

DIVISION III CRIMINAL

CHAPTER 1 GENERAL

Rule 3.1.1

Police Reports Containing Confidential Personal Information

In accordance with Penal Code section 964 and the public policy set forth therein, prosecutors and law enforcement agencies should not submit police reports, arrest reports or investigative reports containing “confidential personal information” (as defined in subd. (b) of Pen. Code, § 964) of victims or witnesses to the court in support of a criminal complaint, indictment, or information; or in support of a search or arrest warrant. Rather, prosecutors and law enforcement agencies should present the court with written declarations from law enforcement officers that are devoid of this confidential personal information.

In the alternative to providing declarations to the court, the parties may submit copies of police reports, arrest reports or investigative reports that are redacted of all “confidential personal information” of victims and/or witnesses. The redacted copies of these reports provided to the court must be attached to a declaration attesting to the fact that all “confidential personal information” of victims and/or witnesses has been effectively redacted from the reports.

All agencies should bear in mind that the court will not undertake the task of redacting any confidential personal information of victims or witnesses from documents submitted for the court’s consideration. Rather, the burden to ensure that this information is not included within any documents presented falls squarely on the agencies preparing and presenting them to the court. In this respect, the court may exercise its discretion to accept or reject a police, arrest or investigative report containing confidential personal information that is submitted in support of a criminal complaint, indictment, or information; or in support of a search or arrest warrant.
(Adopted 1/1/2006)

Rule 3.1.2

Arraignment Options on Misdemeanors and Infractions

Attorneys appearing in propria persona or who are retained to represent defendants charged with misdemeanors or infractions may, in lieu of a court appearance, arraign matters informally, at the counter or by fax, if the attorney, as authorized by the defendant, enters a plea of not guilty and waives time for trial.

Attorneys using the counter arraignment option must personally appear in the clerk’s office. Forms and other rules governing counter and fax arraignment procedures may be obtained from the clerk’s office or the court’s website.

The clerk will assign settlement conference, trial readiness conference, and trial dates as directed by the court.

Exceptions. These arraignment options are not available for:

- A.** Defendants in custody on this or any other matter.
- B.** Cases charging child abuse or domestic violence.
- C.** Cases prosecuted by the consumer fraud or code enforcement divisions of the San Diego City Attorney’s Office.
- D.** Cases on which a victim has elected to exercise the right to be present at the arraignment.
- E.** Cases on which any previously posted cash bail or bond has been forfeited.

(Adopted 1/1/1998; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 7/1/2002; Rev. & Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2011)

Rule 3.1.3

Failure to Appear in Misdemeanor “Notify Letter” Cases

If a defendant fails to appear in court for arraignment after a notify letter has been issued by the prosecutor in a misdemeanor case, the court will set a date 90 days in the future by which time the prosecutor will decide if he or she will file an Affidavit In Support of Arrest Warrant. If the prosecutor files an affidavit within this 90-day period, the case will be referred to the designated criminal department for issuance of a warrant. If no affidavit is filed within 90 days, the case will be dismissed for lack of prosecution unless the prosecutor petitions the court within this 90-day period and shows good cause for an extension of time to either send a notify letter or to file an Affidavit in Support of Arrest Warrant.

This rule does not apply to domestic violence, drug court and Penal Code section 1210 et seq. cases.

(Adopted 1/1/2006)

Rule 3.1.4

Bail Reductions or Increases and Confidentiality of Pretrial Services Records

A. Bail Reductions or Increases. When bail has been set by a judge, all requests for an increase or reduction of said bail must be made to that judge, except that any judge to whom a criminal matter is assigned for any stage of the proceedings may, in his or her discretion, on the court’s own motion, or on the motion of any party, modify the amount of bail set.

B. Confidentiality of Pretrial Services Records and Information. Information supplied by a defendant to a representative of the San Diego Superior Court Pretrial Services Department during the defendant's initial interview or subsequent contacts, or information obtained by Pretrial Services as a result of the interview or subsequent contacts, will be deemed confidential and will not be subject to subpoena or to disclosure, and will not subject any employee or attaché of the Pretrial Services Department to subpoena, with the following exceptions:

1. Information relevant to the imposition of conditions of release must be presented to the court, the prosecutor, the defendant, and the defendant's attorney, on a standardized form when the court is considering what conditions of release to impose, and if the information given is false or misleading, it may be used for prosecution or impeachment;

2. Information concerning compliance with any conditions of release imposed by the court must be furnished to the court, the prosecutor, the defendant and the defendant's attorney, for prosecution, impeachment, or for consideration of modification of conditions of release;

3. As otherwise ordered by the court in the interest of justice, upon noticed motion of the party seeking disclosure and a showing of good cause.

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

Rule 3.1.5

Trial by Declaration

A defendant may elect to have a trial by written declaration as provided under Vehicle Code section 40902 on an alleged infraction, unless the offense involves alcohol or drugs pursuant to Article 2, Chapter 12, Division 11 of the Vehicle Code.

(Adopted 1/1/1998; Rev. 1/1/2000; Renum. 7/1/2001; Renum. 1/1/2006; Rev. 1/1/2010)

Rule 3.1.6

Juror Questionnaires

If juror questionnaires are proposed by counsel, they must be accompanied by a Juror Questionnaire Cover Sheet which will be provided by the court.

(Adopted 1/1/1999; Rev. 1/1/2000; Renum. 7/1/2001; Renum. 1/1/2006)

Rule 3.1.7

Prohibition Against Ex Parte Contacts

The court will not entertain or engage in any ex parte communications with any party or a party's attorney regarding the merits of a pending criminal case, a motion, a petition for writ of habeas corpus, or an extraordinary writ. However, a party or a party's attorney and the court's staff attorney may discuss procedural matters ex parte.

(Rev. & Renum. 1/1/2006)

CHAPTER 2 MOTIONS

Rule 3.2.1

General Requirements

A. Notice of Motion. All notices of motion and notices of opposition thereto must be in writing and must prominently display on the first page the trial readiness conference and trial dates, a time estimate for the motion hearing, and the number of witnesses to be called at the hearing, if any.

B. Time for Service (except for motions to suppress heard at the preliminary examination).

1. All moving papers must be filed and served on the opposing party at least 15 court days before the time appointed for the hearing.

2. All papers opposing the motion must be filed and served at least 5 court days before the time appointed for the hearing.

3. All reply papers must be filed and served at least 2 court days before the time appointed for the hearing.

4. Proofs of service of the moving papers must be filed no later than 5 calendar days before the time appointed for hearing.

C. Points and Authorities.

1. A memorandum of points and authorities must include a statement of the case and a statement of facts setting forth all procedural and factual matters relevant to the issue presented.

2. The memorandum must clearly specify the factual and legal issues raised and the specific legal authority relied upon for the motion.

3. Only the factual and legal issues set forth in the memorandum will be considered in the ruling on the motion unless it is established that the new issues were not reasonably discoverable before the motion was filed.

4. Failure of the moving party to serve and file points and authorities within the time permitted without good cause may be considered by the court as an admission that the motion is without merit.

5. Except as to motions to suppress heard at the preliminary examination, failure of the responding party to serve and file points and authorities within the time permitted without good cause may be considered by the court as an admission that the motion is meritorious.

D. Abandonment of Motions. Any party intending to abandon a motion already filed must immediately notify opposing counsel and the clerk of the department in which the motion is to be heard, and must also notify the clerk immediately if the case is disposed of by plea prior to the hearing or if the proceedings are suspended pursuant to Penal Code section 1368.

E. Concession That Motion is Meritorious. If the responding party elects not to oppose the motion, respondent must immediately notify opposing counsel and the clerk of the department in which the motion is to be heard.

F. Trial Department Motions. No party may file in any law and motion department a motion which must be decided by the trial judge. Such motions include, but are not limited to, motions to suppress based on confessions or admissions which are not a product of alleged Fourth Amendment violations (e.g., alleged violations of the Fifth and Sixth Amendments, such as Miranda violations, involuntary confessions, or denial of counsel), Trombetta/Youngblood motions, and severance motions resting on evidentiary considerations.

G. Setting of Motions. The clerk in the department where the pretrial motion is filed will set a date for hearing of the motion at least 15 court days after the motion is filed.

H. Length of Points and Authorities. No opening or responding memorandum of points and authorities exceeding 15 pages will be filed, absent an order from the judge of the court in which the motion is calendared. Such an order will be granted only upon a written application including a declaration setting forth good cause for the order.

(Adopted 1/1/1998; Rev. 1/1/2000; Renum. 7/1/2001; Renum. 1/1/2006; Rev. 1/1/2012)

Rule 3.2.2

Additional Requirements - Special Motions

A. Motions to Dismiss or Strike (Pen. Code, § 995) and Demurrers.

1. Defendant must attach a copy of the current complaint, information, or indictment to the motion.
2. The notice of motion must clearly state whether the defendant seeks to dismiss, strike or demur to the entire complaint, information or indictment. If the defendant does not challenge the entire charging document, the notice of motion must set forth the counts, enhancements, allegations, special circumstances, or other aspects of the charging document that are being challenged.

B. Discovery Motions. In accordance with Penal Code section 1054 et seq., discovery motions must include a declaration by counsel, under penalty of perjury, setting forth the previous oral and written efforts to obtain discovery by cooperative and informal means, and showing how the opposing party has failed to comply with Penal Code section 1054.1 or 1054.3. The motion must be limited to the disputed items, or class of items, listed in the declaration.

C. Suppression Motions (Pen. Code, § 1538.5).

1. Defendant must attach a copy of the current complaint, information, or indictment to the motion.
2. If relevant to the motion, the defendant must attach to the motion legible copies of the search warrant, affidavit in support of the warrant, and receipt and inventory of property.
3. The motion must include a list of specific items to be suppressed. A general request to suppress "all items seized" is not sufficient and may be deemed an abandonment of the motion. Only listed items will be considered by the court for suppression or return, unless any newly identified item could not reasonably be specified prior to the hearing.
4. **Motions Made at Felony Preliminary Examination.** Motions made at a felony preliminary examination must comply with Penal Code section 1538.5, subdivision (f). Defendant may, but is not required to, file a reply brief. Proofs of service must be filed by the date of the hearing.
5. **Motions Made in All Other Cases.**
 - a. Defendant must specify the precise grounds for suppression of the evidence, including the inadequacy of any justification for the search and seizure. If defendant's motion alleges the lack of a warrant as the sole basis for suppression, any opposition filed by the People should specify the justification for the warrantless search. The defendant should then file a reply specifying the inadequacies of the justification. The reply brief must be filed and personally served at least two court days prior to the hearing. The raising of new issues in the reply may constitute good cause for continuance to permit the prosecution to prepare for the hearing.
 - b. A motion brought following a felony preliminary examination must state whether the party stipulates to the preliminary examination transcript, whether the motion was raised at the preliminary examination, and, if so, must specify what factual findings and legal conclusions were made by the magistrate. Failure to indicate whether or not the party stipulates to the preliminary examination transcript will be deemed a stipulation to the admission of the transcript.

(Adopted 1/1/2000; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2003; Rev. & Renum. 1/1/2006; Rev. 1/1/2007)

Rule 3.2.3

Additional Requirements - Felonies

A. At the post-bindover arraignment on the information or arraignment on an indictment, the judge will set a filing deadline for all pretrial motions which will be 21 calendar days after the arraignment or such other date as the judge may, for good cause, assign.

B. All such motions, including motions to join in motions, must be filed no later than the close of business on the assigned date.

C. No moving papers will be accepted thereafter for filing except by order of the supervising criminal judge extending time or granting relief from default.
(Adopted 1/1/2000; Renum. 7/1/2001; Renum. 1/1/2006)

Rule 3.2.4

Motions Settings - Misdemeanors and Infractions

Except where there is an order setting a hearing date, the moving party may request a date for the hearing. Dates are subject to confirmation by the clerk's office and mandatory time provisions of statutes, the California Rules of Court, and these rules.
(Adopted 1/1/2000; Renum. 7/1/2001; Renum. 1/1/2006)

Rule 3.2.5

Discovery Motions for Jury Services Information and/or Related Motions to Challenge Jury Selection System.

A. All discovery motions for jury services information and/or related motions to challenge the jury selection system must be filed in the department of the Supervising Criminal Judge, located in the County Courthouse downtown, whether or not the criminal case has been assigned to a judge for all purposes.

B. Moving papers relating to such motions must identify arguments as to why the jury selection system is defective.

C. All moving papers relating to such motions must be separately served on the Jury Commissioner or Manager of Jury Services, the same date the moving papers are served on responding party. Proof of service must be filed with the original moving papers.

D. The Jury Commissioner, Manager of Jury Services, or court employees whose primary employment is in the Jury Services Office will not be called to testify at a hearing on a discovery motion for jury services information and/or related motions to challenge the jury selection system unless given three court days prior notice.

E. For good cause shown, the Supervising Criminal Judge may waive any of the above requirements.
(Adopted 1/1/2008)

CHAPTER 3 HABEAS CORPUS AND ERROR CORAM NOBIS PETITIONS

Rule 3.3.1

Application

This chapter does not apply to extraordinary writs in misdemeanor or infraction cases in which the San Diego Superior Court is named as respondent. Such writs are governed by Division VII rules (Appellate).
(Adopted 1/1/1998; Rev. 1/1/2000; Renum. 7/1/2001; Renum. 1/1/2006)

Rule 3.3.2

Place for Filing

A. Habeas Corpus Petitions.

1. A petition for writ of habeas corpus should be filed in the criminal records division of the court that serves the area in which the underlying criminal case was or is pending.

2. A petition for writ of habeas corpus filed by or on behalf of an inmate at the R.J. Donovan Correctional Facility concerning a condition of confinement should be filed at the South County Division. A petition challenging a parole eligibility finding should be filed in the criminal records division of the court that serves the area in which the underlying criminal case was adjudicated.

B. Error Coram Nobis Petitions. A petition for writ of error coram nobis must be filed in the department of the supervising criminal judge of the division in which the underlying criminal case was or is pending.

C. Subsequent Pleadings. Unless otherwise ordered, any pleadings filed by any party after the original petition must be filed at the same location as the original petition, not in the department to which the petition has been assigned.

(Adopted 1/1/1998; Rev. 1/1/1999; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 1/1/2003; Renum. 1/1/2006; Rev. 1/1/2009)

Rule 3.3.3

Service of Petition

A. Except as provided in sections B and C of this rule, a petition will not be accepted by the clerk for filing unless it is accompanied by a proof of personal service upon the respondent.

B. When a petitioner is a defendant who is not represented by counsel, the clerk will accept the petition for filing if it is accompanied by a proof of personal service or service by mail upon the respondent.

C. When a petitioner is an incarcerated prisoner, the clerk will accept the petition for filing without requiring a proof of service.

(Adopted 1/1/1998; Rev. 1/1/2000; Renum. 7/1/2001; Renum. 1/1/2006)

Rule 3.3.4

Supporting Documents

A. A petition for any of the writs included in this chapter must be accompanied by the following:

- 1.** A copy of the order or judgment from which relief is sought;
- 2.** Any declarations, relevant records, transcripts, or any other documents supporting a claim;
- 3.** Documentation to show that a petitioner has exhausted any administrative remedies prior to filing the petition, if required, or a declaration under penalty of perjury explaining why administrative remedies have not been sought.

B. If a petitioner does not submit the required documents or does not provide facts sufficient to excuse the failure to submit the required documents, the court may summarily deny the petition.

(Adopted 1/1/1998; Rev. 1/1/1999; Rev. 1/1/2000; Renum. 7/1/2001; Renum. 1/1/2006)

Rule 3.3.5

Disposition of Petition

A. Habeas Corpus Petitions. The parties must follow the procedures set forth in California Rules of Court, rules 4.550-4.552.

B. Error Coram Nobis Petitions.

1. Within 30 days after the filing of the petition, the court will either summarily deny the petition or set the matter for hearing.

2. If the matter is set for hearing, the court will allow at least 15 days for the respondent and any real party in interest to file a responsive pleading.

3. On motion of any party, or on the court's own motion, for good cause shown, the court may shorten or extend time for doing any act under this rule.

(Adopted 1/1/1998; Rev. 1/1/1999; Rev. 1/1/2001; Renum. 7/1/2001; Rev. 7/1/2002; Rev. & Renum. 1/1/2006; Rev. 1/1/2009)