CHAPTER 4
MISCELLANEOUS PROVISIONS

Rule 1.4.1

Records

Nothing on file in any court may be taken out of the clerk's office or the civil business office unless it is going to a courtroom or chambers of a judge.

(Adopted 1/1/1998; Renum. 7/1/2001; Renum. 1/1/2006)

Rule 1.4.2

Exhibits

Evidence admitted in any case before any court will be only those items required in the case and will be retained by the court for the minimum time required by law, unless good cause is shown to retain the evidence longer. No exhibit will be received by any court if the exhibit poses a security, storage, safety, or health problem.

A. Exhibits which will not be received include but are not limited to:

1. Any type of explosive powder;

2. Explosive chemicals, toluene, ethane;

3. Explosive devices, such as grenades or pipe bombs;

4. Flammable liquids such as gasoline, kerosene, lighter fluid, paint thinner, ethyl-ether;

5. Canisters containing tear gas, mace;

6. Rags which have been soaked with flammable liquids;

7. Liquid drugs such as phencyclidine (PCP), methamphetamine, corrosive liquids, pyrrolidine, morpholine, or piperidine; and

8. Samples of any bodily fluids, liquid or dried.

B. Exhibits which will not be accepted by the exhibits custodian, and which will be ordered returned to the submitting party at the conclusion of the trial or hearing at which the exhibit was received, include:

1. Containers with liquid substances that are not clearly marked and identified as to type and amount;

2. Hypodermic needles unless placed in containers which will safeguard personnel;

3. Foam-core boards or substantially similar material used for displaying exhibits such as, but not limited to, photographs, charts, drawings or maps;

4. Large or irregularly shaped objects that do not fit in a records box that is 12 x 10 x 15 inches or smaller;

5. Firearms or ammunition of any kind;

6. Drugs; and

7. Money.

Applications for exceptions to this rule regarding large or irregularly shaped objects, firearms, firearms ammunition, drugs, or money shall be made in writing to the Criminal Supervising Judge or his or her designee, with notice to the branch court's exhibits custodian and all parties. All exhibits must be individually tagged with the proper exhibit tag. Each exhibit tag must be properly completed and securely attached to the exhibit. Any exhibit improperly tagged, marked, weighed, or otherwise identified will not be accepted by any court. Original photographs must be substituted for any photographically enlarged exhibits.

If any exhibit is ordered returned to the submitting party, the submitting party shall provide the court with a full and complete photographic or electronic record of the exhibit. The court will retain the photographic or electronic record along with the other trial/hearing exhibits. The submitting party shall be responsible for maintenance, custody, and safekeeping of the returned exhibit until 60 days after the case becomes final as defined by Penal Code § 1417.1. All exhibit tags and other identifying markings shall remain in place during this period. The submitting party shall maintain a record of anyone, other than the counsel of record or his or her staff, who views or handles the exhibit. In the event the exhibit is requested for further proceedings by any court having jurisdiction over the case, the submitting party shall contact the requesting court and make arrangements for the delivery of said exhibit, with notice to this court and all counsel of record.

Only attorneys of record and court employees may view the exhibits; all other interested persons must obtain an order of the court. Viewing must take place in the presence of an exhibit custodian. Exhibits may not be altered or taken apart, except by court order. If the court issues an order permitting the copying of exhibits, all exhibits may be copied regardless of format (e.g., paper, photograph, DVD, CD, audiotape, videotape) unless copying of a specific exhibit, or use of a particular type of copying equipment, is prohibited by law or court order.

Attorneys, investigators, law enforcement agencies, and other interested parties may seek temporary release of exhibits for copying or laboratory testing. A stipulation and court order is required in all instances, except a stipulation is not required in civil cases. The party seeking the release must present a certified copy of a signed stipulation and order to the exhibit custodian. The order must include the case number, names of the parties, name and telephone number of the person to whom the exhibits are to be released, a description of the exhibits, and the date the exhibits are to be returned.

Exhibits in a criminal matter may be released for use in a civil action brought by the victim of the crime. To obtain such exhibits, the party in the civil action must submit a stipulation signed by the prosecutor and criminal defense counsel (including appellate counsel if applicable), a declaration, and certified copy of an order signed by the judge. The stipulation must bear the criminal case caption and number, and reference the civil case by name and number.

Unless specifically ordered by the court, all exhibits marked, identified and/or admitted into evidence in a civil case must be retrieved by the offering party at the conclusion of trial. The party introducing the exhibit is responsible for maintaining and preserving that exhibit pending any post-verdict proceedings and appeals, until there is a final disposition of the action or proceeding. All exhibit tags and other identifying markings or information concerning each exhibit must remain in place and not be disturbed. Each exhibit must remain intact and in the same condition as during trial. In the event further proceedings of any court having jurisdiction of the matter require the presence of any exhibit, the party introducing the exhibit must promptly deliver the exhibit to the court, with notice to all parties.
(Adopted 1/1/1998; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2011; Rev. 1/1/2013; Rev. 1/1/2016; Rev. 1/1/2018; Rev. 1/1/2019)

Rule 1.4.3

Jury Lists

The jury master list for the Central Division will be comprised of those jurors residing in any of the filing districts.

The jury master list for the East, North and South County Divisions will be comprised of those jurors residing in the filing district as determined by zip code that corresponds with the division in which the juror lives. The *Zip Code List* may be accessed under the forms section of the court's internet site at http://www.sdcourt.ca.gov.

The jury master list will be drawn so that all eligible persons have an equal chance of being selected for the court division in which they reside regardless of their place of residence. The Jury Commissioner or his or her designee may grant a temporary excuse from jury service to a prospective juror who has served on a grand or trial jury in any state or federal court during the previous 36 months. A prospective juror who was summoned and appeared for jury service in any state or federal court during the previous 12 months will be temporarily excused from jury service, upon request.
(Adopted 1/1/2000; Renum. 7/1/2001; Rev. 1/1/2005; Rev. & Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2008; Rev. 1/1/2016)

Rule 1.4.4

Appointment of Counsel Under the Servicemembers Civil Relief Act

If the plaintiff or defendant in an action is in the military service, the Servicemembers Civil Relief Act ("the Act") may apply. (50 U.S.C. Appen., § 501 et seq.)

A. If the defendant servicemember has not made an appearance:

1. The court may not enter a default judgment or an order of default on the merits unless the court appoints an attorney for the defendant. Default means any order, ruling or decree which is adverse to the servicemember's interest. Actions taken by the appointed attorney do not bind the servicemember or waive any defenses (including lack of jurisdiction) unless the servicemember has authorized action.

2. The court must grant a 90-day or longer initial stay if there may be a defense to the proceeding which the servicemember cannot present without being present, or if after due diligence, counsel has been unable to contact the defendant or otherwise determine if a meritorious defense exists.

3. After the 90-day stay, the court must appoint an attorney to represent the servicemember in the action or proceeding if it refuses to grant an additional stay.

4. If the court does enter a default, plaintiff may be required to file a bond to indemnify the responding servicemember if the order is later set aside.

5. If the court enters a default judgment during a period of military service (or within 60 days after the end of service), the court must reopen the judgment to allow the servicemember to defend if:

a. The service member was materially affected due to military service in asserting a defense, and

b. The service member has a meritorious or legal defense to the action or some part of it, so long as the application is filed within 90 days after the end of military service.

B. If the plaintiff or defendant servicemember has received notice of the proceeding:

1. The court must grant a minimum 90-day stay of the proceedings if the servicemember communicates that military duty requirements materially affect the servicemember's ability to appear, stating a date when the servicemember will be available, and if the servicemember's commanding officer communicates that the servicemember's current military duties prevent an appearance and leave is not authorized at the time of the hearing.

2. The servicemember may apply for an additional stay in the same manner as the original request. If the court refuses to grant the additional stay, the court must appoint counsel to represent the servicemember in the proceeding. In cases where an attorney is appointed and the attorney is unable to locate and/or secure the servicemember's agreement to representation, actions by the attorney must not waive any defense of the servicemember or otherwise bind the servicemember. Any actions taken by the attorney appointed pursuant to an order under the Act do not constitute an appearance for jurisdictional purposes and do not constitute a waiver of any substantive or procedural defense, including a defense relating to lack of personal jurisdiction.

C. Miscellaneous.

1. Appointments of counsel under the Act are pro bono.

2. Any individual holding a power of attorney from the servicemember may appear in court on his or her behalf to request a stay or additional stay.

3. A request for a stay does not constitute a general appearance for jurisdictional purposes or a waiver of substantive or procedural defenses.

(Adopted 1/1/1998; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009; Renum. 1/1/2010; Rev. 1/1/2012; Rev. 1/1/2016)

Rule 1.4.5

Communication and Coordination Regarding Criminal Protective Orders and Restraining Orders (California Rules of Court, rule 5.445)

A. Definition and Purpose.

The definitions and purpose of this local rule are set forth in the California Rules of Court, rule 5.445.

B. Communication and Coordination.

1. The court will ensure that clerks assigned to departments that hear criminal protective and restraining orders and child custody and visitation orders, will receive training in the use of the San Diego County Sheriff's Restraining Order Index so that judicial officers have access to existing restraining orders issued in the court upon request.

2. Courts responsible for hearing criminal protective orders and courts issuing orders relating to child custody and visitation that involve the same parties are encouraged to communicate and share information in order to coordinate terms of the orders with a goal towards ensuring the safety of all parties involved in those proceedings. (Cal. Rules of Court, rule 5.445(c)(3), Pen. Code, § 136.2(f).) This rule does not abrogate any requirement that a court considering modifying an order set the matter for hearing and share the information with the parties.

C. Notice by Parties to Court Handling Protective or Restraining Orders

1. Duties of Self-Represented Parties and Attorneys In Family Law, Dependency and Probate Guardianship Cases. All self-represented parties and attorneys must inform the judicial officer hearing any temporary or permanent domestic violence, family, civil harassment, juvenile, or elder abuse (i.e., "personal conduct") restraining order, or any hearing involving child custody and visitation of the existence of any temporary or permanent personal conduct restraining order, criminal protective order, or order regarding child custody and visitation, that involves any party to the case pending before that court. The parties must also provide the court with a copy of the restraining order and have a continuing duty to update the court regarding the status of such orders.

2. Prosecuting Attorney's Duty. The prosecuting attorney must investigate and disclose to the judicial officer hearing any criminal case in which a temporary or permanent criminal protective order is sought or issued, of the existence of any temporary or permanent domestic violence, family, civil harassment, juvenile or elder abuse (i.e., "personal conduct") restraining order that involves any party to the criminal case.

D. Modification of Criminal Protective Order. To request a modification of a criminal protective order, counsel or a litigant must file a Petition to Modify a Domestic Violence Protective Order (SDSC Form #CRM-248), which will then be calendared in a department that hears such matters.

1. In Central, the petitions for misdemeanor cases must be filed in Criminal Business Office 250 and the hearings will be set in Department 1104.

The petitions for felony cases must be filed in Criminal Business Office 150 and the hearings will be set in the appropriate department.

2. In North County, the petition must be filed and the hearing scheduled in the Business Office, and the hearing will be set in Department 1 for misdemeanors and in Department 5 for felonies.

3. In South County, the petition must be filed in the Business Office and the hearing will be set in Department 12.

4. In East County, the petition must be filed in the Business Office and the hearing will be scheduled in a calendaring department.

(Adopted 1/1/2015; Rev. 1/1/2018)