

**LOCAL RULES – SUPERIOR COURT of CALIFORNIA, COUNTY of ORANGE**

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**DIVISION 8**

**CRIMINAL**

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**Chapter 1**

**Felony Cases**

**Rule 800. Pretrial Motions in Felony Cases**

A. General Applicability

This rule applies to any of the following motions in a felony case once the indictment or information has been filed:

1. Demurrer to Indictment or Information (Penal Code section 1004) where court authorizes filing after entry of plea.
2. Motion to dismiss Indictment or Information (Penal Code section 995).
3. Motion under Penal Code section 1538.5 and other motions to suppress evidence or for return of property unlawfully seized.
4. Motion for discovery, including discovery relating to informants claimed to be material witnesses.
5. Motion to compel a lineup.
6. Motion to sever or consolidate cases, counts, or defendants.
7. Any speedy trial motion where grounds exist at the time set herein for making pretrial motions.
8. Motion to challenge jury selection system.
9. Any other motion to dismiss or strike, statutory or non-statutory, where the grounds exist at the time set herein for making pretrial motions.

B. Time for Motions and Hearing

1. Except as otherwise authorized by the court, or required by statute, all motions, together with points and authorities, must be in writing and must be served and filed with the clerk in the trial department, or with the Criminal Clerk's Office if the clerk of the trial department is not available in accordance with Rule 4.111 of the *California Rules of Court*. In the event the Criminal Clerk's Office is not available for the filing of documents, the documents may be placed in a drop box. The motion must designate a hearing at 9:00 a.m. on the second available Friday immediately preceding the trial date. The clerk may refuse to file any motion not in compliance with this section.

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2. All motions must contain in the upper right-hand corner of the first page, the filing party's estimate of the overall time required for the hearing of the matter, date and department number of the hearing, and a request for a removal order if a defendant or necessary witness is in custody. If the court has not previously ordered the defendant to be present at the pretrial motion date and the defendant is not in custody, counsel for said defendant shall give written notice of said hearing date to the defendant and file a proof of service of same at the time the motion is filed. Failure to request a removal order when one is required, or to give such notice to such noncustodial defendant, may result in said motion being taken off calendar.

### **C. General Procedure**

1. All motions, together with points and authorities, must be separately filed.
2. The responding party must serve and file with the clerk in the department hearing such motions, or with the Criminal Clerk's Office if the clerk in the hearing department is not available, responding points and authorities in accordance with Rule 4.111 of the *California Rules of Court*.
3. The moving party must serve and file with the clerk in the department hearing such motions, or with the Criminal Clerk's Office if the clerk in the hearing department is not available, any reply points and authorities in accordance with Rule 4.111 of the *California Rules of Court*.
4. Continuances of hearings on motions will not be granted except for good cause shown and upon the filing of a written notice of intention to move for such continuance with the clerk of the department hearing such motions or with the Criminal Clerk's Office if the clerk in the hearing department is not available, together with proof of service upon the opposing counsel, prior to noon of the Wednesday before the hearing.
5. The requirements for all motions subject to this rule must be the same except cases that come within the provisions of subdivision (b) of Penal Code section 1048. In those cases the judge assigned to the trial department will specially set the pretrial motion/trial readiness conference date and the filing deadlines.

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D. Additional Requirements for Penal Code section 995 Motions

1. Moving papers relating to such motions shall include the following:
  - a. A brief statement in summary form of the facts as set forth in the transcript.
  - b. A statement of the issues, specifically identifying in what regard the People's case is defective.
  - c. Where defendant intends to rely upon some testimony in the transcript, the moving papers shall contain references to such testimony identified as to page and line number of the transcript.
  - d. A statement of the authorities upon which defendant relies with explanation as to why they are applicable. (Mere citation of sections in the California Penal Code and the U.S. Constitution shall not be sufficient.)

E. Additional Requirements for Penal Code section 1538.5 Motions

1. Moving papers relating to such motions shall include the following:
  - a. A complete statement of all the facts known to counsel at the time the motion is filed upon which the moving party relies in support of the motion.
  - b. A complete specification of the exact matters or things sought to be suppressed or returned ("all evidence seized on..." ...without listing the items is not a specification).
  - c. A statement of the issues, specifically identifying in what regard the search or seizure is defective. Such statement shall specifically state the theory or theories which shall be relied upon and urged for the suppression of evidence.
  - d. A statement of authorities citing the specific authority or authorities which will be offered in support of the theory or theories upon which suppression of evidence is urged.
  - e. Where a motion to suppress was made at the preliminary hearing, any references in the supporting papers to such testimony shall be identified as to volume number, if more than one volume, page and line number in the transcript.
  - f. Where no motion to suppress was made at the preliminary hearing and if the moving party requests testimony be received by the court at such hearing, the first page of the notice of motion, or motion shall so indicate. The failure to so indicate shall be construed by the court as a request by the moving party to submit the matter on the statement or statements of fact and the argument of counsel.

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- g. Where a motion to suppress was made at the preliminary hearing and if the moving party requests additional testimony be received by the court at such hearing, the first page of the notice of motion, or motion shall so indicate. The failure to so indicate shall be construed by the court as a request on the part of the moving party that the matter be submitted on the transcript(s) of prior proceedings and the argument of counsel.
  2. Responding papers to such motions shall include the following:
    - a. A complete statement of all the facts known to counsel at the time the responding papers are filed upon which the responding party relies in opposition to the motion.
    - b. A statement of the issues, specifically identifying in what regard the search or seizure is justified. Such statement shall specifically state the theory or theories which shall be relied upon and urged to justify the search or seizure.
    - c. A statement of authorities citing the specific authority or authorities which will be offered in support of the theory or theories upon which justifications for the search or seizure are urged.
    - d. Where no motion to suppress was made at the preliminary hearing and if the responding party requests testimony be received by the court at such hearing, the first page of the notice of motion, or motion shall so indicate. The failure to so indicate shall be construed by the court as a request by the responding party to submit the matter on the statement or statements of fact and the argument of counsel.
  3. Reply papers relating to such motions shall include the following:
    - a. A statement of all additional facts known to counsel at the time reply papers are filed upon which the moving party relies in reply to the responding party's statement of facts.
    - b. A statement of all additional issues upon which the moving party relies in reply to the responding party's statement of issues.
    - c. A statement of any additional authorities upon which the moving party relies in reply to the responding party's statement of authorities.
  4. If the pleadings (moving, responding and reply papers) raise no disputed issues of fact, the court will determine said motion on the pleadings and the argument of counsel. If the pleadings raise disputed issues of fact, the court will receive only such testimony as is necessary to resolve the disputed issues of fact or facts.

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F. Additional Requirements for Motions to Challenge Jury Selection System and/or Discovery Motions Related Thereto

1. All motions shall be filed in the department of the Presiding Judge (Department C1), whether or not the criminal case has been assigned to a judge for all purposes.
2. Moving papers relating to such motions shall include a statement of the issues specifically identifying in what regard the jury selection system is defective.
3. All moving papers relating to such motions shall be separately served on the Jury Commissioner, Deputy Jury Commissioner, or court employees whose primary employment is in the Jury Services Division the same date the moving papers are served on the responding party. Proof of service shall be filed with the original moving papers.
4. The Jury Commissioner, Deputy Jury Commissioner, or court employees whose primary employment is in the Jury Services Division shall not be called to testify at the hearing on a motion to challenge the jury selection system unless given three court days prior notice.
5. For good cause shown, the court may waive any of the above additional requirements.

G. Effect of Noncompliance with These Rules

1. If any motion subject to this rule is not made within the time limits and pursuant to the requirements of this rule, the failure to do so shall constitute a waiver of the right to make the motion, but the court for good cause shown, may grant relief from the waiver.
2. If any response is not made within the time limits and pursuant to the requirements of this rule, the failure to do so may result in the refusal of the court to consider such response.

*Rule 800 revised effective January 1, 2016; Revised effective July 1, 1985; revised effective July 1, 1991; revised effective July 1, 1992; revised effective July 1, 1998; revised effective January 1, 2013.*

**Rule 805. Motions in Capital Cases**

A. General Applicability

This rule applies to all written motions filed in a capital case. For purposes of this rule, a capital case is defined as a criminal prosecution in which: a) the prosecution has filed with the court written notification of its intention to seek the death penalty; and, b) the case has been assigned to a specific courtroom for trial.

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A criminal prosecution shall cease to be deemed a capital case for purposes of this rule upon:

1. The court's receipt from the prosecution of written or oral notification of its intention to no longer seek the death penalty in the case;
2. The dismissal of all special circumstance allegations that potentially subject a defendant to capital punishment; or,
3. Findings by the trier of fact that all special circumstance allegations are not true.

**B. Additional Copy for Motions in Capital Cases**

Counsel for all parties must file, in the department where the matter is scheduled to be heard, an original and one identical copy of each motion or brief and each opposition and reply thereto. Such identical copies must include all papers filed with the original pleadings, including points and authorities, declarations, and exhibits.

**C. Effect of Noncompliance with Rule**

The clerk of the court must not accept for filing or file any motion, brief or document which does not comply with this rule.

(Approved effective July 1, 2009)

### **Rule 806. Subpoena Duces Tecum**

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

*Rule 806 adopted effective July 1, 2012.*

**Chapter 2**

**Misdemeanor Cases**

**Rule 850. Law and Motion**

In misdemeanor cases and in felony cases before an order holding a defendant to answer is issued, matters set for a motion shall have such motion noticed in writing, served on the prosecuting attorney and filed with the clerk, along with a proof of service, no less than ten days prior to the hearing date unless otherwise provided by law or otherwise ordered by the court. Written opposition to any motion is not required; however, if submitted, it must be served on the moving party and filed with the clerk, along with the proof of service, at least three days prior to the hearing.

(Effective July 1, 1998)

**Rule 852. Acceptance of Pleas**

A defendant who absents himself from a misdemeanor proceeding wherein a plea is entered through counsel and the pronouncement of immediate judgment is requested, must do so with full knowledge of the pendency of criminal proceedings. Further, the court must be confident that the waiver of all rights, including the right to be present, is made knowingly and intelligently, and that acts of counsel are authorized by the defendant.

- A. To implement the foregoing policy, a guilty plea form shall have been executed by the defendant and his attorney, and shall be filed at the time of entry of the plea and prior to pronouncement of judgment. Said guilty plea form shall contain:
  - 1. An express waiver of the defendant's presence for the entry of the plea if guilty or nolo contendere; and
  - 2. An acknowledgment that the defendant has read and considered, and the attorney has explained to the defendant, each and every legal and constitutional right which the defendant is waiving. Further, an acknowledgment that the defendant understands each of the rights being waived.
  
- B. At the entry of a plea of guilty or nolo contendere, defense counsel shall submit to the court, for the judicial officer's approval, a completed notarized "Tahl" form and a sentence recommendation form containing the terms and proposed probation conditions of a negotiated plea or a plea to the court. No such forms shall be accepted for consideration unless they include the following:



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1. Specification of the counts to which the defendant is pleading;
  2. If applicable, specification of the counts the district attorney is dismissing;
  3. Proposed stay date for any fine, jail sentence and/or restitution;
  4. Proposed report back dates for progress review, program compliance or other purpose.
- C. Defense counsel shall submit a written stipulation for a continuance of the pretrial hearing, with a time waiver, signed by defense counsel and, if applicable, a deputy district attorney, setting the date for the entry of plea.
- D. The clerk shall deliver the "Tahl" form and sentence recommendation form to the attorney for the defendant. After delivery to defense counsel no changes or alterations shall be made to these forms.
- E. Defense counsel shall return to the court at the next subsequent pretrial hearing and shall then submit the notarized "Tahl" form and sentence recommendation form containing the terms and conditions of probation, each containing the signatures of the defendant, defendant's attorney of record and, if applicable, a deputy district attorney. The defendant's signature on the sentence recommendation form shall include, immediately above the signature, the following language: "I understand and accept all of the conditions of probation."

(Effective July 1, 1998; revised August 1, 2004)

**Rule 854. Pretrial Conferences**

In misdemeanor criminal cases, when a not guilty plea has been entered, a pretrial settlement conference shall be set, leading to a prompt, efficient and just disposition of criminal cases. In no event shall a case be set on the pretrial calendar until a plea of not guilty has been entered; prior thereto, the case will remain on the arraignment calendar.

(Effective July 1, 1998)

**Rule 856. Informal Arraignments**

A. Exceptions to Informal Arraignments

In misdemeanor cases, subject to the following exceptions noted below, attorneys who are in good standing with the State Bar and the Court, on or before a defendant's in-court appearance date, may enter a plea of "Not Guilty" and set a

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(issued 01/01/16)

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pretrial and jury trial date with the clerk of the court pursuant to Penal Code section 977(a):

1. When a defendant has failed to appear;
2. When an arrest warrant has been issued;
3. When a violation of Penal Code section 166(a)(4) has been charged;
4. When a violation of Penal Code section 192(c) has been charged;
5. When a misdemeanor offense involving domestic violence, as defined in Family Code section 6211, or a misdemeanor violation of Penal Code section 273.6 has been charged;
6. When a violation of Vehicle Code sections 23152 and/or 23153 has been charged and a prior conviction of either offense has been alleged; or
7. When an attorney's eligibility to use the informal arraignment procedure is revoked.
8. When a defendant is in-custody on the day of the arraignment.

**B. Representations of Counsel**

By utilizing the informal arraignment procedure, the attorney represents and agrees as follows:

1. That he or she is counsel for the defendant;
2. That the client has expressly authorized the attorney to appear on the client's behalf pursuant to Penal Code section 977(a);
3. That the telephone, counter, or facsimile arraignment constitutes a general appearance by the attorney;
4. That the client has specifically authorized the attorney to act as the client's agent for the purpose of receiving notice from the court of the pretrial and jury trial date;
5. That the client and attorney have agreed that notice of the date to the attorney shall be deemed full, complete and valid notice to the client;
6. That the attorney's use of any informal arraignment procedure constitutes a representation to the Court that the attorney has specifically advised the

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client that failure of the client to appear timely on the court date set for pretrial and jury trial, upon order of the Court, may constitute the crime of failure to appear, and a bench warrant may be ordered.

### C. Methods of Informal Arraignments

Attorneys who represent misdemeanor defendants who have no outstanding warrants and who are not in custody may arraign their clients by telephone, facsimile (FAX) machine, or by personally appearing at the Clerk's Office at the location where the case is initially scheduled to be heard. Telephone, facsimile and counter arraignments will be accepted from attorneys only.

### D. Telephone Arraignment

1. An **Informal Arraignment by Attorney** form will be completed by the clerk on behalf of the attorney.
2. Telephone arraignments will be conducted between 9:00 a.m. and 2:00 p.m. daily (excluding holidays and weekends), no sooner than seven days prior to the scheduled in-court arraignment date and no later than 10:00 a.m. on the scheduled in-court date of arraignment.
3. The clerk will set the case for pretrial and jury trial in the normal course of the Court's business: pretrial within thirty days and jury trial within 35 days, both from the date of the informal arraignment. The clerk will file the original **Informal Arraignment by Attorney** form and mail one copy to the attorney for the defendant, and notify the prosecuting attorney of the pretrial and jury trial dates set by the Court.
4. The attorney for the defendant must confirm the pretrial and jury trial dates with the Clerk's Office, in writing, within three calendar days of the telephone arraignment.
5. Any bail/bond posted or O/R release must remain in force from the date of the telephone arraignment to the next appearance date in the matter. The attorney agrees that any bail/bond or release issues are reserved for the next hearing date.
6. Notice of rejected telephone arraignments will be mailed to the submitting attorney by 5:00 p.m. on the court day following receipt of the request for informal arraignment. If a telephone arraignment is rejected, the defendant and his or her attorney are required to appear in Court on the originally scheduled in-court arraignment date.

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### E. Counter Arraignments

1. An **Informal Arraignment by Attorney** form is to be completed by the attorney and the original delivered to the Court.
2. Counter arraignments will be conducted between 9:00 a.m. and 2:00 p.m. daily (excluding holidays and weekends), no sooner than seven and no later than two court days prior to the scheduled in-court arraignment date.
3. The clerk will set the case for pretrial and jury trial in the normal course of the Court's business: pretrial within thirty days and jury trial within 35 days, both from the date of the informal arraignment. The clerk will file the original **Informal Arraignment by Attorney** form and notify the prosecuting attorney of the pretrial and jury trial dates set by the Court.
4. Any bail/bond posted or O/R release must remain in force from the date of the counter arraignment to the next appearance date in the matter. The attorney agrees that any bail/bond or release issues are reserved for the next hearing date.
5. Notice of a rejected counter arraignment will be mailed to the submitting attorney by 5:00 p.m. on the court day following receipt of the request for informal arraignment. If a counter arraignment is rejected, the defendant and his or her attorney are required to appear in Court on the originally scheduled in-court arraignment date.

### F. Facsimile Arraignments

1. An **Informal Arraignment by Attorney** form is to be completed by the attorney and the original faxed to the Court.
2. FAX arraignments must be received between 9:00 a.m. and 2:00 p.m. daily (excluding holidays and weekends), no sooner than seven and no later than two court days prior to the scheduled in-court arraignment date.
3. The clerk will set the case for pretrial and jury trial in the normal course of the Court's business: pretrial within thirty days and jury trial within 35 days, both from the date of the informal arraignment. The clerk will file the original **Informal Arraignment by Attorney** form and mail one copy to the attorney for the defendant, and notify the prosecuting attorney of the pretrial and jury trial dates set by the Court.
4. The attorney for the defendant must confirm the pretrial and jury trial dates with the Clerk's Office, in writing, within three calendar days of the FAX arraignment.

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5. Any bail/bond posted or O/R release must remain in force from the date of the FAX arraignment to the next appearance date in the matter. The attorney agrees that any bail/bond or release issues are reserved for the next hearing date.
6. Notice of a rejected FAX arraignment will be mailed to the submitting attorney by 5:00 p.m. on the court day following receipt of the request for informal arraignment. If a FAX arraignment is rejected, the defendant and his or her attorney are required to appear in Court on the originally scheduled in-court arraignment date.

### **G. Failure to Comply**

Failure to comply with any of the provisions of the Informal Arraignment Rule may result in:

1. Imposition of sanctions pursuant to Code of Civil Procedure section 177.5.
2. The Presiding Judge or his/her designee's entering an order revoking the attorney's eligibility to use informal arraignment procedures at the Court.

*(Rule 856 revised effective January 1, 2016; effective July 1, 1998; revised effective July 1, 1999, July 1, 2008, July 1, 2009)*

### **Rule 858. Traffic Trials by Declaration Pursuant to Vehicle Code section 40902**

A defendant may elect to have a trial by written declaration as fully set forth in section 40902 of the Vehicle Code and rule 4.210 of the California Rules of Court.

*(Effective July 1, 1998; revised effective July 1, 1999; revised effective January 1, 2007)*

### **Rule 860. Transfer of Cases Pursuant to CCP section 170**

Any matter in which a Judicial Officer is disqualified pursuant to Code of Civil Procedure section 170, et seq., will be transferred to the Master Calendar or Presiding Judge within the same court.

*(Effective July 1, 1998)*

### **Rule 862. Motions to Continue [Repealed]**

*Rule 862 repealed effective July 1, 2012; adopted effective July 1, 1998.*

**Rule 864. Motions to Suppress Evidence**

A. Misdemeanor Cases

1. The notice of motion shall be in writing and specifically describe and list all evidence which is sought to be suppressed; and shall specifically state the legal theory or theories which are relied upon and urged for the suppression of evidence. A memorandum of points and authorities shall be attached and shall include a brief summary of the facts and cite specific case authority in support of the theory or theories urged to support or oppose suppression of the evidence.
2. If counsel desires that the seized evidence be produced by the People at the time of hearing, the notice of motion shall contain an appropriate demand therefor.
3. Notice of the motion and the memorandum of points and authorities shall be served on the prosecuting attorney and filed with the clerk, along with such proof of service, no less than ten days prior to the hearing date unless otherwise provided by law or otherwise ordered by the court. Written opposition is not required. However, if submitted, it must be served on the moving party and filed with the clerk, along with such proof of service, at least three days prior to the hearing.

B. Effect of Nonconforming Motion

If any motion subject to this rule is not made within the time limits and pursuant to the requirements of this rule, the failure to do so shall constitute a waiver of the right to make the motion, but the court for good cause shown, may grant relief from the waiver.

(Effective July 1, 1998)

**Rule 866. Request for Returned Documents by Mail**

Any party requesting documents be returned by mail shall include a self-addressed, stamped envelope at the time the request is made.

(Adopted effective July 1, 1998)