pertinent; and consideration of substance abuse/mental health issues and treatment, if pertinent.

b. **Defense:** any information about the accused or the case that the accused consents to a trial judge considering, and/or that the accused desires a judge who is not the trial judge to consider under Penal Code section 1204.5, or a statement that the accused chooses to defer providing such information without prejudice

(c) Misdemeanor Trial Settings

- i. When a misdemeanor case is set for trial time-not-waived, the court will set the trial date on, or in the week of, the statutory last day for trial (Pen. Code § 1382). The cases and the parties must be trial ready on the trial date in recognition of the statutory last day.
- ii. For all misdemeanor trial settings (time-waived and time-not-waived), the court will also set the date, for filing in limine motions, witness lists, and a required Readiness brief, which date will be 5 calendar days before the trial date, subject to any case-specific factors, which factors will be reflected in the minutes. (Cal. Rules of Court, rule 4.112(a); Pen. Code § 1204.5 subd. (b).) Readiness briefs must include, but need not be limited to:
 - a. Prosecution: a statement of facts expected to be shown by the evidence; perceived factors in aggravation; factors in mitigation; criminal history information, including prior performance on probation and/or parole; other pending cases and their status; the history of prosecution settlement offers; the history of defense settlement proposals; any indicated sentences previously given by the court; whether collateral consequences have been considered; considerations of substance abuse/mental health and treatment, if pertinent; and consideration of the merits of diversion.
 - b. Defense: any information about the accused that the accused consents to a trial judge considering, and/or that the accused desires a judge who is not the trial judge to consider pursuant to Penal Code section 1204.5, or a statement that the accused chooses to defer providing such information without prejudice.

(d) Settlement Discussions.

In every case set on the Master Trial Calendar, the court encourages and expects the parties to have in-depth case discussions, including the exchange of offers and counter-offers for resolutions. At the discretion of the Supervising Judge – Criminal, however, cases set on the Master Trial Calendar may be sent out for discussions. If the parties do not reach an agreement and receive an indicated sentence during those discussions, the trial departments will have no further obligation to provide an indicated sentence when the case reaches a trial department. Trial judges will not read or consider a Readiness brief without consent, as described in Penal Code section 1204.5, subdivision (a). The judicial officer handling discussions may have multiple discussion sessions with the parties on a given case if the parties need to take further steps to settle the case in between sessions. But once a judicial officer has concluded settlement efforts on a case, the court will not send the case back to that judge for further rounds of discussions absent unusual circumstances.

B. FELONY ARRAIGNMENT ON INFORMATION/INDICTMENT CALENDAR

The Felony Arraignment on Information/Indictment Calendar will be called on Monday at 9:00 a.m. or at such other time as designated by the Supervising Judge – Criminal, and will include all non-family violence felony matters. If Monday is a court holiday, this calendar will be called on Tuesday or at such other time as designated by the Supervising Judge – Criminal.

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

(Effective 1/1/2023)

(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 must appear with the defendant at the time of arraignment on the information. Any request to be relieved as attorney of record must be made at this appearance. An attorney seeking to be relieved must 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.

(Effective 1/1/2023)

(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 will 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:

(Effective 1/1/2023)

- (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 ensure 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 every Wednesday at 1:35 p.m. or at such other time as designated by the Supervising Judge – Criminal.

(Effective 1/1/2023)

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

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

(Effective 1/1/2023)

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

The Felony After Arraignment Calendar will be called at 1:30 p.m. on Wednesday or at such other time as designated by the Supervising Judge – Criminal and will consist of non-family violence felony matters. No probation violation, sentencing, misdemeanor, or pre-information/indictment felony matters will be set on the After Arraignment Calendar without authorization of the Supervising Judge – Criminal.

(Effective 1/1/2023)

(1) 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.

(Effective 1/1/2023)

(2) Motions to Continue Master Trial Calendar Cases

(a) Unless good cause is shown, motions to continue matters on the Master Trial Calendar will be heard on the After Arraignment Calendar before the pending trial date.

(Effective 1/1/2023)

(b) 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.

(Effective 1/1/2023)

(3) 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 must be prepared to articulate good cause to not set a trial date under Penal Code § 1049.5.

(Effective 1/1/2023)

(b) Counsel must 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 must be prepared to meaningfully discuss these issues at each Trial Status Conference date and must be mindful of the Pace of Litigation (Standards of Judicial Administration 2.1, 2.2(j)).

(Effective 1/1/2023)

D. FELONY PLEA, EARLY RESOLUTION, AND PRELIMINARY HEARING DEPARTMENTS

The Felony Plea, Early Resolution, and Preliminary Hearing judges and departments are responsible for non-Family Violence felony matters from arraignment on the complaint through sentencing under Penal Code section 859a, subdivision (a), or a holding order under Penal Code section 872, subdivision (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. Pre-hearing meet and confer. Counsel for the parties must meet and confer before each court appearance to discuss the exchange of discovery, proposals for early resolution, collateral consequences, mitigation materials, and any other issues that might impact case disposition.
- ii. Hearing preparation. Counsel must use the periods between court hearings to communicate with their client(s), alleged victims, and witnesses about ongoing investigations and offer(s) for disposition. Counsel who appear in the Felony Plea Department must be prepared to discuss any matter relating to the case disposition, including readiness, witness availability, discovery matters, ongoing investigations, and any special issues for alleged victims or the accused. This requirement applies to counsel of record and to counsel making special appearances. No continuances will be granted on the basis that special appearance counsel is not prepared to discuss the case.

(b) Motions

- i. Motions made before the filing of an information will be scheduled by the Felony Plea judge in the Felony Plea Department, Felony Law and Motion Department, or other designated department.
- ii. Motions to set or reduce bail or for pretrial release will be set in the Pretrial Services Pilot/In-Custody Felony Arraignment Department.
- iii. Motions to Release documents pursuant to subpoena duces tecum will be set in the Felony Law and Motion Department, whether pre or post information.
- iv. All motion papers and responses must comply with Rule 7.

(2) Preliminary Examinations**(a) Calendaring**

Preliminary examinations will be set as follows in the designated Preliminary Examination Departments or as otherwise designated by the Supervising Judge – Criminal:

i. Long Cause Preliminary Examinations

- a. Long Cause Preliminary Examinations are examinations with a time estimate of over one court day.
- b. Long Cause Preliminary Examinations are set on Monday each week along with the Master Trial Calendar with the Supervising Judge – Criminal, or as designated by the Supervising Judge – Criminal. If Monday is a court holiday, then the long cause preliminary hearing calendar will be called on Tuesday.

- c. Long Cause Preliminary Examinations will be heard in an available Trial Department or other available department at the discretion of the Supervising Judge – Criminal or their designee.
The date and time of the examination will be determined during the Readiness Conference as delineated in this Rule.
 - ii. All other preliminary examinations will be set in the Preliminary Hearing Departments as designated by the Supervising Judge – Criminal.
- (b) Readiness Notice
- i. Long Cause Preliminary Examinations:
 - a. Counsel must be prepared to participate in a Readiness Conference on the court day immediately preceding the Master Trial Calendar or as designated by the Supervising Judge – Criminal. Counsel must advise whether each party will be ready to proceed, whether a continuance under Penal Code section 1050 will be sought and any objections thereto, whether there are requests for remote testimony and any objections thereto, and whether interpreters are needed. Each party must also provide an updated and accurate time estimate for the hearing.
 - b. During the Readiness Conference, Long Cause Preliminary Examinations will be scheduled in an available Trial Department or other department at the discretion of the Supervising Judge – Criminal or their designee.
 - c. The Readiness Conference will be held remotely, at the direction of the Supervising Judge – Criminal, or at another location designated by the Supervising Judge – Criminal.
 - ii. All other Preliminary Examinations
Each party must inform the preliminary examination judges via email by 5 p.m. at least one court day before the date set for the preliminary examination whether the party will be ready to proceed, whether a continuance pursuant to Penal Code section 1050 will be sought and any objections thereto, whether there are requests for remote testimony and any objections thereto, and whether interpreters are needed. Each party must also provide an updated and accurate time estimate for the hearing.
- (c) Motions at Preliminary Examination
Any motions to be brought at the preliminary examination must comply with Rule 7.
- (d) Scope of Examination
The court and the parties must 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 magistrate presiding over the preliminary hearing before the preliminary examination begins.
- (3) Early Resolution
- (a) Early resolution settlement conferences will be set at the discretion of the Felony Plea Judge. Conferences will be virtual or in-person, as directed by the Supervising Judge – Criminal.
 - (b) Matters set for an early resolution conference will have a return date set in the Felony Plea department for further setting.

E. FELONY LAW AND MOTION CALENDAR

(1) General

Pre-and Post-Indictment/Information motions in felony cases (except family violence, South County, and North County cases) will 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 will be heard before the judge who signed the warrant, if available (Pen. Code, 1538.5, subd. (b)). If that judge is not available, the motion will 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 will be litigated in front of the All Purpose Judge assigned.
- (c) If the time estimate for hearing a motion exceeds what can be heard on a regular Law and Motion calendar, the motion may be reassigned to a different department as designated by the Supervising Judge – Criminal.

(2) Pre-Information Motions

- (a) Pre-Information motions may be set only by the Felony Plea judge, except motions to release documents pursuant to subpoena duces tecum which may be directly calendared with the Law and Motion department.
- (b) Regardless of the stage of proceedings, motions regarding custodial status or pretrial release terms will be set in the Pretrial Services/Arrestment department.

(3) Post-Information/Indictment Motions

- (a) For trial cases set time-not-waived (TNW), the last date to file pretrial motions is 30 calendar days before the initial TNW trial date set, absent an order shortening time signed by the Supervising Judge – Criminal.
- (b) The following Post-Information/Indictment matters may be filed directly with the clerk's office: motions to consolidate, motions to amend, motions to sever, Pitchess/police personnel records discovery, motions to unseal documents, bond surety motions, motions to return seized property, and Vehicle Code section 14602.7 storage hearings. All other Law and Motion matters must be scheduled via calendar request with the Law and Motion department.
- (c) Motions originally calendared on the After Arrestment calendar may be assigned to the Felony Law and Motion Department at the discretion of the Supervising Judge – Criminal.
- (d) Regardless of the stage of proceedings, motions to release documents pursuant to a subpoena duces tecum must be set in the Felony Law and Motion department, via direct calendaring with the clerk's office.

- (e) Regardless of the stage of proceedings, motions regarding custodial status or pretrial release terms will be set in the Pretrial Services/Arrestment department.
 - (f) Any motion to be filed with a requested hearing date on or after the Master Trial Calendar date must have the approval initials of the Supervising Judge – Criminal or their designee.
- (4) Motion Papers
- (a) All papers filed in support of or in opposition to a motion must comply with Rule 7.
 - (b) Except for motions brought under Penal Code section 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 under Penal Code section 1538.5, subdivision (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 under Penal Code section 1538.5, subdivision (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 is 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.
- (5) Motions to Continue
- (a) Except in unusual or exigent circumstances, any party intending to request a continuance or who cannot proceed in any matter set for hearing must promptly inform all other counsel and THEN inform the court assigned to hear the motion. This notification to the court must be at least two court days before the hearing. It is counsel's responsibility in felony cases to submit a calendar request to reset the trial date if continuing the motion will require a continuance of the trial date. The provisions of Penal Code section 1050 must be followed.
 - (b) The court retains 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 matters in which the alleged victim is a person defined in Penal Code section 13700 subdivision (b) and/or Family Code section 6211 ("Family Violence") before trial, including for arraignment, plea, preliminary hearings, disposition, and sentencing, and will hold hearings as necessary to monitor treatment progress and probation compliance.

(1) Arraignment

- (a) Prosecuting Attorney's Duty. When the original complaint is filed, when determining an accused's custody status, and upon consideration of any plea agreement, the prosecuting attorney must present the court with information about an accused's prior convictions for weapons charges, for domestic violence, or for other forms of violence; any current protective or restraining order issued by any civil or criminal court; and any firearms registered to or otherwise allegedly within the custody or control of the accused.
- (b) Protective Order Consideration.
 - i. On its own motion, the court must consider issuance of a protective order at each Family Violence arraignment.
 - ii. Before requesting a criminal protective order in any Family Violence matter, the prosecuting attorney must make reasonable efforts to determine whether the alleged victim and the accused have any shared children; whether there are any Family, Juvenile, Dependency, or Probate court orders for custody or visitation for such children; the case numbers for any such orders; and whether there are any existing protective or restraining orders involving the accused, the alleged victim and/or the shared children. The prosecuting attorney must advise the Family Violence court of the existence of any such orders when the proposed criminal protective order is submitted for approval and signature. If a criminal protective order is issued, the prosecuting attorney must make reasonable efforts to submit a copy of the issued criminal protective order to the Family, Juvenile, Dependency, or Probate Court where one or more cases involving shared children is/are pending.

(2) Preliminary Examination

- (a) Readiness Notice. Each party must inform the preliminary examination judges via email by 5 p.m. at least one court day before the date set for the preliminary examination whether the party will be ready to proceed, whether a continuance under Penal Code section 1050 will be sought and any objections thereto, whether there are requests for remote testimony and any objections thereto, and whether interpreters are needed. Each party must also provide an updated and accurate time estimate for the hearing.
- (b) Motions. Motions to release documents in response to a subpoena duces tecum, Penal Code section 1538.5 motions, and other motions necessary to be heard before or with the preliminary hearing must comply with Rule 7 and be set on the same day as the preliminary hearing.

(3) Felony Pleas and Misdemeanor Pre-Trial Conferences

- (a) Plea. All accused 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 under Penal Code section 1024.

- (b) Pre-hearing meet and confer. For felony plea and misdemeanor pre-trial conferences, counsel for the parties must meet and confer before each court appearance to discuss the exchange of discovery, proposals for early resolution, collateral consequences, mitigation materials, and any other issues that might impact case disposition.
- (c) Hearing preparation. Counsel must use the periods between hearings to communicate with their client(s), alleged victims, and witnesses about ongoing investigations and offer(s) for disposition. Counsel who appear at felony plea and misdemeanor pre-trial conferences must be prepared to discuss any matter relating to the case disposition, including readiness, witness availability, discovery matters, ongoing investigations, and any special issues for alleged victims or the accused. This requirement applies to counsel of record and to counsel making special appearances. No continuances will be granted on the basis that special appearance counsel is not prepared to discuss the case.
- (4) Protective Orders
- (a) Issuance. The issuance of protective orders in Family Violence matters will be in accordance with Rule 4(F)(1)(b) and (F)(4)(b) and (c).
- (b) Modification: Who may request. The following parties may request that a case be calendared to modify a criminal protective order:
- i. The prosecuting attorney at the request of a protected person or the Family, Juvenile Justice, Dependency, or Probate Court;
 - ii. The Probation Department at the request of the accused, protected person, or the Family, Juvenile Justice, Dependency, or Probate Court;
 - iii. The accused or accused's counsel on behalf of the accused defendant;
 - iv. The court on its own motion.
- (c) Modification: Procedure.
- i. Where applicable, the party requesting modification must include the following information with the Request for Hearing on Criminal Protective Order Modification ("Request"): (1) any applicable CLETS Civil Restraining Orders and Custody and Visitation Orders; (2) the case numbers of both the criminal court case and any Family, Juvenile, Dependency, or Probate cases involving the accused defendant and the alleged victim; and (3) a copy of attendance or other record reflecting any safety planning, therapy sessions, or other counseling course attended by the accused and/or the alleged victim after the alleged incident date for the most recent Family Violence matter.
 - ii. The requesting party is responsible for service of the Request on all appropriate parties and agencies, including the District Attorney's office, Adult Probation (if the accused is on formal probation), the accused, and the accused's attorney of record at least five days before the hearing. Except when the protected person is the requesting party, the prosecuting attorney must send a copy of the Request to the protected person at their last known address.
 - iii. At any criminal protective order modification hearing, the parties must be prepared to provide the court with detailed information about the protected person's desired level of protection, preferably through the protected person's physical presence in court or virtual attendance at the hearing in a manner that permits the court to see the protected person and the protected person's surroundings.
- (d) Modification: Custody or Visitation Orders.
- i. Any court responsible for issuing custody or visitation orders involving minor children of an accused subject to a criminal protective order (Judicial Council Form CR-160) may modify the criminal protective order if all of the following circumstances are present:
 - a. Both the accused and the alleged 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 accused is on probation (formal or court), has been convicted of, or is currently charged with a Family Violence offense in Santa Clara County and a criminal protective order has issued;
- (Effective 1/1/2023)
- c. The Family, Juvenile, or Probate Court identifies a criminal protective order issued against the accused, that 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 accused signs an appropriate waiver of rights form or enters a waiver of rights on the record; and
 - e. Both the alleged victim/protected person and the accused/restrained person agree either that the criminal protective order may be modified to a more restrictive order or that item 16 on the criminal protective order may be checked.
- ii. The Family, Juvenile, or Probate Court may not modify an existing criminal protective order to be less restrictive. The Family, Juvenile, or Probate Court may modify a criminal protective order by checking item 16 only when the minor child or children are not listed as protected persons.
 - iii. The Family, Juvenile, or Probate Court may on its own motion or at the request of an accused, 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 must provide the Criminal Court with copies of existing or proposed orders relating to the matter. Notice of the hearing must be provided to all counsel and parties.

- (e) Termination: Except as otherwise set forth in Penal Code section 1203.4b an issued criminal protective order will be terminated (i) upon dismissal of the action or (ii) when probation is revoked and terminated and the criminal protective order was issued solely pursuant to Penal Code section 1203.097. If the criminal protective order is not addressed at the hearing dismissing the action or terminating probation under Penal Code section 1203.097, the clerk of court will, within thirty days of case resolution, prepare and submit to a judicial officer for signature a Notice of Termination of Protective Order in Criminal Proceeding (CR-165).
- (f) Property Removal Orders. In cases where the court allows the restrained person to remove “necessary personal property” from the protected person’s residence as a one-time exception to the criminal protective order, Attachment CR-6072 (Property Removal Order) must be completed by and filed by the court, and the restrained person and protected person must be provided with one certified copy of the same.

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 7.

(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.

RULE 5 SOUTH COUNTY FACILITY

(Effective 1/1/2023)

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

RULE 6 NORTH COUNTY FACILITY

(Effective 1/1/2023)

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.

RULE 7 PLEADINGS AND FILING OF DOCUMENTS

(Effective 1/1/2023)

A. METHOD OF FILING PLEADINGS AND DOCUMENTS

- (1) Documents may be filed electronically or in paper form at the Clerk’s Office consistent with Rule 6(C) and (D)(1) and (2) of the General Court and Administration Rules except as described below.

- (2) Any motion to set aside a bail forfeiture, any appeal of a denial of a motion to set aside a bail forfeiture, and any documents filed conditionally under seal may not be filed or submitted electronically.
- (a) Except as provided in California rules of Court, Rules 2.500 through 2.507, an electronically filed document is a public document when it is filed unless it is sealed under California Rules of Court, rule 2.551(b) or filed as a confidential document as provided by law. Unless the document is confidential and/or will be filed under seal, to protect personal privacy, parties must not include, or must redact where inclusion is necessary, the personal data identifiers from all documents, including any exhibits, filed with the court under this rule, such as social security numbers, and financial account numbers. A motion to file documents under seal may be filed and served electronically. But, documents lodged with the court conditionally under seal, as provided in California Rule of Court, rule 2.551(d), must be served and submitted to the clerk of the court in paper form, pending hearing on the motion to seal.
- (3) Consistent with rule 6(C) of the General Court and Administration Rules, documents must be electronically filed with the court using one of the court's approved electronic filing service providers. Information concerning the approved electronic filing service providers, including the procedures for electronically filing documents with the court and for electronically serving documents, is available on the court's website at www.sccscourt.org.

B. FORMAT OF DOCUMENTS SUBMITTED FOR FILING

- (1) Documents submitted in paper form must be held by binder clips.
- (2) Exhibit attachments to pleadings must be separated by a standard size sheet of paper with a title identifying the sequence of the exhibit.
- (3) Tabs may not be included in any documents submitted for filing.
- (4) Memoranda of points and authorities must not exceed 25 pages, unless an order extending the page limit accompanies the motion when filed.

C. LOCATION OF FILING

- (1) The party filing any motion, pleading, or petition, must file the original electronically or in the Criminal Court Clerk's office when the case is to be heard.
- (2) If filing a motion in paper form, a courtesy copy for the Law and Motion Department must be provided. If filing a motion electronically, the filing party should provide an electronic courtesy copy to the Law and Motion department or other assigned judge.
- (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.

D. 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 on the same day that the originals are filed, unless previously served.

E. 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.

F. REQUESTS FOR ORDERS SHORTENING TIME

- (1) Orders Shortening Time must be signed only by the judge hearing the motion or a 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.

G. TIME ESTIMATE

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

H. REQUEST FOR ORAL TESTIMONY

Oral testimony will not be permitted in a motion hearing unless the court orders otherwise, except for properly noticed hearings brought under Penal Code section 1538.5. The court retains complete discretion as to the necessity for, and 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.

I. UNLESS OTHERWISE ORDERED BY THE COURT

- (1) All motions and applications, together with supporting papers, documents and points and authorities, must be filed electronically or with the Criminal Court clerk in the appropriate courthouse no later than 15 calendar days before the date set for hearing. This requirement applies except where inconsistent with a state rule of court or statute. (See e.g. Code Civ. Pro., § 1005 requiring 16 court days for a Pitchess/Evid. Code section 1043 motion.)
- (2) Unless waived by the court, or unless the party who would respond to the motion concedes 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 before 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 with these filing deadlines is sufficient grounds for the court to refuse to consider the matters contained in late-filed papers.

J. MOTIONS TO SUPPRESS EVIDENCE

The notice of a motion brought under Penal Code section 1538.5 must describe with particularity the evidence sought to be suppressed and must be served with a memorandum of points and authorities.

K. MOTIONS TO DISMISS INFORMATION/INDICTMENT

The moving party must lodge all exhibits relevant to any claim. The parties must meet and confer about the exhibits before their submission. If voice recordings are submitted for review by the court, the transcript required by California Rules of Court, rule 2.1040 must be included unless the magistrate waived the requirement under California Rules of Court, rule 2.1010(b)(3).

L. 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.
- (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.

M. SUBPOENAS DUCES TECUM

All subpoenas duces tecum in criminal cases must comply with Penal Code section 1326 and Evidence Code section 1560, and when applicable Code of Civil Procedure section 1985.3, and must be returnable to the court. In the event materials that 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 must immediately lodge such materials with the clerk of the court. The materials must not be opened, reviewed, or copied by the recipient without a prior court order.

N. COMPLIANCE WITH STATUTES AND RULES OF COURT

- (1) All papers filed in law and motion matters, and all motion proceedings must comply with the applicable statutes, California Rules of Court, and these Criminal Court Rules.
- (2) A mere citing of code sections authorizing the filing of a motion is not 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, must 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. Parties must not cite to unpublished decisions of the California Court of Appeal except as provided in California Rules of Court, rule 8.1115.
 - (b) A memorandum of points and authorities must contain a concise statement of facts, a concise statement of the law, a discussion of the evidence and arguments relied upon, and a discussion of the statutes, cases, and other authorities 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.

O. MOTIONS TO JOIN

Any party seeking to join in any motion must set out the relevant facts and law as it relates to the joining party. All motions to join must be made in writing.

P. SEARCH WARRANTS

When an accused 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.

Q. MOTIONS FOR REINSTATEMENT

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

R. POST-TRIAL MOTIONS

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

RULE 8 USE OF JUVENILE RECORDS

(Effective 1/1/2023)

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).

RULE 9 REQUESTS FOR INTERPRETERS

(Effective 1/1/2023)

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.

RULE 10 REQUESTS FOR CALENDAR SETTING*(Effective 1/1/2023)*

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.

RULE 11 PROPOSED ORDERS*(Effective 1/1/2023)*

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.

RULE 12 WRITS*(Effective 1/1/2023)***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.

RULE 13 REQUEST FOR COPY/TRANSCRIPT OF ELECTRONIC SOUND RECORDING FOR RECORD ON APPEAL, WRITS, OR OTHER HEARINGS FOR MISDEMEANORS OR INFRACTIONS*(Effective 1/1/2023)*

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 14 TRAFFIC DIVISION – TRIAL BY DECLARATION*(Effective 1/1/2023)*

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.

RULE 15 ANCILLARY DEFENSE EXPENSES*(Effective 1/1/2023)***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;
 - 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 1/1/2023)

RULE 16 PROTOCOL FOR SEALING OF RECORDS-CRIMINAL DIVISION

(Effective 1/1/2023)

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.

RULE 17 REQUESTS UNDER PROPOSITION 47 (PENAL CODE § 1170.18)

(Effective 1/1/2023)

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 18 POSTING OF PROPERTY BOND

(Effective 1/1/2023)

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)