

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on September 21, 2018, effective on April 25, 2019

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21		

1 Title 4. Criminal Rules

2
3 Division 2. Pretrial

4
5 Chapter 1. Pretrial Proceedings

6
7 **Rule 4.119. Additional requirements in pretrial proceedings in capital cases**

8
9 **(a) Application**

10
11 This rule applies only in pretrial proceedings in cases in which the death penalty
12 may be imposed.

13
14 **(b) Checklist**

15
16 Within 10 days of counsel's first appearance in court, primary counsel for each
17 defendant and the prosecution must each acknowledge that they have reviewed
18 Capital Case Attorney Pretrial Checklist (form CR-600) by signing and submitting
19 this form to the court. Counsel are encouraged to keep a copy of this checklist.

20
21 **(c) Lists of appearances, exhibits, and motions**

22
23 (1) Primary counsel for each defendant and the prosecution must each prepare
24 the lists identified in (A)–(C):

25
26 (A) A list of all appearances made by that party during the pretrial
27 proceedings. Capital Case Attorney List of Appearances (form
28 CR-601) must be used for this purpose. The list must include all
29 appearances, including ex parte appearances; the date of each
30 appearance; the department in which it was made; the name of counsel
31 making the appearance; and a brief description of the nature of the
32 appearance. A separate list of Penal Code section 987.9 appearances
33 must be maintained under seal for each defendant.

34
35 (B) A list of all exhibits offered by that party during the pretrial
36 proceedings. Capital Case Attorney List of Exhibits (form CR-602)
37 must be used for this purpose. The list must indicate whether the
38 exhibit was admitted in evidence, refused, lodged, or withdrawn.

39
40 (C) A list of all motions made by that party during the pretrial proceedings,
41 including ex parte motions. Capital Case Attorney List of Motions
42 (form CR-603) must be used for this purpose. The list must indicate if a
43 motion is awaiting resolution.

1
2 (2) In the event of any substitution of attorney during the pretrial proceedings,
3 the relieved attorney must provide the lists of all appearances, exhibits, and
4 motions to substituting counsel within five days of being relieved.

5
6 (3) No later than 21 days after the clerk notifies trial counsel that it must submit
7 the lists to the court, counsel must submit the lists to the court and serve on
8 all parties a copy of all the lists except the list of Penal Code section 987.9
9 appearances. Unless otherwise provided by local rule, the lists must be
10 submitted to the court in electronic form.

11
12 **(d) Electronic recordings presented or offered into evidence**

13
14 Counsel must comply with the requirements of rule 2.1040 regarding electronic
15 recordings presented or offered into evidence, including any such recordings that
16 are part of a digital or electronic presentation.

17
18 *Rule 4.119 adopted effective April 25, 2019.*

19
20 **Advisory Committee Comment**

21
22 **Subdivision (b).** *Capital Case Attorney Pretrial Checklist* (form CR-600) is designed to be a tool
23 to assist pretrial counsel in identifying and fulfilling all their record preparation responsibilities.
24 Counsel are therefore encouraged to keep a copy of this form and to use it to monitor their own
25 progress.

26
27 **Subdivision (c)(1).** To facilitate preparation of complete and accurate lists, counsel are
28 encouraged to add items to the lists at the time appearances or motions are made or exhibits
29 offered.

30
31 **Subdivision (c)(3).** Rule 8.613(d) requires the clerk to notify counsel to submit the lists of
32 appearances, exhibits, and motions.

33
34
35 **Division 3. Trials**

36
37 **Rule 4.230. Additional requirements in capital cases**

38
39 **(a) Application**

40
41 This rule applies only in trials in cases in which the death penalty may be imposed.
42

1 **(b) Checklist**

2
3 Within 10 days of counsel's first appearance in court, primary counsel for each
4 defendant and the prosecution must each acknowledge that they have reviewed
5 Capital Case Attorney Trial Checklist (form CR-605) by signing and submitting
6 this form to the court. Counsel is encouraged to keep a copy of this checklist.

7
8 **(c) Review of daily transcripts by counsel during trial**

9
10 During trial, counsel must call the court's attention to any errors or omissions they
11 may find in the daily transcripts. The court must periodically ask counsel for lists of
12 any such errors or omissions and may hold hearings to verify them. Immaterial
13 typographical errors that cannot conceivably cause confusion are not required to be
14 brought to the court's attention.

15
16 **(d) Lists of appearances, exhibits, motions, and jury instructions**

17
18 **(1) Primary counsel for each defendant and the prosecution must each prepare**
19 **the lists identified in (A)–(D).**

20
21 **(A) A list of all appearances made by that party. Capital Case Attorney List**
22 **of Appearances (form CR-601) must be used for this purpose. The list**
23 **must include all appearances, including ex parte appearances, the date**
24 **of each appearance, the department in which it was made, the name of**
25 **counsel making the appearance, and a brief description of the nature of**
26 **the appearance. A separate list of Penal Code section 987.9**
27 **appearances must be maintained under seal for each defendant. In the**
28 **event of any substitution of attorney at any stage of the case, the**
29 **relieved attorney must provide the list of all appearances to substituting**
30 **counsel within five days of being relieved.**

31
32 **(B) A list of all exhibits offered by that party. Capital Case Attorney List of**
33 **Exhibits (form CR-602) must be used for this purpose. The list must**
34 **indicate whether the exhibit was admitted in evidence, refused, lodged,**
35 **or withdrawn.**

36
37 **(C) A list of all motions made by that party, including ex parte motions.**
38 **Capital Case Attorney List of Motions (form CR-603) must be used for**
39 **this purpose.**

40
41 **(D) A list of all jury instructions submitted in writing by that party. Capital**
42 **Case Attorney List of Jury Instructions (form CR-604) must be used for**

1
2 **Rule 8.608. General provisions**

3
4 **(a) Supervising preparation of record**

5
6 The clerk/executive officer of the Supreme Court, under the supervision of the
7 Chief Justice, must take all appropriate steps to ensure that superior court clerks
8 and reporters promptly perform their duties under the rules in this article. This
9 provision does not affect the superior courts' responsibility for the prompt
10 preparation of appellate records in capital cases.

11
12 **(b) Extensions of time**

13
14 When a rule in this article authorizes a trial court to grant an extension of a
15 specified time period, the court must consider the relevant policies and factors
16 stated in rule 8.63.

17
18 **(c) Delivery date**

19
20 The delivery date of a transcript sent by mail is the mailing date plus five days.

21
22 *Rule 8.608 adopted effective April 25, 2019.*

23
24 **Rule 8.610. Contents and form of the record**

25
26 **(a) Contents of the record**

- 27
28 (1) The record must include a clerk's transcript containing:
29
30 (A) The accusatory pleading and any amendment.
31
32 (B) Any demurrer or other plea.
33
34 (C) All court minutes.
35
36 (D) All instructions submitted in writing, ~~each one~~ and the cover page
37 required by rule 2.1055(b)(2) indicating the party requesting it each
38 instruction, and any written jury instructions given by the court.
39
40 (E) Any written communication, including printouts of any e-mail or text
41 messages and their attachments, between the court and the parties, the
42 jury, or any individual juror or prospective juror.
43

- 1 (F) Any verdict.
2
3 (G) Any written opinion of the court.
4
5 (H) The judgment or order appealed from and any abstract of judgment or
6 commitment.
7
8 (I) Any motion for new trial, with supporting and opposing memoranda
9 and attachments.
10
11 (J) Any transcript of a sound or sound-and-video recording furnished to
12 the jury or tendered to the court under rule 2.1040, including witness
13 statements.
14
15 (K) Any application for additional record and any order on the application.
16
17 (L) Any written defense motion or any written motion by the People, with
18 supporting and opposing memoranda and attachments.
19
20 (M) If related to a motion under (L), any search warrant and return and the
21 reporter's transcript of any preliminary examination or grand jury
22 hearing.
23
24 (N) Any document admitted in evidence to prove a prior juvenile
25 adjudication, criminal conviction, or prison term.
26
27 (O) The probation officer's report. ~~and~~
28
29 (P) Any court-ordered diagnostic or psychological report required under
30 Penal Code section 1369.
31
32 (Q) Any copies of visual aids provided to the clerk under rule 4.230(f). If a
33 visual aid is oversized, a photograph of that visual aid must be included
34 in place of the original. For digital or electronic presentations, printouts
35 showing the full text of each slide or image must be included.
36
37 (R) Each juror questionnaire, whether or not the juror was selected.
38
39 (S) The table correlating the jurors' names with their identifying numbers
40 required by rule 8.611.
41
42 (T) The register of actions.
43

1 (U) All documents filed under Penal Code section 987.9 or 987.2.

2
3 ~~(P)(V) Any other document filed or lodged in the case, including each~~
4 ~~juror questionnaire, whether or not the juror was selected.~~

5
6 (2) The record must include a reporter's transcript containing:

7
8 (A) The oral proceedings on the entry of any plea other than a not guilty
9 plea;

10
11 (B) The oral proceedings on any motion in limine;

12
13 (C) The voir dire examination of jurors;

14
15 (D) Any opening statement;

16
17 (E) The oral proceedings at trial;

18
19 (F) All instructions given orally;

20
21 (G) Any oral communication between the court and the jury or any
22 individual juror;

23
24 (H) Any oral opinion of the court;

25
26 (I) The oral proceedings on any motion for new trial;

27
28 (J) The oral proceedings at sentencing, granting or denying of probation,
29 or other dispositional hearing;

30
31 (K) The oral proceedings on any motion under Penal Code section 1538.5
32 denied in whole or in part;

33
34 (L) The closing arguments;

35
36 (M) Any comment on the evidence by the court to the jury;

37
38 (N) The oral proceedings on motions in addition to those listed above; and

39
40 (O) Any other oral proceedings in the case, including any proceedings that
41 did not result in a verdict or sentence of death because the court ordered
42 a mistrial or a new trial.

43

1 (3) All exhibits admitted in evidence, refused, or lodged are deemed part of the
2 record, but, except as provided in rule 8.622, may be transmitted to the
3 reviewing court only as provided in rule 8.634.

4
5 (4) The superior court or the Supreme Court may order that the record include
6 additional material.

7
8 **(b) Sealed and confidential records**

9
10 Rules 8.45–8.47 govern sealed and confidential records in appeals under this
11 chapter.

12
13 **(c) Juror-identifying information**

14
15 Any document in the record containing juror-identifying information must be
16 edited in compliance with rule ~~8.332~~ 8.611. Unedited copies of all such documents
17 and a copy of the table required by the rule, under seal and bound together if filed
18 in paper form, must be included in the record sent to the Supreme Court.

19
20 **(d) Form of record**

21
22 The clerk’s transcript and the reporter’s transcript must comply with rules 8.45–
23 8.47, relating to sealed and confidential records, and rule 8.144.

24
25 **Advisory Committee Comment**

26
27 **Subdivision (a).** Subdivision (a) ~~restates~~ implements Penal Code section 190.7(a).

28
29 **Subdivision (b).** The clerk’s and reporter’s transcripts may contain records that are sealed or
30 confidential. Rules 8.45–8.47 address the handling of such records, including requirements for the
31 format, labeling, and transmission of and access to such records. Examples of confidential records
32 include Penal Code section 1203.03 diagnostic reports, records closed to inspection by court
33 order under *People v. Marsden* (1970) 2 Cal.3d 118 or *Pitchess v. Superior Court* (1974) 11
34 Cal.3d 531, in-camera proceedings on a confidential informant, and defense investigation and
35 expert funding requests (Pen. Code, §§ 987.2 and 987.9; *Puett v. Superior Court* (1979) 96
36 Cal.App.3d 936, 940, fn. 2; Keenan v. Superior Court (1982) 31 Cal.3d 424, 430).

37
38
39 **Rule 8.611. Juror-identifying information**

40
41 **(a) Application**

42

1 A clerk's transcript, a reporter's transcript, or any other document in the record that
2 contains juror-identifying information must comply with this rule.

3
4 **(b) Juror names, addresses, and telephone numbers**

5
6 (1) The name of each trial juror or alternate sworn to hear the case must be
7 replaced with an identifying number wherever it appears in any document.
8 The superior court clerk must prepare and keep under seal in the case file a
9 table correlating the jurors' names with their identifying numbers. The clerk
10 and the reporter must use the table in preparing all transcripts or other
11 documents.

12
13 (2) The addresses and telephone numbers of trial jurors and alternates sworn to
14 hear the case must be deleted from all documents.

15
16 **(c) Potential jurors**

17
18 Information identifying potential jurors called but not sworn as trial jurors or
19 alternates must not be sealed unless otherwise ordered under Code of Civil
20 Procedure section 237(a)(1).

21
22 *Rule 8.611 adopted effective April 25, 2019.*

23
24 **Advisory Committee Comment**

25
26 Rule 8.611 implements Code of Civil Procedure section 237.

27
28
29 **Rule 8.613. Preparing and certifying the record of preliminary proceedings**

30
31 **(a)–(c) * * ***

32
33 **(d) Notice to prepare transcript and lists**

34
35 Within five days after receiving notice under (b)(1) or notifying the judge under
36 (b)(2), the clerk must do the following:

37
38 (1) Notify each reporter who reported a preliminary proceeding to prepare a
39 transcript of the proceeding. If there is more than one reporter, the designated
40 judge may assign a reporter or another designee to perform the functions of
41 the primary reporter.

42

1 (2) Notify trial counsel to submit the lists of appearances, exhibits, and motions
2 required by rule 4.119.

3
4 *(Subd (d) amended effective April 25, 2019.)*

5
6 **(e) Reporter's duties**

7
8 (1) The reporter must prepare an original and five copies of the reporter's
9 transcript in electronic form and two additional copies in electronic form for
10 each codefendant against whom the death penalty is sought. The transcript
11 must include the preliminary examination or grand jury proceeding unless a
12 transcript of that examination or proceeding has already been filed in superior
13 court for inclusion in the clerk's transcript.

14
15 (2) The reporter must certify the original and all copies of the reporter's
16 transcript as correct.

17
18 (3) Within 20 days after receiving the notice to prepare the reporter's transcript,
19 the reporter must deliver the original and all copies of the transcript to the
20 clerk.

21
22 *(Subd (e) amended effective April 25, 2019.)*

23
24 **(f) Review by counsel**

25
26 (1) Within five days after the reporter delivers the transcript, the clerk must
27 deliver the original transcript and the lists of appearances, exhibits, and
28 motions required by rule 4.119 to the designated judge and one copy of the
29 transcript and each list required by rule 4.119 that is not required to be sealed
30 to each trial counsel. If a different attorney represented the defendant or the
31 People in the preliminary proceedings, both attorneys must perform the tasks
32 required by (2).

33
34 (2) Each trial counsel must promptly:

35
36 (A) Review the reporter's transcript and the lists of appearances, exhibits,
37 and motions to identify any for errors or omissions in the transcript;

38
39 (B) Review the docket sheets and minute orders to determine whether all
40 preliminary proceedings have been transcribed; and

41
42 ~~(C) Consult with opposing counsel to determine whether any other~~
43 ~~proceedings or discussions should have been transcribed; and~~

1
2 ~~(D)~~(C) Review the court file to determine whether it is complete.

3
4 (3) Within 21 days after the clerk delivers the transcript and lists under (1), trial
5 counsel must confer regarding any errors or omissions in the reporter’s
6 transcript or court file identified by trial counsel during the review required
7 under (2) and determine whether any other proceedings or discussions should
8 have been transcribed.

9
10 *(Subd (f) amended effective April 25, 2019; previously amended effective January 1, 2007.)*

11
12 **(g) Declaration and request for corrections or additions**

13
14 (1) Within 30 days after the clerk delivers the reporter’s transcript and lists, each
15 trial counsel must serve and file:

16
17 (A) A declaration stating that counsel or another person under counsel’s
18 supervision has performed the tasks required by (f), including
19 conferring with opposing counsel; and

20
21 (B) ~~must serve and file~~ Either:

22
23 ~~(A)(i)~~ A request for corrections or additions to the reporter’s transcript
24 or court file. Immaterial typographical errors that cannot
25 conceivably cause confusion are not required to be brought to the
26 court’s attention; or

27
28 ~~(B)(ii)~~ A statement that counsel does not request any corrections
29 or additions.

30
31 (C) The requirements of (B) may be satisfied by a joint statement or request
32 filed by counsel for all parties.

33
34 (2)–(4) * * *

35
36 *(Subd (g) amended effective April 25, 2019; previously amended effective January 1,*
37 *2007.)*

38
39 **(h) * * ***

40
41 **(i) Transcript delivered in electronic form**

42
43 (1)–(2) * * *

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(3) A copy of a sealed or confidential transcript delivered in electronic form must be ~~placed on a separated disk~~ from any other transcripts and clearly labeled as ~~confidential~~ required by rule 8.45.

(4)–(5) * * *

(Subd (i) amended effective April 25, 2019; previously amended effective January 1, 2007, January 1, 2017, and January 1, 2018.)

(j) Delivery to the superior court

Within five days after the reporter delivers the copies in electronic form, the clerk must deliver to the responsible judge, for inclusion in the record:

- (1) The certified original reporter’s transcript of the preliminary proceedings and the copies that have not been distributed to counsel, ~~including the copies in electronic form~~; and
- (2) The complete court file of the preliminary proceedings or a certified copy of that file.

(Subd (j) amended effective April 25, 2019; previously amended effective January 1, 2007, and January 1, 2018.)

(k) * * *

(l) Notice that the death penalty is no longer sought

After the ~~presiding judge has ordered preparation of~~ clerk has notified the court reporter to prepare the pretrial record, if the death penalty is no longer sought, the clerk must promptly notify the reporter that this rule does not apply.

(Subd (l) amended effective April 25, 2019; previously amended effective January 1, 2007.)

Rule 8.613 amended effective April 25, 2019; adopted as rule 34.2 effective January 1, 2004; previously amended and renumbered as rule 8.613 effective January 1, 2007; previously amended effective January 1, 2017, and January 1, 2018.

1 Rule 8.613 implements Penal Code section 190.9(a). Rules 8.613–8.622 govern the process of
2 preparing and certifying the record in any appeal from a judgment of death ~~imposed after a trial~~
3 ~~that began on or after January 1, 1997~~; specifically, rule 8.613 provides for the record of the
4 preliminary proceedings in such an appeal. ~~Rule 8.625 governs the process of certifying the~~
5 ~~record in any appeal from a judgment of death imposed after a trial that began before January 1,~~
6 ~~1997.~~

7
8 **Subdivision (f).** * * *

9
10 **Subdivision (i).** * * *

11
12
13 **Rule 8.616. Preparing the trial record**

14
15 **(a) Clerk’s duties**

16
17 (1) The clerk must promptly—and no later than five days after the judgment of
18 death is rendered:—

19
20 (A) Notify the reporter to prepare the reporter’s transcript; and

21
22 (B) Notify trial counsel to submit the lists of appearances, exhibits, and
23 motions required by rule 4.230.

24
25 (2) The clerk must prepare an original and eight copies of the clerk’s transcript
26 and two additional copies for each codefendant sentenced to death. The clerk
27 is encouraged to send the clerk’s transcript in electronic form if the court is
28 able to do so.

29
30 (3) The clerk must certify the original and all copies of the clerk’s transcript as
31 correct.

32
33 *(Subd (a) amended effective April 25, 2019.)*

34
35 **(b) Reporter’s duties**

36
37 (1) The reporter must prepare an original and five copies of the reporter’s
38 transcript in electronic form and two additional copies in electronic form for
39 each codefendant sentenced to death.

40
41 (2) Any portion of the transcript transcribed during trial must not be retyped
42 unless necessary to correct errors, but must be repaginated and combined
43 with any portion of the transcript not previously transcribed. Any additional

1 copies needed must not be retyped but, if the transcript is in paper form, must
2 be prepared by photocopying or an equivalent process.

- 3
4 (3) The reporter must certify the original and all copies of the reporter's
5 transcript as correct and deliver them to the clerk.

6
7 *(Subd (b) amended effective April 25, 2019; previously amended effective January 1,*
8 *2016.)*

9
10 **(c) Sending the record to trial counsel**

11
12 Within 30 days after the judgment of death is rendered, the clerk must deliver one
13 copy of the clerk's and reporter's transcripts and one copy of each list of
14 appearances, exhibits, and motions required by rule 4.230 that is not required to be
15 sealed to each trial counsel. The clerk must retain~~ing~~ the original transcripts and
16 ~~the~~ any remaining copies. If counsel does not receive the transcripts within that
17 period, counsel must promptly notify the superior court.

18
19 *(Subd (c) amended effective April 25, 2019.)*

20
21 **(d) * * ***

22
23 *Rule 8.616 amended effective April 25, 2019; repealed and adopted as rule 35 effective January*
24 *1, 2004; previously renumbered as rule 8.606 effective January 1, 2007; previously amended*
25 *effective January 1, 2016.*

26
27
28 **Rule 8.619. Certifying the trial record for completeness**

29
30 **~~(a) Review by counsel during trial~~**

31
32 ~~During trial, counsel must call the court's attention to any errors or omissions they~~
33 ~~may find in the transcripts. The court must periodically ask counsel for lists of any~~
34 ~~such errors or omissions and may hold hearings to verify them.~~

35
36 **~~(b)~~(a) Review by counsel after trial**

- 37
38 (1) When the clerk delivers the clerk's and reporter's transcripts and the lists of
39 appearances, exhibits, motions, and jury instructions required by rule 4.230 to
40 trial counsel, each counsel must promptly:

41

1 ~~(1)~~(A) Review the docket sheets, ~~and~~ minute orders, and the lists of
2 appearances, exhibits, motions, and jury instructions to determine
3 whether the reporter’s transcript is complete; and
4

5 ~~(2)~~ ~~Consult with opposing counsel to determine whether any other proceedings~~
6 ~~or discussions should have been transcribed; and~~
7

8 ~~(3)~~(B) Review the court file to determine whether the clerk’s transcript
9 is complete.
10

11 (2) Within 21 days after the clerk delivers the transcripts and lists under (1), trial
12 counsel must confer regarding any errors or omissions in the reporter’s
13 transcript or clerk’s transcript identified by trial counsel during the review
14 required under (1).
15

16 *(Subd (a) amended and relettered effective April 25, 2019; adopted as subd (b); previously*
17 *amended effective January 1, 2007.)*
18

19 **(e)(b) Declaration and request for additions or corrections**
20

21 (1) Within 30 days after the clerk delivers the transcripts, each trial counsel must
22 serve and file;

23
24 (A) A declaration stating that counsel or another person under counsel’s
25 supervision has performed the tasks required by ~~(b)~~(a), including
26 conferring with opposing counsel; and must serve and file
27

28 (B) Either:
29

30 ~~(A)~~(i) A request to include additional materials in the record or to
31 correct errors that have come to counsel’s attention.
32 Immaterial typographical errors that cannot conceivably
33 cause confusion are not required to be brought to the
34 court’s attention; or
35

36 ~~(B)~~(ii) A statement that counsel does not request any additions or
37 corrections.
38

39 (2) The requirements of (1)(B) may be satisfied by a joint statement or request
40 filed by counsel for all parties.
41

1 (3) If the clerk’s and reporter’s transcripts combined exceed 10,000 pages, the
2 time limits stated in (a)(2) and (b)(1) are extended by three days for each
3 1,000 pages of combined transcript over 10,000 pages.
4

5 ~~(2)~~(4) A request for additions to the reporter’s transcript must state the nature and
6 date of the proceedings and, if known, the identity of the reporter who
7 reported them.
8

9 ~~(3)~~(5) If any counsel fails to timely file a declaration under (1), the judge must not
10 certify the record and must set the matter for hearing, require a showing of
11 good cause why counsel has not complied, and fix a date for compliance.
12

13 *(Subd (b) amended and relettered effective April 25, 2019; adopted as subd (c); previously*
14 *amended effective January 1, 2007.)*
15

16 ~~(d)~~**(c) Completion of the record**
17

18 If any counsel files a request for additions or corrections:
19

- 20 (1) The clerk must promptly deliver the original transcripts to the judge who
21 presided at the trial.
22
- 23 (2) Within 15 days after the last request is filed, the judge must hold a hearing
24 and order any necessary additions or corrections. The order must require that
25 any additions or corrections be made within 10 days of its date.
26
- 27 (3) The clerk must promptly—and in any event within five days—notify the
28 reporter of an order under (2). If any portion of the proceedings cannot be
29 transcribed, the judge may order preparation of a settled statement under rule
30 8.346.
31
- 32 (4) The original transcripts must be augmented or corrected to reflect all
33 additions or corrections ordered. The clerk must promptly send copies of the
34 additional or corrected pages to trial counsel.
35
- 36 (5) Within five days after the augmented or corrected transcripts are filed, the
37 judge must set another hearing to determine whether the record has been
38 completed or corrected as ordered. The judge may order further proceedings
39 to complete or correct the record.
40
- 41 (6) When the judge is satisfied that all additions or corrections ordered have been
42 made and copies of all additional or corrected pages have been sent to trial

1 counsel, the judge must certify the record as complete and redeliver the
2 original transcripts to the clerk.

- 3
4 (7) The judge must certify the record as complete within ~~90~~ 30 days after the
5 ~~judgment of death is rendered~~ last request to include additional materials or
6 make corrections is filed or, if no such request is filed, after the last statement
7 that counsel does not request any additions or corrections is filed.

8
9 *(Subd (c) amended and relettered effective April 25, 2019; adopted as subd (d); previously*
10 *amended effective January 1, 2007.)*

11
12 **(e)(d) Transcript delivered in electronic form**

- 13
14 (1) When the record is certified as complete, the clerk must promptly notify the
15 reporter to prepare five copies of the transcript in electronic form and two
16 additional copies in electronic form for each codefendant sentenced to death.
17
18 (2) Each copy delivered in electronic form must comply with the applicable
19 requirements of rule 8.144 and any additional requirements prescribed by the
20 Supreme Court, and must be further labeled to show the date it was made.
21
22 (3) A copy of a sealed or confidential transcript delivered in electronic form must
23 be placed on a separated disk from any other transcripts and clearly labeled as
24 confidential-required by rule 8.45.
25
26 (4) The reporter is to be compensated for copies delivered in electronic form as
27 provided in Government Code section 69954(b).
28
29 (5) Within 10 days after the clerk notifies the reporter under (1), the reporter
30 must deliver the copies in electronic form to the clerk.

31
32 *(Subd (d) amended and relettered effective April 25, 2019; adopted as subd (e); previously*
33 *amended effective January 1, 2017, and January 1, 2018.)*

34
35 **(f)(e) Extension of time**

- 36
37 (1) The court may extend for good cause any of the periods specified in this rule.
38
39 (2) An application to extend the ~~30-day~~ period to review the record under ~~(e)(a)~~
40 or the period to file a declaration under (b) must be served and filed within
41 that the relevant period. If the clerk's and reporter's transcripts combined
42 exceed 10,000 pages, the court may grant an additional three days for each
43 1,000 pages over 10,000.

1
2 (3) If the court orders an extension of time, the order must specify the
3 justification for the extension. The clerk must promptly send a copy of the
4 order to the Supreme Court.

5
6 *(Subd (e) amended and relettered effective April 25, 2019; adopted as subd (f).)*

7
8 **(g)(f) Sending the certified record**

9
10 (1) When the record is certified as complete, the clerk must promptly send one
11 copy of the clerk's transcript and one copy of the reporter's transcript:

12
13 (A) To each defendant's appellate counsel and each defendant's habeas
14 corpus counsel: ~~one paper copy of the entire record and one copy of the~~
15 ~~reporter's transcript in electronic form.~~ If either counsel has not been
16 retained or appointed, the clerk must keep that counsel's copies until
17 counsel is retained or appointed.

18
19 (B) To the Attorney General, the Habeas Corpus Resource Center, and the
20 California Appellate Project in San Francisco: ~~one paper copy of the~~
21 ~~clerk's transcript and one copy of the reporter's transcript in electronic~~
22 ~~form.~~

23
24 (2) The reporter's transcript must be in electronic form. The clerk is encouraged
25 to send the clerk's transcript in electronic form if the court is able to do so.

26
27 *(Subd (f) amended and relettered effective April 25, 2019; adopted as subd (g); previously*
28 *amended effective January 1, 2018.)*

29
30 **(h)(g) Notice of delivery**

31
32 When the clerk sends the record to the defendant's appellate counsel, the clerk must
33 serve a notice of delivery on the clerk/executive officer of the Supreme Court.

34
35 *(Subd (g) amended and relettered effective April 25, 2019; adopted as subd (h); previously*
36 *amended effective January 1, 2018.)*

37
38 *Rule 8.619 amended effective April 25, 2019; adopted as rule 35.1 effective January 1, 2004;*
39 *previously amended and renumbered as rule 8.619 effective January 1, 2007; previously*
40 *amended effective January 1, 2017, and January 1, 2018.*

41
42 **Advisory Committee Comment**

43

1 Rule 8.619 implements Penal Code section 190.8(c)–(e).

2
3 Subdivision ~~(e)~~(d)(4) restates a provision of former rule 35(b), second paragraph, as it was in
4 effect on December 31, 2003.

5
6
7 **Rule 8.622. Certifying the trial record for accuracy**

8
9 **(a) Request for corrections or additions**

10
11 (1) Within 90 days after the clerk delivers the record to defendant’s appellate
12 counsel;

13
14 (A) Any party may serve and file a request for corrections or additions to
15 the record. Immaterial typographical errors that cannot conceivably
16 cause confusion are not required to be brought to the court’s attention.
17 Items that a party may request to be added to the clerk’s transcript
18 include a copy of any exhibit admitted in evidence, refused, or lodged
19 that is a document in paper or electronic format. The requesting party
20 must state the reason that the exhibit needs to be included in the clerk’s
21 transcript. Parties may file a joint request for corrections or additions.

22
23 (B) Appellate counsel must review all sealed records that they are entitled
24 to access under rule 8.45 and file an application to unseal any such
25 records that counsel determines no longer meet the criteria for sealing
26 specified in rule 2.550(d). Notwithstanding rule 8.46(e), this
27 application must be filed in the trial court and these records may be
28 unsealed on order of the trial court.

29
30 (2) A request for additions to the reporter’s transcript must state the nature and
31 date of the proceedings and, if known, the identity of the reporter who
32 reported them. A request for an exhibit to be included in the clerk’s transcript
33 must specify that exhibit by number or letter.

34
35 (3) Unless otherwise ordered by the court, within 10 days after a party serves and
36 files a request for corrections or additions to the record, defendant’s appellate
37 counsel and the trial counsel from the prosecutor’s office must confer
38 regarding the request and any application to unseal records served on the
39 prosecutor’s office.

40
41 (4) If the clerk’s and reporter’s transcripts combined exceed 10,000 pages, the
42 time limits stated in (1), (3), and (b)(4) are extended by 15 days for each
43 1,000 pages of combined transcript over 10,000 pages.

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(Subd (a) amended effective April 25, 2019.)

(b) Correction of the record

(1) If any counsel files a request for corrections or additions, the procedures and time limits of rule 8.619~~(d)~~(c)(1)–(5) must be followed.

(2) If any application to unseal a record is filed, the judge must grant or deny the application before certifying the record as accurate.

~~(2)~~(3) When the judge is satisfied that all corrections or additions ordered have been made, the judge must certify the record as accurate and redeliver the record to the clerk.

~~(3)~~(4) The judge must certify the record as accurate within ~~120~~ 30 days after ~~it is delivered to appellate counsel~~ the last request to include additional materials or make corrections is filed.

(Subd (b) amended effective April 25, 2019; previously amended effective January 1, 2007.)

(c) Computer-readable Copies of the record

(1) When the record is certified as accurate, the clerk must promptly notify the reporter to prepare six copies of the reporter’s transcript in electronic form and two additional copies in electronic form for each codefendant sentenced to death.

(2) In preparing the copies, the procedures and time limits of rule 8.619~~(e)~~(d)(2)–(5) must be followed.

(Subd (c) amended effective April 25, 2019; previously amended effective January 1, 2007, and January 1, 2018.)

(d) Extension of time

(1) The court may extend for good cause any of the periods specified in this rule.

(2) An application to extend the ~~90-day~~ period to request corrections or additions under (a) must be served and filed within that period. ~~If the clerk’s and reporter’s transcripts combined exceed 10,000 pages, the court may grant an additional 15 days for each 1,000 pages over 10,000.~~

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(3) If the court orders an extension of time, the order must specify the justification for the extension. The clerk must promptly send a copy of the order to the Supreme Court.

(4) If the court orders an extension of time, the court may conduct a status conference or require the counsel who requested the extension to file a status report on counsel’s progress in reviewing the record.

(Subd (d) amended effective April 25, 2019.)

(e) Sending the certified record

When the record is certified as accurate, the clerk must promptly send:

(1) To the Supreme Court: the corrected original record, including the judge’s certificate of accuracy, ~~and a copy of~~ The reporter’s transcript must be in electronic form. The clerk is encouraged to send the clerk’s transcript in electronic form if the court is able to do so.

(2) To each defendant’s appellate counsel, each defendant’s habeas corpus counsel, the Attorney General, the Habeas Corpus Resource Center, and the California Appellate Project in San Francisco: a copy of the order certifying the record and a copy of the reporter’s transcript in electronic form.

(3) To the Governor: the copies of the transcripts required by Penal Code section 1218, with copies of any corrected or augmented pages inserted.

(Subd (e) amended effective April 25, 2019; previously amended effective January 1, 2018.)

Rule 8.622 amended effective April 25, 2019; adopted as rule 35.2 effective January 1, 2004; previously amended and renumbered as rule 8.622 effective January 1, 2007; previously amended effective January 1, 2018.

Advisory Committee Comment

Rule 8.622 implements Penal Code section 190.8(g).

Former rule 8.625. Certifying the record in pre-1997 trials [Repealed]

~~(a) Application~~

1 This rule governs the process of certifying the record in any appeal from a
2 judgment of death imposed after a trial that began before January 1, 1997.

3
4 **(b) — Sending the transcripts to counsel for review**

5
6 (1) — ~~When the clerk and the reporter certify that their respective transcripts are~~
7 ~~correct, the clerk must promptly send a copy of each transcript to each~~
8 ~~defendant’s trial counsel, to the Attorney General, to the district attorney, to~~
9 ~~the California Appellate Project in San Francisco, and to the Habeas Corpus~~
10 ~~Resource Center, noting the sending date on the originals.~~

11
12 (2) — ~~The copies of the reporter’s transcript sent to the California Appellate Project~~
13 ~~and the Habeas Corpus Resource Center must be delivered in electronic form~~
14 ~~complying with the applicable requirements of rule 8.144 and any additional~~
15 ~~requirements prescribed by the Supreme Court, and must be further labeled to~~
16 ~~show the date it was made.~~

17
18 (3) — ~~When the clerk is notified of the appointment or retention of each defendant’s~~
19 ~~appellate counsel, the clerk must promptly send that counsel copies of the~~
20 ~~clerk’s transcript and the reporter’s transcript, noting the sending date on the~~
21 ~~originals. The clerk must notify the Supreme Court, the Attorney General,~~
22 ~~and each defendant’s appellate counsel in writing of the date the transcripts~~
23 ~~were sent to appellate counsel.~~

24
25 **(c) — Correcting, augmenting, and certifying the record**

26
27 (1) — ~~Within 90 days after the clerk delivers the transcripts to each defendant’s~~
28 ~~appellate counsel, any party may serve and file a request for correction or~~
29 ~~augmentation of the record. Any request for extension of time must be served~~
30 ~~and filed in the Supreme Court no later than five days before the 90-day~~
31 ~~period expires.~~

32
33 (2) — ~~If no party files a timely request for correction or augmentation, the clerk~~
34 ~~must certify on the original transcripts that no party objected to the accuracy~~
35 ~~or completeness of the record within the time allowed by law.~~

36
37 (3) — ~~Within 10 days after any party files a timely request for correction or~~
38 ~~augmentation, the clerk must deliver the request and the transcripts to the trial~~
39 ~~judge.~~

40
41 (4) — ~~Within 60 days after receiving a request and transcripts under (3), the judge~~
42 ~~must order the reporter, clerk, or party to make any necessary corrections or~~
43 ~~do any act necessary to complete the record, fixing the time for performance.~~

1 If any portion of the oral proceedings cannot be transcribed, the judge may
2 order preparation of a settled statement under rule 8.346.

3
4 ~~(5) — The clerk must promptly send a copy of any order under (4) to the parties and
5 to the Supreme Court, but any request for extension of time to comply with
6 the order must be addressed to the trial judge.~~

7
8 ~~(6) — The original transcripts must be corrected or augmented to reflect all
9 corrections or augmentations ordered. The clerk must promptly send copies
10 of all corrected or augmented pages to the parties.~~

11
12 ~~(7) — The judge must allow the parties a reasonable time to review the corrections
13 or augmentations. If no party objects to the corrections or augmentations as
14 prepared, the judge must certify that the record is complete and accurate. If
15 any party objects, the judge must resolve the objections before certifying the
16 record.~~

17
18 ~~(8) — If the record is not certified within 90 days after the clerk sends the
19 transcripts to appellate counsel under (b)(2), the judge must monitor
20 preparation of the record to expedite certification and report the status of the
21 record monthly to the Supreme Court.~~

22
23 **(d) — Sending the certified record**

24
25 When the clerk certifies that no party objected to the record or the judge certifies
26 that the record is complete and accurate, the clerk must promptly send:

27
28 ~~(1) — To the Supreme Court: the original record, including the original certification
29 by the trial judge.~~

30
31 ~~(2) — To each defendant's appellate counsel, the Attorney General, and the
32 California Appellate Project in San Francisco: a copy of the order certifying
33 the record.~~

34
35 ~~(3) — To the Governor: the copies of the transcripts required by Penal Code section
36 1218, with copies of any corrected or augmented pages inserted.~~

37
38 **(e) — Subsequent trial court orders; omissions**

39
40 ~~(1) — If, after the record is certified, the trial court amends or recalls the judgment
41 or makes any other order in the case, including an order affecting the
42 sentence, the clerk must promptly certify and send a copy of the amended~~

1 abstract of judgment or other order— as an augmentation of the record— to
2 the persons and entities listed in (d).

3
4 ~~(2) If, after the record is certified, the superior court clerk or the reporter learns~~
5 ~~that the record omits a document or transcript that any rule or court order~~
6 ~~requires to be included, the clerk must promptly copy and certify the~~
7 ~~document or the reporter must promptly prepare and certify the transcript.~~
8 ~~Without the need for further court order, the clerk must send the document or~~
9 ~~transcript— as an augmentation of the record— to the persons and entities~~
10 ~~listed in (d).~~

11
12 *Rule 8.625 repealed effective April 25, 2019; adopted as rule 35.3 effective January 1, 2004;*
13 *previously amended and renumbered as rule 8.625 effective January 1, 2007; previously*
14 *amended effective January 1, 2017, and January 1, 2018.*