

EMERGENCY LOCAL RULES

Preamble

On March 23, 2020 Chief Justice Tani Cantil-Sakauye ordered and authorized all superior courts to adopt any proposed rules or rule amendments intended to address the impact of COVID-19 to take effect immediately without advance circulation for 45 days of public comment. Distribution of the amended rules is to comply with rule 10.613(g)(2). Further no litigant's substantive right shall be prejudiced for failing to comply with the new or amended rule until at least 20 days after distribution of the rule change.

Pursuant to the above and the Presiding Judge Interim Order 2020-02, and any other subsequent interim order, the following emergency local rules are effective beginning April 24, 2020 until further order of the court. To the extent that any Emergency Local Rule is in conflict with any existing local rule or rules, the Emergency Local Rule supersedes such existing rules until further order of this Court.

EMERGENCY LOCAL RULES OF COURT

Emergency Local Rule 1.0 – Electronic Filing and Service; Recording Court Proceedings

- A. All filings in all case types should be submitted electronically. Until further order of the Presiding Judge, the courthouse is closed to the public for in-person filing of documents.
1. Persons who are unable to file documents electronically may file by mail, or by using the drop boxes at any courthouse location. The mailing addresses are as follows:
- | | |
|---------------------------|----------------------------------------|
| Criminal Department: | 240 Church Street, Salinas, CA 93901 |
| Civil, Family, Probate & | |
| Small Claims Departments: | 1200 Aguajito Road, Monterey, CA 93940 |
| Traffic Department: | 3180 Del Monte Blvd., Marina, CA 93933 |
- B. Electronic Service. All parties are directed to California Emergency Rule of Court 12.
- C. No electronic recording of court proceedings, including remote court proceedings, other than by a court reporter or electronic recording authorized by the court to make the official record of the proceeding, shall be permitted without advance written approval of the court. The parties, or anyone attending the hearing, may not record the hearing or any part of it. The Court maintains an official record of the proceedings. (See CRC 1.150.)

Emergency Local Rule 2.0 – Civil, Family and Probate Law Departments

- A. Remote Appearances. For the following matters, parties and counsel shall appear remotely by an electronic platform provided by the Court, specified below:
1. Civil Department (Unlimited) – Case Management Conferences, Law and Motion matters, Ex Parte Calendar and uncontested evidentiary hearings will be heard by CourtCall unless noticed otherwise by the court.

2. Civil Department (Limited and Small Claims) – All hearings may be heard by GoToMeeting, CourtCall, or telephone unless noticed otherwise by the court. Notice of the particular platform that will be used for the hearing will be provided by the court.
 3. Family Law Department – All Family Law hearings, settlement conferences, and mediations may be heard by GoToMeeting, CourtCall, or telephone unless noticed otherwise by the court. Notice of the particular platform that will be used for the hearing will be provided by the court.
 4. Probate Department – All Probate hearings may be heard by GoToMeeting, CourtCall, or telephone unless noticed otherwise by the court. Notice of the particular platform that will be used for the hearing will be provided by the court.
- B. The parties are encouraged to contact the clerk of the Department in which the matter is to be heard to confirm the electronic platform being used by that Department.
- C. If a party or Counsel cannot appear remotely, no less than 3 court days prior to the hearing the party shall file a request to participate in the hearing by another means. Consistent with the health and safety of the public, the court, in its discretion, may grant the request, or deny the request and continue the hearing.
- D. Parties may, by written stipulation, submit for decision on the papers filed, any civil or family law and motion matter or any uncontested matters without a hearing or oral argument.
- E. Ex Parte Applications. All ex parte applications will be heard on Thursdays at 10:00 AM in department TBD. The Court will pre-screen the submission for a factual showing of irreparable harm, immediate danger, or other statutory basis for obtaining ex parte relief, and may reject the submission if the documents do not show that ex parte relief is appropriate. If the matter is not appropriate for the ex parte calendar, the Court will notify the parties and reschedule to a future date. Parties are expected to comply with all applicable rules of court, including Rules 3.1200 through 3.1207 of the California Rules of Court, to the extent those rules are consistent with these Emergency Local Rules.
- F. If a matter is to be continued by the Court, the Clerk's office will notify the parties. If a Department of Child Support Services (DCSS) matter is to be continued by the Court, DCSS will notify the parties.
- G. Physical and Electronic Evidence
1. Any documentary evidence (including, but not limited to, documents, text messages, emails, and photographs), must be attached to a declaration as an exhibit, served and filed at least 7 calendar days prior to the hearing. Any removable storage devices, including but not limited to CDs, flash drives and memory sticks, will not be considered for filing and the court will not consider documents offered on a removable storage device.
 2. Other physical evidence will only be considered when in-person hearings resume after the court closure ends, unless the Court finds good cause to provide an alternative method to present the evidence (e.g., photograph).

3. Any electronic sound or sound-and-video recordings, must comply with local rule 10.01 and Rule 2.1040 of the California Rules of Court. The person wishing to present any electronic sound or sound-and video recordings must provide the equipment necessary to listen to and/or view the recordings and provide the opposing party with a copy of the recording and any required transcript at least 7 calendar days prior to the hearing, unless for good cause the judicial officer makes an exception.
4. A party requiring additional time for the submission of evidence must file and serve a written request to continue the hearing at least 7 calendar days prior to the hearing or request a continuance at the time of the court call hearing.

Emergency Local Rule 2.1 – Probate Department

- A. Emergency Agreement. If a matter is reset due to the COVID-19 pandemic, parties may be able to have their matter decided on the papers without a hearing. See the Court’s website [FAQ – Probate] for the current procedures, including the filing of an Emergency Agreement (local form E-1P).
- B. Court Confirmation of Sales of Real Property (by Private Sale)
 1. Notice of Sale
 - a. The Notice of Sale must include the information regarding the hearing on the Report of Sale and Petition for Order Confirming Sale of Real Property – the date, time, department, and that the hearing shall be conducted telephonically by CourtCall or any other electronic platform provided by the Court.
 - b. The Notice of Sale shall also include information regarding the submission of overbids in writing at or before the hearing through the Court’s e-filing system (see <https://www.monterey.courts.ca.gov/efiling>) or by email to: emergencyprobate@monterey.courts.ca.gov.
 2. Notice of Hearing on Report of Sale and Petition for Order Confirming Sale of Real Property
 - a. The Notice of Hearing shall include a statement in substantial compliance with the following: “This hearing shall be conducted telephonically by CourtCall or any other court electronic platform provided by the Court. All parties, including the buyer(s) and interested bidders or objectors shall appear by telephone by CourtCall or any other court electronic platform provided by the Court.”
 - b. The Clerk shall post the Notice of Hearing at the Monterey Courthouse at a location accessible to the public.
 3. Written Offers. Any overbidder shall submit an offer in writing at or before the hearing through the Court’s e-filing system or by email to emergencyprobate@monterey.courts.ca.gov.

Emergency Local Rule 3.0 – Criminal Department

- A. Any criminal proceeding on calendar may be conducted remotely, limited as follows:
 - 1. Remote proceedings may only occur with the defendant's consent;
 - 2. "Consent" means the consent required only for the waiver of the defendant's appearance as provided below;
 - 3. For good cause shown, the court may require any witness to appear personally in a particular proceeding.

- B. Conducting proceedings remotely includes, but is not limited to, the use of video, audio, and telephonic means for remote appearances; the electronic exchange and authentication of documentary evidence; e-filing and e-service; the use of remote interpreting; and the use of remote reporting and electronic recording to make the official record of an action or proceedings.

- C. Notwithstanding any other law, including Penal Code sections 865 and 977, this rule applies to all criminal proceedings except cases alleging murder with special circumstances and cases in which the defendant is currently incarcerated in state prison, as governed by Penal Code section 977.2.

- D. Types of Personal Appearance Waivers
 - 1. With the consent of the defendant, the court may allow a defendant to waive his or her appearance and to appear remotely.
 - 2. With the consent of the defendant, the court may allow a defendant to waive his or her appearance and permit counsel to appear on his or her behalf. The court shall accept a defendant's waiver of appearance or personal appearance when:
 - a. Counsel for the defendant orally represents on the record that counsel has fully discussed the waiver and its implications with the defendant and the defendant has authorized counsel to proceed as counsel represents to the court;
 - b. Electronic communication is received by the court from the defendant as confirmed by defendant's counsel; or
 - c. Any other means that ensures the validity of the defendant's waiver; and
 - d. The court does not have any specific concerns about the validity of the waiver.

- E. Consent by the Defendant
 - 1. For purposes of arraignment and entry of a not guilty plea, consent means knowing, intelligent and voluntary waiver of the right to appear personally in court. Counsel for the defendant must state on the record at each applicable hearing that counsel is proceeding with the defendant's consent.
 - 2. For purposes of waiving time for a preliminary hearing, consent also means a knowing, intelligent and voluntary waiver of the right to hold a preliminary hearing within required time limits specified either in Penal Code section 859b or under emergency orders issued by the Chief Justice and Chair of the Judicial Council.

3. The court shall accept counsel for the defendant's representation that the defendant understands and agrees with waiving any right to appear unless the court has specific concerns in a particular matter about the validity of the waiver.

F. Appearance through Counsel

1. When counsel appears on behalf of a defendant, the court shall allow counsel to do any of the following:
 - a. Waive reading and advisement of rights for arraignment,
 - b. Enter a plea of not guilty, or
 - c. Waive time for preliminary hearing.
2. For appearances by counsel, including where the defendant is appearing remotely or has waived his or her appearance and/or counsel is appearing by remote access, counsel must confirm to the court at each hearing that the appearance by counsel is made with the consent of the defendant.

G. Remote Hearings

1. With the defendant's consent, a defendant may appear remotely for any pretrial criminal proceeding.
2. Where a defendant appears remotely, counsel may not be required to be personally present with the defendant for any portion of the criminal proceeding provided that the audio and/or video conferencing system or other technology allows for private communication between the defendant and his or her counsel. Any private communication is confidential and privileged under Evidence Code section 952.

H. Special Requests to Place on Calendar

1. A party to a criminal action may file with the court a request to have any criminal matter placed on calendar.
 - a. All requests must be filed no less than 3 court days prior to the requested date of the hearing.
 - b. All requests must be served on opposing counsel and must include a declaration establishing good cause to place the matter on calendar.
2. Consistent with the health and safety of the public, the court, in its discretion, may grant or deny the request and may continue the hearing to a date when the matter can be heard in court.