

Mr. MC  
1234 Mother Copper Dr.,  
Copper, CA 91234  
Tel: (123) 123-1234  
Defendant in Pro Per

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA  
PALO ALTO BRANCH

THE PEOPLE OF THE STATE	)	
OF CALIFORNIA,	)	Case No. 1-12-TR-123456
	)	
Plaintiff,	)	<b>NOTICE OF MOTION FOR</b>
	)	
Vs.	)	<b>CHANGE OF VENUE TO</b>
	)	
Mr. MC	)	<b>COUNTY SEAT; DECLARATIONS;</b>
	)	
Defendant	)	<b>POINTS AND AUTHORITIES</b>
_____	)	

TO: PLAINTIFF., THE PEOPLE OF THE STATE OF CALIFORNIA, AND TO THE DISTRICT ATTORNEY FOR THE WITHIN-NAMED COUNTY:

PLEASE TAKE NOTICE that on the date set for arraignment herein, April 12, 2009 at 10:00 a.m. in Department 12 of the above-entitled Court at 720 Grant Avenue, Palo Alto, California, Defendant will move the Court for an order transferring the place of trial in this action to the Court at the Santa Clara Branch, California.

This motion is made on the ground that Defendant, upon having been arrested for the offense charged, requested that the court at which he directed to appear be specified as the court at the county seat, and that pursuant to Section 40502(b) of the Vehicle Code, the said court is therefore the proper court for trial of this action.

This motion is based on the pleadings, records, and files in the action, the accompanying Declaration and Points and Authorities, and on oral and documentary evidence to be presented at the hearing on the motion.

DATED:

\_\_\_\_\_  
Mr. MC  
Defendant in Pro Per

## DECLARATION

I, **Mr. MC**, declare:

1. I am the Defendant in the above-entitled action.
2. On May 1, 2007, I was driving my vehicle towards the northbound direction on Lawrence Expressway in Sunnyvale, CA, when I was stopped by Officer Copper of the San Jose California Highway Patrol. Officer Copper got out of the vehicle and indicated the intention to cite me for a Vehicle Code violation. I immediately told Officer Copper that I desired to have the court at which I would be directed to appear be the one at the county seat, pursuant to Section 40502(b) of the Vehicle Code. Officer Copper told me she did not understand what "County Seat" is.
3. The county seat at **Santa Clara**, California is closer, and more accessible than to this court at **270 Grant Avenue, Palo Alto, California**.
4. **Officer Copper** then prepared a traffic citation or Notice to Appear in which the court at which I was directed to appear was, contrary to my requests, the **Palo Alto** court. I was then handed the citation book so that I could sign the citation and promise to appear.
5. I then signed my name on the citation, promising to appear as directed, and wrote the words: "COUNTY SEAT PLEASE!"  
I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED:

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**Mr. MC**  
Defendant in Pro Per

## POINTS AND AUTHORITIES

### ARGUMENT

- I. WHEN A NOTICE TO APPEAR IS ISSUED BY A PEACE OFFICER FOR VIOLATION OF THE VEHICLE CODE, THE OFFICER MUST SPECIFY THE PLACE FOR APPEARANCE AS THE COURT AT THE COUNTY SEAT, IF SO DEMANDED BY THE PERSON CITED.

When a peace officer cites a person for violation of Vehicle Code and issues a Notice to Appear, the place for appearance is governed by Section 40502 of that Code, which states in pertinent part:

Section 40502. [Place to Appear] The place specified in the Notice to Appear shall be...:

(b) Upon demand of the person arrested, before a municipal court judge or other magistrate having jurisdiction of the offense at the county seat of the county in which the offense is alleged to have been committed...[Emphasis added]

Subdivisions (a) and (c) of Section 40502 respectively name the “nearest or most accessible” magistrate or a “person authorized to receive a deposit of bail” as other places that may be specified as the place to appear. With respect to these two choices, the decision lies within the arresting officer’s discretion. Subdivision (b), however, requires the place to appear to be the county seat whenever 1) the arrested person’s residence or business address is closer to the county seat than to the nearest municipal or justice court, and 2) the arrested person demands that the place to appear be the county seat. In *Smith v. Municipal Court* (1959) 167 Cal.App.2d 534, 538, the similar wording of former Section 739(c) of the Vehicle Code was construed to require that “[i]f a demand therefore is made by the arrestee, the officer must specify as the place of appearance a municipal court within the judicial district...” [Emphasis added]

Whichever court is so demanded is the proper court for trial. Here, defendant requested that the court at the county seat be the place, but the citing officer did not comply.

II. WHEN THE ARRESTING OFFICER HAS REFUSED TO COMPLY WITH A DEMAND FOR APPEARANCE AT THE COUNTY SEAT COURT, THE ACTION MUST BE TRANSFERRED THERE FROM THE NON-COUNTY SEAT COURT WHEN SUCH TRANSFER IS REQUESTED AT ARRAIGNMENT.

Section 1462.2 of the Penal Code states that “Except as provided by the Vehicle Code,” the proper court for the trial of a misdemeanor is in the judicial district in which the offense is alleged to have occurred. The fact that this section specifically refers to the Vehicle Code shows that the Legislature contemplated provision of Vehicle Code Section 40502 as determining trial venue for Vehicle Code offenses where a Notice to Appear is issued. Section 1462.2 states that when the action is commenced in a court other than the proper for trial, it may nevertheless be tried there, “unless the defendant, at the time he pleads, requests an order transferring the action or proceeding to the proper court.” It continues, “If after such request it appears that the action or proceeding was not commenced in the proper court, the court shall order the action or proceeding transferred to the proper court.” The proper time for making the motion is therefore immediately following a not-guilty plea at arraignment. In *Smith*, the court stated that the respondent court “was without discretion to deny the motion to transfer...” [167 Cal.App.2d at 541]

The court at the “county seat” is a court located within the city limit of the city in which the seat of government of the county is located, Government Code Section 23600. See also *People v. Beltran* (1981) 124 Cal.App. 3d 335. In this county, that is **Santa Clara**.

DATED:

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**Mr. MC**

Defendant in Pro Per