



## Judicial Council of California · Administrative Office of the Courts

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## REPORT TO THE JUDICIAL COUNCIL

For meeting on October 26, 2012

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Title	Agenda Item Type
Criminal Procedure: Transcripts of Notification of Appeal Rights	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Revise Cal. Rules of Court, rule 4.305; and repeal rule 4.470	January 1, 2013
Recommended by	Date of Report
Criminal Law Advisory Committee	August 8, 2012
Hon. Steven Z. Perren, Chair	Contact
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### Executive Summary

The Criminal Law Advisory Committee recommends that the Judicial Council amend rule 4.305 to eliminate the requirement that reporter's transcripts of the court's notification of the defendant's appeal rights be prepared, certified, and filed in all applicable cases. This proposal reflects recent statutory amendments to Penal Code section 1203.01 that relieved courts from producing similar transcripts in every felony case resulting in a prison sentence. The committee also recommends the repeal of rule 4.470, an identical copy of rule 4.305, as duplicative.

### Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council, effective January 1, 2013:

1. Amend rule 4.305 of the California Rules of Court by deleting this sentence: "A reporter's transcript of the proceedings required by this rule must be forthwith prepared and certified by the reporter and filed with the court"; and

2. Repeal rule 4.470 of the California Rules of Court.

The text of the proposed amended rules is attached at page 4.

### **Previous Council Action**

The Judicial Council adopted rule 250, the original predecessor of rules 4.305 and 4.470, effective January 1, 1972. That rule was renumbered as rule 470 effective January 1, 1991, and renumbered again in duplicate to become rules 4.305 *and* 4.470 effective January 1, 2001, in conjunction with a broad reorganization of the California Rules of Court that also introduced the arrangement of the rules into divisions and chapters. Rules 4.305 and 4.470 appear under different divisions of the rules—“Sentencing” and “Determinate Sentencing”—but the text of the two rules remains identical.

### **Rationale for Recommendation**

#### **Background**

Rules 4.305 and 4.470 require courts to notify defendants of certain appeal rights after imposing a sentence after a trial or contested probation violation hearing. The rules also impose the following transcript requirement: “A reporter’s transcript of the proceedings required by this rule must be forthwith prepared and certified by the reporter and filed with the court.” These rules were designed to reduce late appeals and rebut defendants’ claims of ignorance of appeal requirements, including the deadline to file a notice of appeal.

#### **Purpose**

The purpose of the proposal is twofold. First, the committee proposes repealing rule 4.470 as duplicative. As explained above, the rule was renumbered into two distinct rules in 2001 but the text of both rules remains identical. Although the renumbered rules appear under different divisions, the committee concluded that two instances of the same rule are unnecessary and confusing. The committee proposes retaining rule 4.305 because it is located under the broader division entitled “Sentencing” and immediately precedes a similar rule for misdemeanors and infractions.

Second, recently enacted Assembly Bill 110 (Blumenfield; Stats. 2011, ch. 193) revised Penal Code section 1203.01 to delete a requirement that court reporters produce transcripts of certain sentencing proceedings in every felony case that results in a prison sentence. Section 1203.01 now requires production of transcripts only in capital and life cases, or upon request by certain parties. The revisions were designed to eliminate the costs associated with preparing transcripts unnecessarily.

In light of the recent amendments to section 1203.01, the committee proposes deleting the transcript requirement from rule 4.305. The committee concluded that requiring the production of transcripts in every applicable case is unnecessary, particularly in the absence of an appeal. If transcripts are needed later to rebut a defendant’s claim that the court failed to provide the

required advisements, a trial or appellate court may still order production of the transcripts as needed because all proceedings at the time of sentencing must be reported. (Cal. Rules of Court, rule 4.431.) The proposal is intended to promote cost savings and efficiencies by eliminating the costs associated with preparing, certifying, and filing transcripts unnecessarily.

### **Comments, Alternatives Considered, and Policy Implications**

This proposal was circulated for public comment during the spring 2012 cycle. Six comments were received, of which 4 agreed with the proposal and two disagreed. Notably, the Joint Rules Working Group of the Trial Court Presiding Judges and Court Executives Advisory Committees agreed with the proposal and expressed appreciation for the committee's efforts "to provide for a more efficient process." A chart with all comments received and committee responses is attached at pages 5–11.

In sum, the commentators who disagreed with the proposal suggested that deletion of the transcript requirement would result in minimal cost savings and make it more difficult for attorneys and courts to obtain transcripts in the absence of an appeal. As noted above, however, the committee believes that requiring the production of transcripts in every applicable case is costly and unnecessary. A trial or appellate court may order production of transcripts as needed. The committee believes that producing transcripts *only when needed* promotes efficiencies and cost savings that outweigh the potential convenience of producing transcripts in every applicable case, which necessarily includes many instances in which the transcripts are never needed.

### **Implementation Requirements, Costs, and Operational Impacts**

No implementation requirements or operational impacts are expected. Courts that apply rule 4.305 to reduce the number of transcripts prepared at court expense will likely realize some cost savings.

### **Attachments**

1. Cal. Rules of Court, rules 4.305 and 4.470 (as amended), at page 4
2. Comment chart, at pp. 5–11.

Rule 4.470 of the California Rules of Court is repealed, and rule 4.305 is amended, effective January 1, 2013, to read:

1   **Rule 4.305. Notification of appeal rights in felony cases**

2  
3   After imposing sentence or making an order deemed to be a final judgment in a criminal  
4   case on conviction after trial, or after imposing sentence following a revocation of  
5   probation, except where the revocation is after the defendant's admission of violation of  
6   probation, the court must advise the defendant of his or her right to appeal, of the  
7   necessary steps and time for taking an appeal, and of the right of an indigent defendant to  
8   have counsel appointed by the reviewing court. ~~A reporter's transcript of the proceedings~~  
9   ~~required by this rule must be forthwith prepared and certified by the reporter and filed~~  
10   ~~with the clerk.~~

11  
12   **Rule 4.470. Notification of appeal rights in felony cases**

13  
14   After ~~imposing sentence or making an order deemed to be a final judgment in a criminal~~  
15   ~~case on conviction after trial, or after imposing sentence following a revocation of~~  
16   ~~probation, except where the revocation is after the defendant's admission of violation of~~  
17   ~~probation, the court must advise the defendant of his or her right to appeal, of the~~  
18   ~~necessary steps and time for taking an appeal, and of the right of an indigent defendant to~~  
19   ~~have counsel appointed by the reviewing court. A reporter's transcript of the proceedings~~  
20   ~~required by this rule must be forthwith prepared and certified by the reporter and filed~~  
21   ~~with the clerk.~~

**SPR12-16****Criminal Procedure: Transcripts of Notification of Appeal Rights** (amend Cal. Rules of Court, rule 4.305, and revoke rule 4.470)

All comments are verbatim unless indicated by an asterisk (\*).

	Commentator	Position	Comment	Committee Response
1.	First District Appellate Project, Mr. Mat Zwerling Executive Director	N	<ul style="list-style-type: none"><li>• The committee first proposes revocation of rule 4.470 as duplicative of rule 4.305. This choice appears reasonable, and the appellate projects do not formally oppose rule 4.470's elimination. However, there are a number of duplications between Divisions Four ("Sentence") and Five ("Determinate Sentencing"), and judges and attorneys handling a determinate sentence case may be less likely to overlook the requirement of notification of appeal rights if it is also found in the determinate sentencing section of the rules.</li><li>• The second proposal is to eliminate the last sentence of the remaining rule (4.305), which currently reads, "A reporter's transcript of the proceedings required by this rule must be forthwith prepared and certified by the reporter and filed with the clerk." We oppose this proposed deletion. For the purposes of the appellate projects—generally, the investigation of potential motions for constructive filing of late notices of appeal—the committee's proposed change may make it more difficult to obtain reporter's transcripts that will evidence (or dispel a claim of) the trial court's failure to advise a defendant of his or her appeal rights (or other grounds for a motion seeking to cure a</li></ul>	<ul style="list-style-type: none"><li>• The committee declines the suggestion to retain two identical rules under distinct divisions in the rules. Although each rule is under distinct divisions, the committee believes that two versions of the same rule are unnecessary and confusing. The committee proposes retaining rule 4.305 because it is located under the division entitled "Sentencing" and immediately precedes a similar rule for misdemeanors and infractions.</li><li>• The committee believes that requiring the production of transcripts in every applicable case, particularly in the absence of an appeal, is costly and unnecessary. If transcripts are needed later to rebut a defendant's claim that the court failed to provide the required advisements, a trial or appellate court may still order production of the transcripts as needed because all proceedings at the time of sentencing must be reported. (Cal. Rules of Court, rule 4.431.)</li></ul>

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		<p>late notice of appeal). It has been our experience that it is easier to get a copy of the reporter's transcript of the sentencing hearing when it has already been prepared and filed with the appeals clerk. Moreover, we believe retaining this aspect of the rule would benefit the courts and be in keeping with the purpose behind the rule's enactment: "to alleviate what had become a serious burden on the appellate courts, namely processing belated notices of appeal and accommodating the resulting delays which they caused. The role of rule 250 in this remedial scheme was to rebut future claims of ignorance by defendants, thus eliminating a major former basis for relief." (<i>People v. Baltor</i> (1978) 77 Cal.App.3d 227, 231 [addressing former rule 250, the forerunner of rule 4.305].)</p> <ul style="list-style-type: none"><li>• It should be noted that in the vast majority of cases that fall under rule 4.305, reporter's transcripts of the sentencing hearing will have to be prepared anyway, as the rule applies to the judgment in all trials and contested probation revocation hearings, i.e. the cases that are most frequently appealed. Rule 4.305 already does not apply to guilty/no contest plea cases or admitted probation violation cases (see <i>People v. Serrano</i> (1973) 33 Cal.App.3d 331,</li></ul>	<ul style="list-style-type: none"><li>• Although transcripts may separately be prepared as part of the appeal process in many of these cases, which include capital and life cases, the proposal is intended to promote cost savings and efficiencies by eliminating the costs associated with preparing, certifying, and filing transcripts in the absence of an appeal. The proposal is not intended to mirror the recent amendments to Penal Code section 1203.01.</li></ul>

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		<p>338), which means the rule—as it currently exists—already weeds out the cases least likely to result in an appeal, provide viable appellate issues, and, in turn, viable motions for constructive filing of late notices of appeal. Because sentencing hearing transcripts will almost always be prepared in the cases covered by this rule, we believe the cost-savings the committee anticipates achieving above and beyond the savings derived from the amendments to Penal Code section 1203.01 will be negligible (Under the 2011 amendments to Penal Code section 1203.01, reporter's transcripts of sentencing proceedings no longer need to be mailed to the Department of Corrections or other institution in non-capital and non-lifer cases (unless requested)). In the alternative, should the committee decide to make changes to this last sentence of the rule, consistent with Penal Code section 1203.01, the rule should state that a reporter's transcript of the sentencing hearing must be prepared and certified by the reporter and filed with the clerk in all cases in which the judgment imposed includes a sentence of death or an indeterminate term with or without the possibility of parole. Penal Code section 1203.01 cannot be reasonably construed to eliminate this obligation in death sentence and</p>	

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		indeterminate life sentence cases.	
2. Mr. Dennis A. Fischer Attorney Law Offices of Dennis A. Fischer	N	<p>I am somewhat puzzled by the proposal to delete from the California Rules of Court, after all these many years, the venerable provision specifying the preparation of a reporter's transcript of the sentencing court's giving of appeal rights. While I have no difficulty with the elimination of one or two redundant provisions, I question the reason given by the Criminal Law Advisory Committee for deleting the last sentence of the retained rule (Cal. Rules of Court, rule 4.305), and suggest its disappearance could have unintended consequences of the kind the original rule 250 was enacted 40 years ago to correct.</p> <p>Here is why. In those cases where the defendant has taken an appeal, the normal record on appeal always includes the transcript of sentencing. (See Cal. Rules of Court, rule 8.320(c)(8).) As to those cases, then, deletion of the last sentence of rule 4.305 is unobjectionable because the defendant and his appellate counsel will be provided the same transcript in connection with the appeal. Thus, the practical effect of this proposal concerns only the relatively smaller number of cases where there has been no appeal taken. But that was always the case in the past four decades, and indeed before 1972 when rule 250 was adopted. Its adoption was aimed largely at the problem of late filed notices of appeal, due in part to deficient notification of appellate rights</p>	<p>As noted above, the committee believes that requiring the production of transcripts in every applicable case, particularly in the absence of an appeal, is costly and unnecessary. If transcripts are needed later to rebut a defendant's claim that the court failed to provide the required advisements, a trial or appellate court may still order production of the transcripts as needed because all proceedings at the time of sentencing must be reported. (Cal. Rules of Court, rule 4.431.) The committee believes that producing transcripts <i>only when needed</i> promotes efficiencies and cost savings that outweigh the convenience of producing transcripts in every applicable case, which necessarily includes many instances in which the transcripts are never needed.</p>

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		<p>that resulted in defendants (often in propria persona) seeking habeas corpus relief, and on a number of occasions published decisions were necessary to decide them. (See, e.g., <i>In re Benoit</i> (1973) 10 Cal.3d 72.) My educated guess is that the number of such challenges has decreased in the years since then, perhaps because former rule 250 and its successors educated judges to routinely give the necessary notifications. What will happen now with the subset of nonappealed cases where a prisoner complains that he was not given his rights and his trial attorney never informed him what to do? How many such cases arise these days? I have no way of knowing how much it costs the system when prisoners bring such challenges through habeas corpus, which could entail additional court time and expenses including the appointment of counsel, but I see no discussion of these issues in the proposal. Even a few of these a year could cost tens of thousands. Does anyone know the number?</p> <p>With respect, I disagree that revised Penal Code section 1203.01 has anything to do with this. Its purpose was to reduce the number of automatically prepared transcripts for use by the Department of Corrections and Rehabilitation, not to enable prisoners to belatedly invoke their appellate rights about which they allegedly had not been notified. Nothing in section 1203.01 affects the number of sentencing transcripts automatically prepared as a normal part of the record on appeal when a prisoner does appeal,</p>	

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			<p>and nothing it says would reduce the cost of a prisoner or his attorney seeking habeas relief because he did not know his appellate rights. The proposal still begs the question.</p> <p>At bottom, we are all in favor of promoting costs savings and efficiencies by eliminating the unnecessary preparation of transcripts. But those savings only would occur when (1) the defendant has not taken an appeal and (2) the sentence is other than death or an indeterminate term. Does anyone have any idea how many cases are left, and any projection of how many convictions may be vulnerable to belated challenge on the grounds that the prisoner did not know his appellate rights? Is this <i>deja vu</i> all over again circa 1972?</p>	
3.	Hon. Helios J. Hernandez Superior Court of Riverside County	A	This proposal would delete rule 4.470 and modify rule 4.4305. Both rules deal with preparing transcripts after sentencing. The two rules would be consolidated into one. This would have no effect on a Judge's daily life.	No response required.
4.	Orange County Bar Association Ms. Dimetria Jackson President	A	This is consistent with recent changes in Penal Code section 1203.1, though it is likely to create practical challenges; trying to obtain transcripts of a plea years after it occurred can be difficult due to changes in court reporter staff, and post conviction review is fairly common due to a multiplicity of significant impacts from a prior conviction, such as immigration, registration as a sex offender, etc.	Please see the committee responses to items 1 and 2 above.

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
5.	Superior Court of San Diego County Mr. Michael M. Roddy Court Executive Officer	A	No additional comments.	No response required.
6.	Trial Court Presiding Judges Advisory Committee/Court Executive Advisory Committee Joint Rules Working Group	A	The working group appreciates the efforts of the advisory committee to provide for a more efficient process.	No response required.