

EMERGENCY LOCAL RULES:
VIDEO TECHNOLOGY IN CRIMINAL CASES
(Amended)

The Court adopts the following as Emergency Local Rules (“Rules”) intended to address the impact of the COVID-19 pandemic, under the authority granted the Court by the March 23, 2020, and March 30, 2020, Orders of the Chief Justice of the California Supreme Court, as Chair of the Judicial Council (“Orders”) and by the Emergency Rules in Response to the COVID-19 Pandemic issued by the Judicial Council on April 6, 2020 (“Emergency Rules”) and as amended thereafter. The Superior Court of Contra Costa County will conduct hearings in misdemeanor and felony criminal cases by videoconference in accordance with these Rules. These Rules are effective May 29, 2020, supersede prior versions, and shall remain in effect until either rescinded or modified by this Court or by expiration of the Emergency Rules.

1. Application of Rules and Right to Waiver. These Rules shall apply to the use of video technology in Criminal matters. A defendant may, in accordance with Emergency Rule 5, waive his or her appearance or personal appearance at any hearing.

2. Appearances by Video Technology.

- a. *Defendants and Counsel.* Unless a defendant waives his or her appearance, an in-custody defendant will be present in a courtroom and defense counsel may appear in person with their client or may appear remotely by videoconference. An out-of-custody defendant may appear remotely by videoconference.
- b. *Court and Court Staff.* The Court will preside over all hearings by videoconference, and all court staff (other than bailiffs) may also participate by videoconference subject to these Rules. All proceedings will be reported by an official Court reporter unless otherwise ordered by the Court.

- c. *Parties and Witnesses.* All other parties and witnesses will appear by videoconference when permitted by the Rules, unless the court orders a witness to appear personally in a particular proceeding.

3. Conduct of Video Technology Hearings.

- a. *Initiation of Hearing.* The Court will initiate a videoconference session via the Zoom videoconferencing application. Each party or their attorney will be invited to participate in the hearing by an emailed invitation sent by the Court.
- b. *Witnesses.* Any party who intends to call witnesses at the hearing must make timely arrangements to have the witnesses available to testify by videoconference.
- c. *Exhibits.* Any party who intends to offer exhibits into evidence must provide copies of any documentary exhibits, photographs of any physical exhibits, and copies of any audio or video recordings to all other parties at least 24 hours prior to the hearing. This may be accomplished electronically. Any party who intends to offer exhibits into evidence at the hearing must electronically upload the exhibits to <https://www.cc-courts.org/filesupload/> prior to the start of the hearing. The court may exercise its discretion to permit the exchange or viewing of exhibits by another means or on less than 24 hours' notice, provided that any exhibits are provided to the court as directed.
- d. *Orders.* Any written orders generated as a result of a hearing shall be served on all parties by facsimile or email. Criminal Protective Orders shall be personally served on the defendant without delay.
- e. *Videoconference Records.* To the extent any records of the videoconference are retained by Zoom, all records are deemed court records and may be available to the public.

4. Rules Applicable to Remote Appearances in Certain Out-of-Custody Matters.

- a. *Technological Availability Requirement.* The Court will proceed with remote appearances for qualifying out-of-custody matters. These include certain arraignments, pre-trial conferences, preliminary hearing conferences and dispositions (including dismissals, parole violations admissions, and changes-of-plea) in accordance with Emergency Rules 3 and 5. Remote appearances will be permitted only “when the technology is available.” Cal. Emergency Rule of Ct. 5.
- b. *Consent Requirement.* Remote appearances will require counsel to obtain the defendant’s advanced (a) consent to appear remotely, and (b) waiver to be personally present. Under Emergency Rule 5, consent and waiver may be an “on the record oral representation 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.” Such representation may be made by counsel at the outset of a calendar for all cases to be called in that court session or some portion of them as applicable.
- c. *Process for Remote Appearance in Out-of-Custody Matters.* In order to make the technology available for a remote appearance, counsel must meet the following requirements:
 - i. Obtain their client’s advanced consent and waiver, as described above, **before** the remote appearance;
 - ii. Provide counsel’s email address to the court clerk no later than **5 court days before** the appearance in order to receive a Zoom email invite to the calendar, which time period may be waived at the discretion of the judge;

- iii. Return all completed and required forms (e.g., change of plea forms, Watson advisements, interlock ignition device documents) to the court's drop box no later than **5 court days before** the remote appearance, which time period may be waived at the discretion of the judge;
 - 1. Failure to timely return forms will result in an incomplete court file on your court date and may result in a continuance of the matter.
 - 2. Criminal drop boxes are located in front of the Main St. entrance to the Wakefield Taylor Courthouse in Martinez, and at the branch courts in Pittsburg and Richmond solely for cases heard at those courts.
- iv. Agree to return any post-plea forms to the Court's drop box as ordered by the Court;
- v. Become proficient in using the Zoom platform; and
- vi. Agree to appear on-time for all remote appearances and remain ready in the virtual "waiting room" for each matter to be called.
- d. *No Late or Same-Day Appearance Requests.* **No late remote appearance requests will be permitted.** The courtroom clerk **will not** provide email invitations on the day of the appearance.
- e. *Exceptions for Unreported Pretrial Conferences.* Rules 4 (b), (c), and (d) above shall not apply to unreported pretrial conferences, such as those traditionally held in chambers.
- f. Public Defender and District Attorney email invitations will be sent automatically to the same list of recipients as requested.

g. *Personal Appearances.* Counsel should plan for personal appearances with the defendant for domestic violence cases involving the service of any criminal protective order pursuant to Penal Code section 136.2, and for proof of SCRAM, as well as other cases at the discretion of the Court.

5. Court Discretion to Order Personal Appearances. Nothing in these Rules shall change the authority of any judge to order personal appearances in that judge's discretion.

6. Expiration. These Rules will remain in effect, pursuant to the Emergency Rules, until 90 days after the Governor declares that the state of emergency related to the COVID-19 pandemic is lifted, or until the Emergency Rules are otherwise repealed by the Judicial Council.