

AMENDMENTS TO THE CALIFORNIA RULES OF COURT  
Adopted by the Judicial Council on September 24, 2019, effective January 1, 2020

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4		

1 **Rule 2.251. Electronic service**

2  
3 **(a) \* \* \***

4  
5 **(b) Electronic service by express consent**

6  
7 (1) A party or other person indicates that the party or other person agrees to  
8 accept electronic service by:

9  
10 (A) Serving a notice on all parties and other persons that the party or other  
11 person accepts electronic service and filing the notice with the court.  
12 The notice must include the electronic service address at which the  
13 party or other person agrees to accept service; or

14  
15 (B) Manifesting affirmative consent through electronic means with the  
16 court or the court's electronic filing service provider, and concurrently  
17 providing the party's electronic service address with that consent for  
18 the purpose of receiving electronic service. A party or other person may  
19 manifest affirmative consent by serving notice of consent to all parties  
20 and other persons and either:

21  
22 ~~(C) A party or other person may manifest affirmative consent under (B) by:~~

23  
24 (i) Agreeing to the terms of service ~~agreement~~ with an electronic  
25 filing service provider, which clearly states that agreement  
26 constitutes consent to receive electronic service ~~electronically~~; or

27  
28 (ii) Filing Consent to Electronic Service and Notice of Electronic  
29 Service Address (form EFS-005-CV).

30  
31 (2) \* \* \*

32  
33 *(Subd (b) amended effective January 1, 2019; adopted as part of subd (a); previously*  
34 *amended and relettered effective July 1, 2013; previously amended effective January 1,*  
35 *2007, January 1, 2008, January 1, 2011, January 1, 2018, and January 1, 2019.)*

36  
37 **(c)–(k) \* \* \***

38  
39 *Rule 2.251 amended effective January 1, 2020; adopted as rule 2060 effective January 1, 2003;*  
40 *previously amended and renumbered as rule 2.260 effective January 1, 2007, and as rule 2.251*  
41 *effective January 1, 2011; previously amended effective January 1, 2008, January 1, 2009, July 1,*  
42 *2009, January 1, 2010, July 1, 2013, January 1, 2016, January 1, 2017, January 1, 2018, and*  
43 *January 1, 2019.*



1 When a document to be filed electronically provides for a signature under penalty  
2 of perjury of any person, the document is deemed to have been signed by that  
3 person if filed electronically provided that either of the following conditions is  
4 satisfied:  
5

6 (1) The declarant has signed the document using an electronic signature and  
7 declares under penalty of perjury under the laws of the state of California that  
8 the information submitted is true and correct. If the declarant is not the  
9 electronic filer, the electronic signature must be unique to the declarant,  
10 capable of verification, under the sole control of the declarant, and linked to  
11 data in such a manner that if the data are changed, the electronic signature is  
12 invalidated; or  
13

14 (2) The declarant, before filing, has physically signed a printed form of the  
15 document. By electronically filing the document, the electronic filer certifies  
16 that the original, signed document is available for inspection and copying at  
17 the request of the court or any other party. In the event this second method of  
18 submitting documents electronically under penalty of perjury is used, the  
19 following conditions apply:  
20

21 (A) At any time after the electronic version of the document is filed, any  
22 party may serve a demand for production of the original signed  
23 document. The demand must be served on all other parties but need not  
24 be filed with the court.  
25

26 (B) Within five days of service of the demand under (A), the party or other  
27 person on whom the demand is made must make the original signed  
28 document available for inspection and copying by all other parties.  
29

30 (C) At any time after the electronic version of the document is filed, the  
31 court may order the filing party or other person to produce the original  
32 signed document in court for inspection and copying by the court. The  
33 order must specify the date, time, and place for the production and must  
34 be served on all parties.  
35

36 (D) Notwithstanding (A)–(C), local child support agencies may maintain  
37 original, signed pleadings by way of an electronic copy in the statewide  
38 automated child support system and must maintain them only for the  
39 period of time stated in Government Code section 68152(a). If the local  
40 child support agency maintains an electronic copy of the original,  
41 signed pleading in the statewide automated child support system, it may  
42 destroy the paper original.  
43

1 (Subd (b) amended effective January 1, 2020; adopted as subd (a); previously amended  
2 effective January 1, 2007, July 1, 2016, and January 1, 2018; previously relettered and  
3 amended as subd (b) effective January 1, 2019.)  
4

5 **(c) Documents not signed under penalty of perjury**  
6

7 (1) If a document does not require a signature under penalty of perjury, the  
8 document is deemed signed by the party if the document is person who filed it  
9 electronically.  
10

11 ~~(d)~~ **Documents requiring signatures of opposing parties**  
12

13 (2) When a document to be filed electronically, such as a stipulation, requires the  
14 signatures of opposing parties or persons other than the filer not under penalty  
15 of perjury, the following procedures applies apply:  
16

17 (1)(A) ~~The party filing the document must obtain the signatures of all parties~~  
18 ~~on a printed form of the document. The opposing party or other person~~  
19 has signed a printed form of the document before, or on the same day  
20 as, the date of filing.

21 (2) ~~The party filing the document~~ electronic filer must maintain the  
22 original, signed document and must make it available for inspection  
23 and copying as provided in ~~(a)(b)(2)~~ of this rule and Code of Civil  
24 Procedure section 1010.6. The court and any other party may demand  
25 production of the original signed document in the manner provided in  
26 ~~(a)(b)(2)(A-C)(A)-(C).~~

27 (3) ~~By electronically filing the document, the electronic filer indicates that~~  
28 ~~all parties have signed the document and that the filer has the signed~~  
29 ~~original in his or her possession;~~ or  
30

31 (B) The opposing party or other person has signed the document using an  
32 electronic signature and that electronic signature is unique to the person  
33 using it, capable of verification, under the sole control of the person  
34 using it, and linked to data in such a manner that if the data are  
35 changed, the electronic signature is invalidated.  
36

37 (Subd (c) amended effective January 1, 2020; adopted as subd (b); previously amended  
38 effective January 1, 2007; relettered as subd (c) effective January 1, 2019.)  
39

40  
41 **~~(e)~~(d) Digital signature**  
42

1 A party or other person is not required to use a digital signature on an electronically  
2 filed document.

3  
4 *(Subd (d) amended and relettered effective January 1, 2020; adopted as subd (d);*  
5 *previously relettered as subd (e) effective January 1, 2019.)*  
6

7 **(e) Judicial signatures**  
8

9 If a document requires a signature by a court or a judicial officer, the document  
10 may be electronically signed in any manner permitted by law.

11  
12 *(Subd (e) relettered effective January 1, 2020; adopted as subd (e) effective January 1,*  
13 *2008; previously relettered as subd (f) effective January 1, 2019.)*  
14

15 *Rule 2.257 amended effective January 1, 2020; adopted as rule 2057 effective January 1, 2003;*  
16 *previously amended and renumbered effective January 1, 2007; previously amended effective*  
17 *January 1, 2008, July 1, 2016, January 1, 2018, and January 1, 2019.*  
18

19 **Advisory Committee Comment**  
20

21 The requirements for electronic signatures that are compliant with the rule do not impair the  
22 power of the courts to resolve disputes about the validity of a signature.  
23

24 **Rule 2.540. Application and scope**  
25

26 **(a)** \* \* \*

27  
28 **(b) Level of remote access**  
29

30 (1) A court may provide authorized persons from government entities with  
31 remote access to electronic records as follows:  
32

33 (A)–(M) \* \* \*

34  
35 (N) County public conservator: criminal electronic records, mental health  
36 electronic records, and probate electronic records.  
37

38 (O) County public administrator: probate electronic records.  
39

40 ~~(N)~~**(P)** Federally recognized Indian tribe (including any reservation,  
41 department, subdivision, or court of the tribe) with concurrent  
42 jurisdiction: child welfare electronic records, family electronic records,  
43 juvenile justice electronic records, and probate electronic records.

1  
2           ~~(O)~~(Q)       For good cause, a court may grant remote access to electronic  
3           records in particular case types to government entities beyond those  
4           listed in (b)(1)(A)–~~(P)~~(N). For purposes of this rule, “good cause”  
5           means that the government entity requires access to the electronic  
6           records in order to adequately perform its ~~statutory~~ legal duties or fulfill  
7           its responsibilities in litigation.  
8

9           ~~(P)~~(R)       All other remote access for government entities is governed by  
10          articles 2 and 3.

11  
12          ~~(2)–(3)~~ \* \* \*

13  
14          *(Subd (b) amended effective January 1, 2020.)*

15  
16          (c)   \* \* \*

17  
18          *Rule 2.540 amended effective January 1, 2020; adopted effective January 1, 2019.*

19  
20  
21          ~~**Rule 2.891. Periodic review of Request for court interpreter skills and professional**~~  
22          ~~**conduct credential review**~~

23  
24          ~~Each trial court must establish a procedure for biennial, or more frequent, review of the~~  
25          ~~performance and skills of each court interpreter certified under Government Code section~~  
26          ~~68560 et seq. The court may designate a review panel, which must include at least one~~  
27          ~~person qualified in the interpreter’s language. The review procedure may include~~  
28          ~~interviews, observations of courtroom performance, rating forms, and other evaluation~~  
29          ~~techniques.~~

30  
31          ~~**Former rule 2.891. Periodic review of court interpreter skills and professional**~~  
32          ~~**conduct [Repealed]**~~

33  
34          ~~*Rule 2.891 repealed effective January 1, 2020; adopted as rule 984 effective July 1, 1979;*~~  
35          ~~*previously amended effective January 1, 1996; previously amended and renumbered as rule*~~  
36          ~~*2.891 effective January 1, 2007.*~~

37  
38          **Rule 2.891. Request for court interpreter credential review**

39  
40          Certified and registered court interpreters are credentialed by the Judicial Council under  
41          Government Code section 68562. The council, as the credentialing body, has authority to  
42          review a credentialed interpreter’s performance, skills, and adherence to the professional  
43          conduct requirements of rule 2.890, and to impose discipline on interpreters.

1  
2 **(a) Purpose**

3  
4 This rule clarifies the council’s authority to adopt disciplinary procedures and to  
5 conduct a credential review, as set out in the *California Court Interpreter*  
6 *Credential Review Procedures*.

7  
8 **(b) Application**

9  
10 Under the *California Court Interpreter Credential Review Procedures*, all court  
11 interpreters certified or registered by the council may be subject to a credential  
12 review process after a request for a credential review alleging professional  
13 misconduct or malfeasance. Nothing in this rule prevents an individual California  
14 court from conducting its own review of, and disciplinary process for, interpreter  
15 employees under the court’s collective bargaining agreements, personnel policies,  
16 rules, and procedures, or, for interpreter contractors, under the court’s contracting  
17 and general administrative policies and procedures.

18  
19 **(c) Procedure**

20  
21 (1) On a request made to the council by any person, court, or other entity for the  
22 review of an interpreter’s credential for alleged professional misconduct or  
23 malfeasance by an interpreter credentialed by the council, the council will  
24 respond in accordance with procedures stated in the *California Court*  
25 *Interpreter Credential Review Procedures*.

26  
27 (2) On a request by the council in relation to allegations under investigation  
28 under the *California Court Interpreter Credential Review Procedures*, a  
29 California court is required to forward information to the council regarding a  
30 complaint or allegation of professional misconduct by a certified or registered  
31 court interpreter.

32  
33 **(d) Disciplinary action imposed**

34  
35 The appropriateness of disciplinary action and the degree of discipline to be  
36 imposed must depend on factors such as the seriousness of the violation, the intent  
37 of the interpreter, whether there is a pattern of improper activity, and the effect of  
38 the improper activity on others or on the judicial system.

39  
40 *Rule 2.891 adopted effective January 1, 2020.*

1 **Rule 3.720. Application**

2  
3 (a) \* \* \*

4  
5 (b) ~~Emergency s~~Suspension of rules

6  
7 A court by local rule may exempt specified types or categories of general civil  
8 cases ~~filed before January 1, 2020~~, from the case management rules in this chapter,  
9 provided that the court has in place alternative procedures for case processing and  
10 trial setting for such actions, including, without limitation, compliance with Code  
11 of Civil Procedure sections 1141.10 et seq. and 1775 et seq. The court must ~~post~~  
12 include the alternative procedures ~~on in its website~~ local rules.

13  
14 *(Subd (b) amended effective January 1, 2020; adopted effective February 26, 2013; previously*  
15 *amended effective January 1, 2016.)*

16  
17 (c) \* \* \*

18  
19 *Rule 3.720 amended effective January 1, 2020; adopted effective January 1, 2007; previously*  
20 *amended effective February 26, 2013, and January 1, 2016.*

21  
22  
23 **Advisory Committee Comment**

24 ~~Subdivision (b) of this rule is an emergency measure in response to the limited fiscal resources~~  
25 ~~available to the courts as a result of the current fiscal crisis and is not intended as a permanent~~  
26 ~~change in the case management rules.~~

27  
28  
29 **Rule 3.1345. Format of discovery motions**

30  
31 (a) **Separate statement required**

32  
33 Except as provided in (b), Aany motion involving the content of a discovery  
34 request or the responses to such a request must be accompanied by a separate  
35 statement. The motions that require a separate statement include a motion:

- 36  
37 (1) To compel further responses to requests for admission;  
38  
39 (2) To compel further responses to interrogatories;  
40  
41 (3) To compel further responses to a demand for inspection of documents or  
42 tangible things;  
43

- 1 (4) To compel answers at a deposition;  
2  
3 (5) To compel or to quash the production of documents or tangible things at a  
4 deposition;  
5  
6 (6) For medical examination over objection; and  
7  
8 (7) For issue or evidentiary sanctions.  
9

10 *(Subd (a) amended effective January 1, 2020; previously amended effective July 1, 1987,*  
11 *January 1, 1992, January 1, 1997, July 1, 2001, and January 1, 2007.)*  
12

13 **(b) Separate statement not required**  
14

15 A separate statement is not required under the following circumstances:  
16

- 17 (1) ~~When~~ When no response has been provided to the request for discovery; or  
18  
19 (2) When a court has allowed the moving party to submit—in place of a separate  
20 statement—a concise outline of the discovery request and each response in  
21 dispute.  
22

23 *(Subd (b) amended effective January 1, 2020; adopted effective July 1, 2001.)*  
24

25 **(c)–(d) \* \* \***  
26

27 *Rule 3.1345 amended effective January 1, 2020; adopted as rule 335 effective January 1, 1984;*  
28 *previously amended effective July 1, 1987, January 1, 1992, January 1, 1997, and July 1, 2001;*  
29 *previously amended and renumbered as rule 3.1020 effective January 1, 2007; previously*  
30 *renumbered as rule 3.3145 effective January 1, 2009.*  
31  
32

33 **Standard 4.15. Vacatur relief under Penal Code section 236.14**  
34

35 **(a) Request to consolidate hearings for arrests and convictions that occurred in**  
36 **the same county**  
37

- 38 (1) The court should allow the filing of a single petition requesting vacatur relief  
39 under Penal Code section 236.14(a) for multiple arrests and convictions that  
40 occurred in the same county.  
41  
42 (2) The court should favor consolidating hearings for multiple arrests and  
43 convictions that occurred in the same county.

1  
2 (3) The court may require the following documentation before granting a request  
3 to consolidate hearings:

4  
5 (A) An agreement between the petitioner and all of the involved state or  
6 local prosecutorial agencies, as defined in Penal Code section  
7 236.14(c), to consolidate the hearings;

8  
9 (B) Documentation that states whether any of the involved state or local  
10 prosecutorial agencies, as defined in Penal Code section 236.14(c),  
11 intend to file an opposition to the petition; and

12  
13 (C) Proof of service of the request to consolidate hearings on all of the  
14 involved state or local prosecutorial agencies, as defined in Penal Code  
15 section 236.14(c).

16  
17 (4) The court should consider the following nonexclusive list of factors when  
18 deciding whether to consolidate hearings:

19  
20 (A) The common questions of fact or law, if any;

21  
22 (B) The convenience of parties, witnesses, and counsel;

23  
24 (C) The efficient utilization of judicial facilities and staff resources;

25  
26 (D) The calendar of the court; and

27  
28 (E) The disadvantages of duplicative and inconsistent orders.

29  
30 **(b) Confidentiality**

31  
32 (1) The court should designate the petition and related filings and court records  
33 as confidential.

34  
35 (2) At the hearing or any other proceeding accessible to the public, the court  
36 should consider implementing procedures consistent with Penal Code section  
37 236.14(q), such as ordering the identity of the petitioner to be either “Jane  
38 Doe” or “John Doe.”

39  
40 **(c) Initial court review and orders**

41

1 (1) After 45 days from the filing of the petition, the court should conduct an  
2 initial review of the case. Concurrent with granting or denying a request to  
3 consolidate hearings, the court should:

4  
5 (A) Grant relief without a hearing when the prosecuting agency files  
6 no opposition within 45 days from the date of service and the  
7 court finds that the petitioner meets the requirements for relief;

8  
9 (B) Set a hearing date if an opposition is filed or a hearing is  
10 otherwise warranted; or

11  
12 (C) Deny the petition without prejudice if the petitioner fails to  
13 provide the information required by Penal Code section  
14 236.14(b).

15  
16 **(d) Notification**

17  
18 (1) The court should timely notify the petitioner and prosecuting agency of its  
19 decisions under subdivision (c)(1).

20  
21 (2) The court should timely notify the relevant probation department of any  
22 decision to terminate probation.

23  
24 **(e) Additional relief**

25  
26 When granting the petition for vacatur relief under Penal Code section 236.14(a),  
27 the court should consider ordering the following additional relief, including, but not  
28 limited to:

29  
30 *Standard 4.15 adopted effective January 1, 2020.*

31  
32  
33 **Rule 4.130. Mental competency proceedings**

34  
35 **(a) \* \* \***

36  
37 **(b) Initiation of mental competency proceedings**

38  
39 (1)–(2) \* \* \*

40  
41 (3) In a felony case, if the judge initiates mental competency proceedings prior to  
42 the preliminary examination, counsel for the defendant may request a  
43 preliminary examination as provided in Penal Code section 1368.1(a)(1), or

1 counsel for the People may request a determination of probable cause as  
2 provided in Penal Code section 1368.1(a)(2) and rule 4.131.

3  
4 *(Subd (b) amended effective January 1, 2020.)*

5  
6 **(c) Effect of initiating mental competency proceedings**

7  
8 (1) If mental competency proceedings are initiated, criminal proceedings are  
9 suspended and may not be reinstated until a trial on the competency of the  
10 defendant has been concluded and the defendant ~~either:~~ is found mentally  
11 competent at a trial conducted under Penal Code section 1369, at a hearing  
12 conducted under Penal Code section 1370(a)(1)(G), or at a hearing following  
13 a certification of restoration under Penal Code section 1372.

14  
15 ~~(A) — Is found mentally competent; or~~

16  
17 ~~(B) — Has his or her competency restored under Penal Code section 1372.~~

18  
19 (2)–(3) \* \* \*

20  
21 *(Subd (c) amended effective January 1, 2020.)*

22  
23 **(d) Examination of defendant after initiation of mental competency proceedings**

24  
25 (1) On initiation of mental competency proceedings, the court must inquire  
26 whether the defendant, or defendant’s counsel, seeks a finding of mental  
27 incompetence.

28  
29 (2) Any court-appointed experts must examine the defendant and advise the  
30 court on the defendant’s competency to stand trial. Experts’ reports are to be  
31 submitted to the court, counsel for the defendant, and the prosecution. The  
32 report must include the following:

33  
34 (A) A brief statement of the examiner’s training and previous experience as  
35 it relates to examining the competence of a criminal defendant to stand  
36 trial and preparing a resulting report;

37  
38 (B) A summary of the examination conducted by the examiner on the  
39 defendant, including a summary of the defendant’s mental status, a  
40 ~~current~~ diagnosis under the most recent version of the *Diagnostic and*  
41 *Statistical Manual of Mental Disorders*, if possible, of the defendant’s  
42 current mental disorder or disorders, and a statement as to whether  
43 symptoms of the mental disorder or disorders which motivated the

1 defendant's behavior would respond to mental health treatment  
2 summary of the defendant's mental status;

3  
4 (C)–(G) \* \* \*

- 5  
6 (3) Statements made by the defendant during the examination to experts  
7 appointed under this rule, and products of any such statements, may not be  
8 used in a trial on the issue of the defendant's guilt or in a sanity trial should  
9 defendant enter a plea of not guilty by reason of insanity.

10  
11 *(Subd (d) amended effective January 1, 2020; previously amended effective January 1,*  
12 *2018.)*

13  
14 (e) \* \* \*

15  
16 **(f) Posttrial procedure**

- 17  
18 (1) If the defendant is found mentally competent, the court must reinstate the  
19 criminal proceedings.  
20  
21 (2) If the defendant is found to be mentally incompetent, the criminal  
22 proceedings remain suspended and the court must ~~follow the procedures~~  
23 stated in Penal Code section 1370 et seq. either issue an order committing the  
24 person for restoration treatment under the provisions of the governing statute,  
25 or, in the case of a person eligible for commitment under Penal Code sections  
26 1370 or 1370.01, may consider placing the committed person on a program  
27 of diversion.

28  
29 *(Subd (f) amended effective January 1, 2020.)*

30  
31 **(g) Diversion of a person eligible for commitment under section 1370 or 1370.01**

- 32  
33 (1) After the court finds that the defendant is mentally incompetent and before  
34 the defendant is transported to a facility for restoration under section  
35 1370(a)(1)(B)(i), the court may consider whether the defendant may benefit  
36 from diversion under Penal Code section 1001.36. The court may set a  
37 hearing to determine whether the defendant is an appropriate candidate for  
38 diversion. When determining whether to exercise its discretion to grant  
39 diversion under this section, the court may consider previous records of  
40 participation in diversion under section 1001.36.  
41  
42 (2) The maximum period of diversion after a finding that the defendant is  
43 incompetent to stand trial is the lesser of two years or the maximum time for

1 restoration under Penal Code section 1370(c)(1) (for felony offenses) or  
2 1370.01(c)(1) (for misdemeanor offenses).

3  
4 (3) The court may not condition a grant of diversion for defendant found to be  
5 incompetent on either:

6  
7 (A) The defendant's consent to diversion, either personally, or through  
8 counsel; or

9  
10 (B) A knowing and intelligent waiver of the defendant's statutory right to a  
11 speedy trial, either personally, or through counsel.

12  
13 (4) A finding that the defendant suffers from a mental disorder or disorders  
14 rendering the defendant eligible for diversion, any progress reports  
15 concerning the defendant's treatment in diversion, or any other records  
16 related to a mental disorder or disorders that were created as a result of  
17 participation in, or completion of, diversion or for use at a hearing on the  
18 defendant's eligibility for diversion under this section, may not be used in  
19 any other proceeding without the defendant's consent, unless that information  
20 is relevant evidence that is admissible under the standards described in article  
21 I, section 28(f)(2) of the California Constitution.

22  
23 (5) If, during the period of diversion, the court determines that criminal  
24 proceedings should be reinstated under Penal Code section 1001.36(d), the  
25 court must, under Penal Code section 1369, appoint a psychiatrist, licensed  
26 psychologist, or any other expert the court may deem appropriate, to examine  
27 the defendant and return a report, opining on the defendant's competence to  
28 stand trial. The expert's report must be provided to counsel for the People  
29 and to the defendant's counsel.

30  
31 (A) On receipt of the evaluation report, the court must conduct an inquiry  
32 into the defendant's current competency, under the procedures set forth  
33 in (h)(2) of this rule.

34  
35 (B) If the court finds by a preponderance of the evidence that the defendant  
36 is mentally competent, the court must hold a hearing as set forth in  
37 Penal Code section 1001.36(d).

38  
39 (C) If the court finds by a preponderance of the evidence that the defendant  
40 is mentally incompetent, criminal proceedings must remain suspended,  
41 and the court must order that the defendant be committed, under Penal  
42 Code section 1370 (for felonies) or 1370.01 (for misdemeanors), and  
43 placed for restoration treatment.

1  
2 (D) If the court concludes, based on substantial evidence, that the defendant  
3 is mentally incompetent and is not likely to attain competency within  
4 the time remaining before the defendant's maximum date for returning  
5 to court, and has reason to believe the defendant may be gravely  
6 disabled, within the meaning of Welfare and Institutions Code section  
7 5008(h)(1), the court may, instead of issuing a commitment order under  
8 Penal Code sections 1370 or 1370.01, refer the matter to the  
9 conservatorship investigator of the county of commitment to initiate  
10 conservatorship proceedings for the defendant under Welfare and  
11 Institutions Code section 5350 et seq.  
12

13 (6) If the defendant performs satisfactorily and completes diversion, the case  
14 must be dismissed under the procedures stated in Penal Code section  
15 1001.36, and the defendant must no longer be deemed incompetent to stand  
16 trial.  
17

18 *(Subd (g) adopted effective January 1, 2020.)*  
19

20 **(h) Posttrial hearings on competence**  
21

22 (1) If, at any time after the court has declared a defendant incompetent to stand  
23 trial, and counsel for the defendant, or a jail medical or mental health staff  
24 provider, provides the court with substantial evidence that the defendant's  
25 psychiatric symptoms have changed to such a degree as to create a doubt in  
26 the mind of the judge as to the defendant's current mental incompetence, the  
27 court may appoint a psychiatrist or a licensed psychologist to examine the  
28 defendant and, in an examination with the court, opine as to whether the  
29 defendant has regained competence.  
30

31 (2) On receipt of the evaluation report, the court must direct the clerk to serve a  
32 copy on counsel for the People and counsel for the defendant. If, in the  
33 opinion of the appointed expert, the defendant has regained competence, the  
34 court must conduct a hearing, as if a certificate of restoration of competence  
35 had been filed under Penal Code section 1372(a)(1), except that a  
36 presumption of competency does not apply. At the hearing, the court may  
37 consider any evidence, presented by any party, which is relevant to the  
38 question of the defendant's current mental competency.  
39

40 (A) At the conclusion of the hearing, if the court finds that it has been  
41 established by a preponderance of the evidence that the defendant is  
42 mentally competent, the court must reinstate criminal proceedings.  
43

1 (B) At the conclusion of the hearing, if the court finds that it has not been  
2 established by a preponderance of the evidence that the defendant is  
3 mentally competent, criminal proceedings must remain suspended.  
4

5 (C) The court's findings on the defendant's mental competency must be  
6 stated on the record and recorded in the minutes.  
7

8 (Subd (h) adopted effective January 1, 2020.)  
9

10 Rule 4.130 amended effective January 1, 2018; adopted effective January 1, 2007.  
11

12 **Advisory Committee Comment**

13 \* \* \*

14  
15 **Rule 5.225. Appointment requirements for child custody evaluators**  
16

17 (a)–(b) \* \* \*

18  
19 (c) **Licensing requirements**  
20

21 A person appointed as a child custody evaluator meets the licensing criteria  
22 established by Family Code section 3110.5(c)(1)–(5), if:  
23

24 (1) The person is licensed as a:

25  
26 (A) Physician and either is ~~either~~ a board-certified psychiatrist or has  
27 completed a residency in psychiatry;

28  
29 (B) Psychologist;

30  
31 (C) Marriage and family therapist; ~~or~~

32  
33 (D) Clinical social worker; or

34  
35 (E) Professional clinical counselor qualified to assess couples and families.  
36

37 (2) \* \* \*

38  
39 (Subd (c) amended effective January 1, 2020; adopted effective January 1, 2007;  
40 previously amended effective January 1, 2015.)  
41

42 (d)–(o) \* \* \*

43

1 *Rule 5.225 amended effective January 1, 2020; adopted as rule 1257.4 effective January 1, 2002;*  
2 *renumbered as rule 5.225 effective January 1, 2003; previously amended effective January 1,*  
3 *2005, January 1, 2007, January 1, 2011, January 1, 2015, and January 1, 2016.*

4  
5 **Rule 5.305. Hearing of matters by a judge under Family Code sections 4251(a) and**  
6 **4252(b)(7)**

7  
8 (a) \* \* \*

9  
10 (b) **Duty of judge hearing matter**

11  
12 A judge hearing a title IV-D support action under this rule and Family Code  
13 sections 4251(a) and 4252(b)(7) ~~must~~ may make an order or may make an interim  
14 order and refer the matter to the commissioner for further proceedings when  
15 appropriate. As long as a local child support agency is a party to the action, any  
16 future proceedings must be heard by a commissioner, unless the commissioner is  
17 unavailable because of exceptional circumstances.

18  
19 *(Subd (b) amended effective January 1, 2020; previously amended effective January 1,*  
20 *2003, and January 1, 2007.)*

21  
22 (c) \* \* \*

23  
24 *Rule 5.305 amended effective January 1, 2020; adopted as rule 1280.1 effective July 1, 1997;*  
25 *previously amended and renumbered effective January 1, 2003; previously amended effective*  
26 *January 1, 2007.*

27  
28  
29 **Rule 5.275. Standards for computer software to assist in determining support**

30  
31 (a) \* \* \*

32  
33 (b) **Standards**

34  
35 The standards for computer software to assist in determining the appropriate  
36 amount of child or spousal support are:

37  
38 (1)–(5) \* \* \*

39  
40 (6) The printout of the calculator results must display, on the first page of the  
41 results, the range of the low-income adjustment as permitted by Family Code  
42 section 4055(b)(7), if the low-income adjustment applies. If the software  
43 generates more than one report of the calculator results, the range of the low-

1 income adjustment only must be displayed on the report that includes the user  
2 inputs.

3  
4 ~~(6)~~(7) The software or a license to use the software must be available to persons  
5 without restriction based on profession or occupation.

6  
7 ~~(7)~~(8) The sale or donation of software or a license to use the software to a court or  
8 a judicial officer must include a license, without additional charge, to the  
9 court or judicial officer to permit an additional copy of the software to be  
10 installed on a computer to be made available by the court or judicial officer to  
11 members of the public.

12  
13 *(Subd (b) amended effective January 1, 2020; previously amended effective January 1,*  
14 *2003, and January 1, 2007.)*

15  
16 **(c)–(h)** \* \* \*

17  
18 **(i) Application**

19  
20 ~~An application for certification must be on a form supplied by the Judicial Council~~  
21 ~~and must be accompanied by an application fee of \$250. A person seeking~~  
22 ~~certification of software must apply in writing to the Judicial Council.~~

23  
24 *(Subd (i) amended effective January 1, 2020; previously amended January 1, 2003.)*

25  
26 **(j)** \* \* \*

27  
28 *Rule 5.275 amended effective January 1, 2020; adopted as rule 1258 effective December 1, 1993;*  
29 *previously amended and renumbered as rule 5.275 effective January 1, 2003; previously*  
30 *amended effective January 1, 2000, January 1, 2007, January 1, 2009, and January 1, 2016.*

31  
32 **Rule 5.350. Procedures for hearings to cancel (set aside) voluntary declarations of**  
33 **parentage or paternity when no previous action has been filed**

34  
35 **(a) Purpose**

36  
37 This rule provides a procedure for a hearing to cancel (set aside) a voluntary  
38 declaration of parentage or paternity under Family Code sections ~~7575(e)~~ 7576 and  
39 7577.

40  
41 *(Subd (a) amended effective January 1, 2020.)*  
42

1 **(b) Filing of request for hearing**

2  
3 A person who has signed a voluntary declaration of parentage or paternity, or a  
4 ~~local child support agency~~ another interested party, may ask that the declaration be  
5 canceled (set aside) by filing a completed *Request for Hearing and Application to*  
6 *Cancel (Set Aside) Voluntary Declaration of Parentage or Paternity* (form FL-  
7 280).

8  
9 *(Subd (b) amended effective January 1, 2020; previously amended effective January 1,*  
10 *2003, and January 1, 2006.)*

11  
12 **(c) \* \* \***

13  
14 **(d) Notice of hearing**

15  
16 The person who is asking that the voluntary declaration of parentage or paternity be  
17 canceled (set aside) must serve, either by personal service or by mail, a copy of the  
18 request for hearing and a blank *Responsive Declaration to Application to Cancel*  
19 *(Set Aside) Voluntary Declaration of Parentage or Paternity* (form FL-285) on the  
20 other person or people who signed the voluntary declaration of parentage or  
21 paternity. If the local child support agency is providing services in the case, the  
22 person requesting the set-aside must also serve a copy of the request for hearing on  
23 the agency.

24  
25 *(Subd (d) amended effective January 1, 2020; previously amended effective January 1,*  
26 *2003.)*

27  
28 **(e) Order after hearing**

29  
30 The decision of the court must be written on the *Order After Hearing on Motion to*  
31 *Cancel (Set Aside) Voluntary Declaration of Parentage or Paternity* (form FL-  
32 290). If the voluntary declaration of parentage or paternity is canceled (set aside),  
33 the clerk must mail a copy of the order to the Department of Child Support Services  
34 in order that the voluntary declaration of parentage or paternity be purged from the  
35 records.

36  
37 *(Subd (e) amended effective January 1, 2020; previously amended effective January 1,*  
38 *2003.)*

39  
40 **(f) Use of court file in subsequent proceedings**

41  
42 Pleadings in any subsequent proceedings, including but not limited to proceedings  
43 under the Uniform Parentage Act, that involve the parties and child named in the

1 voluntary declaration of parentage or paternity must be filed in the court file that  
2 was initiated by the filing of the *Request for Hearing and Application to Cancel*  
3 *(Set Aside) Voluntary Declaration of Parentage or Paternity* (form FL-280).

4  
5 *(Subd (f) amended effective January 1, 2020; previously amended effective January 1,*  
6 *2003.)*

7  
8 *Rule 5.350 amended effective January 1, 2020; adopted as rule 1280.10 effective July 1, 2000;*  
9 *previously amended and renumbered effective January 1, 2003; previously amended effective*  
10 *January 1, 2006, and January 1, 2007.*

## 11 12 **Title 5. Family and Juvenile Rules**

### 13 14 **Division 1. Family Rules**

#### 15 16 **Chapter 19. Minor Marriage or Domestic Partnership**

#### 17 18 **Article 1. General Provisions**

#### 19 20 **Rule 5.448. Minor's request to marry or establish a domestic partnership**

##### 21 22 **(a) Application**

23  
24 (1) This rule implements Family Code sections 297.1, 303, and 304, allowing a  
25 person under 18 years of age (a minor) to seek a court order for permission to  
26 marry or establish a domestic partnership.

27  
28 (2) The responsibilities of Family Court Services under (c) apply equally to  
29 courts that adopt a confidential child custody mediation program,  
30 recommending child custody counseling, or a tiered/hybrid program.

31  
32 (3) For the purpose of this rule, the terms “parent” and “parent with legal  
33 authority” are used interchangeably.

##### 34 35 **(b) Required initial filings**

36  
37 (1) The minor and the minor's proposed spouse or domestic partner must  
38 complete and file with the court clerk a *Request of Minor to Marry or*  
39 *Establish a Domestic Partnership* (form FL-910).

40  
41 (2) Unless the minor has no parent or legal guardian capable of consenting, each  
42 minor must file, in addition to form FL-910, the written consent from a parent  
43 with legal authority to provide consent or a legal guardian. *Consent for Minor*

1 to Marry or Establish a Domestic Partnership (form FL-912) may be used  
2 for this purpose.

3  
4 **(c) Responsibilities of Family Court Services**

5  
6 Unless the minor is 17 years of age and has achieved a high school diploma or a  
7 high school equivalency certificate, Family Court Services must:

- 8  
9 (1) Interview the parties intending to marry or establish a domestic partnership.  
10  
11 (A) The parties must initially be interviewed separately; and  
12  
13 (B) The parties may subsequently be interviewed together.  
14  
15 (2) Interview at least one of the parents or the legal guardian of each party who is  
16 a minor, if the minor has a parent or legal guardian. If more than one parent  
17 or legal guardian is interviewed, the parents or guardians must be interviewed  
18 separately.  
19  
20 (3) Inform the parties that Family Court Services must:  
21  
22 (A) Prepare a written report, including recommendations for granting or  
23 denying the parties permission to marry or establish a domestic  
24 partnership;  
25  
26 (B) Provide the parties and the court with a copy of the report; and  
27  
28 (C) Submit a report of known or suspected child abuse or neglect to the  
29 county child protective services agency if Family Court Services knows  
30 or reasonably suspects that either party is a victim of child abuse or  
31 neglect.  
32  
33 (4) Prepare a written report, which must:  
34  
35 (A) Include an assessment of any potential force, threat, persuasion, fraud,  
36 coercion, or duress by either of the parties or their family members  
37 relating to the intended marriage or domestic partnership;  
38  
39 (B) Include recommendations for granting or denying the parties  
40 permission to marry or establish a domestic partnership; and  
41  
42 (C) Be submitted to the parties and the court.  
43

1 (5) Protect party confidentiality in:

2  
3 (A) Storage and disposal of records and any personal information gathered  
4 during the interviews; and

5  
6 (B) Management of written reports containing recommendations for either  
7 granting or denying permission for a minor to marry or establish a  
8 domestic partnership.

9  
10 **(d) Responsibilities of judicial officer**

11  
12 In determining whether to issue a court order granting permission for the minor to  
13 marry or establish a domestic partnership:

14  
15 (1) The judicial officer must:

16  
17 (A) If Family Court Services is required to interview the parties, do the  
18 following before making a final determination:

19  
20 (i) Separately and privately interview each of the parties; and

21  
22 (ii) Consider whether there is any evidence of coercion or undue  
23 influence on the minor.

24  
25 (B) Complete *Order and Notices to Minor on Request to Marry or*  
26 *Establish a Domestic Partnership* (form FL-915).

27  
28 (2) The judicial officer may order that the parties:

29  
30 (A) Appear at a hearing to consider whether it is in the best interest of the  
31 minor to marry or establish a domestic partnership.

32  
33 (B) Participate in counseling concerning the social, economic, and personal  
34 responsibilities incident to the marriage or domestic partnership before  
35 the marriage or domestic partnership is established. The judicial  
36 officer:

37  
38 (i) Must not require the parties to confer with counselors provided  
39 by religious organizations of any denomination;

40  
41 (ii) Must consider, among other factors, the ability of the parties to  
42 pay for the counseling in determining whether to order the parties  
43 to participate in counseling;

1  
2 (iii) May impose a reasonable fee to cover the cost of any counseling  
3 provided by the county or the court; and  
4

5 (iv) May require the parties to file a certificate of completion of  
6 counseling before granting permission to marry or establish a  
7 domestic partnership.  
8

9 **(e) Waiting period**

10  
11 After obtaining a court order granting a minor permission to marry or establish a  
12 domestic partnership, the parties must wait 30 days from the date the court made  
13 the order before filing a marriage license or filing a declaration of domestic  
14 partnership. This waiting period is not required if the minor is:  
15

16 (1) 17 years of age and has a high school diploma or a high school equivalency  
17 certificate; or  
18

19 (2) 16 or 17 years of age and is pregnant or whose prospective spouse or  
20 domestic partner is pregnant.  
21

22 *Rule 5.448 adopted effective January 1, 2020.*  
23

24 **Rule 5.480. Application**  
25

26 This chapter addressing the Indian Child Welfare Act (~~25 United States Code section~~  
27 U.S.C. § 1901 et seq.) as codified in various sections of the ~~California~~ Family Code,  
28 Probate Code, and Welfare and Institutions Codes, applies to most proceedings involving  
29 Indian children that may result in an involuntary foster care placement; guardianship or  
30 conservatorship placement; custody placement under Family Code section 3041;  
31 declaration freeing a child from the custody and control of one or both parents;  
32 termination of parental rights; preadoptive placement; or adoptive placement. This  
33 chapter applies to:  
34

35 \* \* \*

36 *Rule 5.480 amended effective January 1, 2020; adopted effective January 1, 2008; previously*  
37 *amended effective January 1, 2013, and July 1, 2003.*  
38

39 **Rule 5.481. Inquiry and notice**  
40

41 **(a) Inquiry**  
42

1 The court, court-connected investigator, and party seeking a foster-care placement,  
2 guardianship, conservatorship, custody placement under Family Code section 3041,  
3 declaration freeing a child from the custody or control of one or both parents,  
4 termination of parental rights, preadoptive placement, or adoption have an  
5 affirmative and continuing duty to inquire whether a child is or may be an Indian  
6 child in all proceedings identified in rule 5.480. The court, court-connected  
7 investigator, and party include the county welfare department, probation  
8 department, licensed adoption agency, adoption service provider, investigator,  
9 petitioner, appointed guardian or conservator of the person, and appointed  
10 fiduciary.

11  
12 (1) The party seeking a foster-care placement, guardianship, conservatorship,  
13 custody placement under Family Code section 3041, declaration freeing a  
14 child from the custody or control of one or both parents, termination of  
15 parental rights, preadoptive placement, or adoption must ask the child, if the  
16 child is old enough, and the parents, Indian custodian, or legal guardians,  
17 extended family members, others who have an interest in the child, and  
18 where applicable the party reporting child abuse or neglect, whether the child  
19 is or may be an Indian child and whether the residence or domicile of the  
20 child, the parents, or Indian custodian is on a reservation or in an Alaska  
21 Native village, and must complete the *Indian Child Inquiry Attachment* (form  
22 ICWA-010(A)) and attach it to the petition unless the party is filing a  
23 subsequent petition; and there is no new information.

24  
25 (2) At the first appearance by a parent, Indian custodian, or guardian, and all  
26 other participants in any dependency case; or in juvenile wardship  
27 proceedings in which the child is at risk of entering foster care or is in foster  
28 care; or at the initiation of any guardianship, conservatorship, proceeding for  
29 custody under Family Code section 3041, proceeding to terminate parental  
30 rights, proceeding to declare a child free of the custody and control of one or  
31 both parents, preadoptive placement, or adoption proceeding; and at each  
32 hearing that may culminate in an order for foster care placement, termination  
33 of parental rights, preadoptive placement or adoptive placement, as described  
34 in Welfare and Institutions Code section 224.1(d)(1), or that may result in an  
35 order for guardianship, conservatorship, or custody under Family Code  
36 section 3041; the court must:

37  
38 (A) Ask each participant present whether the participant knows or has  
39 reason to know the child is an Indian child;

40  
41 (B) Instruct the parties to inform the court if they subsequently receive  
42 information that provides reason to know the child is an Indian child;  
43 and

1  
2 (C) Order the parent, Indian custodian, or guardian, if available, to  
3 complete *Parental Notification of Indian Status* (form ICWA-020).  
4

5 (3) \* \* \*

6  
7 (4) If the social worker, probation officer, licensed adoption agency, adoption  
8 service provider, investigator, or petitioner knows or has reason to know or  
9 believe that an Indian child is or may be involved, that person or entity must  
10 make further inquiry as soon as practicable by:

11  
12 (A) Interviewing the parents, Indian custodian, and “extended family  
13 members” as defined in 25 United States Code sections ~~1901 and~~  
14 ~~1903(2)~~, to gather the information listed in Welfare and Institutions  
15 Code section ~~224.2(a)(5)~~ 224.3(a)(5), Family Code section 180(b)(5),  
16 or Probate Code section 1460.2(b)(5), ~~which is required to complete the~~  
17 ~~*Notice of Child Custody Proceeding for Indian Child* (form ICWA-~~  
18 ~~030)~~;

19  
20 (B) \* \* \*

21  
22 (C) Contacting the tribes and any other person ~~that~~ who reasonably can be  
23 expected to have information regarding the child’s membership status  
24 or eligibility. These contacts must at a minimum include the contacts  
25 and sharing of information listed in Welfare and Institutions Code  
26 section 224.2(e)(3).

27  
28 (5) The petitioner must on an ongoing basis include in its filings a detailed  
29 description of all inquiries, and further inquiries it has undertaken, and all  
30 information received pertaining to the child’s Indian status, as well as  
31 evidence of how and when this information was provided to the relevant  
32 tribes. Whenever new information is received, that information must be  
33 expeditiously provided to the tribes.

34  
35 (5) ~~The circumstances that may provide reason to know the child is an Indian~~  
36 ~~child include the following:~~

37  
38 (A) ~~The child or a person having an interest in the child, including an~~  
39 ~~Indian tribe, an Indian organization, an officer of the court, a public or~~  
40 ~~private agency, or a member of the child’s extended family, informs or~~  
41 ~~otherwise provides information suggesting that the child is an Indian~~  
42 ~~child to the court, the county welfare agency, the probation department,~~

1 the licensed adoption agency or adoption service provider, the  
2 investigator, the petitioner, or any appointed guardian or conservator

3  
4 (B) ~~The residence or domicile of the child, the child's parents, or an Indian~~  
5 ~~eustodian is or was in a predominantly Indian community; or~~

6  
7 (C) ~~The child or the child's family has received services or benefits from a~~  
8 ~~tribe or services that are available to Indians from tribes or the federal~~  
9 ~~government, such as the U.S. Department of Health and Human~~  
10 ~~Services, Indian Health Service, or Tribal Temporary Assistance to~~  
11 ~~Needy Families benefits.~~

12  
13 *(Subd (a) amended effective January 1, 2020; previously amended effective January 1, 2013.)*

14  
15 **(b) Reason to know the child is an Indian child**

16  
17 (1) There is reason to know a child involved in a proceeding is an Indian child if:

18  
19 (A) A person having an interest in the child, including the child, an officer  
20 of the court, a tribe, an Indian organization, a public or private agency,  
21 or a member of the child's extended family informs the court the child  
22 is an Indian child;

23  
24 (B) The residence or domicile of the child, the child's parents, or Indian  
25 custodian is on a reservation or in an Alaska Native village;

26  
27 (C) Any participant in the proceeding, officer of the court, Indian tribe,  
28 Indian organization, or agency informs the court that it has discovered  
29 information indicating that the child is an Indian child;

30  
31 (D) The child who is the subject of the proceeding gives the court reason to  
32 know he or she is an Indian child;

33  
34 (E) The court is informed that the child is or has been a ward of a tribal  
35 court; or

36  
37 (F) The court is informed that either parent or the child possesses an  
38 identification card indicating membership or citizenship in an Indian  
39 tribe.

40  
41 (2) When there is reason to know the child is an Indian child, but the court does  
42 not have sufficient evidence to determine that the child is or is not an Indian  
43 child, the court must confirm, by way of a report, declaration, or testimony

1 included in the record that the agency or other party used due diligence to  
2 identify and work with all of the tribes of which there is reason to know the  
3 child may be a member, or eligible for membership, to verify whether the  
4 child is in fact a member or whether a biological parent is a member and the  
5 child is eligible for membership. Due diligence must include the further  
6 inquiry and tribal contacts discussed in (a)(4) above.

7  
8 (3) Upon review of the evidence of due diligence, further inquiry, and tribal  
9 contacts, if the court concludes that the agency or other party has fulfilled its  
10 duty of due diligence, further inquiry, and tribal contacts, the court may:

11  
12 (A) Find there is no reason to know the child is an Indian child and the  
13 Indian Child Welfare Act does not apply. Notwithstanding this  
14 determination, if the court or a party subsequently receives information  
15 that was not previously available relevant to the child's Indian status,  
16 the court must reconsider this finding; or

17  
18 (B) Find it is known the child is an Indian child, and that the Indian Child  
19 Welfare Act applies, and order compliance with the requirements of the  
20 act, including notice in accordance with (c) below; or

21  
22 (C) Find there is reason to know the child is an Indian child, order notice in  
23 accordance with (c) below, and treat the child as an Indian child unless  
24 and until the court determines on the record that the child is not an  
25 Indian child.

26  
27 (4) A determination by an Indian tribe that a child is or is not a member of, or  
28 eligible for membership in, that tribe, or testimony attesting to that status by a  
29 person authorized by the tribe to provide that determination, must be  
30 conclusive. Information that the child is not enrolled, or is not eligible for  
31 enrollment in, the tribe is not determinative of the child's membership status  
32 unless the tribe also confirms in writing that enrollment is a prerequisite for  
33 membership under tribal law or custom.

34  
35 *(Subd (b) adopted effective January 1, 2020.)*

36  
37 **(c)(b)Notice**

38  
39 (1) If it is known or there is reason to know ~~that~~ an Indian child is involved in a  
40 proceeding listed in rule 5.480, except for a wardship proceeding under  
41 Welfare and Institutions Code sections 601 and 602 et seq., the social worker,  
42 petitioner, or in probate guardianship and conservatorship proceedings, if the  
43 petitioner is unrepresented, the court, must send *Notice of Child Custody*

1 *Proceeding for Indian Child* (form ICWA-030) to the parent or legal  
2 guardian and Indian custodian of an Indian child, and the Indian child's tribe,  
3 in the manner specified in Welfare and Institutions Code section ~~224.2~~ 224.3,  
4 Family Law Code section 180, and Probate Code section 1460.2 for all initial  
5 hearings that may result in the foster care placement, termination of parental  
6 rights, preadoptive placement, or adoptive placement, or an order of  
7 guardianship, conservatorship, or custody under Family Code section 3041.  
8 For all other hearings, and for continued hearings, notice must be provided to  
9 the child's parents, legal guardian or Indian custodian, and tribe in  
10 accordance with Welfare and Institutions Code sections 292, 293, and 295.

11  
12 (2) \* \* \*

13  
14 (3) The circumstances that may provide reason to know the child is an Indian  
15 child include the circumstances specified in ~~(a)(5)~~(b)(1).

16  
17 (4) \* \* \*

18  
19 *(Subd (c) relettered and amended effective January 1, 2020; adopted as subd (b);*  
20 *previously amended effective January 1, 2013 and July 1, 2013.)*

21  
22 *Rule 5.481 amended effective January 1, 2020; adopted effective January 1, 2008; previously*  
23 *amended effective January 1, 2013, and July 1, 2013.*

24  
25 **Advisory Committee Comment**

26  
27 Federal regulations (25 C.F.R. § 23.105) and state law (Welf. & Inst. Code, § 224.2(e)) contain  
28 detailed recommendations for contacting tribes to fulfill the obligations of inquiry, due diligence,  
29 information sharing, and notice under the Indian Child Welfare Act and state law.

30  
31  
32 **Rule 5.482. Proceedings after notice**

33  
34 **(a) Timing of proceedings**

35  
36 (1) If it is known or there is reason to know ~~that~~ a child is an Indian child, ~~the a~~  
37 court hearing that may result in a foster care placement, termination of  
38 parental rights, preadoptive placement, or adoptive placement must not  
39 proceed until at least 10 days after the parent, Indian custodian, the tribe, or  
40 the Bureau of Indian Affairs ~~have~~ has received notice, except as stated in  
41 sections (a)(2) and (3).  
42

1 (2) The detention hearing in dependency cases and in delinquency cases in which  
2 the probation officer has assessed that the child is in foster care or it is  
3 probable the child will be entering foster care described by rule 5.480(2)(A)–  
4 (C) may proceed without delay, provided that:

5  
6 (A) Notice of the detention hearing must be given as soon as possible after  
7 the filing of the petition initiating the proceeding; and  
8

9 (B) Proof of notice must be filed with the court within 10 days after the  
10 filing of the petition.  
11

12 (3) The parent, Indian custodian, or tribe must be granted a continuance, if  
13 requested, of up to 20 days to prepare for the proceeding, except for specified  
14 hearings in the following circumstances:  
15

16 (A) The detention hearing in dependency cases and in delinquency cases  
17 described by rule 5.480(2)(A)–(C);  
18

19 (B) The jurisdiction hearing in a delinquency case described by rule  
20 5.480(2)(A)–(C) in which the court finds the continuance would not  
21 conform to speedy trial considerations under Welfare and Institutions  
22 Code section 657; and  
23

24 (C) The disposition hearing in a delinquency case described by rule  
25 5.480(2)(A)–(C) in which the court finds good cause to deny the  
26 continuance under Welfare and Institutions Code section 682. A good  
27 cause reason includes when probation is recommending the release of a  
28 detained child to his or her parent or to a less restrictive placement. The  
29 court must follow the placement preferences under rule ~~5.484~~ 5.485  
30 when holding the disposition hearing.  
31

32 *(Subd (a) amended effective January 1, 2020; previously amended effective January 1,*  
33 *2013, and July 1, 2013.)*  
34

35 **(b) Proof of notice**  
36

37 Proof of notice in accordance with this rule must be filed with the court in advance  
38 of the hearing, except for those excluded by (a)(2) and (3), and must include *Notice*  
39 *of Child Custody Proceeding for Indian Child* (form ICWA-030), return receipts,  
40 and any responses received from the Bureau of Indian Affairs and tribes.  
41

42 *(Subd (b) amended effective January 1, 2020; previously amended effective January 1,*  
43 *2013.)*

1  
2 **(c) ~~When there is no information or response from a tribe~~ Determination of**  
3 **applicability of the Indian Child Welfare Act**  
4

- 5 (1) ~~If after notice has been provided as required by federal and state law and~~  
6 ~~neither the tribe nor the Bureau of Indian Affairs has provided a~~  
7 ~~determinative response within 60 days after receiving that notice, then the~~  
8 ~~court may determine that the Indian Child Welfare Act does not apply to the~~  
9 ~~proceedings, provided that the court must reverse its determination of the~~  
10 ~~inapplicability of the act and must apply it prospectively if a tribe or the~~  
11 ~~Bureau of Indian Affairs subsequently confirms that the child is an Indian~~  
12 ~~child. If the court finds that proper and adequate inquiry, further inquiry, and~~  
13 ~~due diligence were conducted under Welfare and Institutions Code section~~  
14 ~~224.2 and, if applicable, notice provided under Welfare and Institutions Code~~  
15 ~~section 224.3, and the court determines there is no reason to know the child is~~  
16 ~~an Indian child, the court may make a finding that the Indian Child Welfare~~  
17 ~~Act does not apply to the proceedings.~~  
18  
19 (2) ~~If at any time, based on the petition or other information, the court knows or~~  
20 ~~has reason to know the child is an Indian child, the court must proceed as if~~  
21 ~~the child were an Indian child. The determination of the court that the Indian~~  
22 ~~Child Welfare Act does not apply in (c)(1) is subject to reversal based on~~  
23 ~~sufficiency of the evidence. The court must reverse its determination if it~~  
24 ~~subsequently receives information providing reason to believe that the child~~  
25 ~~is an Indian child and order the social worker or probation officer to conduct~~  
26 ~~further inquiry under Welfare and Institutions Code section 224.3.~~  
27  
28 (3) ~~The court is not required to delay proceedings until a response to notice is~~  
29 ~~received.~~  
30

31 *(Subd (c) amended effective January 1, 2020; adopted as subd (d); previously amended*  
32 *effective January 1, 2013; previously relettered as subd (c) effective August 15, 2016.)*  
33

34 **(d) Intervention**  
35

36 The Indian child's tribe and Indian custodian ~~may~~ are entitled to intervene, orally or  
37 in writing, at any point in the proceedings, ~~and~~ The tribe may, but are is not  
38 required to, file with the court the *Notice of Designation of Tribal Representative*  
39 *and Notice of Intervention in a Court Proceeding Involving an Indian Child* (form  
40 ICWA-040) to give notice of ~~their~~ its intent to intervene.  
41

42 *(Subd (d) amended effective January 1, 2016; adopted as subd (e); previously amended*  
43 *effective January 1, 2013; previously relettered as subd (d) effective August 15, 2016.)*

1  
2 (e) \* \* \*

3  
4 (f) **Consultation with tribe**

5  
6 Any person or court involved in the placement of an Indian child in a proceeding  
7 described by rule 5.480 must use the services of the Indian child's tribe, whenever  
8 available through the tribe, in seeking to secure placement within the order of  
9 placement preference specified in rule ~~5.484~~ 5.485.

10  
11 *(Subd (f) amended effective January 1, 2020; adopted as subd (g); previously amended*  
12 *effective July 1, 2013; previously relettered as subd (f) effective August 15, 2016.)*

13  
14 *Rule 5.482 amended effective January 1, 2020; adopted effective January 1, 2008; previously*  
15 *amended effective January 1, 2013, July 1, 2013, and August 15, 2016.*

16  
17  
18 **Rule 5.483. Dismissal and transfer of case**

19  
20 (a) ~~**Mandatory transfer of case to tribal court with**~~ **Dismissal when tribal court**  
21 **has exclusive jurisdiction**

22  
23 ~~The court must order transfer of a case to the tribal court of the child's tribe if:~~  
24 Subject to the terms of any agreement between the state and the tribe under 25  
25 United States Code section 1919:

26  
27 (1) ~~The Indian child is a ward of the tribal court;~~ If the court receives information  
28 at any stage of the proceeding suggesting that the Indian child is already the  
29 ward of the tribal court or The Indian child is domiciled or resides within a  
30 reservation of an Indian tribe that has exclusive jurisdiction over Indian child  
31 custody proceedings under 25 United States Code section 1911 or 1918 of  
32 title 25 of the United States Code, the court must expeditiously notify the  
33 tribe and the tribal court that it intends to dismiss the case upon receiving  
34 confirmation from the tribe or tribal court that the child is a ward of the tribal  
35 court or subject to the tribe's exclusive jurisdiction.

36  
37 (2) When the court receives confirmation that the child is already a ward of a  
38 tribal court or is subject to the exclusive jurisdiction of an Indian tribe, the  
39 state court must dismiss the proceeding and ensure that the tribal court is sent  
40 all information regarding the proceeding, including, but not limited to, the  
41 pleadings and any state court record. If the local agency has not already  
42 transferred physical custody of the Indian child to the child's tribe, the state  
43 court must order that the local agency do so forthwith and hold in abeyance

1            any dismissal order pending confirmation that the Indian child is in the  
2            physical custody of the tribe.

3  
4            (3) This section does not preclude an emergency removal consistent with 25  
5            United States Code section 1922, 25 Code of Federal Regulations  
6            part 23.113, and Welfare and Institutions Code section 319 to protect the  
7            child from risk of imminent physical damage or harm and if more time is  
8            needed to facilitate the transfer of custody of the Indian child from the county  
9            welfare department to the tribe.

10  
11            *(Subd (a) amended effective January 1, 2020.)*

12  
13            **(b) \* \* \***

14  
15            **(c) Documentation of request to transfer a case to tribal court**

16  
17            (1) \* \* \*

18  
19            (2) Upon receipt of a transfer petition, the state court must ensure that the tribal  
20            court is promptly notified in writing of the transfer petition. This notification  
21            may request a timely response regarding whether the tribal court wishes to  
22            decline the transfer.

23            *(Subd (C) amended effective January 1, 2020.)*

24  
25            **(d) Cause to deny a request to transfer to tribal court with concurrent state and**  
26            **tribal jurisdiction**

27  
28            ~~(1) One or more~~ Either of the following circumstances constitutes mandatory  
29            good cause to deny a request to transfer:

30  
31            (A) One or both of the child's parents objects to the transfer in open court  
32            or in an admissible writing for the record; or

33  
34            ~~(B) The child's tribe does not have a "tribal court" or any other~~  
35            ~~administrative body as defined in section 1903 of the Indian Child~~  
36            ~~Welfare Act: "a court with jurisdiction over child custody proceedings~~  
37            ~~and which is either a Court of Indian Offenses, a court established and~~  
38            ~~operated under the code or custom of an Indian tribe, or any other~~  
39            ~~administrative body of a tribe which is vested with authority over child~~  
40            ~~eustody proceedings;" or~~

41  
42            ~~(C)~~(B)        The tribal court of the child's tribe declines the transfer.

43

1 (2) ~~One or more of the following circumstances may constitute discretionary~~  
2 ~~good cause to deny a request to transfer~~ In assessing whether good cause to  
3 ~~deny the transfer exists, the court must not consider:~~

4  
5 (A) ~~The evidence necessary to decide the case cannot be presented in the~~  
6 ~~tribal court without undue hardship to the parties or the witnesses, and~~  
7 ~~the tribal court is unable to mitigate the hardship by making~~  
8 ~~arrangements to receive and consider the evidence or testimony by use~~  
9 ~~of remote communication, by hearing the evidence or testimony at a~~  
10 ~~location convenient to the parties or witnesses, or by use of other means~~  
11 ~~permitted in the tribal court's rules of evidence or discovery;~~

12  
13 (B) ~~The proceeding was at an advanced stage when the request to transfer~~  
14 ~~was received and the petitioner did not make the request within a~~  
15 ~~reasonable time after receiving notice of the proceeding, provided the~~  
16 ~~notice complied with statutory requirements. Waiting until~~  
17 ~~reunification efforts have failed and reunification services have been~~  
18 ~~terminated before filing a request to transfer may not, by itself, be~~  
19 ~~considered an unreasonable delay;~~

20  
21 (C) ~~The Indian child is over 12 years of age and objects to the transfer; or~~

22  
23 (D) ~~The parents of a child over five years of age are not available and the~~  
24 ~~child has had little or no contact with his or her tribe or members of the~~  
25 ~~child's tribe.~~

26  
27 (A) Socioeconomic conditions and the perceived adequacy of tribal social  
28 services or judicial systems;

29  
30 (B) Whether the child custody proceeding is at an advanced stage if the  
31 Indian child's parent, Indian custodian, or tribe did not receive notice of  
32 the child custody proceeding until an advanced stage. It must not, in  
33 and of itself, be considered an unreasonable delay for a party to wait  
34 until reunification efforts have failed and reunification services have  
35 been terminated before filing a petition to transfer;

36  
37 (C) Whether there have been prior proceedings involving the child for  
38 which no transfer petition was filed;

39  
40 (D) Whether transfer could affect the placement of the child; or

41  
42 (E) Whether the Indian child has cultural connections with the tribe or its  
43 reservation.

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42

(3) \* \* \*

*(Subd (d) amended effective January 1, 2020; previously amended effective January 1, 2013.)*

**(e) Evidentiary considerations**

~~The court may not consider socioeconomic conditions and the perceived adequacy of tribal social services, tribal probation, or the tribal judicial systems in its determination that good cause exists to deny a request to transfer to tribal court with concurrent state and tribal jurisdiction.~~

**(f)(e) Evidentiary burdens**

(1) \* \* \*

(2) If the court believes, or any party asserts, that good cause to deny the request exists, the reasons for that belief or assertion must be stated orally on the record or in writing, in advance of the hearing, and made available to all parties who are requesting the transfer, and the petitioner must have the opportunity to provide information or evidence in rebuttal of the belief or assertion.

*(Subd (e) relettered effective January 1, 2020; adopted as subd (f); previously amended effective January 1, 2013.)*

**(g)(f) \* \* \***

*(Subd (f) relettered effective January 1, 2020; adopted as subd (g); previously amended effective January 1, 2016.)*

**(h)(g) \* \* \***

*(Subd (g) relettered effective January 1, 2020; adopted as subd (h); previously amended effective January 1, 2016.)*

**(i)(h) \* \* \***

*(Subd (h) relettered effective January 1, 2020; adopted as subd (h); previously relettered as subd (i) effective January 1, 2016.)*

1 Rule 5.483 amended effective January 1, 2020; adopted effective January 1, 2008; previously  
2 amended effective January 1, 2013 and January 1, 2016.

3  
4  
5 **Advisory Committee Comment**  
6

7 Once a transfer to tribal court is finalized as provided in rule 5.483(~~i~~)(h), the appellate court lacks  
8 jurisdiction to order the case returned to state court (*In re M.M.* (2007) 154 Cal.App.4th 897).

9  
10 As stated by the Court of Appeal in *In re M.M.*, the juvenile court has the discretion to stay the  
11 provisions of a judgment or order awarding, changing, or affecting custody of a minor child  
12 “pending review on appeal or for any other period or periods that it may deem appropriate” (Code  
13 Civ. Proc., § 917.7), and the party seeking review of the transfer order should first request a stay  
14 in the lower court. (See *Nuckolls v. Bank of California, Nat. Assn.* (1936) 7 Cal.2d 574, 577 [61  
15 P.2d 927] [“Inasmuch as the [L]egislature has provided a method by which the trial court, in a  
16 proper case, may grant the stay, the appellate courts, assuming that they have the power, should  
17 not, except in some unusual emergency, exercise their power until the petitioner has first  
18 presented the matter to the trial court.”].) If the juvenile court should deny the stay request, the  
19 aggrieved party may then petition this court for a writ of supersedeas pending appeal. (Cal. Rules  
20 of Court, rule 8.112).

21  
22 ~~Subsection (h)~~ Subdivision (g) and this advisory committee comment are added to help ensure  
23 that an objecting party does not inadvertently lose the right to appeal a transfer order.  
24  
25

26 **Rule 5.484. Emergency proceedings involving an Indian child**  
27

28 **(a) Standards for removal**  
29

30 Whenever it is known or there is reason to know the case involves an Indian child,  
31 the court may not order an emergency removal or placement of the child without a  
32 finding that the removal or placement is necessary to prevent imminent physical  
33 damage or harm to the child. The petition requesting emergency removal or  
34 continued emergency placement of the child or its accompanying documents must  
35 contain the following:  
36

- 37 (1) A statement of the risk of imminent physical damage or harm to the child and  
38 any evidence that the emergency removal or placement continues to be  
39 necessary to prevent such imminent physical damage or harm to the child;  
40  
41 (2) The name, age, and last known address of the Indian child;  
42  
43 (3) The name and address of the child’s parents and Indian custodian, if any;

- 1
- 2       (4) The steps taken to provide notice to the child's parents, Indian custodian, and
- 3       tribe about the emergency proceeding;
- 4
- 5       (5) If the child's parents and Indian custodian are unknown, a detailed
- 6       explanation of what efforts have been made to locate and contact them;
- 7
- 8       (6) The residence and the domicile of the Indian child;
- 9
- 10      (7) If either the residence or the domicile of the Indian child is believed to be on
- 11      a reservation or in an Alaska Native village, the name of the tribe affiliated
- 12      with that reservation or village;
- 13
- 14      (8) The tribal affiliation of the child and of the parents or Indian custodian;
- 15
- 16      (9) A specific and detailed account of the circumstances that led to the
- 17      emergency removal of the child;
- 18
- 19      (10) If the child is believed to reside or be domiciled on a reservation where the
- 20      tribe exercises exclusive jurisdiction over child custody matters, a statement
- 21      of efforts that have been made and are being made to contact the tribe and
- 22      transfer the child to the tribe's jurisdiction; and
- 23
- 24      (11) A statement of the efforts that have been taken to assist the parents or Indian
- 25      custodian so the Indian child may safely be returned to their custody.
- 26

27   **(b) Return of Indian child when emergency situation has ended**

- 28
- 29      (1) Whenever it is known or there is reason to know the child is an Indian child
- 30      and there has been an emergency removal of the child from parental custody,
- 31      any party who asserts that there is new information indicating that the
- 32      emergency situation has ended may request an ex parte hearing by filing a
- 33      request on *Request for Ex Parte Hearing to Return Physical Custody of an*
- 34      *Indian Child* (form ICWA-070) to determine whether the emergency
- 35      situation has ended.
- 36
- 37      (2) If the request provides evidence of new information establishing that the
- 38      emergency placement is no longer necessary, the court must promptly
- 39      schedule a hearing. At the hearing the court must consider whether the child's
- 40      removal and placement is still necessary to prevent imminent physical
- 41      damage or harm to the child. If the court determines that the child's
- 42      emergency removal or placement is no longer necessary to prevent imminent

1 physical damage or harm to the child, the court must order the child returned  
2 to the physical custody of the parents or Indian custodian.

3  
4 (3) In accordance with rules 3.10 and 3.20, this procedure is governed by the  
5 provisions of division 6, chapter 3 and division 11, chapter 4 of title 3 of the  
6 California Rules of Court.

7  
8 **(c) Time limitation on emergency proceedings**

9  
10 An emergency removal must not continue for more than 30 days unless the court  
11 makes the following determinations:

12  
13 (1) Restoring the child to the parent or Indian custodian would subject the child  
14 to imminent physical damage or harm;

15  
16 (2) The court has been unable to transfer the proceeding to the jurisdiction of the  
17 appropriate Indian tribe; and

18  
19 (3) It has not been possible to have a hearing that complies with the substantive  
20 requirements of the Indian Child Welfare Act for a foster care placement  
21 proceeding.

22  
23 *Rule 5.484 adopted effective January 1, 2020.*

24  
25 **Rule 5.485.5.484. Placement of an Indian child**

26  
27 (a) \* \* \*

28  
29 (b) **Standards and preferences in placement of an Indian child**

30  
31 (1) All placements of an Indian child must be in the least restrictive setting that  
32 most approximates a family situation and in which the child's special needs,  
33 if any, may be met.

34  
35 ~~(1)~~(2) Unless the court finds by clear and convincing evidence that there is good  
36 cause to deviate from them the contrary, whenever it is known or there is  
37 reason to know the child is an Indian child, all placements of Indian children  
38 in any proceeding listed in rules 5.480 and 5.484 must follow the specified  
39 placement preferences in Family Code section 177(a), Probate Code section  
40 1459(b), and Welfare and Institutions Code section 361.31.

41  
42 ~~(2)~~(3) The court must analyze the availability of placements within the placement  
43 preferences in descending order without skipping. The court may deviate

1 from the preference order only for good cause, which may include the  
2 following considerations:

3  
4 (A) The requests of the parent or Indian custodian if they attest that they  
5 have reviewed the placement options, if any, that comply with the order  
6 of preference;

7  
8 (B) The requests of the Indian child, when of sufficient age and capacity to  
9 understand the decision being made;

10  
11 (C) The presence of a sibling attachment that can be maintained only  
12 through a particular placement;

13  
14 ~~(D)~~(D) The extraordinary physical, mental, or emotional needs of the  
15 Indian child, including specialized treatment services that may be  
16 unavailable in the community where families who meet the placement  
17 preferences live as established by a qualified expert witness; or

18  
19 ~~(E)~~(E) The unavailability of a suitable families placement within the  
20 placement preferences based on a documented diligent effort to identify  
21 families-placements meeting the preference criteria. The standard for  
22 determining whether a placement is unavailable must conform to the  
23 prevailing social and cultural standards of the Indian community in  
24 which the Indian child's parent or extended family resides or with  
25 which the Indian child's parent or extended family members maintain  
26 social and cultural ties.

27  
28 ~~(3)~~(4) The placement preferences must be analyzed and considered each time there  
29 is a change in the child's placement. A finding that there is good cause to  
30 deviate from the placement preferences does not affect the requirement that a  
31 diligent search be made for a subsequent placement within the placement  
32 preferences.

33  
34 (5) The burden of establishing good cause for the court to deviate from the  
35 preference order is on the party requesting that the preference order not be  
36 followed. A placement may not depart from the preferences based on the  
37 socioeconomic status of any placement relative to another or solely on the  
38 basis of ordinary bonding or attachment that flowed from time spent in a  
39 nonpreferred placement that was made in violation of the Indian Child  
40 Welfare Act.

41  
42 ~~(4)~~(6) \* \* \*

43

1           ~~(5)~~(7) \* \* \*

2  
3           ~~(6)~~(8) When no preferred placement is available, active efforts must be made and  
4           documented to place the child with a family committed to enabling the child  
5           to have visitation with “extended family members,” as defined in ~~rule~~  
6           ~~5.481(a)(4)(A)~~ 25 United States Code section 1903(2), and participation in  
7           the cultural and ceremonial events of the child’s tribe.  
8

9           *(Subd (b) amended effective January 1, 2020; previously amended effective January 1,*  
10          *2013.)*

11  
12       **(c) Active efforts**

13  
14           In addition to any other required findings to place an Indian child with someone  
15           other than a parent or Indian custodian, or to terminate parental rights, the court  
16           must find that active efforts have been made, in any proceeding listed in rule 5.480,  
17           to provide remedial services and rehabilitative programs designed to prevent the  
18           breakup of the Indian family, and must find that these efforts were unsuccessful.  
19           These active efforts must include affirmative, active, thorough, and timely efforts  
20           intended primarily to maintain or reunite the child with his or her family, must be  
21           tailored to the facts and circumstances of the case, and must be consistent with the  
22           requirements of Welfare and Institutions Code section 224.1(f).  
23

24           (1) The active efforts must be documented in detail in the record.

25  
26           ~~(1)~~(2) The court must consider whether active efforts were made in a manner  
27           consistent with the prevailing social and cultural conditions and way of life of  
28           the Indian child’s tribe.  
29

30           ~~(2)~~(3) Active efforts to provide services must include pursuit of any steps necessary  
31           to secure tribal membership for a child if the child is eligible for membership  
32           in a given tribe, as well as attempts to use the available resources of extended  
33           family members, the tribe, tribal and other Indian social service agencies, and  
34           individual Indian caregivers.  
35

36           *Rule 5.485 renumbered and amended effective January 1, 2020; adopted as rule 5.484 effective*  
37           *January 1, 2008; previously amended effective January 1, 2013.*  
38

39  
40       **Rule ~~5.486~~5.485. Termination of parental rights**

41  
42       **(a) \* \* \***  
43

1 **(b) When parental rights may not be terminated**

2  
3 The court may not terminate parental rights to an Indian child or declare a child  
4 free from the custody and control of one or both parents if the court finds a  
5 compelling reason for determining that termination of parental rights would not be  
6 in the child’s best interest. Such a reason may include:

7  
8 (1) The child is living with a relative who is unable or unwilling to adopt the  
9 child because of circumstances that do not include an unwillingness to accept  
10 legal or financial responsibility for the child, but who is willing and capable  
11 of providing the child with a stable and permanent environment through legal  
12 guardianship, and the removal of the child from the custody of his or her  
13 relative would be detrimental to the emotional well-being of the child. For  
14 purposes of an Indian child, “relative” must include an “extended family  
15 member,” as defined in the Indian Child Welfare Act (25 U.S.C. § 1903(2));

16  
17 ~~(1)(2)~~ Termination of parental rights would substantially interfere with the child’s  
18 connection to his or her tribal community or the child’s tribal membership  
19 rights; or

20  
21 ~~(2)(3)~~ The child’s tribe has identified tribal customary adoption, guardianship, long-  
22 term foster care with a fit and willing relative, or another planned permanent  
23 living arrangement for the child.

24  
25 *(Subd (b) amended effective January 1, 2020.)*

26  
27 *Rule 5.486 renumbered and amended effective January 1, 2020; adopted as rule 5.485 effective*  
28 *January 1, 2008; previously amended effective January 1, 2013.*

29  
30 **Rule ~~5.487~~.5.486. Petition to invalidate orders**

31  
32 **(a) Who may petition**

33  
34 Any Indian child who is the subject of any action for foster-care placement,  
35 guardianship or conservatorship placement, custody placement under Family Code  
36 section 3041, declaration freeing a child from the custody and control of one or  
37 both parents, preadoptive placement, adoptive placement, or termination of parental  
38 rights; any parent or Indian custodian from whose custody such child was removed;  
39 and the Indian child’s tribe may petition the court to invalidate the action on a  
40 showing that the action violated the Indian Child Welfare Act.

41  
42 *(Subd (a) was amended effective January 1, 2010.)*

43

1 (b)–(c) \* \* \*

2  
3 *Rule 5.487 renumbered and amended effective January 1, 2020; adopted as rule 5.486 effective*  
4 *January 1, 2008; previously amended effective January 1, 2013.*

5  
6 **Rule ~~5.488~~5.487.** \* \* \*

7  
8 *Rule 5.488 renumbered effective January 1, 2020; adopted as rule 5.487 effective January 1,*  
9 *2008; previously amended effective January 1, 2013.*

10  
11  
12 **Rule 5.550. Continuances**

13  
14 (a)–(b) \* \* \*

15  
16 (c) **Continuances of detention hearings (§§ 319, 322, 635, 636, 638)**

17  
18 (1)–(2) \* \* \*

19  
20 (3) When the court knows or has reason to know the child is an Indian child, the  
21 detention hearing may not be continued beyond 30 days unless the court  
22 makes the findings required by section 319(e)(2).

23  
24 *(Subd (c) amended effective January 1, 2007; adopted effective January 1, 1998;*  
25 *previously amended effective July 1, 2002.)*

26  
27 **(d) Continuances of a dispositional hearing when the court knows or has reason to**  
28 **know the child is an Indian child (§ 352(b))**

29  
30 (1) When the court knows or has reason to know that the case involves an Indian  
31 child, no continuance of a dispositional may be granted that would result in  
32 the hearing being held longer than 30 days after the hearing at which the  
33 minor was ordered removed or detained unless the court finds that there are  
34 exceptional circumstances requiring a continuance.

35  
36 (2) The absence of an opinion from a qualified expert witness must not, in and of  
37 itself, support a finding that exceptional circumstances exist.

38  
39 *(Subd (d) adopted effective January 1, 2020.)*

40  
41 *Rule 5.550 amended effective July 1, 2016; adopted effective January 1, 1991; previously*  
42 *amended effective January 1, 1998, January 1, 1999, and July 1, 2002; previously amended and*  
43 *renumbered as rule 5.550 effective January 1, 2007.*

1  
2 **Rule 5.570. Request to change court order (petition for modification)**

3  
4 **(a)–(d)** \* \* \*

5  
6 **(e) Grounds for grant of petition (§§ 388, 778)**

7  
8 (1)–(4) \* \* \*

9  
10 (5) For a petition filed under section 388(c)(1)(A), the court may terminate  
11 reunification services during the time periods described in section 388(c)(1)  
12 only if the court finds by a preponderance of evidence that reasonable  
13 services have been offered or provided, and, by clear and convincing  
14 evidence, that the change of circumstance or new evidence described in the  
15 petition satisfies a condition in section 361.5(b) or (e). In the case of an  
16 Indian child, the court may terminate reunification services only if the court  
17 finds by clear and convincing evidence that active efforts have been made to  
18 provide remedial services and rehabilitative programs designed to prevent the  
19 breakup of the Indian family within the meaning of sections 224.1(f) and  
20 361.7 and that these efforts have proved unsuccessful. The court may grant  
21 the petition after following the procedures in (f), (g), and (h).  
22

23 (6) For a petition filed under section 388(c)(1)(B), the court may terminate  
24 reunification services during the time periods described in section 388(c)(1)  
25 only if the court finds by a preponderance of evidence that reasonable  
26 services have been offered or provided, and, by clear and convincing  
27 evidence, that action or inaction by the parent or guardian creates a  
28 substantial likelihood that reunification will not occur. Such action or  
29 inaction includes, but is not limited to, failure to visit the child or failure to  
30 participate regularly and make substantive progress in a court-ordered  
31 treatment program. In determining whether the parent or guardian has failed  
32 to visit the child or to participate regularly or make progress in a court-  
33 ordered treatment plan, the court must consider factors including, but not  
34 limited to, the parent or guardian’s incarceration, institutionalization, or  
35 participation in a residential substance abuse treatment program. In the case  
36 of an Indian child, the court may terminate reunification services only if the  
37 court finds by clear and convincing evidence that active efforts have been  
38 made to provide remedial services and rehabilitative programs designed to  
39 prevent the breakup of the Indian family within the meaning of sections  
40 224.1(f) and 361.7 and that these efforts have proved unsuccessful. The court  
41 may grant the petition after following the procedures in (f), (g), and (h).  
42

43 (7) \* \* \*

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*(Subd (e) amended effective January 1, 2020; adopted as subd (c); previously amended and relettered as subd (e) effective January 1, 2007; previously amended effective January 1, 2010, January 1, 2014, and January 1, 2016.)*

**(f)–(g)** \* \* \*

**(h) Conduct of hearing (§ 388)**

(1) \* \* \*

(A) \* \* \*

(B) If the request is for termination of court-ordered reunification services, the petitioner must show by clear and convincing evidence that one of the conditions in section 388(c)(1)(A) or (B) exists and must show by a preponderance of the evidence that reasonable services have been offered or provided. In the case of an Indian child, the court may terminate reunification services only if the court finds by clear and convincing evidence that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family within the meaning of sections 224.1(f) and 361.7 and that these efforts have proved unsuccessful.

(C)–(E) \* \* \*

(2) \* \* \*

*(Subd (h) amended effective January 1, 2020; adopted as subd (f); previously amended and relettered as subd (h) effective January 1, 2007; previously amended effective July 1, 2000, July 1, 2002, January 1, 2003, January 1, 2010, January 1, 2014 and January 1, 2016.)*

*Rule 5.570 amended effective January 1, 2020; adopted as rule 1432 effective January 1, 1991; previously amended and renumbered as rule 5.570 effective January 1, 2007; previously amended effective January 1, 1992, July 1, 1995, July 1, 2000, July 1, 2002, January 1, 2003, January 1, 2009, January 1, 2010, January 1, 2014, January 1, 2016, and January 1, 2019.*

**Rule 5.590. Advisement of right to review in section 300, 601, or 602 cases**

**(a) Advisement of right to appeal**

1 If at a contested hearing on an issue of fact or law the court finds that the child is  
2 described by Welfare and Institutions Code section 300, 601, or 602 or sustains a  
3 supplemental or subsequent petition, the court after making its disposition order  
4 other than orders covered in (b) must advise, orally or in writing, the child, if of  
5 sufficient age, and, ~~if present,~~ the parent or guardian of:

6  
7 (1)–(4) \* \* \*

8  
9 If the parent or guardian is not present at the hearing, the advisement must be made  
10 by the clerk of the court by first-class mail to the last known address of the party or  
11 by electronic service in accordance with section 212.5.

12  
13 *(Subd (a) amended effective January 1, 2020; adopted as subd (d) effective January 1,*  
14 *1990; previously amended effective January 1, 2007; previously amended and relettered as*  
15 *subd (a) effective July 1, 2010.)*

16  
17 **(b)–(c) \* \* \***

18  
19 *Rule 5.590 amended effective January 1, 2020; adopted as rule 1435 effective January 1, 1990;*  
20 *previously amended effective January 1, 1992, January 1, 1993, January 1, 1994, January 1,*  
21 *1995, July 1, 1999, January 1, 2016, and January 1, 2019; previously amended and renumbered*  
22 *as rule 5.585 effective January 1, 2007; previously amended and renumbered as rule 5.590*  
23 *effective July 1, 2010.*

24  
25  
26 **Chapter 7. Intercounty Transfers; ~~and Out-of-County~~ Placements; Interstate**  
27 **Compact on the Placement of Children**

28  
29 **Rules 5.610–5.613 \* \* \***

30  
31 **Rule 5.614. ~~Intereounty~~ Out-of-county placements**

32  
33 **(a) \* \* \***

34  
35 **(b) ~~Participants to be served with notice~~ Required notices**

36  
37 Unless the requirements for emergency placement in section 361.4 are met, or the  
38 circumstances in section 361.2(h)(2)(A) exist, before placing a child out of county,  
39 the agency must notify the following ~~participants~~ of the proposed removal:

40  
41 (1) The ~~participants~~ persons listed in section 361.2(h);

42  
43 (2) The Indian child’s identified Indian tribe, if any;

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(3) The Indian child’s Indian custodian, if any; and

(4) The child’s CASA program, if any.

*(Subd (b) amended effective January 1, 2020.)*

(c) \* \* \*

**(d) Method of service**

The agency must serve notice of its intent to place the child out of county as follows:

- (1) Notice must be served by either first-class mail, sent to the last known address of the person to be noticed; electronic service in accordance with Welfare and Institutions Code section 212.5; or personal service at least 14 days before the placement, unless the child’s health or well-being is endangered by delaying the action or would be endangered if prior notice were given;
- (2) Notice to the child’s identified Indian tribe and Indian custodian must comply with the requirements of section 224.23; and
- (3) *Proof of Notice* (form JV-326) must be filed with the court before any hearing on the proposed out-of-county placement.

*(Subd (d) effective January 1, 2020.)*

**(e) Objection to proposed out-of-county placement**

Each participant who receives notice under (b)(1)–(3) may object to the proposed removal of the child, and the court must set a hearing as required by section 361.2(h).

- (1) An objection to the proposed ~~intercounty~~ out-of-county placement may be made by using *Objection to Out-of-County Placement and Notice of Hearing* (form JV-556).
- (2) An objection must be filed ~~no later than seven days after receipt of the notice.~~ within the time frames in section 361.2(h).

*(Subd (e) effective January 1, 2020.)*

1  
2 **(f) Notice of hearing on proposed removal**

3  
4 If an objection is filed, the clerk must set a hearing, and notice of the hearing must  
5 be as follows:

- 6  
7 (1) If the party objecting to the removal is not represented by counsel, the clerk  
8 must provide notice of the hearing to the agency and the participants listed in  
9 (b);  
10  
11 (2) If the party objecting to the removal is represented by counsel, that counsel  
12 must provide notice of the hearing to the agency and the participants listed in  
13 (b);  
14  
15 (3) Notice must be by either first-class mail, sent to the last known address of the  
16 person to be noticed; electronic service in accordance with Welfare and  
17 Institutions Code section 212.5; or personal service; ~~and~~  
18  
19 (4) Notice to the child's identified Indian tribe and Indian custodian must comply  
20 with the requirements of section 224.3; and

21  
22 ~~(4)(5)~~ *Proof of Notice* (form JV-326) must be filed with the court before the hearing  
23 on the proposed removal.

24  
25 *(Subd (f) effective January 1, 2020.)*

26  
27 **(g)–(h) \* \* \***

28  
29 *Rule 5.614 amended effective January 1, 2020; adopted effective January 1, 2019.*

30  
31 **Rule 5.635. Parentage**

32  
33 **(a) \* \* \***

34  
35 **(b) Parentage inquiry (§§ 316.2, 726.4)**

36  
37 At the initial hearing on a petition filed under section 300 or at the dispositional  
38 hearing on a petition filed under section 601 or 602, and at hearings thereafter until  
39 or unless parentage has been established, the court must inquire of the child's  
40 parents present at the hearing and of any other appropriate person present as to the  
41 identity and address of any and all presumed or alleged parents of the child.  
42 Questions, at the discretion of the court, may include the following and others that  
43 may provide information regarding parentage:

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(1)–(5) \* \* \*

(6) Has a man formally or informally acknowledged paternity parentage, including the execution and filing of a voluntary declaration of parentage or paternity under Family Code section 7570 et seq., and agreed to have his name placed on the child’s birth certificate?

(7) ~~Have~~ Has genetic tests testing been administered, and, if so, what were the results?

(8) \* \* \*

*(Subd (b) amended effective January 1, 2020; adopted effective January 1, 2001; previously amended effective January 1, 2006, January 1, 2007, and January 1, 2015.)*

**(c) Voluntary declaration**

If a voluntary declaration as described in Family Code section 7570 et seq. has been executed and filed with the California Department of Child Support Services, the declaration establishes the paternity parentage of a child and has the same force and effect as a judgment of paternity parentage by a court. A ~~man~~ person is presumed to be the ~~father~~ parent of the child under Family Code section 7611 if the voluntary declaration has been properly executed and filed.

*(Subd (c) amended effective January 1, 2020; adopted effective January 1, 2001; previously amended effective January 1, 2006, July 1, 2006, January 1, 2007, and January 1, 2015.)*

**(d)–(h) \* \* \***

*Rule 5.635 amended effective January 1, 2020; adopted as rule 1413 effective July 1, 1995; previously amended effective January 1, 1999, January 1, 2001, January 1, 2006, July 1, 2006, January 1, 2007, and January 1, 2015.*

**Former Rule 5.645. Renumbered effective January 1, 2020**

*Rule 5.645 renumbered as rule 5.643*

**Rule ~~5.645~~ 5.643. Mental health or condition of child; court procedures**

**(a) Doubt concerning the mental health of a child (§§ 357, 705, 6550, 6551)**

Whenever the court believes that the child who is the subject of a petition filed under section 300, 601, or 602 is mentally disabled or may be mentally ill, the court

1 may stay the proceedings and order the child taken to a facility designated by the  
2 court and approved by the State Department of Mental Health as a facility for 72-  
3 hour treatment and evaluation. The professional in charge of the facility must  
4 submit a written evaluation of the child to the court.

5  
6 (b) \* \* \*

7  
8 (c) **Findings regarding ~~mental retardation~~ developmental disability (§ 6551)**

9  
10 Article 1 of chapter 2 of part 1 of division 5 (commencing with section 5150)  
11 applies.

12  
13 (1) If the professional finds that the child ~~is mentally retarded~~ has a  
14 developmental disability and recommends commitment to a state hospital, the  
15 court may direct the filing in the appropriate court of a petition for  
16 commitment of a child ~~as a mentally retarded person~~ who has a  
17 developmental disability to the State Department of Developmental Services  
18 for placement in a state hospital.

19  
20 (2) If the professional finds that the child ~~is not mentally retarded~~ does not have a  
21 developmental disability, the child must be returned to the juvenile court on  
22 or before the expiration of the 72-hour period, and the court must proceed  
23 with the case under section 300, 601, or 602.

24  
25 (3) The jurisdiction of the juvenile court must be suspended while the child is  
26 subject to the jurisdiction of the appropriate court under a petition for  
27 commitment of a ~~mentally retarded~~ person who has a developmental  
28 disability, or under remand for 90 days for intensive treatment or  
29 commitment ordered by that court.

30  
31 *(Subd (c) amended effective January 1, 2020; previously amended effective January 1,*  
32 *2007, and January 1, 2009.)*

33  
34 *Rule 5.643 renumbered and amended effective January 1, 2020; adopted as rule 1498 effective*  
35 *January 1, 1999; previously amended and renumbered as rule 5.645 effective January 1, 2007;*  
36 *previously amended effective January 1, 2009, and January 1, 2012.*

37  
38  
39 **Rule 5.645. Mental health or condition of child; competency evaluations**

40  
41 **(d)(a) Doubt as to ~~capacity to cooperate with counsel~~ child's competency (§§ 601,**  
42 **602, ~~709~~; Pen. Code, § 1367)**

43

1 (1) If the court finds that there is substantial evidence ~~that~~ regarding a child who  
2 is the subject of a petition filed under section 601 or 602 ~~lacks sufficient~~  
3 ~~present ability to consult with counsel and assist in preparing his or her~~  
4 ~~defense with a reasonable degree of rational understanding, or lacks a rational~~  
5 ~~as well as factual understanding of the nature of the charges or proceedings~~  
6 ~~against him or her, that raises a doubt as to the child's competency as defined~~  
7 ~~in section 709, the court must suspend the proceedings and conduct a hearing~~  
8 ~~regarding the child's competence~~ competency. ~~Evidence is substantial if it~~  
9 ~~raises a reasonable doubt about the child's competence to stand trial.~~

10  
11 ~~(A)~~(2) Unless the parties have stipulated to a finding of incompetency, the  
12 court must appoint an expert to examine the child to evaluate the child and  
13 determine whether the child suffers from a mental illness, mental disorder,  
14 developmental disability, developmental immaturity, or other condition  
15 affecting competency and, if so, whether the condition or conditions impair  
16 the child's competency the child is incompetent as defined in section  
17 709(a)(2).

18  
19 (3) Following the hearing on competency, the court must proceed as directed in  
20 section 709.

21  
22 **(b) Expert qualifications**

23  
24 ~~(B)~~(1) To be appointed as an expert, an individual must be a:

25  
26 ~~(i)~~(A) Licensed psychiatrist who has successfully completed four years of  
27 medical school and either four years of general psychiatry residency,  
28 including one year of internship and two years of child and adolescent  
29 fellowship training, or three years of general psychiatry residency,  
30 including one year of internship and one year of residency that focus on  
31 children and adolescents and one year of child and adolescent  
32 fellowship training; or

33  
34 ~~(ii)~~(B) Clinical, counseling, or school psychologist who has received a  
35 doctoral degree in psychology from an educational institution  
36 accredited by an organization recognized by the Council for Higher  
37 Education Accreditation and who is licensed as a psychologist.

38  
39 ~~(C)~~(2) The expert, whether a licensed psychiatrist or psychologist, must:

40  
41 ~~(i)~~(A) Possess demonstrable professional experience addressing child and  
42 adolescent developmental issues, including the emotional, behavioral,  
43 and cognitive impairments of children and adolescents;

- 1  
2 (ii)(B) Have expertise in the cultural and social characteristics of  
3 children and adolescents;  
4  
5 (iii)(C) Possess a curriculum vitae reflecting training and experience in  
6 the forensic evaluation of children and adolescents;  
7  
8 (iv)(D) Be familiar with juvenile competency standards and accepted  
9 criteria used in evaluating juvenile competence;  
10  
11 (v)(E) ~~Possess a comprehensive understanding of~~ Be familiar with  
12 effective interventions, as well as treatment, training, and programs for  
13 the attainment of competency available to children and adolescents; ~~and~~  
14  
15 (vi)(F) Be proficient in the language preferred by the child, or if that is  
16 not feasible, employ the services of a certified interpreter and use  
17 assessment tools that are linguistically and culturally appropriate for the  
18 child; and  
19  
20 (G) Be familiar with juvenile competency remediation services available to  
21 the child.  
22

23 (2)(3) Nothing in this rule precludes involvement of clinicians with other  
24 professional qualifications from participation as consultants or witnesses or in  
25 other capacities relevant to the case.  
26

27 (3) ~~Following the hearing on competence, the court must proceed as directed in~~  
28 ~~section 709.~~  
29

30 **(c) Interview of child**

31  
32 The expert must attempt to interview the child face-to-face. If an in-person  
33 interview is not possible because the child refuses an interview, the expert must try  
34 to observe and make direct contact with the child to attempt to gain clinical  
35 observations that may inform the expert's opinion regarding the child's  
36 competency.  
37

38 **(d) Review of records**

39  
40 (1) The expert must review all the records provided as required by section 709.  
41

1 (2) The written protocol required under section 709(i) must include a description  
2 of the process for obtaining and providing the records to the expert to review,  
3 including who will obtain and provide the records to the expert.  
4

5 **(e) Consult with the child's counsel**  
6

7 (1) The expert must consult with the child's counsel as required by section 709.  
8 This consultation must include, but is not limited to, asking the child's  
9 counsel the following:  
10

11 (A) If the child's counsel raised the question of competency, why the  
12 child's counsel doubts that the child is competent;  
13

14 (B) What has the child's counsel observed regarding the child's behavior;  
15 and  
16

17 (C) A description of how the child interacts with the child's counsel.  
18

19 (2) No waiver of the attorney-client privilege will be deemed to have occurred  
20 from the child's counsel report of the child's statements to the expert, and all  
21 such statements are subject to the protections in (g)(2) of this rule.  
22

23 **(f) Developmental history**  
24

25 The expert must gather a developmental history of the child as required by section  
26 709. This history must be documented in the report and must include the following:  
27

28 (1) Whether there were complications or drug use during pregnancy that could  
29 have caused medical issues for the child;  
30

31 (2) When the child achieved developmental milestones such as talking, walking,  
32 and reading;  
33

34 (3) Psychosocial factors such as abuse, neglect, or drug exposure;  
35

36 (4) Adverse childhood experiences, including early disruption in the parent-child  
37 relationship;  
38

39 (5) Mental health services received during childhood and adolescence;  
40

41 (6) School performance, including an Individualized Education Plan, testing,  
42 achievement scores, and retention;  
43

- 1           (7) Acculturation issues;  
2  
3           (8) Biological and neurological factors such as neurological deficits and head  
4           trauma; and  
5  
6           (9) Medical history including significant diagnoses, hospitalizations, or head  
7           trauma.

8  
9       **(g) Written report**

- 10  
11       (1) Any court-appointed expert must examine the child and advise the court on  
12       the child's competency to stand trial. The expert's report must be submitted  
13       to the court, to the counsel for the child, to the probation department, and to  
14       the prosecution. The report must include the following:  
15  
16       (A) A statement identifying the court referring the case, the purpose of the  
17       evaluation, and the definition of competency in the state of California.  
18  
19       (B) A brief statement of the expert's training and previous experience as it  
20       relates to evaluating the competence of a child to stand trial.  
21  
22       (C) A statement of the procedure used by the expert, including:  
23  
24           (i) A list of all sources of information considered by the expert  
25           including those required by section 709(b)(3);  
26  
27           (ii) A list of all sources of information the expert tried or wanted to  
28           obtain but, for reasons described in the report, could not be  
29           obtained;  
30  
31           (iii) A detailed summary of the attempts made to meet the child face-  
32           to-face and a detailed account of any accommodations made to  
33           make direct contact with the child; and  
34  
35           (iv) All diagnostic and psychological tests administered, if any.  
36  
37       (D) A summary of the developmental history of the child as required by  
38       this rule.  
39  
40       (E) A summary of the evaluation conducted by the expert on the child,  
41       including the current diagnosis or diagnoses that meet criteria under the  
42       most recent version of the *Diagnostic and Statistical Manual of Mental*

1 Disorders, when applicable, and a summary of the child's mental or  
2 developmental status.

3  
4 (F) A detailed analysis of the competence of the child to stand trial under  
5 section 709, including the child's ability or inability to understand the  
6 nature of the proceedings or assist counsel in the conduct of a defense  
7 in a rational manner as a result of a mental or developmental  
8 impairment.

9  
10 (G) An analysis of whether and how the child's mental or developmental  
11 status is related to any deficits in abilities related to competency.

12  
13 (H) If the child has significant deficits in abilities related to competency, an  
14 opinion with explanation as to whether treatment is needed to restore or  
15 attain competency, the nature of that treatment, its availability, and  
16 whether restoration is likely to be accomplished within the statutory  
17 time limit.

18  
19 (I) A recommendation, as appropriate, for a placement or type of  
20 placement, services, and treatment that would be most appropriate for  
21 the child to attain or restore competence. The recommendation must be  
22 guided by the principle of section 709 that services must be provided in  
23 the least restrictive environment consistent with public safety.

24  
25 (J) If the expert is of the opinion that a referral to a psychiatrist is  
26 appropriate, the expert must inform the court of this opinion and  
27 recommend that a psychiatrist examine the child.

28  
29 (2) Statements made to the appointed expert during the child's competency  
30 evaluation and statements made by the child to mental health professionals  
31 during the remediation proceedings, and any fruits of these statements, must  
32 not be used in any other hearing against the child in either juvenile or adult  
33 court.

34  
35 *Rule 5.645 adopted effective January 1, 2020.*

36  
37 **Advisory Committee Comment**

38  
39 ~~Welfare and Institutions Code section 709(b) mandates that the Judicial Council develop and~~  
40 ~~adopt rules regarding the qualification of experts to determine competency for purposes of~~  
41 ~~juvenile adjudication. Upon a court finding of incompetency based on a developmental disability,~~  
42 ~~the regional center determines eligibility for services under Division 4.5 of the Lanterman~~  
43 ~~Developmental Disabilities Services (Welf. & Inst. Code, § 4500 et seq.).~~

1  
2  
3 **Rule 5.668. Commencement of hearing—explanation of proceedings (§§ 316, 316.2)**  
4

5 **(a)–(b)** \* \* \*

6  
7 **(c) Indian Child Welfare Act inquiry (§ 224.2(c) & (g))**  
8

- 9 (1) At the first appearance in court of each party, the court must ask each  
10 participant present at the hearing whether:  
11  
12 (A) The participant knows or has reason to know the child is an Indian  
13 child;  
14  
15 (B) The residence or domicile of the child, the child’s parents, or Indian  
16 custodian is on a reservation or in an Alaska Native village;  
17  
18 (C) The child is or has ever been a ward of a tribal court; and  
19  
20 (D) Either parent or the child possess an identification card indicating  
21 membership or citizenship in an Indian tribe.  
22  
23 (2) The court must also instruct all parties to inform the court if they  
24 subsequently receive information that provides reason to know the child is an  
25 Indian child, and order the parents, Indian custodian, or guardian, if available,  
26 to complete *Parental Notification of Indian Status* (form ICWA-020).  
27  
28 (3) If there is reason to believe that the case involves an Indian child, the court  
29 must require the agency to proceed in accordance with section 224.2(e).  
30  
31 (4) If it is known, or there is reason to know, the case involves an Indian child,  
32 the court must proceed in accordance with rules 5.481 et seq. and treat the  
33 child as an Indian child unless and until the court determines on the record  
34 after review of the report of due diligence described in section 224.2(g) that  
35 the child does not meet the definition of an Indian child.  
36

37 *(Subd (C) adopted effective January 1, 2020.)*  
38

39 **(e)(d)** \* \* \*

40  
41 *(Subd (d) relettered effective January 1, 2020; adopted as subd (c) effective January 1,*  
42 *2002; previously amended effective January 1, 2007 and January 1, 2008.)*  
43

1 Rule 5.668 amended effective January 1, 2020; repealed and adopted as rule 1441 effective  
2 January 1, 1998; previously amended and renumbered effective January 1, 2007; previously  
3 amended effective January 1, 1999, January 1, 2001, January 1, 2002, January 1, 2008, January  
4 1, 2015, and January 1, 2017.

5  
6 **Rule 5.674. Conduct of hearing; admission, no contest, submission**

7  
8 (a) \* \* \*

9  
10 (b) **Detention hearing; general conduct (§ 319; 42 U.S.C. § 600 et seq.)**

11  
12 (1) \* \* \*

13  
14 (2) The findings and orders that must be made on the record are:

15  
16 (A)–(B) \* \* \*

17  
18 (C) Reasonable efforts, or when it is known or there is reason to know the  
19 child is an Indian child, active efforts, have been made to prevent  
20 removal; ~~and~~

21  
22 (D) The findings and orders required to be made on the record under  
23 section 319; and

24  
25 (E) When it is known or there is reason to know the case involves an Indian  
26 child, that detention is necessary to prevent imminent physical damage  
27 or harm to the child, and there are no reasonable means by which the  
28 child can be protected if maintained in the physical custody of his or  
29 her parent or parents or Indian custodian.

30  
31 (Subd (b) amended effective January 1, 2016; adopted effective July 1, 2002; previously  
32 amended effective January 1, 2007.)

33  
34 (c) **Detention hearing; rights of child, parent, Indian custodian, or guardian**  
35 **(§§ 311, 319)**

36  
37 At the detention hearing, the child, the parent, Indian custodian, and the guardian  
38 have the right to assert the privilege against self-incrimination and the right to  
39 confront and cross-examine:

40  
41 (1) \* \* \*

42

1 (2) Any person examined by the court under section 319. If the child, parent,  
2 Indian custodian, Indian child's tribe, or guardian asserts the right to cross-  
3 examine preparers of documents submitted for court consideration, the court  
4 may not consider any such report or document unless the preparer is made  
5 available for cross-examination.  
6

7 *(Subd (c) amended and relettered effective January 1, 2017; adopted as subd (c);*  
8 *previously amended and relettered as subd (d) effective July 1, 2002; previously amended*  
9 *effective January 1, 2007.)*  
10

11 **(d) No parent, Indian custodian, or Indian child's tribe or guardian present and**  
12 **not noticed (§ 321)**  
13

14 If the court orders the child detained at the detention hearing and no parent, Indian  
15 custodian, or Indian child's tribe or guardian is present and no parent, Indian  
16 custodian, or Indian child's tribe or guardian has received actual notice of the  
17 detention hearing, a parent, Indian custodian, or Indian child's tribe or guardian  
18 may file an affidavit alleging the failure of notice and requesting a detention  
19 rehearing. The clerk must set the rehearing for a time within 24 hours of the filing  
20 of the affidavit, excluding noncourt days. At the rehearing the court must proceed  
21 under rules 5.670–5.678.  
22

23 *(Subd (d) adopted effective January 1, 2017.)*  
24

25 **(e) Hearing for further evidence; prima facie case (§ 321)**  
26

27 If the court orders the child detained, and the child, a parent, an Indian custodian,  
28 an Indian child's tribe, a guardian, or counsel requests that evidence of the prima  
29 facie case be presented, the court must set a prima facie hearing for a time within 3  
30 court days to consider evidence of the prima facie case or set the matter for  
31 jurisdiction hearing within 10 court days. If at the hearing the petitioner fails to  
32 establish the prima facie case, the child must be released from custody.  
33

34 *Subd (e) adopted effective January 1, 2017.)*  
35

36 *Rule 5.674 amended effective January 1, 2017; repealed and adopted as rule 1444 effective*  
37 *January 1, 1998; previously amended and renumbered as rule 5.674 effective January 1, 2007;*  
38 *previously amended effective July 1, 2002, and January 1, 2016.*  
39

40 **Rule 5.676. Requirements for detention**  
41

42 **(a) Requirements for detention (§ 319)**  
43

1 No child may be ordered detained by the court unless the court finds that:

2  
3 (1) \* \* \*

4  
5 (2) Continuance in the home of the parent, Indian custodian, or guardian is  
6 contrary to the child's welfare; and

7  
8 (3) \* \* \*

9  
10 *(Subd (a) amended effective January 1, 2020; previously amended effective July 1, 2002,*  
11 *and January 1, 2007.)*

12  
13 **(b) Additional requirements for detention of Indian child**

14  
15 If it is known, or there is reason to know the child is an Indian child, the child may  
16 not be ordered detained unless the court also finds that detention is necessary to  
17 prevent imminent physical damage or harm to the child. The court must state the  
18 facts supporting this finding on the record.

19  
20 *(Subd (b) adopted effective January 1, 2020.)*

21  
22 ~~(b)~~(c) \* \* \*

23  
24 *(Subd (c) relettered effective January 1, 2020; adopted as subd (b); previously amended*  
25 *effective July 1, 2002, and January 1, 2007.)*

26  
27 **(d) Additional evidence required at detention hearing for Indian child**

28  
29 If it is known, or there is reason to know the child is an Indian child, the reports  
30 relied on must also include:

31  
32 (1) A statement of the risk of imminent physical damage or harm to the Indian  
33 child and any evidence that the emergency removal or placement continues to  
34 be necessary to prevent the imminent physical damage or harm to the child;

35  
36 (2) The steps taken to provide notice to the child's parents, Indian custodian, and  
37 tribe about the hearing under section 224.3;

38  
39 (3) If the child's parents and Indian custodian are unknown, a detailed  
40 explanation of what efforts have been made to locate and contact them,  
41 including contact with the appropriate Bureau of Indian Affairs regional  
42 director;

43

- 1           (4) The residence and the domicile of the Indian child;  
2  
3           (5) If either the residence or the domicile of the Indian child is believed to be on  
4 a reservation or in an Alaska Native village, the name of the tribe affiliated  
5 with that reservation or village;  
6  
7           (6) The tribal affiliation of the child and of the parents or Indian custodian;  
8  
9           (7) A specific and detailed account of the circumstances that caused the Indian  
10 child to be taken into temporary custody;  
11  
12           (8) If the child is believed to reside or be domiciled on a reservation in which the  
13 tribe exercises exclusive jurisdiction over child custody matters, a statement  
14 of efforts that have been made and that are being made to contact the tribe  
15 and transfer the child to the tribe’s jurisdiction; and  
16  
17           (9) A statement of the efforts that have been taken to assist the parents or Indian  
18 custodian so the Indian child may safely be returned to their custody.  
19

20           *(Subd (d) adopted effective January 1, 2020.)*  
21

22           *Rule 5.676 amended effective January 1, 2016; repealed and adopted as rule 1445 effective*  
23 *January 1, 1998; previously amended effective July 1, 2002; previously amended and*  
24 *renumbered as rule 5.676 effective January 1, 2007*  
25

26           **Rule 5.678. Findings in support of detention; factors to consider; reasonable efforts;**  
27 **active efforts; detention alternatives**  
28

29           **(a) Findings in support of detention (§ 319; 42 U.S.C. § 672)**  
30

31           The court must order the child released from custody unless the court makes the  
32 findings specified in section 319~~(b)~~(c), and where it is known, or there is reason to  
33 know the child is an Indian child, the additional finding specified in section 319(d).  
34

35           *(Subd (a) amended effective January 1, 2019; previously amended effective July 1, 2002*  
36 *and January 1, 2007.)*  
37

38           **(b) In determining whether to release or detain the child under (a), the court must**  
39 **consider the factors in section 319~~(d)~~(f).**  
40

41           *(Subd (b) amended effective January 1, 2019; previously amended effective July 1, 2002,*  
42 *January 1, 2007, and January 1, 2016.)*  
43

1 (c) Findings of the court—reasonable or active efforts (§ 319; 42 U.S.C. § 672)

2  
3 (1) \* \* \*

4  
5 (2) Where it is known or there is reason to know the child is an Indian child,  
6 whether the child is released or detained at the hearing, the court must  
7 determine whether active efforts have been made to provide remedial  
8 services and rehabilitative programs designed to prevent the breakup of the  
9 Indian family and whether those efforts have been successful. Those active  
10 efforts must be documented in detail in the record, and the court must make  
11 one of the following findings:

12  
13 (A) Active efforts have been made and were successful; or

14  
15 (B) Active efforts have been made and were not successful; or

16  
17 (C) Active efforts have not been made; and

18  
19 (D) The court orders the department to initiate or continue services in  
20 accordance with section 358.

21  
22 ~~(2)~~(3) The court must also determine whether services are available that would  
23 prevent the need for further detention.

24  
25 ~~(3)~~(4) The court must not order the child detained unless the court, after inquiry  
26 regarding available services, finds that there are no reasonable services, or  
27 where it is known or there is reason to know the child is an Indian child,  
28 active efforts to provide remedial services and rehabilitative programs  
29 designed to prevent the breakup of the Indian family that would prevent or  
30 eliminate the need to detain the child or that would permit the child to return  
31 home.

32  
33 ~~(4)~~(5) If the court orders the child detained, the court must proceed under section  
34 319(d)(g)–(e)(h) and where it is known, or there is reason to know the child is  
35 an Indian child, subdivision (f) of this rule.

36  
37 *(Subd (c) amended effective January 1, 2019; adopted as subd (d); previously amended*  
38 *and relettered effective July 1, 2002; previously amended effective January 1, 2007.)*

39  
40 (d) Orders of the court (§ 319; 42 U.S.C. § 672)

41  
42 If the court orders the child detained, the court must order that temporary care and  
43 custody of the child be vested with the county welfare department pending

1 disposition or further order of the court and must make the other findings and  
2 orders specified in section 319~~(e)~~(g) and ~~(f)(3)~~(h)(3).

3  
4 *(Subd (d) amended effective January 1, 2019; adopted effective July 1, 2002.)*

5  
6 **(e) Detention alternatives (§ 319)**

7  
8 The court may order the child detained as specified in section 319~~(f)~~(h).

9  
10 *(Subd (e) amended effective January 1, 2019; adopted effective January 1, 1999;*  
11 *previously amended effective July 1, 2002, and January 1, 2007.)*

12  
13 **(f) Additional requirements regarding detention of Indian child (§ 319)**

14  
15 (1) If it is known, or there is reason to know the child is an Indian child, the child  
16 must be detained in a home that complies with the placement preferences in  
17 section 361.31 unless the court finds by clear and convincing evidence good  
18 cause exists not to follow the placement preferences in accordance with rule  
19 5.485.

20  
21 (2) If it is known, or there is reason to know the child is an Indian child, the  
22 detention hearing may not be continued beyond 30 days unless the court finds  
23 all of the following:

24  
25 (A) Restoring the child to the parent, parents, or Indian custodian would  
26 subject the child to imminent physical damage or harm;

27  
28 (B) The court is unable to transfer the proceeding to the jurisdiction of the  
29 appropriate Indian tribe; and

30  
31 (C) It is not possible to initiate an Indian child custody proceeding as  
32 defined in section 224.1.

33  
34 *(Subd (h) adopted effective January 1, 2020.)*

35  
36 **(g) Hearing for return of custody of Indian child after emergency removal when**  
37 **emergency has ended (§ 319.4)**

38  
39 If it is known or there is reason to know the child is an Indian child, a party may  
40 request a hearing under rule 5.484(b) for return of the child before disposition if the  
41 party asserts that there is new evidence that the emergency removal or placement is  
42 no longer necessary to prevent imminent physical damage or harm to the child.

43

1 (Subd (g) adopted effective January 1, 2020.)

2  
3 Rule 5.678 amended effective January 1, 2020; repealed and adopted as rule 1446 effective  
4 January 1, 1998; previously amended and renumbered as rule 5.678 effective January 1, 2007;  
5 previously amended effective January 1, 1999, July 1, 2002, January 1, 2016, and January 1,  
6 2019.

7  
8 **Rule 5.690. General conduct of disposition hearing**

9  
10 **(a) Social study (§§ 280, 309, 358, 358.1, 360, 361.5, 16002(b))**

11  
12 The petitioner must prepare a social study of the child. The social study must  
13 include a discussion of all matters relevant to disposition and a recommendation for  
14 disposition.

15  
16 (1) The petitioner must comply with the following when preparing the social  
17 study:

18  
19 (A) \* \* \*

20  
21 (B) If petitioner recommends removal of the child from the home, the  
22 social study must include:

23  
24 (i) A discussion of the reasonable efforts made to prevent or  
25 eliminate removal, or if it is known or there is reason to know the  
26 child is an Indian child, the active efforts to provide remedial  
27 services and rehabilitative programs designed to prevent the  
28 breakup of the Indian family, and a recommended plan for  
29 reuniting the child with the family, including a plan for visitation;

30  
31 (ii)–(iii) \* \* \*

32  
33 (C) The social study must include a discussion of the social worker’s  
34 efforts to comply with section 309(e) and rule 5.637, including but not  
35 limited to:

36  
37 (i)–(ii) \* \* \*

38  
39 (iii) The number and relationship of those relatives described by item  
40 (ii) who are interested in ongoing contact with the child; ~~and~~

41  
42 (iv) The number and relationship of those relatives described by item  
43 (ii) who are interested in providing placement for the child; and

1  
2 (v) If it is known or there is reason to know the child is an Indian  
3 child, efforts to locate extended family members as defined in  
4 section 224.1, and evidence that all individuals contacted have  
5 been provided with information about the option of obtaining  
6 approval for placement through the tribe’s license or approval  
7 procedure.

8  
9 (D)–(F) \* \* \*

10  
11 (2) \* \* \*

12  
13 *(Subd (a) amended effective January 1, 2020; previously amended effective July 1, 1995,*  
14 *January 1, 2000, January 1, 2007, January 1, 2011, and January 1, 2017.)*

15  
16 (b)–(c) \* \* \*

17  
18 **(d) Timing**

19  
20 Notwithstanding any other law, if a minor has been removed from the custody of  
21 the parents or Indian custodians or guardians, a continuance may not be granted  
22 that would result in the dispositional hearing, held under section 361, being  
23 completed more than 60 days, or 30 days in the case of an Indian child, after the  
24 hearing at which the minor was ordered removed or detained, unless the court finds  
25 that there are exceptional circumstances requiring a continuance. If the court knows  
26 or has reason to know that the child is an Indian child, the absence of the opinion of  
27 a qualified expert witness must not, in and of itself, support a finding that  
28 exceptional circumstances exist.

29  
30 *(Subd (d) adopted effective January 1, 2020.)*

31  
32 *Rule 5.690 amended effective January 1, 2020; adopted as rule 1455 effective January 1, 1991;*  
33 *previously amended and renumbered effective January 1, 2007; previously amended effective*  
34 *July 1, 1995, January 1, 2000, January 1, 2009, July 1, 2010, January 1, 2011, January 1, 2017,*  
35 *and January 1, 2019.*

36  
37 **Rule 5.725. Selection of permanent plan (§§ 366.24, 366.26, 727.31)**

38  
39 (a)–(d) \* \* \*

40  
41 (e) **Procedures—adoption**

42  
43 (1) \* \* \*

1  
2  
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(2) An order of the court terminating parental rights, ordering adoption under section 366.26 or, in the case of an Indian child, ordering tribal customary adoption under section 366.24, is conclusive and binding on the child, the parent, and all other persons who have been served under the provisions of section 294. Once a final order of adoption has issued, the order may not be set aside or modified by the court, except as provided in section 366.26(e)(3) and (i)(3) and rules 5.538, 5.540, and 5.542 with regard to orders by a referee.

*(Subd (e) amended effective January 1, 2020; adopted as subd (d); previously relettered as subd (e) effective January 1, 1992, as subd (f) effective January 1, 2005, and as subd (e) effective January 1, 2010; previously amended effective July 1, 1992, January 1, 1995, July 1, 2002, January 1, 2006, January 1, 2007, July 1, 2010, January 1, 2015, and January 1, 2017.)*

**(f)–(h) \* \* \***

*Rule 5.725 amended effective January 1, 2020; repealed and adopted as rule 1463 effective January 1, 1991; previously amended and renumbered effective January 1, 2007; previously amended effective January 1, 1992, July 1, 1992, January 1, 1994, July 1, 1994, January 1, 1995, July 1, 1995, July 1, 1997, January 1, 1999, July 1, 1999, July 1, 2002, January 1, 2005, January 1, 2006, January 1, 2009, January 1, 2010, July 1, 2010, January 1, 2015, and January 1, 2017.*

**Rule 7.151. Reimbursement of graduated filing fee by successful subsequent petitioner [Repealed]**

*Rule 7.151 repealed effective January 1, 2020; adopted effective January 1, 2004; previously amended effective January 1, 2007 and March 1, 2008.*

~~**Rule 7.151. Reimbursement of graduated filing fee by successful subsequent petitioner**~~

~~**(a) Duty to reimburse**~~

~~In decedents’ estates commenced on or after August 18, 2003, and before January 1, 2008, a general personal representative appointed on a *Petition for Probate* (form DE-111) that was not the first filed petition for appointment of a general personal representative in the proceeding must reimburse the unsuccessful petitioner on the first filed petition for a portion of the filing fee paid by the unsuccessful petitioner.~~

~~**(b) Amount of reimbursement**~~

1 The reimbursement required under this rule is in the amount of:

- 2
- 3 (1) The filing fee paid by the unsuccessful petitioner in excess of the filing fee  
4 that would have been payable on that date for a *Petition for Probate* filed to  
5 commence administration of an estate valued at less than \$250,000, less  
6
- 7 (2) The unpaid amount of any costs or sanctions awarded against the  
8 unsuccessful petitioner in favor of the party that sought the personal  
9 representative's appointment in the proceeding.

10

11 **(e) When reimbursement payable**

12

13 The personal representative must make the reimbursement payment required under  
14 this rule in cash and in full no later than the date the *Inventory and Appraisal* (form  
15 DE-160/GC-040) is due under Probate Code section 8800(b), including additional  
16 time allowed by the court under that provision.

17

18 **(d) Payment from estate funds**

19

20 The reimbursement payment under this rule is an authorized expense of  
21 administration and may be made from estate funds without a prior court order.

22

23 **(e) Receipt from unsuccessful petitioner**

24

25 The unsuccessful petitioner must give a signed receipt for the reimbursement  
26 payment made under this rule.

27

28 **(f) Personal representative's right to claim refund**

29

30 A personal representative that is required to but fails to make the reimbursement  
31 payment under this rule may not claim a refund of the difference between the  
32 estimated filing fee and the corrected filing fee under rule 7.552(e).

33

34 **(g) Petitioner on dismissed *Petition for Probate***

35

36 A petitioner that is eligible to receive a refund of filing fee for a dismissed *Petition*  
37 *for Probate* under rule 7.552(d) is not an unsuccessful petitioner within the  
38 meaning of this rule.

39

40 **Rule 7.550. Effect of waiver of account**

41

42 **(a) \* \* \***

43

1 **(b) Information required in report on waiver of account**

2  
3 The report required when an account has been waived must list the information  
4 required by law, including information as to:

5  
6 (1)–(9) \* \* \*

7  
8 ~~(10) For decedent’s estate proceedings commenced on or after August 18, 2003,~~  
9 ~~the information required by rule 7.552(a) and (b).~~

10  
11 *(Subd (b) amended effective January 1, 2020; adopted as part of unlettered subdivision;*  
12 *previously amended effective January 1, 2004 and January 1, 2007.)*

13  
14 *Rule 7.550 amended effective January 1, 2020; adopted effective January 1, 2003; previously*  
15 *amended effective January 1, 2004, and January 1, 2007.*

16  
17 **Rule 7.575. ~~Accounts~~ Accountings of conservators and guardians**

18  
19 ~~This rule defines standard and simplified accountings filed by conservators and guardians~~  
20 ~~under Probate Code section 2620(a), provides when each type of accounting must or may~~  
21 ~~be filed, and prescribes the use of Judicial Council accounting forms in both types of~~  
22 ~~accountings.~~

23  
24 Unless waived by the court under Probate Code section 2628, a conservator or guardian  
25 of the estate must file accountings in the frequency, manner, and circumstances specified  
26 in Probate Code section 2620. The court may order accountings to be filed more  
27 frequently than required by the statute. An accounting must be filed as a standard  
28 accounting unless this rule authorizes filing a simplified accounting.

29  
30 **(a) ~~Standard and simplified~~ Information required in all accountings**

31  
32 ~~A standard accounting lists receipts and disbursements in subject-matter categories,~~  
33 ~~with each receipt and disbursement category subtotaled. A simplified accounting~~  
34 ~~lists receipts and disbursements chronologically, by receipt or payment date,~~  
35 ~~without subject-matter categories.~~

36  
37 Notwithstanding any other provision of this rule or the Judicial Council accounting  
38 forms, each accounting filed with the court must include:

39  
40 (1) All information required by Probate Code section 1061 in the *Summary of*  
41 *Account—Standard and Simplified Accounts* (form GC-400(SUM)/  
42 GC-405(SUM));

43

1           (2) All information required by Probate Code sections 1062–1063 in the  
2           supporting schedules; and

3  
4           (3) All information required by Probate Code section 1064 in the petition for  
5           approval of the accounting or the report accompanying the petition.

6  
7           *(Sub (a) amended effective January 1, 2020.)*

8  
9           **(b) Supporting documents**

10           Each accounting filed with the court must include the supporting documents,  
11           including all original statements, specified in section 2620(c) of the Probate Code.

12  
13  
14           (1) If a conservator or guardian receives a statement from the issuing institution  
15           in electronic form but not in paper form, the court has discretion to accept a  
16           computer-generated printout of that statement as an original in satisfaction of  
17           the requirements in section 2620(c) if:

18  
19                   (A) The fiduciary submitting the printout verifies under penalty of perjury  
20                   that the statement was received in electronic form and printed without  
21                   alteration; and

22  
23                   (B) The printout is an “original,” as defined in Evidence Code section 255.

24  
25           (2) This rule does not authorize a fiduciary to submit, or a court to accept, a copy  
26           of a statement in support of an accounting filed under section 2620.

27  
28           *(Subd (b) adopted effective January 1, 2020.)*

29  
30           **(b)(c) Standard accounting authorized or required**

31  
32           ~~A conservator or guardian may file any accounting required or authorized by~~  
33           ~~Probate Code section 2620 as a standard accounting under this rule and must file a~~  
34           ~~standard accounting if:~~

35  
36           (1) ~~The estate contains income real property;~~

37  
38           (2) ~~The estate contains a whole or partial interest in a trade or business;~~

39  
40           (3) ~~The appraised value of the estate is \$500,000 or more, exclusive of the~~  
41           ~~conservatee’s or ward’s personal residence;~~

42

1 (4) ~~Except as provided in (c)(d), Schedule A (receipts) or Schedule C~~  
2 ~~(disbursements) prepared in a simplified accounting format exceeds five~~  
3 ~~pages in length; or~~  
4

5 (5) ~~The court directs that a standard accounting be filed.~~  
6

7 A “standard accounting” reports receipts and disbursements in subject-matter  
8 categories, with each category subtotaled on a separate form. A conservator,  
9 guardian, or trustee must file each accounting as a standard accounting unless a  
10 simplified accounting is authorized in (d)(1).

11  
12 *(Subd (c) relettered and amended effective January 1, 2020; adopted as subd (b) effective*  
13 *January 1, 2008.)*  
14

15 **(e)(d)Simplified accounting authorized**  
16

17 ~~A conservator or guardian may file a simplified accounting in all cases not listed in~~  
18 ~~(b). If required by this rule to file a standard accounting only because a receipts or~~  
19 ~~disbursements schedule is longer than five pages under (b)(4), a conservator or~~  
20 ~~guardian may file a simplified accounting, except for that schedule, which must be~~  
21 ~~prepared in a standard accounting format.~~  
22

23 A “simplified accounting” reports individual receipts and disbursements  
24 chronologically, by receipt or payment date, without separating them into subject-  
25 matter categories.  
26

27 (1) A conservator, guardian, or trustee may file a simplified accounting only if  
28 all the following requirements are met:  
29

30 (A) The estate or trust contains no income-generating real property;  
31

32 (B) The estate or trust contains neither a whole nor a partial interest in a  
33 trade or business;  
34

35 (C) The appraised value of the estate or trust, excluding the value of the  
36 conservatee’s or ward’s personal residence, is less than \$500,000; and  
37

38 (D) The court has not directed the fiduciary to file a standard accounting.  
39

40 (2) If the requirements in (1) are met, but either *Schedule A, Receipts—Simplified*  
41 *Account* (form GC-405(A)) or *Schedule C, Disbursements—Simplified*  
42 *Account* (form GC-405(C)) would be longer than five pages, the fiduciary  
43 must use the standard receipt forms—forms GC-400(A)(1)–(6)—or the

1                    standard disbursement forms—forms GC-400(C)(1)–(11)—as applicable, but  
2                    may otherwise file a simplified accounting.

3  
4                    *(subd (d) relettered and amended effective January 1, 2020; adopted as subd (C) effective*  
5                    *January 1, 2008.)*

6  
7                    **(d)(e)Standard and simplified accounting Judicial Council forms**

8  
9                    ~~Judicial Council forms designated as GC-400 are standard accounting forms. Forms~~  
10                   ~~designated as GC-405 are simplified accounting forms. Forms designated as GC-~~  
11                   ~~400/GC-405 are forms for both standard and simplified accountings. Each form is~~  
12                   ~~also designated by a suffix following its accounting designator that identifies the~~  
13                   ~~form’s intended use, based either on the form’s schedule letter as shown in the~~  
14                   ~~*Summary of Account* (form GC-400(SUM)/GC-405(SUM)) or the form’s subject~~  
15                   ~~matter.~~

16  
17                   The Judicial Council has approved two overlapping sets of forms for accountings in  
18                   conservatorships and guardianships.

- 19  
20                   (1) Forms intended for use in standard accountings are numbered GC-400.  
21  
22                   (2) Forms intended for use in simplified accountings are numbered GC-405.  
23  
24                   (3) Forms intended for use in both accounting formats bear both numbers.  
25  
26                   (4) Each form number is followed by a suffix—for example, GC-405(A)—to  
27                   specify that form’s intended use. The suffix indicates either the letter or the  
28                   subject matter of the form’s schedule.  
29  
30                   (5) The *Summary of Account—Standard and Simplified Accounts* (form  
31                   GC-400(SUM)/GC-405(SUM)) must be used in all accountings.  
32  
33                   (6) Except for the *Summary of Account*, all standard accounting forms are  
34                   optional. A fiduciary who files a standard accounting and elects not to use the  
35                   Judicial Council forms must:  
36  
37                   (A) Report receipts and disbursements in the subject-matter categories  
38                   specified on the Judicial Council standard accounting forms for receipts  
39                   and disbursements schedules;  
40  
41                   (B) Provide the same information about any asset, property, transaction,  
42                   receipt, disbursement, or other matter that is required on the applicable  
43                   Judicial Council standard accounting form; and

1  
2 (C) Provide the information in the same general format as that of the  
3 applicable Judicial Council standard accounting form, except that  
4 instructional material and material contained or requested in the form's  
5 header and footer may be omitted.

6  
7 (7) Schedule A, Receipts—Simplified Account (form GC-405(A)) and Schedule  
8 C, Disbursements—Simplified Account (form GC-405(C)) must be used in all  
9 simplified accountings unless (d)(2) requires use of the standard forms for  
10 Schedule A or Schedule C.

11  
12 (8) A fiduciary filing a simplified accounting must use the appropriate form in  
13 the GC-405 series whenever the accounting covers an asset, a transaction, or  
14 an event to which that form applies.

15  
16 (e) **Mandatory and optional forms**

17  
18 (1) ~~Judicial Council accounting forms adopted as mandatory forms must be used~~  
19 ~~by standard and simplified accounting filers. Judicial Council accounting~~  
20 ~~forms approved as optional forms may be used by all accounting filers.~~  
21 ~~Judicial Council accounting forms designated as GC 400/GC 405 that are~~  
22 ~~approved as optional forms may be used by standard accounting filers but~~  
23 ~~must be used by simplified accounting filers.~~

24  
25 (2) ~~Standard accounting filers electing not to use optional Judicial Council~~  
26 ~~accounting forms must:~~

27  
28 (A) ~~State receipts and disbursements in the subject matter categories~~  
29 ~~specified in the optional Judicial Council forms for receipts and~~  
30 ~~disbursements schedules;~~

31  
32 (B) ~~Provide the same information about any asset, property, transaction,~~  
33 ~~receipt, disbursement, or other matter that is required by the applicable~~  
34 ~~Judicial Council accounting form; and~~

35  
36 (C) ~~Provide the information in the same general layout as the applicable~~  
37 ~~Judicial Council accounting form, but instructional material contained~~  
38 ~~in the form and material contained or requested in the form's header~~  
39 ~~and footer need not be provided.~~

40  
41 *(Subd (e) relettered and amended effective January 1, 2020; adopted as sub (d) effective*  
42 *January 1, 2008.)*

1 **(f) Required information in all accounts**

2  
3 Notwithstanding any other provision of this rule and the Judicial Council  
4 accounting forms, all standard and simplified accounting filers must provide all  
5 information in their accounting schedules or their *Summary of Account* that is  
6 required by Probate Code sections 1060–1063 and must provide all information  
7 required by Probate Code section 1064 in the petition for approval of their account  
8 or the report accompanying their account.  
9

10 **(f) Order waiving an accounting**

11  
12 The court may make an order waiving an otherwise required accounting if all the  
13 conditions in Probate Code section 2628(a) are met. If the conservatee or ward  
14 owns a personal residence, the request for an order waiving the accounting must  
15 include, in addition to the information needed to verify that all the conditions in  
16 section 2628(a) are met, the following information and documents regarding the  
17 personal residence:

- 18  
19 (1) The street address of the residence;  
20  
21 (2) A true copy of the most recent residential property tax bill;  
22  
23 (3) A true copy of the declarations page from the homeowner’s insurance policy  
24 covering the residence;  
25  
26 (4) A true copy of the most recent statement for any mortgage or loan secured by  
27 the residence; and  
28  
29 (5) A true copy of the most recent fee or dues statement for any homeowners’  
30 association or similar association.  
31

32 *(Subd (f) adopted effective January 1, 2020.)*  
33

34 *Rule 7.575 amended effective January 1, 2010; adopted effective January 1, 2008.*  
35  
36

37 **Chapter 23. ~~Court-Appointed Counsel in Probate Proceedings~~**

38  
39 **Former Rule 7.1101. Qualifications and continuing education required of counsel**  
40 **appointed by the court in guardianships and conservatorships [Repealed]**  
41

42 *Rule 7.1101 repealed effective January 1, 2020; adopted effective January 1, 2008; previously*  
43 *amended effective January 1, 2009, January 1, 2011, and January 1, 2016..*

1  
2 **Rule 7.1101. Qualifications and continuing education required of counsel appointed**  
3 **by the court in guardianships and conservatorships**

4  
5 **(a) Definitions**

6  
7 As used in this rule, the following terms have the meanings stated below:

- 8  
9 (1) “Appointed counsel” or “counsel appointed by the court” are legal counsel  
10 appointed by the court under Probate Code sections 1470 or 1471, including  
11 counsel in private practice and deputy public defenders directly responsible  
12 for the performance of legal services under the court’s appointment of a  
13 county’s public defender.  
14  
15 (2) A “probate guardianship” or “probate conservatorship” is a guardianship or  
16 conservatorship proceeding under division 4 of the Probate Code.  
17  
18 (3) “LPS” and “LPS Act” refer to the Lanterman-Petris-Short Act, Welfare and  
19 Institutions Code section 5000 et seq.  
20  
21 (4) An “LPS conservatorship” is a conservatorship proceeding for a gravely  
22 disabled person under chapter 3 of the LPS Act, Welfare and Institutions  
23 Code sections 5350–5371.  
24  
25 (5) A “contested matter” in a probate or LPS conservatorship proceeding is a  
26 matter that requires a noticed hearing and in which written objections are  
27 filed by any party or made by the conservatee or proposed conservatee orally  
28 in open court.  
29  
30 (6) “Counsel in private practice” includes attorneys employed by or performing  
31 services under contracts with nonprofit organizations.  
32

33 **(b) Qualifications of appointed counsel in private practice**

34  
35 Except as provided in this rule, each counsel in private practice appointed by the  
36 court on or after January 1, 2008, must be an active member of the State Bar of  
37 California for at least three years immediately before the date of appointment, with  
38 no discipline imposed within the 12 months immediately preceding any date of  
39 availability for appointment after January 1, 2008; and

- 40  
41 (1) *Appointments to represent minors in guardianships*

42  
43 For an appointment to represent a minor in a guardianship:

- 1  
2 (A) ~~Within the five years immediately before the date of first availability~~  
3 ~~for appointment after January 1, 2008, must have represented at least~~  
4 ~~three wards or proposed wards in probate guardianships, three children~~  
5 ~~in juvenile court dependency or delinquency proceedings, or three~~  
6 ~~children in custody proceedings under the Family Code; or~~  
7  
8 (B) ~~At the time of appointment, must be qualified:~~  
9  
10 (i) ~~For appointments to represent children in juvenile dependency~~  
11 ~~proceedings under rule 5.660 and the court's local rules~~  
12 ~~governing court-appointed juvenile court dependency counsel; or~~  
13  
14 (ii) ~~For appointments to represent children in custody proceedings~~  
15 ~~under the Family Code under rule 5.242, including the alternative~~  
16 ~~experience requirements of rule 5.242(g).~~  
17  
18 (C) ~~Except as provided in (f)(2), counsel qualified for appointments in~~  
19 ~~guardianships under (B) must satisfy the continuing education~~  
20 ~~requirements of this rule in addition to the education or training~~  
21 ~~requirements of the rules mentioned in (B).~~  
22

23 (2) *Appointments to represent conservatees or proposed conservatees*  
24

25 For an appointment to represent a conservatee or a proposed conservatee,  
26 within the five years immediately before the date of first availability for  
27 appointment after January 1, 2008, counsel in private practice must have:  
28

- 29 (A) ~~Represented at least three conservatees or proposed conservatees in~~  
30 ~~either probate or LPS conservatorships; or~~  
31  
32 (B) ~~Completed any three of the following five tasks:~~  
33  
34 (i) ~~Represented petitioners for the appointment of a conservator at~~  
35 ~~commencement of three probate conservatorship proceedings,~~  
36 ~~from initial contact with the petitioner through the hearing and~~  
37 ~~issuance of Letters of Conservatorship;~~  
38  
39 (ii) ~~Represented a petitioner, a conservatee or a proposed~~  
40 ~~conservatee, or an interested third party in two contested probate~~  
41 ~~or LPS conservatorship matters. A contested matter that qualifies~~  
42 ~~under this item and also qualifies under (i) may be applied toward~~  
43 ~~satisfaction of both items;~~

1  
2 (iii) Represented a party for whom the court could appoint legal  
3 counsel in a total of three matters described in Probate Code  
4 sections 1470, 1471, 1954, 2356.5, 2357, 2620.2, 3140, or 3205;

5  
6 (iv) Represented fiduciaries in three separate cases for settlement of a  
7 court-filed account and report, through filing, hearing, and  
8 settlement, in any combination of probate conservatorships or  
9 guardianships, decedent's estates, or trust proceedings under  
10 division 9 of the Probate Code; or

11  
12 (v) Prepared five wills or trusts, five durable powers of attorney for  
13 health care, and five durable powers of attorney for asset  
14 management.

15  
16 (3) Except as provided in (e)(2), private counsel qualified under (1) or (2) must  
17 also be covered by professional liability insurance satisfactory to the court in  
18 the amount of at least \$100,000 per claim and \$300,000 per year.

19  
20 **(e) Qualifications of deputy public defenders performing legal services on court**  
21 **appointments of the public defender**

22  
23 (1) Except as provided in this rule, beginning on January 1, 2008, each county  
24 deputy public defender with direct responsibility for the performance of legal  
25 services in a particular case on the appointment of the county public defender  
26 under Probate Code sections 1470 or 1471 must be an active member of the  
27 State Bar of California for at least three years immediately before the date of  
28 appointment; and either

29  
30 (A) Satisfy the experience requirements for private counsel in (b)(1) for  
31 appointments in guardianships or (b)(2) for appointments in  
32 conservatorships; or

33  
34 (B) Have a minimum of three years' experience representing minors in  
35 juvenile dependency or delinquency proceedings or patients in  
36 postcertification judicial proceedings or conservatorships under the  
37 LPS Act.

38  
39 (2) A deputy public defender qualified under (1) must also be covered by  
40 professional liability insurance satisfactory to the court in the amount of at  
41 least \$100,000 per claim and \$300,000 per year, or be covered for  
42 professional liability at an equivalent level by a self-insurance program for  
43 the professional employees of his or her county.

1  
2       (3) ~~A deputy public defender who is not qualified under this rule may~~  
3       ~~periodically substitute for a qualified deputy public defender with direct~~  
4       ~~responsibility for the performance of legal services in a particular case. In~~  
5       ~~that event, the county public defender or his or her designee, who may be the~~  
6       ~~qualified supervisor, must certify to the court that the substitute deputy is~~  
7       ~~working under the direct supervision of a deputy public defender who is~~  
8       ~~qualified under this rule.~~

9  
10   **(d) Transitional provisions on qualifications**

11  
12       (1) ~~Counsel appointed before January 1, 2008, may continue to represent their~~  
13       ~~clients through March 2008, whether or not they are qualified under (b) or~~  
14       ~~(c). After March 2008, through conclusion of these matters, the court may~~  
15       ~~retain or replace appointed counsel who are not qualified under (b) or (c) or~~  
16       ~~may appoint qualified co-counsel to assist them.~~

17  
18       (2) ~~In January, February, and March 2008, the court may appoint counsel in new~~  
19       ~~matters who have not filed the certification of qualifications required under~~  
20       ~~(h) at the time of appointment but must replace counsel appointed under this~~  
21       ~~paragraph who have not filed the certificate before April 1, 2008.~~

22  
23   **(e) Exemption for small courts**

24  
25       (1) ~~Except as provided in (2) and (3), the qualifications required under (b) or (c)~~  
26       ~~may be waived by a court with four or fewer authorized judges if it cannot~~  
27       ~~find qualified counsel or for other grounds of hardship.~~

28  
29       (2) ~~A court described in (1) may, without a waiver, appoint counsel in private~~  
30       ~~practice who do not satisfy the insurance requirements of (b)(3) if counsel~~  
31       ~~demonstrate to the court that they are adequately self-insured.~~

32  
33       (3) ~~A court may not waive or disregard the self-insurance requirements of (c)(2)~~  
34       ~~applicable to deputy public defenders.~~

35  
36       (4) ~~A court waiving the qualifications required under (b) or (c) must make~~  
37       ~~express written findings showing the circumstances supporting the waiver~~  
38       ~~and disclosing all alternatives considered, including appointment of qualified~~  
39       ~~counsel from adjacent counties and other alternatives not selected.~~

40  
41   **(f) Continuing education of appointed counsel**

42

1 (1) Except as provided in (2), beginning on January 1, 2008, counsel appointed  
2 by the court must complete three hours of education each calendar year that  
3 qualifies for Minimum Continuing Legal Education credit for State Bar-  
4 certified specialists in estate planning, trust, and probate law.

5  
6 (2) Counsel qualified to represent minors in guardianships under (b)(1)(B) and  
7 who are appointed to represent minors in guardianships of the person only  
8 may satisfy the continuing education requirements of this rule by satisfying  
9 the annual education and training required under rule 5.242(d) or the  
10 continuing education required under rule 5.660(d)(3).

11  
12 **(g) Additional court imposed qualifications, education, and other requirements**

13  
14 The qualifications in (b) and (c) and the continuing education requirement in (f) are  
15 minimums. A court may establish higher qualification or continuing education  
16 requirements, including insurance requirements; require initial education or  
17 training; and impose other requirements, including an application by private  
18 counsel.

19  
20 **(h) Initial certification of qualifications; annual post-qualification reports and**  
21 **certifications**

22  
23 (1) Each counsel appointed or eligible for appointment by the court before  
24 January 1, 2008, including deputy public defenders, must certify to the court  
25 in writing before April 1, 2008, that he or she satisfies the qualifications  
26 under (b) or (c) to be eligible for a new appointment on or after that date.

27  
28 (2) After March 2008, each counsel must certify to the court that he or she is  
29 qualified under (b) or (c) before becoming eligible for an appointment under  
30 this rule.

31  
32 (3) Each counsel appointed or eligible for appointment by the court under this  
33 rule must immediately advise the court of the imposition of any State Bar  
34 discipline.

35  
36 (4) Beginning in 2009, each appointed counsel must certify to the court before  
37 the end of March of each year that:

38  
39 (A) His or her history of State Bar discipline and professional liability  
40 insurance coverage or, if appointed by a court with four or fewer  
41 authorized judges under (c)(2), the adequacy of his or her self-  
42 insurance, either has or has not changed since the date of his or her  
43 qualification certification or last annual certification; and

1  
2 (B) ~~He or she has completed the continuing education required for the~~  
3 ~~preceding calendar year.~~

4  
5 (5) ~~Annual certifications required under this subdivision showing changes in~~  
6 ~~State Bar disciplinary history, professional liability insurance coverage, or~~  
7 ~~adequacy of self insurance must include descriptions of the changes.~~

8  
9 (6) ~~Certifications required under this subdivision must be submitted to the court~~  
10 ~~but are not to be filed or lodged in a case file.~~

11  
12 **(i) Reporting**

13  
14 ~~The Judicial Council may require courts to report appointed counsel's~~  
15 ~~qualifications and completion of continuing education required by this rule to~~  
16 ~~ensure compliance with Probate Code section 1456.~~

17  
18  
19 **Rule 7.1101. Scope, definitions, and general qualifications**

20  
21 **(a) Scope (Prob. Code, §§ 1456, 1470–1471)**

22  
23 The rules in this chapter establish minimum qualifications, annual education  
24 requirements, and certification requirements that an attorney must meet as  
25 conditions of court appointment as counsel under Probate Code section 1470 or  
26 1471 in a proceeding under division 4 of that code.

27  
28 (1) The rules in this chapter apply to an appointed attorney regardless of whether  
29 the attorney is a sole practitioner or works for a private law firm, a legal  
30 services organization, or a public defender's office.

31  
32 (2) The rules in this chapter do not apply to:

33  
34 (A) Retained counsel;

35  
36 (B) Counsel appointed under the authority of any law other than Probate  
37 Code section 1470 or 1471.

38  
39 **(b) Definitions**

40  
41 For purposes of this chapter, the following terms are used as defined below:  
42

- 1           (1) “Appointed counsel” or “appointed attorney” means an attorney appointed by  
2 the court under Probate Code section 1470 or 1471 who assumes direct  
3 personal responsibility for representing a ward or proposed ward, a  
4 conservatee or proposed conservatee, or a person alleged to lack legal  
5 capacity in a proceeding under division 4 of the Probate Code.  
6  
7           (2) “Probate guardianship” means any proceeding related to a general or  
8 temporary guardianship under division 4 of the Probate Code.  
9  
10          (3) “Probate conservatorship” means any proceeding related to a conservatorship  
11 or limited conservatorship, general or temporary, under division 4 of the  
12 Probate Code.  
13  
14          (4) “LPS Act” refers to the Lanterman-Petris-Short Act (Welf. & Inst. Code,  
15 §§ 5000–5556), which provides for involuntary mental health treatment and  
16 conservatorship for persons who are gravely disabled as the result of a mental  
17 health disorder.  
18  
19          (5) A “contested matter” is a matter that requires a noticed hearing and in which  
20 an objection is filed in writing or made orally in open court by any person  
21 entitled to appear at the hearing and support or oppose the petition.  
22  
23          (6) “Trial” means the determination of one or more disputed issues of fact by  
24 means of an evidentiary hearing.  
25

26 **(c) General qualifications**

27  
28 To qualify for any appointment under Probate Code section 1470 or 1471, an  
29 attorney must:  
30

- 31          (1) Be an active member in good standing of the State Bar of California or a  
32 registered legal aid attorney qualified to practice law in California under rule  
33 9.45;  
34  
35          (2) Have had no professional discipline imposed in the 12 months immediately  
36 preceding the date of submitting any initial or annual certification of  
37 compliance; and  
38  
39          (3) Have demonstrated to the court that the attorney or the attorney’s firm or  
40 employer:  
41  
42                (A) Is covered by professional liability insurance with coverage limits no  
43 less than \$100,000 per claim and \$300,000 per year; or

1  
2 (B) Is covered for professional liability at an equivalent level through a  
3 self-insurance program;  
4

5 (4) Have met the applicable qualifications and annual education requirements in  
6 this chapter and have a current certification on file with the appointing court;  
7 and  
8

9 (5) Have satisfied any additional requirements established by local rule.  
10

11 **(d) Local rules**  
12

13 The rules in this chapter establish minimum qualifications and requirements.  
14 Nothing in this chapter prohibits a court from establishing, by local rule adopted  
15 under rule 10.613, additional or more rigorous qualifications or requirements.  
16

17 **(e) Retroactivity**  
18

19 The amendments to this chapter adopted effective January 1, 2020, are not  
20 retroactive. They do not require an attorney who submitted an initial certification of  
21 qualifications under this chapter as it read on or before December 31, 2019, to  
22 submit a new initial certification.  
23

24 *Rule 7.1101 adopted effective January 1, 2020.*  
25

26 **Rule 7.1102. Qualifications and annual education required for counsel appointed to**  
27 **represent a ward or proposed ward (Prob. Code, §§ 1456, 1470(a))**  
28

29 Except as provided in rule 7.1104(b), an attorney appointed for a ward or proposed ward  
30 must have met the qualifications in either (a) or (b) and, in every calendar year after first  
31 availability for appointment, must meet the annual education requirements in (c).  
32

33 **(a) Experience-based qualifications**  
34

35 An attorney is qualified for appointment if the attorney has met the experience  
36 requirements described in either (1) or (2).  
37

38 (1) Within the five years immediately before first availability for appointment,  
39 the attorney has personally represented a petitioner, an objector, a respondent,  
40 a minor child, or a nonminor dependent in at least three of any combination  
41 of the following proceedings, at least one of which must have been a  
42 contested matter or trial:  
43

- 1 (A) A probate guardianship proceeding;  
2  
3 (B) A juvenile court child welfare proceeding; or  
4  
5 (C) A family law child custody proceeding.  
6

7 (2) At the time of first availability for appointment, the attorney meets the  
8 experience requirements:  
9

- 10 (A) In rule 5.660(d) and any applicable local rules for appointment to  
11 represent a minor child or nonminor dependent in a juvenile court child  
12 welfare proceeding; or  
13  
14 (B) In rule 5.242(f) for appointment to represent a minor child in a family  
15 law child custody proceeding.  
16

17 **(b) Alternative qualifications**  
18

19 An attorney who does not yet meet the experience-based qualifications in (a) may,  
20 until the attorney has gained the necessary experience, qualify for appointment if  
21 the attorney meets the requirements in (1) or (2).  
22

23 (1) At the time of appointment, the attorney works for an attorney, a private law  
24 firm, or a legal services organization approved by the court for appointment  
25 under Probate Code section 1470 to represent wards or proposed wards, and  
26 the attorney is supervised by or working in close professional consultation  
27 with a qualified attorney who has satisfied the experience requirements in (a);  
28 or  
29

30 (2) In the 12 months immediately before first availability for appointment, the  
31 attorney has completed at least three hours of professional education  
32 approved by the State Bar of California for Minimum Continuing Legal  
33 Education (MCLE) credit in the subjects listed in (d) and, at the time of  
34 appointment, the attorney is working in close professional consultation with a  
35 qualified attorney who has satisfied the experience requirements in (a).  
36

37 **(c) Annual education**  
38

39 Each calendar year after first availability for appointment, an attorney appointed by  
40 the court to represent a ward or proposed ward must complete at least three hours  
41 of professional education approved by the State Bar for MCLE credit in the  
42 subjects listed in (d).  
43

1 **(d) Subject matter and delivery of education**

2  
3 Education in the following subjects—delivered in person or by any State Bar–  
4 approved method of distance learning—may be used to satisfy this rule’s education  
5 requirements:

6  
7 (1) State and federal statutes—including the federal Indian Child Welfare Act of  
8 1978 (25 U.S.C. §§ 1901–1963)—rules of court, and case law governing  
9 probate guardianship proceedings and the legal rights of parents and children;

10  
11 (2) Child development, including techniques for communicating with a child  
12 client; and

13  
14 (3) Risk factors for child abuse and neglect and family violence.

15  
16 *Rule 7.1102 adopted effective January 1, 2020.*

17  
18 **Rule 7.1103. Qualifications and annual education required for counsel appointed to**  
19 **represent a conservatee, proposed conservatee, or person alleged to lack legal**  
20 **capacity (Prob. Code, §§ 1456, 1470(a), 1471)**

21  
22 Except as provided in rule 7.1104(b), an attorney appointed to represent the interests of a  
23 conservatee, proposed conservatee, or person alleged to lack legal capacity must have  
24 met the qualifications in (a) or (b) and, in every calendar year after first availability for  
25 appointment, must meet the annual education requirements in (c).

26  
27 **(a) Experience-based qualifications**

28  
29 An attorney is qualified for appointment if, within the five years immediately  
30 preceding first availability for appointment, the attorney has personally represented  
31 a petitioner, an objector, a conservatee or proposed conservatee, or a person alleged  
32 to lack legal capacity or be gravely disabled in at least three separate proceedings  
33 under either division 4 of the Probate Code or the LPS Act, including at least one  
34 contested matter or trial.

35  
36 **(b) Alternative qualifications**

37  
38 An attorney who does not yet meet the experience-based qualifications in (a) may,  
39 until the attorney has gained the necessary experience, qualify for appointment if  
40 the attorney meets the requirements in (1) or (2).

41  
42 (1) At the time of appointment, the attorney works for an attorney, a private law  
43 firm, a public defender’s office, or a legal services organization (including

1 the organization designated by the Governor as the state protection and  
2 advocacy agency, as defined in section 4900(i) of the Welfare and  
3 Institutions Code) approved by the court for appointment to represent  
4 conservatees, proposed conservatees, and persons alleged to lack legal  
5 capacity, and the attorney is supervised by or working in close professional  
6 consultation with a qualified attorney who has satisfied the experience  
7 requirements in (a); or  
8

- 9 (2) In the 12 months immediately before first availability for appointment, the  
10 attorney has completed at least three hours of professional education  
11 approved by the State Bar of California for Minimum Continuing Legal  
12 Education (MCLE) credit in the subjects listed in (d), and, at the time of  
13 appointment, the attorney is working in close professional consultation with a  
14 qualified attorney who has satisfied the experience requirements in (a).  
15

16 **(c) Annual education**  
17

18 Each calendar year after first availability for appointment, an attorney appointed by  
19 the court to represent a conservatee, proposed conservatee, or person alleged to lack  
20 legal capacity must complete at least three hours of professional education  
21 approved by the State Bar for MCLE credit in the subjects listed in (d).  
22

23 **(d) Subject matter and delivery of education**  
24

25 Education in the following subjects—delivered in person or by any State Bar–  
26 approved method of distance learning—may be used to satisfy this rule’s education  
27 requirements:  
28

- 29 (1) State and federal statutes—including the federal Americans with Disabilities  
30 Act (42 U.S.C. §§ 12101–12213)—rules of court, and case law governing  
31 probate conservatorship proceedings, capacity determinations, and the legal  
32 rights of conservatees, persons alleged to lack legal capacity, and persons  
33 with disabilities;  
34  
35 (2) The attorney-client relationship and lawyer’s ethical duties to a client under  
36 the California Rules of Professional Conduct and other applicable law; and  
37  
38 (3) Special considerations for representing an older adult or a person with a  
39 disability, including:  
40  
41 (A) Communicating with an older client or a client with a disability;  
42

- 1 (B) Vulnerability of older adults and persons with disabilities to undue  
2 influence, physical and financial abuse, and neglect;  
3  
4 (C) Effects of aging, major neurocognitive disorders (including dementia),  
5 and intellectual and developmental disabilities on a person’s ability to  
6 perform the activities of daily living; and  
7  
8 (D) Less-restrictive alternatives to conservatorship, including supported  
9 decisionmaking.

10  
11 *Rule 7.1103 adopted effective January 1, 2020.*  
12

13 **Rule 7.1104. Local administration**

14  
15 **(a) Procedures**

- 16  
17 (1) A local court may create and maintain lists or panels of certified attorneys or  
18 approve the public defender’s office and one or more legal services  
19 organizations to provide qualified attorneys for appointment under Probate  
20 Code sections 1470 and 1471 to represent specific categories of persons in  
21 proceedings under division 4 of that code.  
22  
23 (2) A court may establish, by local rule adopted under rule 10.613, procedural  
24 requirements, including submission of an application, as conditions for  
25 approval for appointment or placement on a list or panel.  
26

27 **(b) Exception to qualifications**

28  
29 A court may appoint an attorney who is not qualified under rule 7.1102 or 7.1103  
30 on an express finding, on the record or in writing, of circumstances that make such  
31 an appointment necessary. These circumstances may include, but are not limited to,  
32 when:  
33

- 34 (1) No qualified attorney is available for appointment; or  
35  
36 (2) The needs or interests of the person to be represented cannot be served  
37 without the appointment of an attorney who has other specific knowledge,  
38 skills, or experience.  
39

40 *Rule 7.1104 adopted effective January 1, 2020.*  
41

42 **Rule 7.1105. Certification of attorney qualifications**

43

1 **(a) Initial certification**

2  
3 Before first availability for appointment under Probate Code section 1470 or 1471,  
4 an attorney must certify to the court that the attorney:

- 5  
6 (1) Meets the licensing, disciplinary status, and insurance requirements in rule  
7 7.1101(c)(1)–(3); and  
8  
9 (2) Meets the qualifications in rule 7.1102 for appointment to represent wards or  
10 the qualifications in rule 7.1103 for appointment to represent conservatees, or  
11 both, depending on the appointments the attorney wishes to be available for.  
12

13 **(b) Annual certification**

14  
15 To remain eligible for appointment under Probate Code section 1470 or 1471, an  
16 attorney who has submitted an initial certification must certify to the court, no later  
17 than March 31 of each following year, that:

- 18  
19 (1) The attorney meets the licensing, disciplinary status, and insurance  
20 requirements in rule 7.1101(c)(1)–(3); and  
21  
22 (2) The attorney has completed the applicable annual education—in rule 7.1102,  
23 7.1103, or both—required for the previous calendar year.  
24

25 **(c) Notification of disciplinary action**

26  
27 An appointed attorney must notify the court in writing within five court days of any  
28 disciplinary action taken against the attorney by the State Bar of California. The  
29 notification must describe the charges, disposition, and terms of any reproof,  
30 probation, or suspension.  
31

32 **(d) Documentation**

33  
34 A court to which an attorney has submitted a certification under this rule may  
35 require the attorney to submit documentation or other information in support of any  
36 statement in the certification.  
37

38 **(e) Confidentiality**

39  
40 The certifications required by this rule and any supporting documentation or  
41 information submitted to the court must be maintained confidentially by the court.  
42 They must not be filed or lodged in a case file.  
43

1 Rule 7.1105 adopted effective January 1, 2020.

2  
3 **Rule 8.40. ~~Form of filed documents~~ Cover requirements for documents filed in**  
4 **paper form**

5  
6 **~~(a)~~ Form**

7  
8 ~~Except as these rules provide otherwise, documents filed in a reviewing court may~~  
9 ~~be either produced on a computer or typewritten and must comply with the relevant~~  
10 ~~provisions of rule 8.204(b).~~

11  
12 **~~(b)~~(a) Cover color**

13  
14 (1)–(2) \* \* \*

15  
16 (3) A paper brief or petition not conforming to (1) or (2) must be accepted for  
17 filing, but in case of repeated violations by an attorney or party, the court  
18 may proceed as provided in rule 8.204(e)(2).

19  
20 *(Subd (a) amended and relettered effective January 1, 2020; adopted as subd (c);*  
21 *previously amended and relettered as subd (b) effective January 1, 2007; previously*  
22 *amended effective January 1, 2011, and January 1, 2016.)*

23  
24 **~~(e)~~ (b) Cover information**

25  
26 (1)–(2) \* \* \*

27  
28 *Subd (b) amended and relettered effective January 1, 2020; adopted as subd (d);*  
29 *previously amended and relettered subd (c) effective January 1, 2007; previously amended*  
30 *effective January 1, 2013.)*

31  
32 *Rule 8.40 amended effective January 1, 2020; repealed and adopted as rule 44 effective January*  
33 *1, 2005; previously amended and renumbered as rule 8.40 effective January 1, 2007; previously*  
34 *amended effective January 1, 2006, January 1, 2011, January 1, 2013, and January 1, 2016.*

35  
36  
37 **Rule 8.44. Number of copies of filed documents**

38  
39 **(a)–(b) \* \* \***

40  
41 **(c) Electronic copies of paper documents**

42

1 ~~A court that permits electronic filing will specify any requirements regarding~~  
2 ~~electronically filed documents in the electronic filing requirements published under~~  
3 ~~rule 8.74. In addition, Even when filing a paper document is permissible, a court~~  
4 may provide by local rule for the submission of an electronic copy of a document  
5 ~~that is not electronically filed~~ the paper document either in addition to the copies of  
6 the document required to be filed under (a) or (b) or as a substitute for one or more  
7 of these copies. The local rule must ~~specify the format of the electronic copy and~~  
8 provide for an exception if it would cause undue hardship for a party to submit an  
9 electronic copy.

10  
11 *Subd (c) amended effective January 1, 2020; adopted effective January 1, 2014; previously*  
12 *amended effective January 1, 2016.)*

13  
14 *Rule 8.44 amended effective January 1, 2020; adopted effective January 1, 2007; previously*  
15 *amended effective January 1, 2007, January 1, 2011, January 1, 2013, January 1, 2014; and*  
16 *January 1, 2016.*

17  
18 **Rule 8.46. Sealed records**

19  
20 **(a)–(c)** \* \* \*

21  
22 **(d) Record not filed in the trial court; motion or application to file under seal**

23  
24 **(1)–(2)** \* \* \*

25  
26 **(3)** To lodge a record, the party must transmit the record to the court in a secure  
27 manner that preserves the confidentiality of the record to be lodged. The  
28 record must be transmitted separately from the rest of a clerk’s or reporter’s  
29 transcript, appendix, supporting documents, or other records sent to the  
30 reviewing court with a cover sheet that complies with rule 8.40(e)(b) if the  
31 record is in paper form or rule 8.74(a)(9) if the record is in electronic form,  
32 and that labels the contents as “CONDITIONALLY UNDER SEAL.” If the  
33 record is in paper format, it must be placed in a sealed envelope or other  
34 appropriate sealed container.

35  
36 *(Subd (d) amended effective January 1, 2020; adopted effective January 1, 2019.)*

37  
38 **(e)–(g)** \* \* \*

39  
40 *Rule 8.46 amended effective January 1, 2020; repealed and adopted as rule 12.5 effective*  
41 *January 1, 2002; previously amended and renumbered as rule 8.160 effective January 1, 2007;*  
42 *previously renumbered as rule 8.46 effective January 1, 2010; previously amended effective July*

1 1, 2002, January 1, 2004, January 1, 2006, January 1, 2014, January 1, 2016, and January 1,  
2 2019.

3  
4 **Rule 8.71. Electronic filing**

5  
6 **(a) Mandatory electronic filing**

7  
8 Except as otherwise provided by these rules, the Supreme Court Rules Regarding  
9 Electronic Filing, ~~the local rules of the reviewing court~~, or court order, all parties  
10 are required to file all documents electronically in the reviewing court.

11  
12 *(Subd (a) amended effective January 1, 2020.)*

13  
14 **(b)–(g) \* \* \***

15  
16 *Rule 8.71 amended effective January 1, 2020; adopted effective January 1, 2017.*

17  
18  
19 **Rule 8.72. Responsibilities of court and electronic filer**

20  
21 **(a) ~~Publication of electronic filing requirements~~ Responsibilities of court**

22  
23 (1) The court will publish, in both electronic form and print formats, the court’s  
24 electronic filing requirements.

25  
26 **(b) ~~Problems with electronic filing~~**

27 (2) If the court is aware of a problem that impedes or precludes electronic filing,  
28 it must promptly take reasonable steps to provide notice of the problem.

29  
30 *(Subd (a) amended effective January 1, 2020; previously amended effective January 1,*  
31 *2017.)*

32  
33 **(b) Responsibilities of electronic filer**

34  
35 Each electronic filer must:

36  
37 (1) Take all reasonable steps to ensure that the filing does not contain computer  
38 code, including viruses, that might be harmful to the court’s electronic filing  
39 system and to other users of that system;

40  
41 (2) Furnish one or more electronic service addresses, in the manner specified by  
42 the court, at which the electronic filer agrees to accept service; and

43

1 (3) Immediately provide the court and all parties with any change to the  
2 electronic filer's electronic service address.

3  
4 *(Subd (b) adopted effective January 1, 2020)*

5  
6 *Rule 8.72 amended effective January 1, 2020; adopted as rule 8.74 effective July 1, 2010;*  
7 *previously amended and renumbered effective January 1, 2017.*

8  
9 **Advisory Committee Comment**

10  
11 **Subdivision (b)(1).** One example of a reasonable step an electronic filer may take is to use a  
12 commercial virus scanning program. Compliance with this subdivision requires more than an  
13 absence of intent to harm the court's electronic filing system or other users' systems.

14  
15  
16 **Rule 8.74. Responsibilities of electronic filer** **Format of electronic documents**

17  
18 **(a) — Conditions of filing**

19  
20 Each electronic filer must:

- 21  
22 (1) ~~Comply with any court requirements designed to ensure the integrity of~~  
23 ~~electronic filing and to protect sensitive personal information;~~  
24  
25 (2) ~~Furnish information that the court requires for case processing;~~  
26  
27 (3) ~~Take all reasonable steps to ensure that the filing does not contain computer~~  
28 ~~code, including viruses, that might be harmful to the court's electronic filing~~  
29 ~~system and to other users of that system;~~  
30  
31 (4) ~~Furnish one or more electronic service addresses, in the manner specified by~~  
32 ~~the court, at which the electronic filer agrees to accept service; and~~  
33  
34 (5) ~~Immediately provide the court and all parties with any change to the electronic~~  
35 ~~filer's electronic service address.~~

36  
37 **(b) — Format of documents to be filed electronically**

- 38  
39 (1) ~~A document that is filed electronically with the court must be in a format~~  
40 ~~specified by the court unless it cannot be created in that format.~~  
41  
42 (2) ~~The format adopted by a court must meet the following minimum~~  
43 ~~requirements:~~

1  
2 (A) ~~The format must be text-searchable while maintaining original document~~  
3 ~~formatting.~~

4  
5 (B) ~~The software for creating and reading documents must be in the public~~  
6 ~~domain or generally available at a reasonable cost.~~

7  
8 (C) ~~The printing of documents must not result in the loss of document text,~~  
9 ~~format, or appearance.~~

10  
11 ~~(3) The page numbering of a document filed electronically must begin with the~~  
12 ~~first page or cover page as page 1 and use only Arabic numerals (e.g., 1, 2,~~  
13 ~~3). The page number may be suppressed and need not appear on the cover~~  
14 ~~page.~~

15  
16 ~~(4) If a document is filed electronically under the rules in this article and cannot be~~  
17 ~~formatted to be consistent with a formatting rule elsewhere in the California~~  
18 ~~Rules of Court, the rules in this article prevail.~~

19  
20 (a) **Formatting requirements applicable to all electronic documents**

21  
22 (1) Text-searchable portable document format: Electronic documents must be in  
23 text-searchable portable document format (PDF) while maintaining the  
24 original document formatting. In the limited circumstances in which a  
25 document cannot practicably be converted to a text-searchable PDF, the  
26 document may be scanned or converted to non-text-searchable PDF. An  
27 electronic filer is not required to use a specific vendor, technology, or  
28 software for creation of a searchable-format document, unless the electronic  
29 filer agrees to such use. The software for creating and reading electronic  
30 documents must be in the public domain or generally available at a  
31 reasonable cost. The printing of an electronic document must not result in the  
32 loss of document text, formatting, or appearance. The electronic filer is  
33 responsible for ensuring that any document filed is complete and readable.

34  
35 (2) Pagination: The electronic page counter for the electronic document must  
36 match the page number for each page of the document. The page numbering  
37 of a document filed electronically must begin with the first page or cover  
38 page as page 1 and thereafter be paginated consecutively using only arabic  
39 numerals (e.g., 1, 2, 3). The page number for the cover page may be  
40 suppressed and need not appear on the cover page. When a document is filed  
41 in both paper form and electronic form, the pagination in both versions must  
42 comply with this paragraph.

43

1           (3) Bookmarking: An electronic bookmark is a descriptive text link that appears  
2 in the bookmarks panel of an electronic document. Each electronic document  
3 must include an electronic bookmark to each heading, subheading, and the  
4 first page of any component of the document, including any table of contents,  
5 table of authorities, petition, verification, memorandum, declaration,  
6 certificate of word count, certificate of interested entities or persons, proof of  
7 service, exhibit, or attachment. Each electronic bookmark must briefly  
8 describe the item to which it is linked. For example, an electronic bookmark  
9 to a heading must provide the text of the heading, and an electronic  
10 bookmark to an exhibit or attachment must include the letter or number of the  
11 exhibit or attachment and a brief description of the exhibit or attachment. An  
12 electronic appendix must have bookmarks to the indexes and to the first page  
13 of each separate exhibit or attachment. Exhibits or attachments within an  
14 exhibit or attachment must be bookmarked. All bookmarks must be set to  
15 retain the reader's selected zoom setting.

16  
17           (4) Protection of sensitive information: Electronic filers must comply with rules  
18 1.201, 8.45, 8.46, 8.47, and 8.401 regarding the protection of sensitive  
19 information, except for those requirements exclusively applicable to paper  
20 form.

21  
22           (5) Size and multiple files: An electronic filing may not be larger than 25  
23 megabytes. This rule does not change the limitations on word count or  
24 number of pages otherwise established by the California Rules of Court for  
25 documents filed in the court. Although certain provisions in the California  
26 Rules of Court require volumes of no more than 300 pages (see, e.g., rules  
27 8.124(d)(1), 8.144(b)(6), 8.144(g)), an electronic filing may exceed 300  
28 pages so long as its individual components comply with the 300-page volume  
29 requirement and the electronic filing does not exceed 25 megabytes. If a  
30 document exceeds the 25-megabyte file-size limitation, the electronic filer  
31 must submit the document in more than one file, with each file 25 megabytes  
32 or less. The first file must include a master chronological and alphabetical  
33 index stating the contents for all files. Each file must have a cover page  
34 stating (a) the file number for that file and the total number of files for that  
35 document, (b) the volumes contained in that file, and (c) the page numbers  
36 contained in that file. (For example: File 2 of 4, Volumes 3–4, pp. 301–499.)  
37 In addition, each file must be paginated consecutively across all files in the  
38 document, including the cover pages for each file. (For example, if the first  
39 file ends on page 300, the cover of the second file must be page 301.) If a  
40 multiple-file document is submitted to the court in both electronic form and  
41 paper form, the cover pages for each file must be included in the paper  
42 documents.

1           (6) Manual Filing:

2  
3           (A) When an electronic filer seeks to file an electronic document consisting  
4 of more than 10 files, or when the document cannot or should not be  
5 electronically filed in multiple files, or when electronically filing the  
6 document would cause undue hardship, the document must not be  
7 electronically filed but must be manually filed with the court on an  
8 electronic medium such as a flash drive, DVD, or compact disc (CD).  
9 When an electronic filer files with the court one or more documents on  
10 an electronic medium, the electronic filer must electronically file, on  
11 the same day, a “manual filing notification” notifying the court and the  
12 parties that one or more documents have been filed on electronic  
13 media, explaining the reason for the manual filing. The electronic  
14 media must be served on the parties in accordance with the  
15 requirements for service of paper documents. To the extent practicable,  
16 each document or file on electronic media must comply with the format  
17 requirements of this rule.

18  
19           (B) Electronic media files such as audio or video must be manually filed.  
20 Audio files must be filed in .wav or mp3 format. Video files must be  
21 filed in .avi or mp4 format.

22  
23           (C) If manually filed, photographs must be filed in .jpg, .png, .tif, or .pdf  
24 format.

25  
26           (D) If an original electronic media file is converted to a required format for  
27 manual filing, the electronic filer must retain the original.

28  
29           (7) Page size: All documents must have a page size of 8-1/2 by 11 inches.

30  
31           (8) Color: An electronic document with a color component may be electronically  
32 filed or manually filed on electronic media, depending on its file size. An  
33 electronic document must not have a color cover.

34  
35           (9) Cover or first-page information:

36  
37           (A) Except as provided in (B), the cover—or first page, if there is no  
38 cover—of every electronic document filed in a reviewing court must  
39 include the name, mailing address, telephone number, fax number (if  
40 available), email address (if available), and California State Bar number  
41 of each attorney filing or joining in the document, or of the party if he  
42 or she is unrepresented. The inclusion of a fax number or email address

1                   on any electronic document does not constitute consent to service by  
2                   fax or email unless otherwise provided by law.

3  
4           (B) If more than one attorney from a law firm, corporation, or public law  
5           office is representing one party and is joining in the document, the  
6           name and State Bar number of each attorney joining in the electronic  
7           document must be provided on the cover. The law firm, corporation, or  
8           public law office representing each party must designate one attorney to  
9           receive notices and other communication in the case from the court by  
10           placing an asterisk before that attorney’s name on the cover and must  
11           provide the contact information specified under (A) for that attorney.  
12           Contact information for the other attorneys from the same law firm,  
13           corporation, or public law office is not required but may be provided.

14  
15           *(Subd (a) amended effective January 1, 2020; previously amended effective January 1,*  
16           *2011.)*

17  
18   **(b) Additional formatting requirements applicable to documents prepared for**  
19   **electronic filing in the first instance in a reviewing court**

20  
21           (1) Font: The font style must be a proportionally spaced serif face. Century  
22           Schoolbook is preferred. A sans-serif face may be used for headings,  
23           subheadings, and captions. Font size must be 13-points, including in  
24           footnotes. Case names must be italicized or underscored. For emphasis,  
25           italics or boldface may be used or the text may be underscored. Do not use all  
26           capitals (i.e., ALL CAPS) for emphasis.

27  
28           (2) Spacing: Lines of text must be 1.5 spaced. Footnotes, headings, subheadings,  
29           and quotations may be single-spaced. The lines of text must be unnumbered.

30  
31           (3) Margins: The margins must be set at 1-1/2 inches on the left and right and 1  
32           inch on the top and bottom. Quotations may be block-indented.

33  
34           (4) Alignment: Paragraphs must be left-aligned, not justified.

35  
36           (5) Hyperlinks: Hyperlinks to legal authorities and appendixes or exhibits are  
37           encouraged but not required. However, if an electronic filer elects to include  
38           hyperlinks in a document, the hyperlink must be active as of the date of  
39           filing, and if the hyperlink is to a legal authority, it should be formatted to  
40           standard citation format as provided in the California Rules of Court.

41  
42           *(Subd (b) amended effective January 1, 2020; previously amended effective January 1, 2017.)*  
43

1 **(c) Additional formatting requirements for certain electronic documents**

- 2
- 3 (1) Brief: In addition to compliance with this rule, an electronic brief must also
- 4 comply with the contents and length requirements stated in rule 8.204(a) and
- 5 (c). The brief need not be signed. The cover must state:
- 6
- 7 (A) The title of the brief;
- 8
- 9 (B) The title, trial court number, and Court of Appeal number of the case;
- 10
- 11 (C) The names of the trial court and each participating trial judge; and
- 12
- 13 (D) The name of the party that each attorney on the brief represents.
- 14
- 15 (2) Request for judicial notice or request, application, or motion supported by
- 16 documents: When seeking judicial notice of matter not already in the
- 17 appellate record, or when a request, application, or motion is supported by
- 18 matter not already in the appellate record, the electronic filer must attach a
- 19 copy of the matter to the request, application, or motion, or an explanation of
- 20 why it is not practicable to do so. The request, application, or motion and its
- 21 attachments must comply with this rule.
- 22
- 23 (3) Appendix: The format of an appendix must comply with this rule and rule
- 24 8.144 pertaining to clerks' transcripts.
- 25
- 26 (4) Agreed statement and settled statement: The format for an agreed statement
- 27 or a settled statement must comply with this rule and rule 8.144.
- 28
- 29 (5) Reporter's transcript and clerk's transcript: The format for an electronic
- 30 reporter's transcript must comply with Code of Civil Procedure section 271
- 31 and rule 8.144. The format for an electronic clerk's transcript must comply
- 32 with this rule and rule 8.144.
- 33
- 34 (6) Exhibits: Electronic exhibits must be submitted in files no larger than 25
- 35 megabytes, rather than as individual documents.
- 36
- 37 (7) Sealed and confidential records: Under rule 8.45(c)(1), electronic records
- 38 that are sealed or confidential must be filed separately from publicly filed
- 39 records. If one or more pages are omitted from a record and filed separately
- 40 as a sealed or confidential record, an omission page or pages must be inserted
- 41 in the publicly filed record at the location of the omitted page or pages. The
- 42 omission page or pages must identify the type of page or pages omitted. Each
- 43 omission page must be paginated consecutively with the rest of the publicly

1 filed record. Each single omission page or the first omission page in a range  
2 of omission pages must be bookmarked and must be listed in any indexes  
3 included in the publicly filed record. The PDF counter for each omission  
4 page must match the page number of the page omitted from the publicly filed  
5 record. Separately-filed sealed or confidential records must comply with this  
6 rule and rules 8.45, 8.46, and 8.47.

7  
8 *(Subd (c) adopted effective January 1, 2020.)*

9  
10 **(d) Other formatting rules**

11  
12 This rule prevails over other formatting rules.

13  
14 *(Subd (d) adopted effective January 1, 2020.)*

15  
16 *Rule 8.74 amended effective January 1, 2020; adopted as rule 8.76 effective July 1, 2010;*  
17 *previously amended and renumbered effective January 1, 2017; previously amended effective*  
18 *January 1, 2011.*

19  
20 **Advisory Committee Comment**

21  
22 **Subdivision (a)(1).** If an electronic filer must file a document that the electronic filer possesses  
23 only in paper form, use of a scanned image is a permitted means of conversion to PDF, but  
24 optical character recognition must be used, if possible. If a document cannot practicably be  
25 converted to a text-searchable PDF (e.g., if the document is entirely or substantially handwritten,  
26 a photograph, or a graphic such as a chart or diagram that is not primarily text based), the  
27 document may be converted to a non-text-searchable PDF file.

28  
29 **Subdivision (a)(3).** An electronic bookmark's brief description of the item to which it is linked  
30 should enable the reader to easily identify the item. For example, if a declaration is attached to a  
31 document, the bookmark to the declaration might say "Robert Smith Declaration," and if a  
32 complaint is attached to a declaration as an exhibit, the bookmark to the complaint might say  
33 "Exhibit A, First Amended Complaint filed 8/12/17."

34  
35 **Subdivision (b).** Subdivision (b) governs documents prepared for electronic filing in the first  
36 instance in a reviewing court and does not apply to previously created documents (such as  
37 exhibits), whose formatting cannot or should not be altered.

38  
39 **Subdivision (c)(7).** In identifying the type of pages omitted, the omission page might say, for  
40 example, "probation report" or "Marsden hearing transcript."

41  
42 **Rule 8.77. Actions by court on receipt of electronic filing**

43

1 (a) \* \* \*

2  
3 (1)–(2) \* \* \*

4  
5 (3) *Transmission of confirmations*

6  
7 The court must arrange to send receipt and filing confirmation to the  
8 electronic filer at the electronic service address that the filer furnished to the  
9 court under rule ~~8.74(a)(4)~~ 8.72(b)(2). The court or the electronic filing  
10 service provider must maintain a record of all receipt and filing  
11 confirmations.

12  
13 (4) \* \* \*

14  
15 *(Subd (a) amended effective January 1, 2020; previously amended effective January 1, 2011, and*  
16 *January 1, 2017.)*

17  
18 (b)–(e) \* \* \*

19  
20 *Rule 8.77 amended effective January 1, 2020; adopted as rule 8.79 effective July 1, 2010;*  
21 *previously amended effective January 1, 2011, January 1, 2012, and January 1, 2017.*

22  
23  
24 **Rule 8.78. Electronic service**

25  
26 (a) \* \* \*

27  
28 (1) \* \* \*

29  
30 (2) A party indicates that the party agrees to accept electronic service by:

31  
32 (A) \* \* \*

33  
34 (B) Electronically filing any document with the court. The act of electronic  
35 filing shall be deemed to show that the party agrees to accept service at  
36 the electronic service address that the party has furnished to the court  
37 under rule ~~8.74(a)(4)~~ 8.72(b)(2), unless the party serves a notice on all  
38 parties and files the notice with the court that the party does not accept  
39 electronic service and chooses instead to be served paper copies at an  
40 address specified in the notice.

41  
42 (3) \* \* \*

43

1 (Subd (a) amended effective January 1, 2020; previously amended effective January 1,  
2 2011, January 1, 2016, and January 1, 2017.)

3  
4 **(b)–(g)** \* \* \*

5  
6 *Rule 8.78 amended effective January 1, 2020; adopted as rule 8.80 effective July 1, 2010;*  
7 *previously amended and renumbered as rule 8.71 effective January 1, 201, and previously*  
8 *amended and renumbered as rule 8.78 effective January 1, 2017; previously amended effective*  
9 *January 1, 2016.*

10  
11 **Rule 8.204. Contents and format of briefs**

12  
13 **(a)** \* \* \*

14  
15 **(b) Format of briefs filed in paper form**

16  
17 (1)–(9) \* \* \*

18  
19 (10) If filed in paper form, the cover must be in the color prescribed by rule  
20 8.40~~(b)~~(a). In addition to providing the cover information required by rule  
21 8.40~~(e)~~(b), the cover must state:

- 22  
23 (A) The title of the brief;  
24  
25 (B) The title, trial court number, and Court of Appeal number of the case;  
26  
27 (C) The names of the trial court and each participating trial judge; and  
28  
29 (D) The name of the party that each attorney on the brief represents.

30  
31 (11) \* \* \*

32  
33 *(Subd (b) amended effective January 1, 2020; previously amended effective January 1,*  
34 *2004, July 1, 2004, January 1, 2006, January 1, 2007, January 1, 2013, January 1, 2014,*  
35 *January 1, 2016, and January 1, 2017.)*

36  
37 **(c) Length**

38  
39 (1) Except as provided in (5), a brief produced on a computer must not exceed  
40 14,000 words, including footnotes. Such a brief must include a certificate by  
41 appellate counsel or an unrepresented party stating the number of words in  
42 the brief. The person certifying may rely on the word count of the computer  
43 program used to prepare the brief.

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(2) Except as provided in (5), a brief produced on a typewriter must not exceed 50 pages.

(3)–(4) \* \* \*

(5) A petition for rehearing or an answer to a petition for rehearing produced on a computer must not exceed 7,000 words, including footnotes. A petition or answer produced on a typewriter must not exceed 25 pages.

~~(5)~~(6) On application, the presiding justice may permit a longer brief for good cause.

*(Subd (c) amended effective January 1, 2020; previously amended effective January 1, 2007, and January 1, 2011.)*

(d)–(e) \* \* \*

*Rule 8.204 amended effective January 1, 2020; repealed and adopted as rule 14 effective January 1, 2002; previously amended and renumbered as rule 8.204 effective January 1, 2007; previously amended effective January 1, 2004, July 1, 2004, January 1, 2006, January 1, 2011, January 1, 2013, January 1, 2014, January 1, 2016, and January 1, 2017.*

**Rule 8.252. Judicial notice; findings and evidence on appeal**

**(a) Judicial notice**

(1)–(2) \* \* \*

(3) If the matter to be noticed is not in the record, the party must ~~serve and file a copy with the motion or explain~~ attach to the motion a copy of the matter to be noticed or an explanation of why it is not practicable to do so. The pages of the copy of the matter or matters to be judicially noticed must be consecutively numbered, beginning with the number 1. The motion with attachments must comply with rule 8.74 if filed in electronic form.

*(Subd (a) amended effective January 1, 2020; previously amended effective January 1, 2009, January 1, 2013, and January 1, 2015.)*

(b) \* \* \*

1 **(c) Evidence on appeal**

2  
3 (1)–(2) \* \* \*

4  
5 (3) For documentary evidence, a party may offer ~~the original, a certified copy, a~~  
6 ~~photocopy, or, in a case in which electronic filing is permitted, an electronic copy, or if~~  
7 filed in paper form, the original, a certified copy, or a photocopy. The court may admit  
8 the document into evidence without

9  
10 *(Subd (c) amended effective January 1, 2020; previously amended effective January 1,*  
11 *2007, and January 1, 2016.)*

12  
13 *Rule 8.252 amended effective January 1, 2020; repealed and adopted as rule 22 effective January*  
14 *1, 2003; previously amended and renumbered as rule 8.252 effective January 1, 2007; previously*  
15 *amended effective January 1, 2009, January 1, 2013, January 1, 2015, and January 1, 2016.*

16  
17  
18 **Rule 8.268. Rehearing**

19  
20 **(a)** \* \* \*

21  
22 **(b) Petition and answer**

23  
24 (1)–(2) \* \* \*

25  
26 (3) The petition and answer must comply with the relevant provisions of rule  
27 8.204, including the length provisions in subdivision (c)(5).

28  
29 (4) \* \* \*

30  
31 *(Subd (b) amended effective January 1, 2020; previously amended effective January 1,*  
32 *2004, January 1, 2007, and January 1, 2009.)*

33  
34 **(c)–(d)** \* \* \*

35  
36 *Rule 8.268 amended effective January 1, 2020; repealed and adopted as rule 25 effective January*  
37 *1, 2003; previously amended effective January 1, 2004, and January 1, 2009; previously*  
38 *amended and renumbered effective January 1, 2007.*

39  
40 **Rule 8.320. Normal record; exhibits**

41  
42 **(a)–(f)** \* \* \*

43

1 **Advisory Committee Comment**

2  
3 Rules 8.45–8.46 address the appropriate handling of sealed and confidential records that must be  
4 included in the record on appeal. Examples of confidential records include Penal Code section  
5 1203.03 diagnostic reports, records closed to inspection by court order under *People v. Marsden*  
6 (1970) 2 Cal.3d 118 or *Pitchess v. Superior Court* (1974) 11 Cal.3d 531, in-camera proceedings  
7 on a confidential informant, and defense expert funding requests (Pen. Code, § 987.9; *Keenan v.*  
8 *Superior Court* (1982) 31 Cal.3d 424, 430).

9  
10 **Subdivision (d)(1)(E).** This rule identifies the minutes that must be included in the record. The  
11 trial court clerk may include additional minutes beyond those identified in this rule if that would  
12 be more cost-effective.

13  
14 Rule 8.483 governs the normal record and exhibits in civil commitment appeals.

15  
16  
17 **Rule 8.380. Petition for writ of habeas corpus filed by petitioner not represented by**  
18 **an attorney**

19  
20 **(a) Required Judicial Council form**

21  
22 A person who is not represented by an attorney and who petitions a reviewing court  
23 for writ of habeas corpus seeking release from, or modification of the conditions of,  
24 custody of a person confined in a state or local penal institution, hospital, narcotics  
25 treatment facility, or other institution must file the petition on *Petition for Writ of*  
26 *Habeas Corpus* (form ~~MC-275~~ HC-001). For good cause the court may permit the  
27 filing of a petition that is not on that form, but the petition must be verified.

28  
29 *(Subd (a) amended effective January 1, 2020; previously amended effective January 1,*  
30 *2006, January 1, 2007, January 1, 2009, and January 2018.)*

31  
32 **(b)-Subdivision (b) \*\*\***

33  
34 *Rule 8.380 amended effective January 1, 2020; repealed and adopted as rule 60 effective January*  
35 *1, 2005; previously amended and renumbered as rule 8.380 effective January 1, 2007; previously*  
36 *amended effective January 1, 2006, January 1, 2009, January 1, 2014, January 1, 2016, and*  
37 *January 1, 2018.*

38  
39 **Rule 8.384. Petition for writ of habeas corpus filed by an attorney for a party**

40  
41 **(a) Form and content of petition and memorandum**

42

1 (1) A petition for habeas corpus filed by an attorney need not be filed on *Petition*  
2 *for Writ of Habeas Corpus* (form ~~MC-275~~ HC-001) but must contain the  
3 information requested in that form and must be verified. All petitions filed by  
4 attorneys, whether or not on form ~~MC-275~~ HC-001, must be either  
5 typewritten or produced on a computer, and must comply with this rule and  
6 rule 8.40(b)-(c) relating to document covers and rule 8.204(a)(1)(A) relating  
7 to tables of contents and authorities. A petition that is not on form ~~MC-275~~  
8 HC-001 must also comply with the remainder of rule 8.204(a)(b).

9  
10 (2)-(3) \* \* \*

11  
12 *(Subd (a) amended effective January 1, 2020; adopted as part of subd (b) effective January*  
13 *1, 2006; previously amended and lettered as subd (a) effective January 1, 2009; previously*  
14 *amended effective January 1, 2016, and January 1, 2018)*

15  
16 **(b) \*\*\***

17  
18 *Rule 8.384 amended effective January 1, 2020; adopted as rule 60.5 effective January 1, 2006;*  
19 *previously amended and renumbered as rule 8.384 effective January 1, 2007; previously*  
20 *amended effective January 1, 2009, January 1, 2014, January 1, 2016, and January 1, 2018.*

## 21 22 **Chapter 6. Conservatorship and Civil Commitment Appeals**

### 23 24 **Rule 8.483. Appeal from order of civil commitment**

#### 25 26 **(a) Application and contents**

##### 27 28 **(1) Application**

29  
30 Except as otherwise provided in this rule, rules 8.300–8.368 and 8.508  
31 govern appeals from civil commitment orders under Penal Code sections  
32 1026 et seq. (not guilty by reason of insanity), 1370 et seq. (incompetent to  
33 stand trial), 1600 et seq. (outpatient placement and revocation), and 2962 et  
34 seq. (mentally disordered offenders); Welfare and Institutions Code sections  
35 1800 et seq. (extended detention of dangerous persons), 6500 et seq.  
36 (developmentally disabled persons), and 6600 et seq. (sexually violent  
37 predators); and former Welfare and Institutions Code section 6300 et seq.  
38 (mentally disordered sex offenders).

##### 39 40 **(2) Contents**

41

1                    In an appeal from a civil commitment order, the record must contain a clerk's  
2                    transcript and a reporter's transcript, which together constitute the normal  
3                    record.

4  
5    **(b) Clerk's transcript**

6  
7                    The clerk's transcript must contain:

- 8  
9                    (1) The petition and any supporting documents filed along with the petition;  
10  
11                    (2) Any demurrer or other plea, admission, or denial;  
12  
13                    (3) All court minutes;  
14  
15                    (4) All jury instructions that any party submitted in writing and the cover page  
16                    required by rule 2.1055(b)(2) indicating the party requesting each instruction,  
17                    and any written jury instructions given by the court;  
18  
19                    (5) Any written communication between the court and the jury or any individual  
20                    juror;  
21  
22                    (6) Any verdict;  
23  
24                    (7) Any written opinion of the court;  
25  
26                    (8) The commitment order and any judgment or other order appealed from;  
27  
28                    (9) Any motion for new trial, with supporting and opposing memoranda and  
29                    attachments;  
30  
31                    (10) The notice of appeal;  
32  
33                    (11) Any transcript of a sound or sound-and-video recording furnished to the jury  
34                    or tendered to the court under rule 2.1040;  
35  
36                    (12) Any application for additional record and any order on the application;  
37  
38                    (13) Any diagnostic or psychological reports submitted to the court, including at  
39                    the trial or probable cause hearing;  
40  
41                    (14) Any written waiver of the right to a jury trial or the right to be present; and  
42  
43                    (15) If the appellant is the person subject to the civil commitment order;

1  
2 (A) Any written defense motion denied in whole or in part, with supporting  
3 and opposing memoranda and attachments; and

4  
5 (B) Any document admitted in evidence to prove a juvenile adjudication,  
6 criminal conviction, or prison term.

7  
8 **(c) Reporter's transcript**

9  
10 The reporter's transcript must contain:

11  
12 (1) The oral proceedings on the entry of any admission or submission to the  
13 commitment petition;

14  
15 (2) The oral proceedings on any motion in limine;

16  
17 (3) The oral proceedings at trial, excluding the voir dire examination of jurors  
18 and any opening statement;

19  
20 (4) All instructions given orally;

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

24  
25 (6) Any oral opinion of the court;

26  
27 (7) The oral proceedings on any motion for new trial;

28  
29 (8) The oral proceedings of the commitment hearing or other dispositional  
30 hearing, including any probable cause hearing;

31  
32 (9) Any oral waiver of the right to a jury trial or the right to be present; and

33  
34 (10) If the appellant is the person subject to the civil commitment order:

35  
36 (A) The oral proceedings on any defense motion denied in whole or in part  
37 except motions for disqualification of a judge;

38  
39 (B) The closing arguments; and

40  
41 (C) Any comment on the evidence by the court to the jury.  
42

1 **(d) Exhibits**

2  
3 Exhibits admitted in evidence, refused, or lodged are deemed part of the record, but  
4 may be transmitted to the reviewing court only as provided in rule 8.224.  
5

6 **(e) Stipulation for partial transcript**

7  
8 If counsel for the person subject to the civil commitment order and the People  
9 stipulate in writing before the record is certified that any part of the record is not  
10 required for proper determination of the appeal, that part must not be prepared or  
11 sent to the reviewing court.  
12

13 *Rule 8.483 adopted effective January 1, 2020.*

14  
15 **Advisory Committee Comment**

16  
17 The record on appeal of orders establishing conservatorships under Welfare and Institutions Code  
18 section 5350 et seq., including Murphy conservatorships for persons who are gravely disabled as  
19 defined in Welfare and Institutions Code section 5008(h)(1)(B), is governed by rule 8.480.  
20  
21

22 **Rule 8.500. Petition for review**

23  
24 **(a)–(e) \* \* \***

25  
26 **(f) Additional requirements**

27  
28 (1) The petition must also be served on the superior court clerk and, if filed in  
29 paper format, the clerk/executive officer of the Court of Appeal. Electronic  
30 filing of a petition constitutes service of the petition on the clerk/executive  
31 officer of the Court of Appeal.  
32

33 (2)–(3) \* \* \*

34  
35 *(Subd (f) amended effective January 1, 2020; previously amended effective January 1,*  
36 *2004, January 1, 2007, and January 1, 2018.)*

37  
38 **(g) \* \* \***

39  
40 *Rule 8.500 amended effective January 1, 2020; repealed and adopted as rule 28 effective January*  
41 *1, 2003; previously amended effective January 1, 2004, July 1, 2004, January 1, 2009, and*  
42 *January 1, 2018; previously amended and renumbered effective January 1, 2007.*  
43

1 **Rule 8.815. Form of filed documents**

2  
3 Except as these rules provide otherwise, documents filed in the appellate division may be  
4 either produced on a computer or typewritten and must comply with the relevant  
5 provisions of rule 8.883(c).  
6

7 *Rule 8.815 adopted effective January 1, 2020.*  
8

9 **Rule 8.851. Appointment of appellate counsel**

10  
11 **(a)-(c) \*\*\***

12  
13 **Advisory Committee Comment**

14  
15 *Request for Court-Appointed Lawyer in Misdemeanor Appeal* (form CR-133) may be used to  
16 request that appellate counsel be appointed in a misdemeanor case. If the appellant was not  
17 represented by the public defender or other appointed counsel in the trial court, the appellant must  
18 use *Defendant's Financial Statement on Eligibility for Appointment of Counsel and*  
19 *Reimbursement and Record on Appeal at Public Expense* (form ~~MC-210~~ CR-105) to show  
20 indigency. These forms are available at any courthouse or county law library or online at  
21 [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms).  
22

23  
24 **Rule 8.866. Preparation of reporter's transcript**

25  
26 **(a)-(f) \*\*\***

27  
28 **Advisory Committee Comment**

29  
30 Subdivision (a). If the appellant was not represented by the public defender or other appointed  
31 counsel in the trial court, the appellant must use *Defendant's Financial Statement on Eligibility*  
32 *for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form  
33 ~~MC-210~~ CR-105) to show indigency. This form is available at any courthouse or county law  
34 library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms).  
35

36 Subdivisions (a)(2)(C)(iv) and (a)(2)(D)(iii) \*\*\*  
37

38  
39 **Rule 8.868. Record when trial proceedings were officially electronically recorded**

40  
41 **(a)-(f) \*\*\***

42  
43 **Advisory Committee Comment**

1  
2 Subdivision (d). If the appellant was not represented by the public defender or other appointed  
3 counsel in the trial court, the appellant must use *Defendant's Financial Statement on Eligibility*  
4 *for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form  
5 ~~MC-210~~ CR-105) to show indigency. This form is available at any courthouse or county law  
6 library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms).

7  
8  
9 **Rule 8.885. Oral argument**

10  
11 **(a) Calendaring and sessions**

12  
13 (1) Unless otherwise ordered, and except as provided in (2), all appeals in which  
14 the last reply brief was filed or the time for filing this brief expired 45 or  
15 more days before the date of a regular appellate division session must be  
16 placed on the calendar for that session by the appellate division clerk. By  
17 order of the presiding judge or the division, any appeal may be placed on the  
18 calendar for oral argument at any session.

19  
20 (2) Oral argument will not be set in appeals under *People v. Wende* (1979) 25  
21 Cal.3d 436 where no arguable issue is raised.

22  
23 *(Subd (a) amended effective January 1, 2020.)*

24  
25 **(b) \* \* \***

26  
27 **(c) Notice of argument**

28  
29 (1) Except for appeals covered by (a)(2), as soon as all parties' briefs are filed or  
30 the time for filing these briefs has expired, the appellate division clerk must  
31 send a notice of the time and place of oral argument to all parties. The notice  
32 must be sent at least 20 days before the date for oral argument. The presiding  
33 judge may shorten the notice period for good cause; in that event, the clerk  
34 must immediately notify the parties by telephone or other expeditious  
35 method.

36  
37 (2) \* \* \*

38  
39 *(Subd (c) amended effective January 1, 2020; adopted as subd (b); previously amended*  
40 *and relettered effective January 1, 2010.)*

41  
42 **(d) Waiver of argument**

43

- 1           (1) Parties may waive oral argument in advance by filing a notice of waiver of  
2           oral argument within 7 days after the notice of oral argument is sent.  
3  
4           (2) The court may vacate oral argument if all parties waive oral argument.  
5  
6           (3) If the court vacates oral argument, the court must notify the parties that no  
7           oral argument will be held.  
8  
9           (4) If all parties do not waive oral argument, or if the court rejects a waiver  
10          request, the matter will remain on the oral argument calendar. Any party who  
11          previously filed a notice of waiver may participate in the oral argument.  
12

13           *(Subd (d) amended effective January 1, 2020; adopted as subd (c); previously relettered*  
14           *effective January 1, 2010.)*

15  
16       (e)   \* \* \*

17  
18       *Rule 8.885 amended effective January 1, 2020; adopted effective January 1, 2009; previously*  
19       *amended effective January 1, 2010.*

20  
21  
22       **Rule 8.886. Submission of the cause**

23  
24       **(a) When the cause is submitted**

- 25  
26           (1) Except as provided in (2), a cause is submitted when the court has heard oral  
27           argument or approved its waiver and the time has expired to file all briefs and  
28           papers, including any supplemental brief permitted by the court. The  
29           appellate division may order the cause submitted at an earlier time if the  
30           parties so stipulate.  
31  
32           (2) For appeals that raise no arguable issues under *People v. Wende* (1979) 25  
33           Cal.3d 436, the cause is submitted when the time has expired to file all briefs  
34           and papers, including any supplemental brief permitted by the court.  
35

36           *(Subd (a) amended effective January 1, 2020)*

37  
38       (b)   \* \* \*

39  
40       *Rule 8.886 amended effective January 1, 2020; adopted effective January 1, 2009.*

41  
42       **Rule 8.917. Record when trial proceedings were officially electronically recorded**

43

1 (a)-(f) \*\*\*

2

3

4

**Advisory Committee Comment**

5

6 Subdivision (d). The appellant must use *Defendant's Financial Statement on Eligibility for*  
7 *Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form ~~MC-~~  
8 ~~240~~ CR-105) to show indigency. This form is available at any courthouse or county law library or  
9 online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms).

10

11

12 **Rule 8.919. Preparation of reporter's transcript**

13

14 (a)-(f) \*\*\*

15

16

**Advisory Committee Comment**

17 Subdivision (a). The appellant must use *Defendant's Financial Statement on Eligibility for*  
18 *Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form ~~MC-~~  
19 ~~240~~ CR-105) to show indigency. This form is available at any courthouse or county law library or  
20 online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms).

21

22 Subdivisions (a)(2)(C)(iv) and (a)(2)(D)(iii). \*\*\*