

**JUDICIAL COUNCIL OF CALIFORNIA  
ADMINISTRATIVE OFFICE OF THE COURTS**

455 Golden Gate Avenue  
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**Report**

TO: Members of the Judicial Council

FROM: Criminal Law Advisory Committee  
Hon. Steven Z. Perren, Chair  
Joshua Weinstein, Committee Counsel, 415-865-7688,  
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DATE: September 28, 2005

SUBJECT: Criminal Procedure: Rules Governing Change of Venue in Criminal Cases  
(amend Cal. Rules of Court, rules 4.150–4.154; amend and renumber rule  
4.162 as rule 4.155; repeal rules 4.160 and 4.161) (Action Required)

Issue Statement

Change of venue procedure in a criminal case is governed by statutes and rules. Many details of the change of venue procedure, however, are not set forth in the rules or statutes, which can cause confusion in the trial courts. Recent change of venue cases have highlighted procedural questions that would benefit from clarification.

Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council, effective January 1, 2006, amend rules 4.150–4.154; amend and renumber rule 4.162 as rule 4.155; and repeal rules 4.160 and 4.161 of the California Rules of Court to clarify the change of venue procedures in criminal cases.

The text of the proposed rules is attached at pages 4–12.

Rationale for Recommendation

The amendments to the change of venue rules would set forth the responsibilities of the transferring and receiving courts by specifying the procedures after a change of venue motion has been granted.<sup>1</sup> The underlying principle of the proposed amended rules is that the case generally remains the responsibility of the transferring court, with few

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<sup>1</sup> This proposal sets forth procedural requirements upon a change of venue. It does not address the financial aspects of change of venue cases. Financial concerns are addressed by statute a new statute (AB 27, which was signed by the Governor on September 22, 2005). Under AB 27, financial disputes between the courts in change of venue cases are to be mediated by the Administrative Office of the Courts. (See Pen. Code, § 1037.1(b).)

procedures other than the trial being conducted in the receiving court. Specifically, the amendments would:

- *Clarify that the case remains the responsibility of the transferring court.* Amended rule 4.150 would provide that when change of venue has been ordered, “the case remains a case of the transferring court.” (Rule 4.150(b).) Therefore, absent good cause to the contrary, all proceedings other than the trial are heard in the transferring court (including matters not heard by the trial judge, such as a challenge or disqualification of the trial judge or motions for court-appointed defense experts under Penal Code section 987.9). Hearings other than the trial may be held in the receiving court if the judge finds good cause to do so. The amendments also clarify which court of appeal is to review the case, both before and after the verdict.
- *Update the style of rule 4.151 and incorporate rule 4.160(b).* Rule 4.151, which describes the procedure for bringing a change of venue motion, would be stylistically updated and renumbered as subdivision (a). The language from current rule 4.160(a) would be added in subdivision (b) and part of the advisory committee comment from current rule 4.160 would be added. Current rule 4.160 would be repealed. A portion of the advisory committee comment to rule 4.160 would be deleted. The deleted portion, which states that the change of venue should be ordered if there is “clear evidence of a reasonable likelihood” that the defendant could not get a fair trial in the court, is unnecessary, as it merely restates the standard of review.
- *Provide that administrative tasks and decisions are for the presiding judge (or his or her designee).* Rules 4.152 and 4.153 would provide that certain tasks are to be conducted by the presiding judge of the transferring court, or his or her designee, because these tasks are administrative in nature. The presiding judge may delegate the tasks to the supervising judge of the criminal division, the judge hearing the change of venue motion, or any other appropriate judge.
- *Provide for procedures after a change of venue has been ordered.* Rule 4.152 would set forth the steps for selecting the receiving court: (1) notification to the Administrative Director of the Courts of the change of venue; (2) determination of whether the transferring court has adequate resources to send a judge to try the case in the receiving court; and (3) if there are not adequate resources to send a judge to try the case in the receiving court, a request to the Chief Justice to assign a judge to the transferring court.
- *Set forth requirements for an order on change of venue.* Rule 4.153 would provide that after receiving notification from the Administrative Director of the Courts, the presiding judge or his or her designee is to (1) determine the court in which the case is

to be tried, (2) transmit copies of the necessary portions of the record to the receiving court, and (3) enter the order on the record.

- *Clarify procedures in the receiving court.* Rule 4.154 would set forth provisions for the manner in which the trial is to be conducted and the handling of the record.
- *Incorporate remaining provisions into amended or renumbered rules.* Rule 4.160 would be repealed and its provisions incorporated into rules 4.151 and 4.153. Rule 4.161 would be repealed and replaced by 4.152(b)(2). Rule 4.162 would be updated to conform with current Judicial Council rules style and renumbered rule 4.155, to appear sequentially.

#### Alternative Actions Considered

The committee considered statutory amendments. However, because the rules of court set forth most change of venue procedures, it appeared most appropriate to clarify those rules.

#### Comments From Interested Parties

The proposal was circulated in the normal spring comment cycle. Six comments were received. Of those, five agreed with the proposal and one agreed if amended. A suggested amendment was a modification to rule 4.150, moving subdivision (c), the provision stating that the writ and appellate jurisdiction is to remain with the appellate district with jurisdiction over the transferring court, to subdivision (b). The committee declined to make that change because moving it would make that provision discretionary, allowing the trial judge, upon a showing of good cause, to determine which appellate district is to hear the appeal or writ. The committee concluded that the selection of writ or appeal jurisdiction is not a discretionary matter that should be left to a trial court.

A chart summarizing the comments is attached at pages 13–14.

#### Implementation Requirements and Costs

Implementation would not impose costs and would allow some courts to be more efficient.

#### Attachments

Rules 4.150–4.154 of the California Rules of Court are amended; rule 4.162 is amended and renumbered; and rules 4.160 and 4.161 are repealed, effective January 1, 2006, to read:

**Chapter 2. ~~Transfer and Change of Venue~~**

**Rule 4.150. ~~Transfer of criminal actions or proceedings~~ Change of venue: application and general provisions**

(a) **[Application]** ~~Rules 4.150 to 4.154, inclusive, shall 4.155 govern the transfer of change of venue in criminal actions or proceedings cases under Penal Code section 1033.~~

(b) **[General provisions]** When a change of venue has been ordered, the case remains a case of the transferring court. Except upon good cause to the contrary, the court must follow the provisions below:

(1) Proceedings before trial must be heard in the transferring court.

(2) Proceedings that are not to be heard by the trial judge must be heard in the transferring court.

(3) Postverdict proceedings, including sentencing, if any, must be heard in the transferring court.

(c) **[Appellate review]** Review by the Court of Appeal, either by an original proceeding or by appeal, must be heard in the appellate district in which the transferring court is located.

**Advisory Committee Comment**

Subdivision (b)(1) is based on Penal Code section 1033(a), which provides that all proceedings before trial are to be heard in the transferring court, except when a particular proceeding must be heard by the trial judge.

Subdivision (b)(2) addresses motions heard by a judge other than the trial judge, such as requests for funds under Penal Code section 987.9 or a challenge or disqualification under Code of Civil Procedure section 170 et seq.

Reflecting the local community interest in the case, subdivision (b)(3) clarifies that after trial the case is to return to the transferring court for any posttrial proceedings. There may be situations where the local interest is outweighed, warranting the receiving court to conduct posttrial hearings. Such hearings may include motions for new trial where juror testimony is necessary and the convenience to the jurors outweighs the desire to conduct the hearings in the transferring court.

1 Subdivision (c) ensures that posttrial appeals and writs are heard in the same appellate district as any writs  
2 that may have been heard before or during trial.

3  
4 **Rule 4.151. ~~Application and hearing~~ Motion for change of venue**

5  
6 **(a) [Motion procedure]** ~~Application~~ A motion for the transfer of change of venue  
7 in a criminal action or proceeding pursuant to case under Penal Code section  
8 1033 or 1034 of the Penal Code shall must be by notice of motion supported  
9 by an affidavit or a declaration filed with the court setting forth the facts upon  
10 which supporting the application is based. Except for good cause shown, the  
11 application shall motion must be filed at least 10 days prior to before the date  
12 set for trial, and with a copy shall be served upon the adverse party at least 10  
13 days prior to before the hearing on the application. At the hearing  
14 counteraffidavits may be filed.

15  
16 **(b) [Policy considerations in ruling on motion]** Before ordering a change of  
17 venue in a criminal case, the transferring court should consider impaneling a  
18 jury that would give the defendant a fair and impartial trial.

19  
20 **Advisory Committee Comment**

21  
22 Rule 4.151(b) is not intended to imply that the court should attempt to impanel a jury in every case before  
23 granting a change of venue in every case.

24  
25  
26 **Rule 4.152. Selection of court and trial judge**

27  
28 When a judge grants a motion for change of venue, he or she must inform the  
29 presiding judge of the transferring court. The presiding judge, or his or her designee,  
30 must:

31  
32 **(a)** ~~When the court in which the action is pending determines that it should be~~  
33 ~~transferred pursuant to section 1033 or 1034 of the Penal Code, it shall advise~~  
34 Notify the Administrative Director of the Courts of the pending transfer  
35 change of venue. Upon being advised, After receiving the transferring court's  
36 notification, the Administrative Director shall, in order to expedite judicial  
37 business and equalize the work of the judges, must advise the transferring  
38 court which suggest a court or courts that would not be unduly burdened by  
39 the trial of the case. Thereafter, the court in which the case is pending shall  
40 transfer the case to a proper court as it determines to be in the interest of  
41 justice.

42  
43 **(b)** Select the judge to try the case, as follows:  
44

- 1           (1) The presiding judge, or his or her designee, must select a judge from the  
2 transferring court, unless he or she concludes that the transferring court  
3 does not have adequate judicial resources to try the case.  
4
- 5           (2) If the presiding judge, or his or her designee, concludes that the  
6 transferring court does not have adequate judicial resources to try the  
7 case, he or she must request that the Chief Justice of California determine  
8 whether to assign a judge to the transferring court. If the Chief Justice  
9 determines not to assign a judge to the transferring court, the presiding  
10 judge, or his or her designee, must select a judge from the transferring  
11 court to try the case.  
12

13 **Rule 4.153. Order of transfer on change of venue**

14  
15 After receiving the list of courts from the Administrative Director of the Courts, the  
16 presiding judge, or his or her designee, must:  
17

- 18       **(a)** Determine the court in which the case is to be tried. In making that  
19 determination, the court must consider, under Penal Code section 1036.7,  
20 whether to move the jury rather than to move the pending action. In so doing,  
21 the court should give particular consideration to the convenience of the jurors.  
22
- 23       **(b)** Transmit to the receiving court a certified copy of the order of transfer and any  
24 pleadings, documents, or other papers or exhibits necessary for trying the case.  
25
- 26       **(c)** Enter the order of transfer shall be entered upon the for change of venue in the  
27 minutes of the transferring court or the docket and the clerk shall immediately  
28 make out and transmit to the court to which the action is transferred a certified  
29 copy of the order of transfer record, pleadings and proceedings in the action  
30 including the undertakings for the appearance of the defendant and of the  
31 witnesses. The order must include the determinations in (a).  
32

33 **Advisory Committee Comment**

34  
35 Rule 4.152 and 4.153 recognize that, although the determination of whether to grant a motion for change  
36 of venue is judicial in nature, the selection of the receiving court and the decision whether the case should  
37 be tried by a judge of the transferring court are more administrative in nature. Thus, the rule provides that  
38 the presiding judge of the transferring court is to make the latter decisions. He or she may delegate those  
39 decisions to the trial judge, the supervising judge of the criminal division, or any other judge the presiding  
40 judge deems appropriate. If, under the particular facts of the case, the latter decisions are both judicial and  
41 administrative, those decisions may be more properly made by the judge who heard the motion for change  
42 of venue.  
43

44 **Rule 4.154. Proceedings in the receiving court receiving case**

1  
2 The receiving court to which the action is transferred shall must conduct the trial  
3 proceed as if the action case had been commenced in such the receiving court. If it  
4 is necessary to have any of the original pleadings or other papers before such the  
5 receiving court, the transferring court from which the action is transferred shall must  
6 at any time, upon application of the district attorney or the defendant, order transmit  
7 such papers or pleadings to be transmitted by the clerk, a certified copy thereof  
8 being retained. If, during the trial, any original papers or pleadings are submitted to  
9 the receiving court, the receiving court is to file the original. After sentencing, all  
10 original papers and pleadings are to be retained by the transferring court.

11  
12 **Rule 4.160. Policies to be considered before ordering and transferring a criminal**  
13 **case on change of venue**

14  
15 (a) ~~[Attempt to impanel jury]~~ Before ordering a change of venue in a criminal  
16 case, the court should consider impaneling a jury that would give the defendant  
17 a fair and impartial trial.

18  
19 (b) ~~[Moving the jury]~~ After a change of venue has been ordered, the court should  
20 determine, pursuant to Penal Code section 1036.7, whether it would be in the  
21 interests of the administration of justice to move the jury rather than to move  
22 the pending action. In so doing, the court should give particular consideration  
23 to the convenience of the jurors.

24  
25 **Advisory Committee Comment**

26  
27 Section 4(a) is not intended to imply that the court should attempt to impanel a jury in every case  
28 before granting a change of venue. If there is clear evidence of a reasonable likelihood that a fair and  
29 impartial trial cannot be had in the county, a change of venue should be ordered.

30  
31 **Rule 4.161. Change of venue case to be tried by judge from county in which the case**  
32 **originated—criminal cases**

33  
34 A criminal case in which a change of venue has been ordered should be tried in the  
35 court receiving the case by a judge from the court in which the case originated,  
36 unless the originating and receiving courts agree otherwise.

37  
38 **Rule 4.155624.155. Guidelines for reimbursement of costs in change of venue**  
39 **cases—criminal cases**

40  
41 (a) [General] Consistent with Penal Code section 1037(c), the county court in  
42 which an action originated shall must reimburse the county court receiving a  
43 case after an order for change of venue for any ordinary expenditure and any

1 extraordinary but reasonable-and-necessary expenditure ~~which~~ that would not  
2 have been incurred by the receiving ~~county~~ court but for the change of venue.

3  
4 **(b) [Reimbursable ordinary expenditures—court related]** Court-related  
5 reimbursable ordinary expenses include:

6  
7 (1) For prospective jurors on the panel from which the jury is selected and for  
8 the trial jurors and alternates seated:

9  
10 (i)(A) Normal juror per diem and mileage at the rates of the  
11 receiving ~~county~~ court. The cost of the juror should only be charged  
12 to a change of venue case if the juror was not used in any other case  
13 on the day that juror was excused from the change of venue case.

14  
15 (ii)(B) If jurors are sequestered, actual lodging, meals, mileage, and  
16 parking expenses up to state Board of Control limits.

17  
18 (iii)(C) If jurors are transported to a different courthouse or county,  
19 actual mileage and parking expenses.

20  
21 (2) For court reporters:

22  
23 (i)(A) The cost of pro tem reporters, even if not used on the change  
24 of venue trial, but not the salaries of regular official reporters who  
25 would have been paid in any event. The rate of compensation for pro  
26 tem reporters should be that of the receiving ~~county~~ court.

27  
28 (ii)(B) The cost of transcripts requested during trial and for any new  
29 trial or appeal, using the folio rate of the receiving ~~county~~ court.

30  
31 (iii)(C) The cost of additional reporters necessary to allow production  
32 of a daily or expedited transcript.

33  
34 (3) For assigned judges: The assigned judge's per diem, travel, and other  
35 expenses, up to state Board of Control limits, if the judge is assigned to  
36 the receiving court because of the change of venue case, regardless of  
37 whether the assigned judge is hearing the change of venue case.

38  
39 (4) For interpreters and translators:

40  
41 (i)(A) The cost of the services of interpreters and translators, not on  
42 the court staff, if those services are required under Evidence Code  
43 sections 750 through 754. Using the receiving ~~county~~ court's fee

1 schedule, this cost should be paid whether the services are used in a  
2 change of venue trial or to cover staff interpreters and translators  
3 assigned to the change of venue trial.  
4

5 (ii)(B) Interpreters' and translators' actual mileage, per diem, and  
6 lodging expenses, if any, which were incurred in connection with the  
7 trial, up to state Board of Control limits.  
8

9 (5) For maintenance of evidence: The cost of handling, storing, or  
10 maintaining evidence beyond the expenses normally incurred by the  
11 receiving ~~county~~ court.  
12

13 (6) For services and supplies: The cost of services and supplies incurred only  
14 because of the change of venue trial, for example, copying and printing  
15 charges (~~e.g.~~, such as for juror questionnaires), long-distance telephone  
16 calls, and postage. A pro rata share of the costs of routine services and  
17 supplies should not be reimbursable.  
18

19 (7) For court or county employees:  
20

21 (i)(A) Overtime expenditures and compensatory time for staff  
22 incurred because of the change of venue case.  
23

24 (ii)(B) Salaries and benefit costs of extra help or temporary help  
25 incurred either because of the change of venue case or to replace  
26 staff assigned to the change of venue case.  
27

28 (c) **[Reimbursable ordinary expenses—defendant related]** Defendant-related  
29 reimbursable ordinary expenses include the actual costs incurred for guarding,  
30 keeping, and transporting the defendant, including:  
31

32 (1) Expenses related to health care: Costs incurred by or on behalf of the  
33 defendant such as doctors, hospital expenses, medicines, therapists, and  
34 counseling for diagnosis, evaluation, and treatment.  
35

36 (2) Cost of food and special clothing for an in-custody defendant.  
37

38 (3) Transportation: Nonroutine expenses, such as transporting an in-custody  
39 defendant from the ~~originating county~~ transferring court to the receiving  
40 ~~county~~ court. Routine transportation expenses if defendant is transported  
41 by usual means used for other receiving ~~county~~ court prisoners should not  
42 be reimbursable.  
43

1 (d) **[Reimbursable ordinary expenditures—defense expenses]** Reimbursable  
2 ordinary expenses related to providing defense for the defendant include:

3  
4 (1) Matters covered by Penal Code section 987.9 as determined by the  
5 transferring court in which the action originated or by a judge designated  
6 under that section.

7  
8 (2) Payment of other defense costs in accordance with policies of the ~~county~~  
9 court in which the action originated, unless good cause to the contrary is  
10 shown to the trial court.

11  
12 (3) Unless Penal Code section 987.9 applies, the ~~trial~~ receiving court ~~in the~~  
13 ~~receiving county~~ may, in its sound discretion, approve all trial-related  
14 expenses including:

15  
16 (i)(A) Attorney fees for defense counsel and, if any, co-counsel, and  
17 actual travel-related expenses, up to state Board of Control limits,  
18 for staying in the ~~receiving~~ county of the receiving court during trial  
19 and hearings.

20  
21 (ii)(B) Paralegal and extraordinary secretarial or office expenditures  
22 of defense counsel.

23  
24 (iii)(C) Expert witness costs and expenses.

25  
26 (iv)(D) The cost of experts assisting in preparation before trial or  
27 during trial, for example, persons preparing demonstrative evidence.

28  
29 (v)(E) Investigator expenses.

30  
31 (vi)(F) Defense witness expenses, including reasonable-and-  
32 necessary witness fees and travel expenses.

33  
34 (e) **[Extraordinary but reasonable-and-necessary expenses]** Except in  
35 emergencies or unless it is impracticable to do so, a receiving ~~county~~ court  
36 should give notice before incurring any extraordinary expenditures to the  
37 ~~county in which the action originated~~ transferring court, in accordance with  
38 Penal Code section 1037(d). Extraordinary but reasonable-and-necessary  
39 expenditures include:

40  
41 (1) Security-related expenditures: The cost of extra security precautions taken  
42 because of the risk of escape or suicide or threats of, or the potential for,  
43 violence during the trial. These precautions might include, for example,

1 extra bailiffs or correctional officers, special transportation to the  
2 courthouse for trial, television monitoring, and security checks of those  
3 entering the courtroom.  
4

5 (2) Facility remodeling or modification: Alterations to buildings or  
6 courtrooms to accommodate the change of venue case.  
7

8 (3) Renting or leasing of space or equipment: Renting or leasing of space for  
9 courtrooms, offices, and other facilities, or equipment to accommodate  
10 the change of venue case.  
11

12 (f) **[Nonreimbursable expenses]** Nonreimbursable expenses include:  
13

14 (1) Normal operating expenses including the overhead of the receiving  
15 ~~county~~ court, for example:  
16

17 (i)(A) Salary and benefits of existing ~~county~~ or court staff ~~which~~  
18 that would have been paid even if there were no change of venue  
19 case.  
20

21 (i)(B) The cost of operating the jail, for example, detention staff  
22 costs, normal inmate clothing, utility costs, overhead costs, and jail  
23 construction costs. These expenditures would have been incurred  
24 whether or not the case was transferred to the receiving ~~county~~  
25 court. It is, therefore, inappropriate to seek reimbursement from the  
26 ~~county in which the action originated~~ transferring court.  
27

28 (2) Equipment ~~which~~ that is purchased and then kept by the receiving ~~county~~  
29 court and ~~which~~ that can be used for other purposes or cases.  
30

31 (g) **[Miscellaneous]**  
32

33 (1) Documentation of costs: No expense should be submitted for  
34 reimbursement without supporting documentation, such as a claim,  
35 invoice, bill, statement, or time sheet. In unusual circumstances, a  
36 declaration under penalty of perjury may be necessary. The declaration  
37 should describe the cost and state it was incurred because of the change of  
38 venue case. Any required court order or approval of costs also should be  
39 sent to the ~~originating~~ transferring court.  
40

41 (2) Timing of reimbursement: Unless both ~~counties~~ courts agree to other  
42 terms, reimbursement of all expenses ~~which~~ that are not questioned by the  
43 ~~originating county~~ transferring court should be made within 60 days of

1 receipt of the claim for reimbursement. Payment of disputed amounts  
2 should be made within 60 days of the resolution of the dispute.

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Criminal Cases: Change of Venue Preceding

(amend rules 4.150-4.154 and rule 4.162; repeal rules 4.160 and 4.161 of the Cal. Rules of Court)

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
1.	Ms. Mary Cornat Criminal Division Project Manager Superior Court of California, County of Solano	A			
2.	Hon. James C. Emerson Judge Superior Court of California, County of Santa Clara San Jose	A	N	None	
3.	Mr. Stephen V. Love Executive Officer Superior Court of California, County of San Diego San Diego	A	N	None	
4.	Hon. Kenneth W. Riley Supervising Judge Superior Court of California, County of Ventura Ventura	A	N	None	
5.	Superior Court of California, County of Los Angeles Los Angeles	AM	Y	On rule 4.150(b), add: <u>(4) Review by the Court of Appeal, either by an original proceeding or by appeal, must be filed in the appellate district in which the transferring court is located.</u>  On rule 4.151(b), add: <u>If there is a reasonable likelihood that a fair and impartial trial cannot be had in the county, a</u>	Agree in part. Text in subdivision (c). Moving this to (b)(4) would make this provision discretionary. Should be retained in (c) so it is mandatory.  Disagree. The advisory committee comment referenced was discussed by the committee and all agreed the

SPR05-25

Criminal Cases: Change of Venue Preceding

(amend rules 4.150-4.154 and rule 4.162; repeal rules 4.160 and 4.161 of the Cal. Rules of Court)

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				<p><u>change of venue should be ordered.</u> [From 4.160(a) and the last sentence of the advisory committee comment.]</p> <p>On rule 4.153, delete (b) and add (d):  <u>(d) Enter the order for change of venue in the minutes of the transferring court. The order must include the determinations under (a).</u></p>	<p>comment need not be retained as it was confusing and restated existing caselaw.</p> <p>Disagree. Suggested text is already in rule 4.153(c), so it need not be added. Subdivision (b), which requires a certified copy of the order for change of venue and “any pleadings, documents, or other papers or exhibits necessary for trying the case,” is necessary to facilitate the change of venue.</p>
6.	Mr. Dean Zipser President Orange County Bar Association Irvine	A	Y		