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## FACT SHEET

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### Change of Venue in California

Change of venue is the transfer of a legal action from one county to another county for trial. In criminal cases a change of venue is permitted if, for example, the court believes the defendant cannot receive a fair trial in a given county. Reasons for changes of venue include pretrial publicity, bias, political atmosphere, and any other circumstance that the parties believe would prevent them from obtaining a fair trial in the county in which the case was originally filed.

#### **Role of the Judicial Council of California**

Rules 4.150–4.155 of the California Rules of Court describe the duty of the Judicial Council of California to provide assistance with change of venue in criminal actions. Rule 4.151 outlines the application and hearing process for a change of venue. An application for a change of venue must be filed at least 10 days before the date set for trial. The Judicial Council of California plays a role after the court grants a change of venue.

The Judicial Council of California does not decide whether a change of venue should occur. Nor does the Judicial Council of California select the site for the new trial. Under rule 4.152(1) of the California Rules of Court, the Judicial Council of California provides administrative assistance to the trial courts by suggesting a court or courts that would not be unduly burdened by the trial of the case. The Judicial Council of California provides this assistance when a court in which a criminal action is pending determines that the action should be transferred under section 1033 of the Penal Code, which states the grounds for change of venue in a superior court criminal action.

#### **Does the Judicial Council of California provide similar assistance when a change of venue motion is granted in a civil case?**

Although no statute or rule requires the agency to assist with a civil change of venue, it will provide assistance if the judge granting the motion or the presiding judge requests it.

### **Change of Venue Procedure**

Rule 4.151(b) of the California Rules of Court and an accompanying advisory committee comment recommend that the court attempt to impanel a fair and impartial jury before ordering a change of venue, unless there is clear evidence of a reasonable likelihood that a fair and impartial trial cannot be had in the county. Penal Code section 1036.7 states that the court, after ordering a change of venue, should consider whether bringing in a jury from another county, rather than transferring the case, would be in the interest of the administration of justice—including the convenience of the jurors—under rule 4.153(1) of the California Rules of Court. Once the motion to change venue is granted, the following steps are taken:

1. The judge who granted the motion or his or her designee advises the Judicial Council of California of the pending transfer and requests assistance in finding courts with suitable facilities for the trial. The judge also describes the circumstances of the case, explains the basis for the transfer, and suggests possible appropriate sites for the trial.
2. With the guidance of the judge who granted the change of venue motion, the Judicial Council of California contacts the presiding judges or executive officers of appropriate courts to identify a court or courts that have suitable space and would not be unduly burdened by the trial. The Judicial Council of California discusses with the courts the circumstances of the case, the trial's probable length, any special security problems, cost considerations, and any other factors that might apply. The relative workload of the court and the presiding judge's assessment of the court's ability to conduct the trial also are considered.
3. The Judicial Council of California attempts to supply the judge who granted the motion with the names of at least three courts that would not be unduly burdened by the trial.
4. The judge conducts a hearing as required by *McGown v. Superior Court* (1977) 75 Cal.App.3d 648 (called a "McGown hearing"), considers the views of the prosecution and the defense, and determines the proper court for the trial of the case.
5. Having decided on the court for the change of venue, the court that ordered the change notifies the Judicial Council of California of its decision. The Judicial Council of California then advises each of the courts previously contacted.

**How many alternative trial sites does the Judicial Council of California give the court of original jurisdiction?**

The number of options depends on which courts indicate they can take the case. Generally, the Judicial Council of California offers two or three alternative sites.

**How long does it take for the Judicial Council of California to identify these alternatives?**

The Judicial Council of California attempts to identify sites within two weeks. Occasionally the nature of the case makes it difficult to find a suitable court within that time. In all instances, however, the Judicial Council of California finds alternative court sites as soon as possible.

**How long does it take the judge to select a county after alternative sites are found?**

The timing of the selection depends on many factors. Usually the judge discusses the alternatives with the parties' counsel and schedules the *McGown* hearing at the earliest convenience.

**Who serves as the trial judge—the judge from the court where the trial originated or the judge from the receiving court?**

The presiding judge, or his or her designee, must select a judge from the transferring court, unless he or she concludes that the transferring court does not have adequate judicial resources to try the case.

If the presiding judge, or his or her designee, concludes that the transferring court does not have adequate judicial resources to try the case, he or she must request that the Chief Justice of California determine whether to assign a judge to the transferring court. If the Chief Justice determines not to assign a judge to the transferring court, the presiding judge, or his or her designee, must select a judge from the transferring court to try the case.

**Factors Considered**

A suitable court site should be able to handle news media, staffing needs, and security requirements related to the defendant or others (for instance, victim groups or gangs). Demographic characteristics may also be an important consideration. Questions that may be asked of the court include: Can the court accommodate large numbers of

media representatives? Are the accommodations for media representatives separate from those for jurors? Are there staffing considerations to be reviewed with regard to courtroom clerks and court reporters? Is there a need for daily transcripts? Is the detention facility attached to or near the courthouse? Is there an adequate security staff to transport the defendant and serve in the courtroom? In the detention facility, is there an adequate security staff for suicide watch? Are there security issues with witnesses?

**Costs**

The costs vary considerably, depending on the nature of the case and where it is sent. Rule 4.155 of the California Rules of Court (Guidelines for reimbursement of costs in change of venue cases—criminal cases) lists the items that may be charged back to a transferring court. Some of these reimbursable charges include juror expenses, court reporting, compensation and expenses of assigned judges, interpreter costs, security costs, and any special accommodation costs, such as leased office space for counsel.

**Who pays the salary of a judge who is assigned specifically to a change of venue case?**

The state pays the judge's entire salary, whether the judge is active or is a retired judge on assignment.

**Further information is available upon request.**

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