

**DIVISION 8**

**CRIMINAL**

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**Chapter 1**

**Felony Cases**

**Rule 800. Pretrial Motions in Felony Cases**

A. General Applicability

This rule applies to any of the following motions in a felony case once the indictment or information has been filed:

1. Demurrer to Indictment or Information (Penal Code section 1004) where court authorizes filing after entry of plea.
2. Motion to dismiss Indictment or Information (Penal Code section 995).
3. Motion under Penal Code section 1538.5 and other motions to suppress evidence or for return of property unlawfully seized.
4. Motion for discovery, including discovery relating to informants claimed to be material witnesses.
5. Motion to compel a lineup.
6. Motion to sever or consolidate cases, counts, or defendants.
7. Any speedy trial motion where grounds exist at the time set herein for making pretrial motions.
8. Motion to challenge jury selection system.
9. Any other motion to dismiss or strike, statutory or non-statutory, where the grounds exist at the time set herein for making pretrial motions.

B. Time for Motions and Hearing

1. Except as otherwise authorized by the court, or required by statute, all motions, together with points and authorities, shall be in writing and must be served and filed with the clerk in the trial department, or with the Criminal Clerk's Office if the clerk of the trial department is not available; ~~together with proof of service on the responding party no later than the close of business for the Clerk's offices on the second Friday immediately preceding the pretrial motion/trial readiness conference date in accordance with Rule 4.111 of the California Rules of Court.~~ In the event the Criminal Clerk's Office is not available for the filing of documents, the documents may be placed in a drop box. The motion shall designate a hearing at 9:00 a.m. on the second available Friday immediately preceding the trial date.

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The clerk may refuse to file any motion not in compliance with this section.

2. All motions shall contain in the upper right-hand corner of the first page, the filing party's estimate of the overall time required for the hearing of the matter, date and department number of the hearing, and a request for a removal order if a defendant or necessary witness is in custody. If the court has not previously ordered the defendant to be present at the pretrial motion date and the defendant is not in custody, counsel for said defendant shall give written notice of said hearing date to the defendant and file a proof of service of same at the time the motion is filed. Failure to request a removal order when one is required, or to give such notice to such noncustodial defendant, may result in said motion being taken off calendar.

C. General Procedure

1. All motions, together with points and authorities, shall be separately filed. ~~All filings shall be accompanied by proof of service on the opposing party or parties. Where the appropriate Monday or Friday is a legal holiday, the time for filing is extended until noon of the next working day.~~
2. The responding party must serve and file with the clerk in the department hearing such motions, or with the Criminal Clerk's Office if the clerk in the hearing department is not available, responding points and authorities, ~~together with proof of service on the attorney for the moving party not later than noon of the Monday immediately preceding the pretrial motion/trial readiness conference date, unless that Monday is a legal holiday, in which case the time for filing is extended until noon of the next working day~~ in accordance with Rule 4.111 of the *California Rules of Court*.
3. The moving party must serve and file with the clerk in the department hearing such motions, or with the Criminal Clerk's Office if the clerk in the hearing department is not available, any reply points and authorities; ~~together with appropriate proof of service, no later than noon of the Thursday immediately preceding said motion, unless that Thursday is a legal holiday, in which case the time for filing is extended until 9:00 a.m. of the day originally scheduled for the hearing~~ in accordance with Rule 4.111 of the *California Rules of Court*.
4. Continuances of hearings on motions shall not be granted except for good cause shown and upon the filing of a written notice of intention to move for such continuance with the clerk of the department hearing such motions or with the Criminal Clerk's Office if the clerk in the hearing department is not available, together with proof of service upon the opposing counsel, prior to noon of the Wednesday before the hearing.
5. The requirements for all motions subject to this rule shall be the same except cases that come within the provisions of subdivision (b) of Penal Code section 1048. In those cases the judge assigned to the trial department shall specially set the pretrial motion/trial readiness conference date and the filing deadlines.

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D. Additional Requirements for Penal Code section 995 Motions

1. Moving papers relating to such motions shall include the following:
  - a. A brief statement in summary form of the facts as set forth in the transcript.
  - b. A statement of the issues, specifically identifying in what regard the People's case is defective.
  - c. Where defendant intends to rely upon some testimony in the transcript, the moving papers shall contain references to such testimony identified as to page and line number of the transcript.
  - d. A statement of the authorities upon which defendant relies with explanation as to why they are applicable. (Mere citation of sections in the California Penal Code and the U.S. Constitution shall not be sufficient.)

E. Additional Requirements for Penal Code section 1538.5 Motions

1. Moving papers relating to such motions shall include the following:
  - a. A complete statement of all the facts known to counsel at the time the motion is filed upon which the moving party relies in support of the motion.
  - b. A complete specification of the exact matters or things sought to be suppressed or returned ("all evidence seized on..." ...without listing the items is not a specification).
  - c. A statement of the issues, specifically identifying in what regard the search or seizure is defective. Such statement shall specifically state the theory or theories which shall be relied upon and urged for the suppression of evidence.
  - d. A statement of authorities citing the specific authority or authorities which will be offered in support of the theory or theories upon which suppression of evidence is urged.
  - e. Where a motion to suppress was made at the preliminary hearing, any references in the supporting papers to such testimony shall be identified as to volume number, if more than one volume, page and line number in the transcript.
  - f. Where no motion to suppress was made at the preliminary hearing and if the moving party requests testimony be received by the court at such hearing, the first page of the notice of motion, or motion shall so indicate. The failure to so indicate shall be construed by the court as a request by the moving party to submit the matter on the statement or statements of fact and the argument of counsel.



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F. Additional Requirements for Motions to Challenge Jury Selection System and/or Discovery Motions Related Thereto

1. All motions shall be filed in the department of the Presiding Judge (Department C1), whether or not the criminal case has been assigned to a judge for all purposes.
2. Moving papers relating to such motions shall include a statement of the issues specifically identifying in what regard the jury selection system is defective.
3. All moving papers relating to such motions shall be separately served on the Jury Commissioner, Deputy Jury Commissioner, or court employees whose primary employment is in the Jury Services Division the same date the moving papers are served on the responding party. Proof of service shall be filed with the original moving papers.
4. The Jury Commissioner, Deputy Jury Commissioner, or court employees whose primary employment is in the Jury Services Division shall not be called to testify at the hearing on a motion to challenge the jury selection system unless given three court days prior notice.
5. For good cause shown, the court may waive any of the above additional requirements.

G. Effect of Noncompliance with These Rules

1. If any motion subject to this rule is not made within the time limits and pursuant to the requirements of this rule, the failure to do so shall constitute a waiver of the right to make the motion, but the court for good cause shown, may grant relief from the waiver.
2. If any response is not made within the time limits and pursuant to the requirements of this rule, the failure to do so may result in the refusal of the court to consider such response.

*Rule 800 revised effective January 1, 2013; Revised effective July 1, 1985; revised effective July 1, 1991; revised effective July 1, 1992; revised effective July 1, 1998)*