

GENERAL OFFICE MEMORANDUM 20-064

TO: ALL DEPUTY DISTRICT ATTORNEYS

FROM:  JOSEPH P. ESPOSITO
Chief Deputy District Attorney

SUBJECT: COURT OF APPEAL DECISION REGARDING EMERGENCY RULE
4 – COURT RETAINS DISCRETION TO DEPART FROM ZERO BAIL

DATE: APRIL 30, 2020

On April 6, 2020, the Judicial Council adopted Emergency Rule 4 which set forth an Emergency Bail Schedule requiring zero bail for offenses unless an exception applied. GOM 20-060 set forth the Office's position that the rule suspended the courts authority to deviate from zero bail unless an express exception applied.

Yesterday, the Court of Appeal published the case *Ayala v. Superior Court* (Apr. 29, 2020, D077460) ___ Cal.App.5th___ <<https://www.courts.ca.gov/opinions/documents/D077460.PDF>> which holds that a “superior court retains the ability to depart from the scheduled zero bail amount or impose bail conditions under appropriate circumstances in an individual case.” This case is immediately citable and its finality has been expedited from 30 days to five days from yesterday's date.

It is Office policy that requests for departure from zero bail are *only* to be made with Head Deputy or Assistant Head Deputy approval and when it can be demonstrated, based on articulable facts, that the defendant's history of violence or danger of future violence jeopardizes public safety. Departures from \$0 bail shall *not* be made solely to assure a defendant's appearance unless it is likely that the defendant will flee the jurisdiction and no condition(s) of bail can assure his/her appearance.

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