



**San Luis Obispo County  
Superior Court  
Criminal Filing Procedures Manual**

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Approved By:

A handwritten signature in black ink, appearing to read "Gary H. ...", written over a horizontal line.

Presiding Judge

A handwritten date "7-10-12" written in black ink over a horizontal line.

Date

## I. Misdemeanor Filings

Penal Code Section 740: Except as otherwise provided by law, all misdemeanors and infractions must be prosecuted by written complaint, under oath subscribed by the complainant. Such complaint may be verified on information and belief.

Penal Code Section 853.6 provides limited exceptions to the requirement for a formal Complaint. The prosecuting attorney is permitted to initiate prosecution of a misdemeanor by filing a Notice to Appear (TR120 or TR130). If it is not prepared on an approved council form, the San Luis Obispo Superior Court will conclude it does not constitute a complaint to which a defendant may enter a plea. If a defendant pleads other than "guilty" or "nolo contendere" and the Notice to Appear is defective, it will be necessary to re-file the charges by a formal Complaint.

## II. Law Enforcement Filings

The following charges are authorized by the District Attorney to be filed by a Notice to Appear without further approval of the District Attorney: [list]

California Rules of Court:

Rule 4.103(b): A Notice to Appear issued for a non-traffic infraction or misdemeanor offense that is prepared on TR120 or TR130 and that complies with the requirements in the current version of the Judicial Council Instructions (TR-INST) may be filed with the court and served as a Complaint as provided in Penal Code Section 853.9. TR-INST is available at <http://www.courts.ca.gov/documents/trinst.pdf>.

Rule 4.103(c): Corrections to TR106, TR108, TR115, TR120 or TR130 must be made on Notice of Correction and Proof of Service (TR-100).

## III. Time of Filing of Notices to Appear and Complaints for In-Custody Arraignments

- A. In-Custody arraignments will be held daily at 8:30 a.m. in the designated alpha court. Notices to Appear and/or Complaints must be filed in the Clerk's office by 4:00 p.m. of the preceding day for an 8:30 a.m. arraignment.
- B. The court will in unusual circumstances, with prior notice to the "duty" court, conduct an afternoon in-custody arraignment.

## IV. Procedure for Law Enforcement to File Notice to Appear

- A. Law enforcement, consistent with the rules above, may file a duplicate Notice to Appear with the Court if the offense charged is an infraction. [853.6(e)(1)]
- B. If the Notice to Appear is for an offense charging a misdemeanor that is listed in Section II above as authorized by the District Attorney of San Luis Obispo County, then the officer may file the duplicate with the Court [PC 853.6(e)(2)]. The Notice to Appear shall constitute a complaint. [PC 853.9].

1. Any filing of a Notice to Appear pursuant to this section may include any police report, CLETS or DMV that the agency deems appropriate. The DMV printout may be used by the clerk of the court for the sole purpose of clarifying handwriting.
  2. Two additional copies of the Notice to Appear and any other supporting documents to the Notice to Appear shall be lodged with the Court, marked one for the defendant and one for the District Attorney.
  3. The clerk of the court will place the District Attorney's copy in a pick-up drop box from which the District Attorney will retrieve documents daily.
- C. The prosecuting attorney may, within his or her discretion, initiate prosecution by filing the Notice to Appear or by a formal Complaint within 25 days from the time of the arrest. Failure by the prosecution to file the Notice or formal Complaint within 25 days of the time of arrest shall not bar further prosecution of the misdemeanor. However, any further prosecution shall be preceded by a new and separate citation or an arrest warrant. [PC 853.6(e)(3)]
1. Any filing by the District Attorney of a Notice to Appear pursuant to 853.6(e)(3) may include any police report, CLETS or DMV that the District Attorney deems appropriate.
  2. An additional copy of all submitted documents shall be lodged with the court for each defendant. The District Attorney will maintain their own copy.

**V. REQUIREMENTS FOR FILING FORMAL COMPLAINTS BY THE DISTRICT ATTORNEY/CITY ATTORNEY/ATTORNEY GENERAL**

Formal complaints must comply with the following requirements:

**A. Filing Division for Formal Complaints**

The countywide bail schedule contains a column next to each charge which indicates the proper filing division: C = Criminal Division; T = Traffic Division. If at least one charge must be filed in the Criminal Division, the entire case will be processed in the Criminal Division.

**B. Size of Formal Complaint**

The size of every criminal complaint shall be 8-1/2" by 11" (Refer to CRC 2.103 and Local Rule 201).

C. Hole Punching

All forms presented for filing must be firmly bound at the top and must contain two pre-punched normal-sized holes, centered 2 ½ inches apart and 5/8 inch from the top of the form.

D. Form of Formal Complaint

All complaints filed with the court must conform to CRC2.103 and/or the San Luis Obispo Local Rules of Court. (Refer to Appendix A).

Items required to be shown on the face of the complaint are:

- Court
- Branch of the Court
- Defendant's full name and alias. The full name must match exactly to the booking sheet and/or DMV CLETS driving printout.
- Defendant's date of birth
- Agency's name
- Agency case number
- Pleading language

E. Pleading the Formal Complaint

1. Time of Offense and Required Signatures

Each charge must set forth the date of the offense and contain the original signature of the deputy district attorney, deputy city attorney or deputy attorney general.

2. Each Charge Separately Stated

Each count within a complaint must state a single charge, although it may charge more than one defendant.

3. Numbering of Counts

Each count in a complaint must be consecutively numbered, i.e., Count 1, Count 2, etc. The count number should be centered on the page and immediately precede the text to which it applies. (Refer to Appendix A).

4. Pleading Prior Conviction

Each prior must be pled after each charged Count to which it refers and shall also be numbered consecutively, i.e. Prior 1, Prior 2, etc. The prior number shall be centered on the page and immediately precede the following:

- The violation date
- The conviction date
- The charge
- The case number
- The DMV court code (five digit number assigned by DMV to each CA Court)
- The name of the court of conviction

5. Pleading Enhancements

Each enhancement shall be pled after each charged Count to which it refers and shall be numbered consecutively, i.e. Enhancement 1, Enhancement 2, etc. and shall be centered on the page and immediately precede the text to which it applies.

F. Charging Multiple Defendants

Multiple defendants may be charged on one complaint. Each defendant's name, alias, and date of birth must be listed on the face of the complaint.

G. Documents Required with Formal Complaints

1. Original Complaint and one (1) copy clearly marked for each defendant.
2. Notification to Appear Letter or Signed Notice to Appear.
3. The District Attorney may file other supporting documents such as police reports.

H. Amending the Formal Complaint

Amended complaints issued prior to the arraignment will be filed with the Court in the Clerk's office. (Refer to Appendix B for example.)

After the defendant has been arraigned, the Prosecuting Attorney must seek leave of court to amend.