

CHAPTER 14

CRIMINAL DEPARTMENT

14.01 FILING OF CRIMINAL COMPLAINTS

The deadline for filing new felony charges shall be filed no later than 11:00 am of the day the defendant is to appear for arraignment, unless otherwise directed by the presiding judge.

The deadline for filing new misdemeanor charges shall be filed no later than 2:00 pm for the next day setting, unless otherwise directed by the presiding judge.

(Adopted July 1, 2009)

14.02 ADDING CASES TO CRIMINAL CALENDAR

Any application or memorandum for setting a criminal matter on calendar shall be submitted to the clerk's office no later than two (2) court days (excluding weekends and holidays) before the requested hearing date. Any exceptions to this rule must be approved by the judge hearing the case.

(Adopted July 1, 2009)

14.03 DEADLINES FOR FILING

The deadline for filing on the felony "grist" calendar shall be 11:00 am, the day prior to next available grist day for in-custody matters.

The deadline for filing on the felony grist calendar shall be 11:00 am, two (2) court days prior to the requested hearing date (excluding weekends or holidays) for defendants not in custody.

The deadline for a defendant out of custody appearing at the counter to be set for an arraignment on a warrant shall be 2:00 pm for the next day's calendar. This excludes Mondays for all calendars and Fridays for department 11 only.

The deadline for filing or faxing a memorandum to set a matter on calendar for arraignment on warrant shall be two (2) court days (excluding weekends or holidays) prior to the requested hearing date.

(Adopted July 1, 2009)

14.04 PENAL CODE SECTIONS 995 AND 1538.5 MOTIONS

Except for good cause shown, a Motion to Set Aside the Indictment or Information must be set for hearing within ten (10) court days of the date of arraignment.

A Motions to Suppress Evidence must be calendared for setting of hearing within ten (10) court days of the date of arraignment on the information in felony matters. In all misdemeanor cases, a motion to suppress evidence must be calendared for setting of hearing within ten (10) court days of the date of the first pre-trial hearing where time is waived or within ten (10) court days of the date of arraignment where time is not waived.

(Adopted October 1, 1998; Amended July 1, 2015)

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14.05 OTHER PRETRIAL AND DISCOVERY MOTIONS

All other pretrial and discovery motions must be heard prior to the jury trial readiness calendar (Cal. Rules of Court, rule 4.112(b)).

At the time of the defendant's first appearance on a criminal matter, an informal request for continuing discovery shall be deemed to have been made by the defendant requesting the prosecutor to comply with Penal Code section 1054.1, and by the prosecutor requesting the defendant to comply with Penal Code section 1054.3.

(Adopted October 1, 1998; Amended July 1, 2002; Amended January 1, 2009)

SHORT CAUSE CRIMINAL

14.06 PRE-TRIAL CONFERENCE CALENDAR

In order to reasonably predict the business of the court, anticipate assignments of judges, and to eliminate unnecessary inconvenience to parties, witnesses, and trial jurors, a pre-trial conference shall be held in every criminal case (including traffic) in which a trial by jury has been demanded.

- A. Procedures. The judge in each department, except the felony arraignment department, shall, at the time of arraignment and entry of plea, set the date for pre-trial conference.
- B. Date Set for Trial. Once a case is set on the pre-trial conference calendar, it may not be changed without the approval of the judge before whom it is assigned.
- C. Failure to Appear at Pre-trial Conference. Any failure of an attorney to prepare for, appear at, or participate in, a pre-trial conference, unless good cause is shown for any such omission, is an unlawful interference with the proceedings of the court and may be punished as contempt.
- D. Trial Brief Requirement. In all criminal matters where the case does not settle at the pre-trial conference and the matter remains set for trial, trial counsel will be required to file a brief no later than 12:00 noon on Friday for all felony cases and no later than 3:00 p.m. on Friday for all misdemeanor cases immediately preceding the trial date (in most instances the following Monday) unless an earlier date is ordered by the court. The only exception to the timely filing of a trial brief is by authorization of the presiding judge, designee of the presiding judge, or the trial judges.

The trial brief shall include the following:

- A brief factual statement of the case that can be read to the jury
- Proposed jury instructions
- All in limine motions along with supporting points and authorities
- Proposed voir dire questions that are being requested
- A list of any witness problems that may interfere with the timely conduct of the trial
- Any other issues that will have to be dealt with by the trial judge
- Witness list
- Exhibit list
- Proposed verdict form

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(Adopted October 1, 1998; Amended July 1, 2001; Amended January 1, 2004; Rule 14.05 renumbered as 14.03 and amended January 1, 2009)

14.07 JURY TRIAL READINESS CALENDAR

There shall be a jury trial readiness calendar for all criminal and traffic misdemeanor cases at which time all trial counsel must be present. The trial readiness conference is to be a sincere effort by the attorneys and parties to eliminate congestion of the trial calendar so long as justice can be properly afforded to all parties. If the trial attorney fails to appear, the court may, in its discretion, find him/her in contempt.

- A. Procedures. Upon the calling of such readiness calendar, all motions for continuance, waiver of jury, change of plea, reductions, or other procedural matters shall be presented. In the event the case is not disposed of at the trial readiness conference and a trial date is requested or confirmed, all offers on either side will be deemed withdrawn and the case will be set for trial and tried on all counts. No further amendments to pleadings or continuances will be granted except for good cause shown.
- B. Date Set for Trial - Duties. When the parties announce they are ready for trial, the parties announce that:
- The respective attorneys are prepared to commence the trial immediately.
 - All pre-trial motions and discovery have been completed.
 - All witnesses are readily available and have been interviewed by the respective attorneys.
 - The attorneys' calendars permit them to commence the trial immediately and see it to conclusion.
- C. Proposed Jury Questionnaires. Unless waived by the trial judge, counsel shall submit proposed jury questionnaires to the court no less than fifteen (15) court days in advance of the trial date. Upon receipt, the questionnaires shall not be officially filed by the clerk of the court, but shall be immediately forwarded by the clerk to the trial judge for review.
- D. Continuance Policy. The welfare of the People of the State of California requires that all proceedings in criminal cases shall be set for trial and heard at the earliest possible time (Pen. Code, § 1050). Therefore, it is the policy of this court to maximize the use of judicial time and avoid continuances, resetting and unnecessary trailing of cases. Any motion to continue in a criminal proceeding must comply with Penal Code section 1050. Further, this court adheres to no trial continuance policy - when a courtroom event is scheduled, that event should take place as scheduled.
1. Counsel.
- a. Counsel's attention is directed to rule 3-110 of the Rules of Professional Conduct State Bar of California, "Failing to Act Competently."

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- i. A member of the State Bar shall not:
 - a) Accept employment or continue representation in a legal matter when the member does not have sufficient time, resources and ability to perform the matter with competence, or
 - b) Repeatedly accept employment or continue representation in legal matters when the member reasonably should know that the member does not have or will not acquire before performance is required, sufficient time, resources and ability to perform the matter with competence.
 - ii. Counsel should not set a case if they are committed to another trial during that period or if they are going to be on vacation. This includes cases set in the superior court and cases in different divisions and departments of the court. Counsel should not schedule other cases to begin if they have another matter set in court. Neither reason constitutes "good cause" for a continuance.
 - iii. Motions, pre-trials, and trials are to be heard at the date and time set
 - iv. Substitute Counsel. An attorney who appears for another attorney is representing the defendant then before the court. An attorney who makes such an appearance is required to do so competently. (Cal. Rules of Professional Conduct, rule 3-110.) Such an attorney is expected to be prepared to carry out and perform any duties required at that calendar event; should a continuance be required it is his or her responsibility to have complied with this policy and to know when the other attorney will be available to appear; if a case is not to be tried, he or she should have the authority to dispose of the case. Should these rules not be complied with, sanctions will be applied against this attorney. (Code of Civ. Pro., §§ 128.5 & 177.5; Cal. Rules of Court, rule 2.30.) At the next scheduled calendar event, the counsel of record must file a declaration with the court explaining his or her ability to be present at the last calendar event. (*Amended January 1, 2007*)
 - v. Counsel should not delay in filing and serving proper motions. Failure to timely file or serve without good cause will result in the imposition of sanctions.
 - vi. Counsel should subpoena witnesses as soon as a case is set for hearing or trial.
 - vii. Counsel should not accept representation of a defendant if he/she does not have sufficient time to adequately prepare before the next scheduled event.
2. Motions. Motions to continue must comply with Penal Code section 1050. Courtroom events will be continued only when extraordinary circumstances, not within the control of the parties and which were not foreseeable at the time of setting the date of the event, necessitate a continuance. In ruling on motions to continue, the following factors will be taken into consideration:
- a. The time when the need for the continuance arose and the diligence of counsel in bringing the need for a continuance to the attention of the court and opposing counsel at the earliest possible date and in attempting to avoid a continuance;

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- b. The proximity of trial, the age of the case, the established time limits for processing cases, and the nature of any previous continuances or prior orders entered in the case;
 - c. The earliest possible date all parties and the court will be ready to proceed;
 - d. Whether the continuance may be avoided by substitution of attorneys or witnesses, or by the use of stipulations as to testimony; and
 - e. The injury or inconvenience caused to the party not requesting the continuance.
3. Good Cause. Continuances will only be granted on the showing by competent evidence of good cause. The facts proven justifying good cause and the length of continuance shall be set forth on the record. Good cause is not shown by the following:
- a. Counsel's vacation or commitment to another trial or proceeding except as provided in Penal Code section 1050, subdivision (g)
 - b. Failure of a client to adhere to a financial agreement with his/her attorney
 - c. Failure to expeditiously prepare for trial
 - d. A witness's vacation or attendance at school unless this is accompanied by a showing of the witness's unavailability, that the testimony is material and that the party seeking the attendance exercised due diligence to secure the presence of the witness
 - e. Informal diversion
 - b. A civil compromise pursuant to Penal Code section 1378
 - c. Other pending cases
 - d. Negotiations not yet completed
- (Misdemeanor cases coming within (e) and (f) can be conditionally dismissed on waiver of the prohibition against re-filing).
4. No continuance will be granted solely because all parties agree thereto.
5. The failure to adhere to this policy will result in the imposition of sanctions and the assessment of reasonable costs. (Code of Civ. Pro., §§ 128.5 & 177.5; Cal. Rules of Court, rule 2.30.) *(Amended January 1, 2007)*
6. Trailing. Should it be necessary that cases be trailed for hearing or trial, they will be trailed day by day. The case will be called each day at 11:30 a.m., 4:30 p.m., and the next day at 8:30 a.m. When a case is trailing, the defendant and counsel, except in extraordinary circumstances, must be present when the case is called.

(Adopted October 1, 1998; Amended July 1, 2002; Amended January 1, 2004; Amended January 1, 2007; Rule 14.06 renumbered as 14.04 and amended January 1, 2009)

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14.08 EVIDENTIARY PRE-TRIAL

In all misdemeanor pre-trial motions requiring the presentation of any evidence of any party will be noticed in writing with proof of service of opposing party(ies) filed no later than ten (10) court days prior to the date of hearing, unless, for good cause shown, and upon written order of court, time is shortened for the filing of said pre-trial motion.

A. Motion to Suppress Evidence. In misdemeanor cases, whenever a Penal Code Section 1538.5 motion to suppress evidence is made, the moving party shall file written points and authorities at least ten (10) days prior to the date of the hearing. The written points and authorities shall:

1. Identify with particularity the evidence sought to be suppressed;
2. Specifically state the legal theory(ies) which will be relied upon; and
3. Cite the specific authority(ies) which will be offered in support of the motion.

(Adopted October 1, 1998; Rule 14.07 renumbered as 14.05 and amended January 1, 2009, Amended July 1, 2015)

14.09 MODIFICATION OF SENTENCE ADJUDGED

The judge placing a defendant on probation in a misdemeanor case shall, as far as practicable, hear any application for modification, change, or termination of probation, except for applications under Penal Code sections 1203.4 or 1203.45.

Any request for modification of sentence imposed must be filed in writing on a form provided by the court.

(Adopted October 1, 1998; Rule 14.08 renumbered as 14.06 January 1, 2009)

14.10 COURT APPOINTED COUNSEL

Only the Office of the Public Defender shall be appointed as counsel in all appointments authorized under Penal Code section 987 et al. In situations involving conflict of interest filed by the Office of the Public Defender of Monterey County, referral will be made to the Alternate Defender's Office for appointment of counsel.

(Adopted October 1, 1998; Amended January 1, 2004; Rule 14.09 renumbered as 14.07 January 1, 2009)

14.11 REPEALED

(Adopted October 1, 1998; Appeals in misdemeanor cases that were electronically recorded - Repealed January 1, 2011)

14.12 POSTING OF A PROPERTY BOND IN A CRIMINAL CASE

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Security in Real Property

In lieu of a deposit of cash or a bail bond, the defendant or any other person may give as security any equity in real property which he or she owns. No charge is made to the defendant or any other person for the giving as security of any equity of real property. (Pen. Code, § 1298.)

Purpose

The purpose of a property bond is to release the defendant from actual custody and guarantee the appearance of the defendant at all future court hearings.

Requirements

A hearing is required if equity in real property is submitted as security. At the hearing, at which witnesses may be called or examined, the magistrate will determine the value of such equity. If the magistrate finds that the value of the equity is equal to twice the amount of the cash deposit required he or she shall allow such bail. (Pen. Code, § 1298.)

Procedure

- A. To set the matter for hearing, a noticed motion for real property equity bond with proof of service to the Office of District Attorney and Monterey County Counsel must be filed with the clerk's office at least five (5) days prior to the date set for the hearing. The following documents must be submitted as attachments to the motion:
1. Declaration of property owner(s).
 2. A notarized promissory note in the amount of the required bond.
 3. Copy of the deed of trust proposed to be recorded securing the promissory note naming Monterey County as beneficiary and Court Executive Officer of Superior Court of California, County of Monterey, as trustee.
 4. Current preliminary title report including legal description of property, location and all encumbrances from a recognized California Title Company dated within thirty (30) days prior to the application for property bond.
 5. Appraisal Report of the fair market value of the property, completed by a certified real estate appraiser. The report should be dated no more than thirty (30) days prior to the application for property bond.
 6. Proof of insurance coverage for the property. Must have an adequate amount of coverage to cover all encumbrances. Must show County of Monterey on the insurance policy.
 7. Order approving property bond and order for release of defendant. (Pen. Code, § 1281.)
- B. All documents submitted for filing must conform to the form/format requirements

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set forth in California Rules of Court, rule 2.100(b).

- C. The clerk's office will review all forms and paperwork to ensure that all necessary items have been presented for court approval.
- D. The court may require additional evidence in order to ascertain the true equity in the property held by the applicants. (Pen. Code, § 1280.)
- E. If the court approves the property bond, the applicant shall record the deed of trust with the county recorder's office where the property is located to be recorded, and shall deliver to the clerk of the court a copy of the recorded deed of trust. The original deed of trust shall be returned by mail from the county recorder's office to the clerk of the court. All costs incurred to process the property bond and to comply with this rule shall be borne by the applicant.
- F. The clerk of the court will present the order approving property bond and order for release of defendant to the magistrate. Magistrate signs order(s) if not previously signed.
- G. The clerk of the court will send a duplicate copy of order approving property bond and order for release of defendant with court seal affixed, to the county jail.
- H. The clerk of the court will place the promissory note and newly recorded deed of trust in a sealed envelope and store the envelope in a secured area.
- I. In the event the property bond is ordered exonerated, the attorney of record must do the following:
 - 1. Prepare a full reconveyance form.
 - 2. Schedule an appointment with the Court Executive Officer or designee.
 - a. Court Executive Officer or designee shall sign the full reconveyance in the presence of a notary public provided and paid for by the defendant.
 - b. Signed full reconveyance form, cancelled recorded deed of trust, and cancelled promissory note shall be given to the attorney of record.
 - 3. In the event the property bond is ordered forfeited, upon entry of summary judgment and order of the court, the clerk shall prepare an appropriate form of order for the court's signature directing the clerk to release the original deed of trust and promissory note to County Counsel for the commencement of foreclosure proceedings. (Pen. Code, § 1280.1, subd. (b).)

(Adopted January 1, 2008; Rule 14.11 renumbered as 14.09 January 1, 2009; Amended July 1, 2010; Amended July 1, 2012)

14.13 LOCAL CRIMINAL BAIL SCHEDULE

This rule sets forth a schedule and procedure for adoption of the local bail schedule pursuant to Penal Code section 1269b, subdivisions (c) and (d), and California Rules of Court, rule 4.102. This bail schedule will be used for setting bail at all times provided by law.

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- A. The local bail schedule will be reviewed annually.
- B. Judicial officers of this court designated by the presiding judge will review and consider revision of the local bail schedule annually and submit their proposed revisions to the presiding judge. The proposed revised local bail schedule will then be reviewed for adoption by a majority of the judicial officers.
- C. Copies of the local bail schedule shall be sent to the officer in charge of the county jail and of each city jail within the county, to each judicial officer of this court, to the Judicial Council and posted on the court's public website. (Pen. Code, § 1269b, subd. (f); Cal. Rules of Court, rule 4.102.)

Bail shall be set according to the Uniform Bail Schedule established by the Judicial Council per California Rules of Court, rule 4.102 for those charges addressed in said schedule except when a judge determines in his or her discretion that factors in aggravation of mitigation justify a different amount in a specific case.

(Adopted January 1, 2009)

14.14 TRIALS BY DECLARATION

The court adopts the trial by declaration process, defined in Vehicle Code section 40902 and California Rules of Court, rule 4.210.

(Adopted July 1, 2010)

14.15 NIGHT COURT

Night court is held the last Monday of every month (excluding holidays) for traffic arraignments and special sets from the court. No pre-trial or court trials will be set for night court. (Veh. Code, §42006, subd. (a).)

(Adopted July 1, 2013)

14.16 TRAFFIC SCHOOL

The court does not allow installment payments on cases where the defendant is requesting to attend traffic school. (Veh. Code, § 42007, subd. (a)(2).)

(Adopted July 1, 2013)

14.17 MOTION TO RE-OPEN CASE ADJUDICATED BY BAIL FORFEITURE

Any motion to re-open a conviction reported to the Department of Motor Vehicles following a bail forfeiture under Vehicle Code section 40512 or reported as a failure to complete traffic violator school under Vehicle Code section 40512.6 shall be filed with the Traffic division no later than ninety (90) days from the date of the bail forfeiture.

(Adopted July 1, 2013)

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14.18 REQUEST FOR EXTENSION

Upon written or verbal request for an extension of time to take care of an infraction traffic or infraction non-traffic matter, the clerk of the court or designee is authorized to grant a one (1) time sixty (60) day extension from the original pay or appear date (appearance date on citation).

(Adopted July 1, 2013)