

1. Provide Private Meeting Room for Defense

TO THE COURT, PLEASE TAKE NOTICE that Defendant moves the Court for an order that the bailiff, sheriff, court staff, or other appropriate personnel as determined by the Court make available a private meeting room for Defendant and members of the defense team.

This motion is made on the grounds that such a ruling is necessary to ensure access to counsel.

Date:

Attorney for Defendant

POINTS, AUTHORITIES, AND ARGUMENT

By this motion, Defendant requests a private room at the courthouse during breaks in the proceeding, an hour before court, during lunch, and a half hour after close of proceedings.

“The right to counsel is guaranteed to a defendant in a criminal case by both the Sixth Amendment to the United States Constitution and article I, section 15 of the California Constitution. This right is a “fundamental constitutional right, which has been carefully guarded by the courts of this state.” [citations] “Meaningfully applied, the right to counsel includes the opportunity to receive ‘effective aid [of counsel] in the preparation and trial of the case.’” [Citations]” (*Barber v. Municipal Court* (1979) 24 Cal. 3rd 742, 750)

“[I]f an accused is to derive the full benefits of his right to counsel, he must have the assurance of confidentiality and privacy of communication with his attorney... The right to counsel, which embodies the right to private consultation with counsel, is violated when a state agent is present at confidential attorney-client conferences.” (id. at 751)

ABA Criminal Justice Standards for the Defense Function, 4th (2015), Standard 4-3.1(e) prescribes that “Defense counsel should ensure that space is available and adequate for confidential client consultations” and Standard 4-2.2(c) notes that “All detention or imprisonment institutions should provide adequate facilities for private, unmonitored meetings between defense counsel and an accused. Private facilities should also be provided for the review of evidence and discovery materials by counsel together with their detained clients.”

For an attorney/client communication to be deemed confidential, the parties “to the conversation [must have] had an objectively reasonable expectation that the conversation was not being overheard or recorded.” (*Kight v. CashCall, Inc.* (2011) 200 Cal. App. 4th 1377, 1396)

Communications between defendant and counsel that are overheard by known or suspected eavesdroppers are not privileged since they were made in the presence of a third person. “The attorney-client privilege does not prevent a third person openly present at and who overhears a conversation between attorney and client from testifying” (*People v. Castiel* (1957) 153 Cal. App. 2nd 653, 659). Conversations between a defendant and counsel when off the record may be admissible if adequate steps are not taken to protect the conversations from eavesdroppers (*People v. Urbano* (2005) 128 Cal. App. 4th 396). “No privilege of confidential communication attaches to a statement which is made in the presence of a third person who is ostensibly present” (*People v. Cox* (1968) 263 Cal. App.

2nd 176, 188).

Unless the Court grants the relief requested, Defendant and the members of his defense team cannot have “an objectively reasonable expectation that [their] conversation [is] not being overheard or recorded...” (*Kight, supra*)