

JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS
455 Golden Gate Avenue
San Francisco, California 94102-3688

Report

TO: Members of the Judicial Council

FROM: Administrative Office of the Courts
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DATE: November 1, 2005

SUBJECT: Miscellaneous Technical Changes to Rules of Court and Judicial Council Forms (amend Cal. Rules of Court, rules 4.300, 4.406, 4.411, 4.435, 4.453, 4.480, and 1522; revise form CR-120) (Action Required)

Issue Statement

Advisory committee members, court personnel, members of the public, and Administrative Office of the Courts staff have identified errors in rules and on a form resulting from recent name changes in the state correctional system as well as from earlier rule amendments, renumbering, and inadvertent omissions.

Recommendation

The Administrative Office of the Courts staff recommends that the Judicial Council, effective January 1, 2006:

1. Amend rules 4.406, 4.411, 4.435, and 4.480 and advisory committee comments to rules 4.300 and 4.453 to reflect name changes in the state correctional system;
2. Amend rule 1522 to specify that papers in opposition to a coordination petition are to be submitted and served on each party at least nine calendar days before the hearing; and
3. Revise *Notice of Appeal—Felony (Defendant) (Criminal)* (form CR-120) to properly cite rule 30.

The text of amended rules of court is attached at pages 3–6. Judicial Council form CR-120 is attached at pages 7–8.

Rationale for Recommendation

Rules 4.406, 4.411, 4.435, and 4.480 and the advisory committee comments to rules 4.300 and 4.453¹ should be amended to accurately represent the newly formed California Department of Corrections and Rehabilitation and its divisions. The rules would be amended to replace the “Department of Corrections” with “Department of Corrections and Rehabilitation, Division of Adult Operations”; the “California Youth Authority” with “Department of Corrections and Rehabilitation, Division of Juvenile Justice”; and the “Board of Prison Terms” with “Board of Parole Hearings.” Additionally, references to the “Director of Corrections” should be amended to reflect the new title of “Secretary of the Department of Corrections and Rehabilitation.” These technical changes are necessary to maintain consistency and accuracy with the California statutes.

Rule 1522, which requires a party to give notice of the time for filing and service of a response in opposition to a petition for coordination, should be amended to specify that the time is 9, rather than 10, calendar days before the hearing, as that is the required time under rule 1525.

Lastly, the appellate rules underwent a major revision and reorganization process to simplify the wording of the rules and to restructure them to clarify their meaning and facilitate their use. The renumbering of rule 31 was part of the third installment that took effect January 1, 2004. When rule 31 was renumbered as rule 30, part of the rule was eliminated and therefore no longer exists. On the *Notice to Appeal–Felony (Defendant) (Criminal)* (form CR-120), item 2.c.(1) was not correctly amended last year, and this would correct the citation.

Alternative Actions Considered

No alternatives exist other than continuing to use incorrect or incomplete rules and forms.

Comments From Interested Parties

This proposal did not circulate for comment because the amendments are technical and noncontroversial.

Implementation Requirements and Costs

Courts will incur costs in reproducing the form.

Attachments

¹ The text to rules 4.300 and 4.453 was amended by the council to reflect these changes on November 4, 2005, in response to a proposal by the Family and Juvenile Law Advisory Committee.

Rules 4.300, 4.406, 4.411, 4.435, 4.453, 4.480, and 1522 of the California Rules of Court are amended, effective January 1, 2006, to read:

1 **Rule 4.300. Commitments to nonpenal institutions**

2
3 ***

4
5 **Advisory Committee Comment (2005)**

6 ~~Youth Authority~~ Department of Corrections and Rehabilitation, Division of Juvenile Justice
7 (formerly Youth Authority) commitments cannot exceed the maximum possible incarceration in an adult
8 institution for the same crime. *People v. Olivas* (1976) 17 Cal.3d 236.

9
10 Under the indeterminate sentencing law, the receiving institution knew, as a matter of law from
11 the record of the conviction, the maximum potential period of imprisonment for the crime of which the
12 defendant was convicted.

13
14 Under the Uniform Determinate Sentencing Act, the court's discretion as to length of term leaves
15 doubt as to the maximum term when only the record of convictions is present.

16
17 **Rule 4.406. Reasons**

18
19 (a) ***

20
21 (b) **[When reasons required]** Sentence choices that generally require a statement
22 of a reason include:

23
24 (1) Granting probation.

25
26 (2) Imposing a prison sentence and thereby denying probation.

27
28 (3) Declining to commit to the ~~Youth Authority~~ Department of Corrections
29 and Rehabilitation, Division of Juvenile Justice an eligible juvenile found
30 amenable for treatment.

31
32 (4) Selecting a term other than the middle statutory term for either an offense
33 or an enhancement.

34
35 (5) Imposing consecutive sentences.

36
37 (6) Imposing full consecutive sentences under section 667.6(c) rather than
38 consecutive terms under section 1170.1(a), when the court has that
39 choice.
40

- 1 (7) Striking the punishment for an enhancement.
2
3 (8) Waiving a restitution fine.
4
5 (9) Not committing an eligible defendant to the California Rehabilitation
6 Center.
7
8 (10) Striking an enhancement or prior conviction allegation under section
9 1385(a).

10
11 **Rule 4.411. Presentence investigations and reports**

12
13 (a)–(c) ***

14
15 (d) **[Purpose of presentence investigation report]** Probation officers' reports are
16 used by judges in determining the appropriate length of a prison sentence and
17 by the Department of Corrections and Rehabilitation, Division of Adult
18 Operations in deciding upon the type of facility and program in which to place
19 a defendant, and are also used in deciding whether probation is appropriate.
20 Section 1203c requires a probation officer's report on every person sentenced
21 to prison; ordering the report before sentencing in probation-ineligible cases
22 will help ensure a well-prepared report.
23

24 **Rule 4.435. Sentencing upon revocation of probation**

25
26 (a) ***

27
28 (b) Upon revocation and termination of probation pursuant to section 1203.2,
29 when the sentencing judge determines that the defendant shall be committed to
30 prison:

- 31
32 (1) If the imposition of sentence was previously suspended, the judge shall
33 impose judgment and sentence after considering any findings previously
34 made and hearing and determining the matters enumerated in rule
35 4.433(c).
36

37 The length of the sentence shall be based on circumstances existing at the
38 time probation was granted, and subsequent events may not be considered
39 in selecting the base term nor in deciding whether to strike the additional
40 punishment for enhancements charged and found.

- 41
42 (2) If the execution of sentence was previously suspended, the judge shall
43 order that the judgment previously pronounced be in full force and effect

1 and that the defendant be committed to the custody of the ~~Director of~~
2 Corrections Secretary of the Department of Corrections and
3 Rehabilitation for the term prescribed in that judgment.
4

5 **Rule 4.453. Commitments to nonpenal institutions**

6 ***
7

8 **Advisory Committee Comment (2005)**
9

10 ~~Youth Authority~~ Department of Corrections and Rehabilitation, Division of Juvenile Justice
11 (formerly Youth Authority) commitments cannot exceed the maximum possible incarceration in an adult
12 institution for the same crime. *People v. Olivas* (1976) 17 Cal.3d 236.
13

14 Under the indeterminate sentencing law, the receiving institution knew, as a matter of law from
15 the record of the conviction, the maximum potential period of imprisonment for the crime of which the
16 defendant was convicted.
17

18 Under the Uniform Determinate Sentencing Act, the court's discretion as to length of term leaves
19 doubt as to the maximum term when only the record of convictions is present.
20

21 **Rule 4.480. Judge's statement under section 1203.01**
22

23 A sentencing judge's statement of his or her views under section 1203.01 respecting
24 a person sentenced to the Department of Corrections and Rehabilitation, Division of
25 Adult Operations is required only in the event that no probation report is filed. Even
26 though it is not required, however, a statement should be submitted by the judge in
27 any case in which he or she believes that the correctional handling and the
28 determination of term and parole should be influenced by information not contained
29 in other court records.
30

31 The purpose of a section 1203.01 statement is to provide assistance to the
32 Department of Corrections and Rehabilitation, Division of Adult Operations in its
33 programming and institutional assignment and to the ~~Board of Prison Terms~~ Board
34 of Parole Hearings with reference to term fixing and parole release of persons
35 sentenced indeterminate, and parole waiver of persons sentenced determinately. It
36 may amplify any reasons for the sentence which may bear on a possible suggestion
37 by the ~~Director of Corrections~~ Secretary of the Department of Corrections and
38 Rehabilitation or the ~~Board of Prison Terms~~ Board of Parole Hearings that the
39 sentence and commitment be recalled and the defendant be resentenced. To be of
40 maximum assistance to these agencies, a judge's statements should contain
41 individualized comments concerning the convicted offender, any special
42 circumstances which led to a prison sentence rather than local incarceration, and any
43 other significant information which might not readily be available in any of the
44 accompanying official records and reports.

1
2 If a section 1203.01 statement is prepared, it should be submitted no later than two
3 weeks after sentencing so that it may be included in the official Department of
4 Corrections and Rehabilitation, Division of Adult Operations case summary which is
5 prepared during the time the offender is being processed at the Reception-Guidance
6 Center of the Department of Corrections and Rehabilitation, Division of Adult
7 Operations.
8

9 **Rule 1522. Notice of submission of petition for coordination**

- 10
11 (a) **[Contents of notice of submission]** In each included action, the petitioner
12 must file a “Notice of Submission of Petition for Coordination” and the
13 petition for coordination. Each notice must bear the title of the court in which
14 the notice is to be filed and the title and case number of each included action
15 that is pending in that court. Each notice must include:
16
17 (1) The date that the petition for coordination was submitted to the Chair of
18 the Judicial Council;
19
20 (2) The name and address of the petitioner’s attorney of record;
21
22 (3) The title and case number of each included action to which the petitioner
23 is a party and the title of the court in which each action is pending; and
24
25 (4) The statement that any written opposition to the petition must be
26 submitted and served at least ~~10~~ nine calendar days before the hearing
27 date.
28
29 (b) **[Copies of notice]** The petitioner must submit the notice and proof of filing in
30 each included action to the Chair of the Judicial Council within five calendar
31 days of submitting the petition for coordination.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): TELEPHONE NO.: _____ FAX NO.: _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY <p style="text-align: center;">Draft 2 11/16/05 Not Approved by the Judicial Council</p>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____	
PEOPLE OF THE STATE OF CALIFORNIA vs. DEFENDANT: Date of birth: _____ California Dept. of Corrections No. (if applicable): _____	
<p style="text-align: center;">NOTICE OF APPEAL—FELONY (DEFENDANT) (Pen. Code, §§ 1237,1538.5(m); Cal. Rules of Court, rule 30(b))</p>	CASE NUMBER(S): _____

NOTICE

- If your appeal challenges the validity of the plea you must complete the *Request for Certificate of Probable Cause* on the other side of this form. (Pen. Code, § 1237.5.)
- You must file this form in the superior court within 60 days after entry of judgment.

1. Defendant (*name*): _____
 appeals from the order or judgment entered on (*specify date of order, judgment, or sentence*): _____

2. This appeal follows:
- a. A jury or court trial. (Pen. Code, § 1237(a).)
 - b. A contested violation of probation. (Pen. Code, § 1237(b).)
 - c. A guilty (or no-contest) plea or an admitted probation violation (*check all boxes that apply*):
 - (1) This appeal is based on the sentence or other matters occurring after the plea. (Cal. Rules of Court, rule 30(b)(4)(B).)
 - (2) This appeal is based on the denial of a motion to suppress evidence under Penal Code section 1538.5.
 - (3) This appeal challenges the validity of the plea or admission. (*You must complete the Request for Certificate of Probable Cause on the other side of this form.*)
 - d. Other (*specify*): _____

3. I request that the court appoint an attorney on appeal. Defendant was was not represented by an appointed attorney in the superior court.

4. Defendant's address: same as in attorney box above.
 as follows: _____

Date: _____

 (TYPE OR PRINT NAME) ▶ _____
 (SIGNATURE OF DEFENDANT OR ATTORNEY)

PEOPLE OF THE STATE OF CALIFORNIA vs.

CASE NUMBER(S):

DEFENDANT:

REQUEST FOR CERTIFICATE OF PROBABLE CAUSE

I request a certificate of probable cause. The reasonable constitutional, jurisdictional or other grounds going to the legality of the guilty plea, no contest plea or probation violation admission proceeding are (*specify*):

Multiple horizontal lines for providing details of the request.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF DEFENDANT OR ATTORNEY)

COURT ORDER

This *Request for Certificate of Probable Cause* is (*check one*): granted denied.

Date:

JUDGE