

NOVEMBER 19, 2020

Good afternoon,

This communication notices that the Superior Court of California, County of Alameda (Court) is initiating a new 45-day public comment period for the following local rule proposals:

- Local Rule 1.10 – Composition of jury panels (amendment),
- Local Rule 1.12 – Juror questionnaires (new rule), and
- Local Rule 1.90 – Remote proceedings (new rule).

These proposals, along with proposed new Local Rule 5.509 concerning remote juvenile proceedings, which has since been withdrawn in light of Local Rule 1.90, were originally put out for the 45-day public comment period required under rule 10.613(g)(1) of the California Rules of Court, starting in August and September 2020. The Court posted the text of the proposals on the Court's website. The Court also included the electronic link to the Invitation to Comment on the Court's "[Pending Rules](#)" page in the email notices that the Court circulated at the start of each notice period.

Subsequently, however, it came to the Court's attention that the hyperlinks to the proposed text on the Court's website may not have been functioning properly through the entirety of the comment periods. Accordingly, and to ensure that those interested have ample opportunity to comment, the Court is implementing a new 45-day public comment period, beginning today, November 19, 2020. The public comment period will end at the close of business on January 4, 2021. PDF documents setting forth the text of the proposed rules are attached to this email and are available on the Court's [Public Notices](#) and [Invitation to Comment](#) web pages. Hard copies of the proposals may also be requested by email at pcomments@alameda.courts.ca.gov or by phone at 510-891-6012.

Despite the technological issue that made the text of the rules briefly inaccessible, the Court received a number of comments during the fall comment period. Here, the Court responds to some of the comments in order to clarify some apparent misconceptions and explain the intent behind the proposals.

Proposed amendment to Local Rule 1.10, Jury Panels

The proposed amendment builds on the June 5, 2020, emergency amendment to Local Rule 1.10, not the prior 2011 version.

The majority of comments concerning this proposal relate to the 2011 version of Local Rule 1.10, viewable within the [omnibus PDF of Title 1](#) of the Local Rules, rather than the current version of Local Rule 1.10, as amended on June 5, 2020. We apologize if the technical issues referenced above led to this misunderstanding. The current proposed amendment, which is a non-emergency amendment, is intended to codify the emergency amendment adopted on June 5.

The proposed amendment does not significantly change pre-pandemic summons practices.

Some comments suggest an inaccurate perception that this rule amendment proposes a significant operational change. It does not. Instead, it is an effort to render the Court's outdated local rules

consistent with current law—specifically Code of Civil Procedure section 198.5, as discussed further below—and eliminate the disparate practices that may result in inconsistent jury summons.

The below chart sets forth the jury summons practice in Alameda County prior to the June 5, 2020, emergency amendment to Local Rule 1.10.

COURTHOUSE	CASE TYPE	JURY SUMMONS
County Administration Building (Admin)	Unlimited Civil	Countywide
Admin	Limited Civil	Countywide
Hayward Hall of Justice (HHJ)	Unlimited Civil	Countywide
HHJ	Limited Civil	Countywide
Rene C. Davidson (RCD)	Felony Criminal	Countywide
RCD	Misdemeanor Criminal	Countywide
East County Hall of Justice (ECHOJ)	Felony Criminal	Countywide
ECHOJ	Misdemeanor Criminal	Countywide
Fremont Hall of Justice (FHJ)	Misdemeanor Criminal	Regional
Wiley W. Manuel Courthouse (WWM)	Misdemeanor Criminal	Regional

Thus, the June 5 emergency amendment to Local Rule 1.10 impacted the jury summons system for only two courthouses and case types: misdemeanor criminal jury trials heard at WWM and FHJ. All jury trials for all other court locations, regardless of case type or level of offense, previously summonsed—and continue to summons—countywide jury panels.

The proposed amendment addresses representative inequities.

In Alameda County, the District Attorney’s Office generally files criminal cases in the courthouse closest to the arrest location; the residence of the charged defendant is not a factor. Those requesting a jury trial are then assigned to trial departments based on courtroom availability. While efforts are made to keep jury trials in the originating courthouse, case transfer was not uncommon before the coronavirus, and, amidst the pandemic, it is regularly necessary.

This practice, when considered in the context of pre-amendment jury summons, sometimes results in concerning dynamics. For example:

- A south county misdemeanor defendant is tried in ECHOJ before a countywide panel but would be tried in FHJ before a regional panel.
- A north county misdemeanor defendant is tried in RCD before a countywide panel but would be tried in WWM before a regional panel.
- A Fremont resident, charged with a criminal misdemeanor alleged to have occurred in Hayward would likely be tried in WWM, where other Fremont residents would be precluded from sitting on the panel.
- An Oakland resident, charged with a criminal misdemeanor alleged to have occurred in Union City would likely be tried in FHJ, where other Oakland residents would be precluded from sitting on the panel.

Recognizing that misdemeanor criminal defendants in Alameda County are tried throughout Alameda County, regardless of their city of residence, the proposed rule remedies these potential inequities by guaranteeing that no local rule is prohibiting representation from their communities on their juries.

The proposed amendment conforms Local Rule 1.10 to the Code of Civil Procedure.

Code of Civil Procedure section 197 requires that all persons selected for jury service “shall be selected at random, from a source or sources inclusive of a representative cross section of the population of the area served by the court.” Code of Civil Procedure section 198.5 presumes countywide jury panels will be used for all case types and court locations but allows for local rules implementing regional subpanels only if the superior court holds sessions outside the County Seat (Oakland), and the local rule would divide the county “in a manner that provides all qualified persons in the county an equal opportunity to be considered for jury service.”

The proposed amendment to Local Rule 1.10 ensures compliance with these statutes. By contrast, the 2011 version of Local Rule 1.10 that was in place prior to the June 5, 2020, emergency amendment divides the county into “subpanels” that no longer exist and are inconsistent with the Code of Civil Procedure.

To the extent comments propose the Court create a new regional subpanel system for the only two courthouses that, pre-pandemic, hosted misdemeanor jury trials, such a rule would not “divide the county in a manner that provides all qualified persons in the county *an equal opportunity to be considered for jury service.*” (Emphasis added.) Instead it would formalize a subpanel system that would target certain regional county residents for a different summons frequency for a specific case type than residents of the remainder of the county. Such a system would be inconsistent with the law.

The proposed amendment simply codifies the existing emergency amendment to the rule.

The coronavirus pandemic has necessitated operational changes in every aspect of the Court system. The Court enacted the June 5, 2020, emergency amendment to Local Rule 1.10, after consultation with the Court’s justice partners, including the Alameda County Bar Association, Alameda County Public Defender’s Office, and Alameda County District Attorney’s Office, in order to ensure compliance with the Code of Civil Procedure and to reflect the reality that countywide jurors were already being summonsed to RCD and ECHOJ. For the last 5-plus months, this system has worked well. It is consistent with the Code of Civil Procedure, guarantees equal and random participation, and has resulted in a higher and more representative group of Alameda County residents appearing for jury service (particularly since many of these trials permit jurors to participate remotely). The proposed non-emergency amendment to Local Rule 1.10 is offered to codify and clarify the current status quo, even though a straight repeal of the outdated 2011 Local Rule 1.10 would be an equally legally appropriate alternative.

Proposed new Local Rule 1.12, Juror questionnaires

On June 5, 2020, the Court adopted [emergency Local Rule 1.10a](#), later amended on August 14, 2020. Rule 1.10a was adopted in conjunction with the Court’s resumption of jury trials, which had been suspended between March and June 2020 due to the coronavirus pandemic. The rule was one of a number of steps taken by the Court to promote the health and safety of prospective jurors and Court personnel. Specifically, by creating an on-line opportunity for prospective jurors to remotely complete

juror questionnaires and hardship requests in advance, emergency Local Rule 1.10a was an effort to reduce the number of jurors called to each courthouse and to shorten their assembly time within each courthouse.

Emergency Local Rule 1.10a has been effective and well-received across case types, particularly since the Court's recent launch of even more accessible and user-friendly web-based forms. The proposed new non-emergency Local Rule 1.12 would simply codify the text of emergency Local Rule 1.10a, as amended on August 14, 2020, to enable the Court to continue to operate as efficiently as possible, even after the pandemic has ended.

Proposed new Local Rule 1.90, Remote proceedings

As noted above, and as chronicled in the numerous [Press Releases](#) the Court has issued since the onset of the pandemic, COVID-19 has forced the Court to find new ways to conduct essential court functions in order to both protect the public's access to justice and also promote public health and safety. Key among these new initiatives has been the move to remote proceedings wherever possible.

Recent legislation authorizing remote appearances in a number of non-emergency contexts demonstrates it is the will of the people and the Legislature to continue to enable remote court operations where appropriate, even after the pandemic. Public comments by court partners and litigants support the same. Proposed Local Rule 1.90 demonstrates the Court's intent to continue to conduct remote proceedings where appropriate even after the coronavirus pandemic has been contained.

However, these remote appearances would only be authorized where consistent with current law. In other words, if the law requires an in-person proceeding, proposed Local Rule 1.90 would not override that law by allowing that proceeding to be conducted remotely.

Similarly, the proposed rule attempts to mirror the handling of in-person proceedings by clarifying that remote proceedings may not be recorded or transmitted without the advanced written permission of the judicial officer, and by allowing for sanctions for related violations. As was the practice both before the pandemic and today, members of the media may continue to request remote video access and recording permission by filing the appropriate [Judicial Council forms](#) with the Court. Similarly, those with disabilities that may require accommodations unique to remote hearings may request such accommodations through the Americans with Disabilities Act (ADA) as detailed on the Court's [ADA Accommodations page](#).