

5.00.00 CRIMINAL RULES

(Effective January 1, 1994)

5.00.01 CRIMINAL COMPLAINTS: FORMAT

In a criminal filing, the information and any copies of these documents shall be printed on blue paper.

(Revised July 1, 2007)

5.00.02 CRIMINAL COMPLAINTS: TIME AND PLACE FOR FILING

- A. All criminal actions or proceedings wherein the subject matter arises in the South Lake Tahoe area as defined in Local Rule 2.00.09(C) shall be filed in the South Lake Tahoe Session. All other criminal actions or proceedings shall be filed in the Placerville Session. The court, in its discretion, with the concurrence of the Presiding Judge, may transfer an action between sessions.
- B. All criminal complaints charging in-custody defendants shall be filed at the earliest time possible, but in no case later than noon on the date set for the arraignment of the Defendant on those charges. The Clerk may accept documents for filing after noon only upon permission of the Judge assigned to the arraignment, or any other judicial officer if the Judge assigned is unavailable.
- C. All criminal complaints charging out-of-custody defendants shall be filed with the Clerk no later than two (2) court days before the time of the Defendant's first appearance on those charges. The Judge assigned to the criminal calendar may authorize the filing of late documents.

(Revised September 15, 2010)

5.00.03 POLICY

It is the policy of the Superior Court to dispose of misdemeanors and felony preliminary examinations as follows:

A. MISDEMEANOR CASES

- (1) 90 percent disposed of within 30 days after the defendant's first court appearance.
- (2) 98 percent disposed of within 90 days after the defendant's first court appearance.
- (3) 100 percent disposed of within 120 days after the defendant's first court appearance.

B. FELONY PRELIMINARY EXAMINATIONS

- (1) 90 percent disposed of within 30 days after the defendant's first court appearance.
- (2) 98 percent within 45 days after the defendant's first court appearance.
- (3) 100 percent disposed of within 90 days after the defendant's first court appearance.

(Effective July 1, 2000)

5.01.00 - 5.09.00 RESERVED FOR FUTURE USE

(Effective January 1, 1994)

5.10.00 BAIL

(Effective January 1, 1994)

5.10.01 REQUESTS FOR BAIL OR RELEASE ON OWN RECOGNIZANCE

Once bail has been set, counsel may request that bail be modified. Due notice of a request to modify bail shall be given to all parties so that the issue may be fully litigated.

(Effective January 1, 1994)

5.10.02 BAIL FORFEITURES

A. The Court will not give notice to the District Attorney or to the County Counsel when considering a request to set aside a forfeiture of bail pursuant to Penal Code section 1305(a), provided all of the following occurs:

- (1) The defendant has been delivered into the custody of the County Sheriff or the defendant is present at the court proceeding for bail exoneration; and
- (2) The proceeding for exoneration of bail has been commenced within 180 days after entry in the minutes or mailing of the Notice of Forfeiture, together with whatever additional time, if any, the court may have ordered pursuant to Penal Code section 1305(a);
- (3) The Court has assessed the sum of \$75.00 in those cases in which the defendant has voluntarily surrendered to the court and has assessed the sum of \$125.00 in those cases in which the defendant's appearance is the result of an agency arrest. These sums represent a reasonable estimate of the court's costs in repossessing the defendant, and shall be a condition to the exoneration of bail in all cases; and
- (4) Where the defendant has been transported back to El Dorado County at public expense, the actual expenses incurred shall be assessed.

B. In all other cases, the District Attorney and the County Counsel shall be given notice by the agency posting bail pursuant to the provisions of Penal Code section 1305(a). Proof of service of such notice shall be filed with the Court.

(Effective January 1, 1994)

5.11.00 TRIAL SETTING AND READINESS CONFERENCES

Each criminal case pending trial shall receive a date certain for trial and readiness conference. At the time a trial date is assigned, counsel shall advise the Court of the estimated length of trial.

(Effective January 1, 1994)

5.11.01 STATUS CONFERENCE

Status conferences shall be held in criminal cases for the purpose of resolving discovery issues and other matters on a date set by the Court. Counsel **is required to personally** meet and confer in an attempt to resolve any outstanding discovery issues prior to the status conference.

(Revised, July 1, 2006)

5.11.02 PRETRIAL, PRE-PRELIMINARY HEARING, AND READINESS AND SETTLEMENT CONFERENCES

At any and all pretrial conferences, pre-preliminary hearing conferences, preliminary hearings,

arraignments on information, and all Readiness and Settlement Conferences, the defendant, defense counsel, and a prosecuting attorney with *full* authority to dispose of the case shall be required to be present, unless previously excused by the Court on good cause shown.

The presence of the defendant may be excused at a pretrial or pre-preliminary hearing conference provided a “Waiver of Defendant’s Personal Presence” pursuant to Penal Code section 977(b)(2) has been filed; however, such waiver shall not apply at the calendared Readiness and Settlement Conference and the defendant’s personal presence will be required at that time.

Each counsel shall make every effort to reach a disposition of the case without the necessity of a trial at the pretrial or pre-preliminary hearing conference and prior to the Readiness and Settlement Conference. In order to avoid unnecessary continuances and to facilitate timely resolution of criminal matters, the prosecuting attorney and defense counsel must personally meet and confer with regard to the possible settlement and disposition of each case at least one court day before all pretrial conferences, pre-preliminary hearing conferences, preliminary hearings, arraignments on information, and all Readiness and Settlement Conferences in a good faith attempt to settle each case.

When counsels are unable to reach a proposed disposition of the matter, negotiations may proceed in chambers until any possibility of disposition has been exhausted. If a negotiated disposition has been reached, any plea or pleas to be entered as a result of the negotiations shall be entered the same day in open court, after the defendant has been fully advised of his or her rights as required by law.

The Criminal Readiness and Settlement Conference shall be set by the Judge assigned to the Criminal Calendar on a date not more than fourteen (14) calendar days prior to the date set for trial.

The Readiness and Settlement Conference is the last possible point of negotiation, and thereafter the defendant shall either proceed to trial or plead to the principal charge.

Following the Readiness and Settlement Conference, no continuance shall be granted except on affirmative proof in open court that the ends of justice so require.

(Revised July 1, 2006)

5.11.03 PRETRIAL CONFERENCE IN CRIMINAL CASES

(Revised July 1, 2009)

5.11.04 MOTIONS IN CRIMINAL CASES

A. CRIMINAL LAW AND MOTION CALENDAR

(1) Notice Requirement:

In accordance with California Rules of Court, rule 4.111 and unless otherwise ordered, all pretrial motions, accompanied by a Memorandum of Points and Authorities, must be filed and served at least ten (10) calendar days prior to the date of the hearing. All papers opposing the motion must be filed at least five (5) calendar days and all reply papers at least two (2) court days before the time appointed for hearing.

(2) Length of Hearing:

Matters on the Criminal Law and Motion Calendar are set for a total of no more than 15 minutes for argument, without the taking of testimony. When a matter is called on the Criminal Law and Motion Calendar and it appears that argument will take more than 15 minutes or testimony is required, it shall be deemed a long cause matter. The Court, in its discretion, may reset the matter at a date and time convenient to the Court for long cause hearing.

If counsels believe that a matter will take more than 15 minutes to argue, that matter should not be placed on the regularly scheduled Criminal Law and Motion Calendar. In such a case, counsel should contact the Calendar Clerk and request that the matter be scheduled as a long cause hearing.

B. PENAL CODE SECTION 995 MOTION TO DISMISS

- (1) Any Penal Code section 995 Motion to Dismiss, along with supporting papers, must be filed and served at least ten (10) calendar days prior to the date of the hearing. All papers opposing the motion must be filed at least five (5) calendar days and all reply papers at least two (2) court days before the time appointed for hearing

C. PENAL CODE SECTION 1538.5 MOTION TO SUPPRESS

- (1) Except for Motions made during the Preliminary Hearing as provided in subsection (3) below, a motion to suppress pursuant to Penal Code section 1538.5 must be filed and served at least ten (10) days prior to the hearing date. All papers opposing the motion must be filed at least five (5) calendar days and all reply papers at least two (2) court days before the time appointed for hearing.
- (2) The Notice of Motion designating a motion pursuant to Penal Code section 1538.5 shall specifically describe and list the evidence which is the subject of the motion to suppress; and shall specifically state the theory or theories which shall be relied upon and urged for the suppression of evidence; and cite the specific authority or authorities upon which suppression of the evidence is urged.
- (3) A defendant may make a motion pursuant to Penal Code section 1538.5 at the Preliminary Hearing without providing the notice otherwise required by this rule, but such motion shall be restricted to evidence sought to be introduced by the People at the Preliminary Hearing.

D. MOTIONS IN LIMINE

- (1) Any Motions in Limine in criminal cases, unless otherwise specifically ordered by the Court, shall be submitted in writing not less than seven (7) calendar days before the trial date. Any response to a Motion in Limine shall be filed not later than four (4) calendar days preceding the first day of trial.
- (2) A hearing on the Motions in Limine will be specially set at the convenience of the Court, but in no event later than 1:30 pm on the Friday preceding the first day of trial. If counsels believe that a hearing on the Motions will delay the scheduled trial date, they shall

promptly advise the Court of the circumstances which will cause the delay.

E. COMPLEX MOTIONS DURING TRIAL

- (1) Motions that are complex, extensive, or are out of the ordinary in any other respect, shall follow the same notice and hearing procedure described above for Motions in Limine.

(Revised July 1, 2009)

5.11.05 ELECTRONIC RECORDINGS OFFERED INTO EVIDENCE – CRIMINAL CASES

Unless otherwise ordered by the Court, a party offering into evidence an electronic sound or sound-and-video recording shall tender to the Court and to opposing parties a typewritten transcript of the electronic recording no later than fifteen (15) days prior to the trial or hearing. If the hearing at which the recording is to be introduced is a preliminary hearing in a criminal case, the transcript shall be tendered no later than five (5) days prior to the preliminary hearing.

(Effective July 1, 1999)

5.12.00 TRIAL

(Effective January 1, 1994)

5.12.01 CONTINUANCES

A continuance of a criminal trial or hearing shall require the approval of the Court. Counsel are required to file a noticed motion requesting a continuance, or by stipulating to a continuance, provided a court order approving that stipulation is filed.

If necessary, defense counsel shall provide a written time waiver by the defendant.

(Effective January 1, 1994)

5.12.02 MARKING EXHIBITS IN CRIMINAL CASES

In any case in which ten or more exhibits will be marked for identification, all counsel shall meet prior to the Readiness and Settlement Conference and jointly mark in sequential, numerical order all exhibits, complete the List of Exhibits, and deliver the List together with the marked exhibits to the Court at the conference.

If less than ten exhibits are to be marked, the List of Exhibits Form, together with the marked exhibits, shall be delivered to Court Clerk by 8:30 a.m. on the morning of the first day of trial. The Clerk will provide exhibit marking tags and the List of Exhibits Form upon request of counsel.

(Revised, January 1, 1994)

5.13.00 FELONY BAIL SCHEDULE

The Court will periodically adopt a bail schedule. The CEO of the Superior Court shall maintain copies of the current schedule.

(Revised July 1, 1998)

5.14.00 EXHIBIT STORAGE AND DISPOSITION: CRIMINAL CASES

(Effective January 1, 1994)

5.14.01 POLICY

It is the policy of the El Dorado County Courts that evidence admitted in any case before the courts:

- A. Shall be only those items required in the case;
- B. Shall not pose a security or storage problem nor a risk to health or safety;
- C. Shall not be retained by the Courts beyond the minimum time required by law, unless good cause is shown.

(Effective January 1, 1994)

5.14.02 RECEIPT OF EXHIBITS

A. No exhibits shall be accepted by the exhibits custodian unless:

- (1) All containers of liquid substances shall be clearly marked as to the type of liquid and the amount;
- (2) All containers of controlled substances shall be clearly marked identifying the substance and its weight, and are sealed;
- (3) All case, whether individually or packaged, shall be specifically identified as to the total amount of cash and the number of bills of each denomination;
- (4) All firearms shall be secured by means of a nylon tie or trigger guard;
- (5) All hypodermic needles shall be placed in containers that safeguard personnel handling the exhibit from accidental injury.

B. All exhibits must be individually tagged with the appropriate exhibit tag. Each exhibit tag must be properly completed and securely attached to the exhibit.

C. No exhibit shall be received by the Courts, if it poses a security or storage problem or a risk to health or safety. Unidentified liquids, containers, or suspect substances shall be returned to the party who offered the exhibit. Types of exhibits which will not be received include, but are not limited to, the following:

- (1) Any type of explosive powder;
- (2) Explosive chemicals, including toluene and ethane;
- (3) Explosive devices, including grenades, pipe bombs;
- (4) Flammable liquids, including gasoline, kerosene, lighter fluid, paint thinner, and ethyl ether;
- (5) Canisters containing tear-gas, mace, or similar substances;
- (6) Rags that have been soaked in flammable liquids;

- (7) Liquid drugs, including phencyclidine (PCP); methamphetamine, corrosive liquids, pyrrolidine, morpholine, and piperidine; or
- (8) Samples of blood, urine, other bodily fluids, and any substance requiring refrigeration or humidity-controlled storage.

- D. Exhibits toxic by their nature that pose a health hazard to humans shall be introduced to the court in the form of a photographic record and a written chemical analysis certified by competent authority. Where the court finds that good cause exists to depart from this procedure, toxic exhibits may be brought into the courtroom and introduced. Upon conclusion of a trial, exhibits containing toxic or hazardous materials, including but not limited to bodily fluids, controlled substances (including marijuana), weapons, and any other exhibit the Court determines may present a hazard shall be returned to the originating agency for storage pending appeal.
- E. Any exhibit that is improperly tagged, marked, weighed, or otherwise improperly identified, will not be accepted by the Court.
- F. The Court, in its discretion, may admit any exhibit in the interests of justice.
- G. Original photographs shall be substituted for any photographically enlarged exhibits.
- H. The Court, in its discretion, may order a photograph substituted for large or bulky exhibits that pose a storage problem.

(Revised January 1, 2008)

5.14.03 RETENTION, DESTRUCTION, AND RETURN OF EXHIBITS

- A. The Clerk shall retain custody of any exhibit introduced into evidence in a criminal proceeding until the final determination or dismissal of the action or proceeding, or as otherwise required by law.
- B. Upon entry of a judgment of acquittal/not guilty verdict, all exhibits that have been marked, identified, and/or admitted into evidence, shall be removed from the courtroom by counsel at the conclusion of the trial.
- C. Except in capital cases, once a judgment has become final, and any appellate proceedings in the matter have been terminated, exhibits retained from a case shall be promptly destroyed or otherwise disposed of by the Court Clerk in accordance with current law or rule of court. Parties who wish to retain their exhibits shall sign and file with the Clerk a request for return of exhibits prior to the end of the hearing or trial of the matter.
- D. Except as required by law, the Court, on its own motion, may order exhibits destroyed or otherwise disposed of, or may order that exhibits be returned to the attorney for the party introducing those exhibits, sixty days after the expiration of the time for filing a Notice of Appeal.

(Revised July 1, 2006)

5.14.04 VIEWING EXHIBITS

- A. While a case is active, only the attorneys of record and court personnel may view the exhibits. Any other person interested in viewing an exhibit must first obtain an Order of Court permitting a

view.

- B. Viewing of exhibits shall take place in the presence of the exhibit's custodian. Exhibits may not be altered or taken apart, except upon order of court. Special viewing equipment shall not be permitted except upon prior order of court.

(Effective January 1, 1994)

5.15.00 COURT APPOINTED COUNSEL AND EXPERTS; COMPENSATION

(Effective January 1, 1994)

5.15.01 (Reserved for future use)

(Revised July 1, 2006)

5.15.02 INVESTIGATIVE FEES AND EXPENSES

- A. Application for Fees and Expenses. Application for investigative fees and expenses shall be made in writing, as follows:

- (1) To the judge of the department to which the case has been assigned;
- (2) To the judge of the department to which the matter has been referred pursuant to Penal Code section 987.9; or
- (3) To the Presiding Judge for all other cases.

- B. Amount of Fees. The amount of fees will be as set by court policy, including maximum rates and claims procedure.

(Revised July 1, 1995)

5.15.03 EXPERT FEES AND EXPENSES

- A. Application for Expert Fees and Expenses: Application for expert fees and expenses shall be made in writing as follows:

- (1) To the judge of the department to which the case has been assigned;
- (2) To the judge of the department to which the matter has been referred, pursuant to Penal Code section 987.9; or
- (3) For all other cases, to the Presiding Judge.

- B. Amount of Fees: In no event shall the Court grant fees or expenses not reasonably justified by the nature of the case, as supported by written application. The written application shall specify the nature, purpose, and materiality of the proposed expert services and shall contain an estimate of the fees and expenses involved including the proposed expert's hourly fees for out of court work and for courtroom testimony. The name of the expert to be retained and a brief statement of qualification shall also be included or attached. Unusual or extraordinary requests shall be justified in detail.

- C. Order for Fees and Expenses: The order for expert fees and expenses shall be on a form approved by the Court.
- D. Maximum Rates for Expert Services and Testimony: Claims for expert services authorized pursuant to this Rule shall not exceed the amounts approved by the Court.
- E. Submission of Claims: Claims for expert fees and expenses shall be made on a form approved by the Court, to which must be attached a copy of the court order awarding fees and a detailed accounting of all claimed fees and expenses. The claim shall be submitted to the CEO of the Superior Court for subsequent approval by the department that authorized the expenditure specified in subsection (A) of this Rule, and then forwarded to the County Auditor for payment.

(Revised July 1, 2006)

5.15.04 PUBLIC ACCESS TO POLICE REPORTS

Any police report submitted to the Court shall be sealed in a manila envelope by the clerk and placed in the court file.

A member of the public may request that a police report be made available upon written notice. Within five court days of the request, a judge will review the report and may redact any contact information for witnesses and victims, including telephone numbers and addresses, as well as any other information the judge concludes meets the constitutional standards for confidentiality. Upon completion of the judge's review, the police report will be made available to the person requesting the report.

(Effective July 1, 2005)

5.15.05 JURY INSTRUCTIONS IN CRIMINAL CASES

No later than the first day of trial in a criminal case, the prosecution shall submit proposed jury instructions for use in that case in a condition to go to the jury. The jury instructions will be completely and appropriately filled in and all necessary deletions made.

(Effective July 1, 2005)