

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on April 23, 2010,  
effective on July 1, 2010.

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1 **Rule 4.530. Intercounty probation case transfer**

2  
3 **(a) Application**

4  
5 This rule applies to intercounty probation case transfers under Penal Code section  
6 1203.9. It does not apply to transfers of cases in which probation has been granted  
7 under Penal Code section 1210.1.

8  
9 **(b) Definitions**

10 As used in this rule:

11  
12  
13 (1) “Transferring court” means the superior court of the county in which the  
14 probationer is supervised on probation.

15  
16 (2) “Receiving court” means the superior court of the county to which transfer of  
17 the case and probation supervision is proposed.

18  
19 **(c) Motion**

20  
21 Transfers may be made only after noticed motion in the transferring court.

22  
23 **(d) Notice**

24  
25 (1) If transfer is requested by the probation officer of the transferring county, the  
26 probation officer must provide written notice of the date, time, and place set  
27 for hearing on the motion to:

28  
29 (A) The presiding judge of the receiving court or his or her designee;

30  
31 (B) The probation officer of the receiving county or his or her designee;

32  
33 (C) The prosecutor of the transferring county;

34  
35 (D) The victim (if any);

36  
37 (E) The probationer; and

38  
39 (F) The probationer’s last counsel of record (if any).

40  
41 (2) If transfer is requested by any other party, the party must first request in  
42 writing that the probation officer of the transferring county notice the motion.  
43 The party may make the motion to the transferring court only if the probation  
44 officer refuses to do so. The probation officer must notify the party of his or  
45 her decision within 30 days of the party’s request. Failure by the probation

1 officer to notify the party of his or her decision within 30 days is deemed a  
2 refusal to make the motion.

3  
4 (3) If the party makes the motion, the motion must include a declaration that the  
5 probation officer has refused to bring the motion, and the party must provide  
6 written notice of the date, time, and place set for hearing on the motion to:

7  
8 (A) The presiding judge of the receiving court or his or her designee;

9  
10 (B) The probation officers of the transferring and receiving counties or  
11 their designees;

12  
13 (C) The prosecutor of the transferring county;

14  
15 (D) The probationer; and

16  
17 (E) The probationer's last counsel of record (if any).

18  
19 Upon receipt of notice of a motion for transfer by a party, the probation  
20 officer of the transferring county must provide notice to the victim, if any.

21  
22 (4) Notice of a transfer motion must be given at least 60 days before the date set  
23 for hearing on the motion.

24  
25 (5) Before deciding a transfer motion, the transferring court must confirm that  
26 notice was given to the receiving court as required by (1) and (3).

27  
28 **(e) Comment**

29  
30 (1) No later than 10 days before the date set for hearing on the motion, the  
31 receiving court may provide comments to the transferring court regarding the  
32 proposed transfer.

33  
34 (2) Any comments provided by the receiving court must be in writing and signed  
35 by a judge and must state why transfer is or is not appropriate.

36  
37 (3) Before deciding a transfer motion, the transferring court must state on the  
38 record that it has received and considered any comments provided by the  
39 receiving court.

40  
41 **(f) Factors**

42  
43 The transferring court must consider at least the following factors when  
44 determining whether transfer is appropriate:

- 1           (1) The permanency of the probationer’s residence. As used in this subdivision,  
2           “residence” means the place where the probationer customarily lives  
3           exclusive of employment, school, or other special or temporary purpose. A  
4           probationer may have only one residence. The fact that the probationer  
5           intends to change residence to the receiving county, without further evidence  
6           of how, when, and why this is to be accomplished, is insufficient to transfer  
7           probation;  
8
- 9           (2) The availability of appropriate programs for the offender, including substance  
10          abuse, domestic violence, sex offender, and collaborative court programs;  
11
- 12          (3) Restitution orders, including whether transfer would impair the ability of the  
13          receiving court to determine a restitution amount or impair the ability of the  
14          victim to collect court-ordered restitution; and  
15
- 16          (4) Victim issues, including:  
17                (A) The residence and places frequented by the victim, including school  
18                and workplace; and  
19                (B) Whether transfer would impair the ability of the court, law  
20                enforcement, or the probation officer of the transferring county to  
21                properly enforce protective orders.  
22  
23  
24

25   **(g) Transfer**

- 26
- 27          (1) If the transferring court determines that the permanent residence of the  
28          probationer is in the county of the receiving court, the transferring court must  
29          transfer the case unless it determines that transfer would be inappropriate and  
30          states its reasons on the record.  
31
- 32          (2) To the extent possible, the transferring court must establish any amount of  
33          restitution owed by the probationer before it orders the transfer.  
34
- 35          (3) Upon transfer of the case, the receiving court must accept the entire  
36          jurisdiction over the case.  
37
- 38          (4) The orders for transfer must include an order committing the probationer to  
39          the care and custody of the probation officer of the receiving county and an  
40          order for reimbursement of reasonable costs for processing the transfer to be  
41          paid to the county of the transferring court in accordance with Penal Code  
42          section 1203.1b.  
43
- 44          (5) The transferring court must transmit any records of payments and the entire  
45          court file, except exhibits, to the receiving court within two weeks of the  
46          transfer order.

1  
2 (6) The probation officer of the transferring county must transmit, at a minimum,  
3 any court orders, probation reports, case plans, and all records of payments to  
4 the probation officer of the receiving county within two weeks of the transfer  
5 order.

6  
7 (7) Upon transfer of the case, the probation officer of the transferring county  
8 must notify the probationer of the transfer order. The probationer must report  
9 to the probation officer of the receiving county no later than 30 days after  
10 transfer unless the transferring court orders the probationer to report sooner.  
11 If the probationer is in custody at the time of transfer, the probationer must  
12 report to the probation officer of the receiving county no later than 30 days  
13 after being released from custody unless the transferring court orders the  
14 probationer to report sooner. Any jail sentence imposed as a condition of  
15 probation prior to transfer must be served in the transferring county unless  
16 otherwise authorized by law.

17  
18 *Rule 4.530 adopted effective July 1, 2010.*

19  
20 **Advisory Committee Comment**

21  
22 Subdivision (g)(5) requires the transferring court to transmit the entire court file, except exhibits,  
23 to the court of the receiving county. Before transmitting the court file, transferring courts should  
24 consider retaining copies of the court file in the event of an appeal or a writ.

25  
26 Subdivision (g)(7) clarifies that any jail sentence imposed as a condition of probation before  
27 transfer must be served in the transferring county unless otherwise authorized by law. For  
28 example, Penal Code section 1208.5 authorizes the boards of supervisors of two or more counties  
29 with work furlough programs to enter into agreements to allow work-furlough-eligible persons  
30 sentenced to or imprisoned in one county jail to transfer to another county jail.

31  
32 **Rule 4.700. Firearm relinquishment procedures for criminal protective orders**

33  
34 **(a) Application of rule**

35  
36 This rule applies when a court issues a criminal protective order under Penal Code  
37 section 136.2 during a criminal case or as a condition of probation under Penal  
38 Code section 1203.097(a)(2) against a defendant charged with a crime of domestic  
39 violence as defined in Penal Code section 13700.

40  
41 **(b) Purpose**

42  
43 This rule is intended to:

44  
45 (1) Assist courts issuing criminal protective orders to determine whether a  
46 defendant subject to such an order owns, possesses, or controls any firearms;  
47 and

- 1  
2 (2) Assist courts that have issued criminal protective orders to determine whether  
3 a defendant has complied with the court's order to relinquish or sell the  
4 firearms under Code of Civil Procedure section 527.9.  
5

6 **(c) Setting review hearing**  
7

- 8 (1) At any hearing where the court issues a criminal protective order, the court  
9 must consider all credible information, including information provided on  
10 behalf of the defendant, to determine if there is good cause to believe that the  
11 defendant has a firearm within his or her immediate possession or control.  
12  
13 (2) If the court finds good cause to believe that the defendant has a firearm  
14 within his or her immediate possession or control, the court must set a review  
15 hearing to ascertain whether the defendant has complied with the requirement  
16 to relinquish the firearm as specified in Code of Civil Procedure section  
17 527.9. Unless the defendant is in custody at the time, the review hearing  
18 should occur within two court days after issuance of the criminal protective  
19 order. If circumstances warrant, the court may extend the review hearing to  
20 occur within 5 court days after issuance of the criminal protective order. The  
21 court must give the defendant an opportunity to present information at the  
22 review hearing to refute the allegation that he or she owns any firearms. If the  
23 defendant is in custody at the time the criminal protective order is issued, the  
24 court should order the defendant to appear for a review hearing within two  
25 court days after the defendant's release from custody.  
26  
27 (3) If the proceeding is held under Penal Code section 136.2, the court may,  
28 under Penal Code section 977(a)(2), order the defendant to personally appear  
29 at the review hearing. If the proceeding is held under Penal Code section  
30 1203.097, the court should order the defendant to personally appear.  
31

32 **(d) Review hearing**  
33

- 34 (1) If the court has issued a criminal protective order under Penal Code section  
35 136.2, at the review hearing:  
36  
37 (A) If the court finds that the defendant has a firearm in or subject to his or  
38 her immediate possession or control, the court must consider whether  
39 bail, as set, or defendant's release on own recognizance is appropriate.  
40  
41 (B) If the defendant does not appear at the hearing and the court orders that  
42 bail be revoked, the court should issue a bench warrant.  
43  
44 (2) If the criminal protective order is issued as a condition of probation under  
45 Penal Code section 1203.097, and the court finds at the review hearing that

1 the defendant has a firearm in or subject to his or her immediate possession  
2 or control, the court must proceed under Penal Code section 1203.097(a)(12).

3  
4 (3) In any review hearing to determine whether a defendant has complied with  
5 the requirement to relinquish firearms as specified in Code of Civil Procedure  
6 section 527.9, the burden of proof is on the prosecution.

7  
8 *Rule 4.700 adopted effective July 1, 2010.*

9  
10 **Advisory Committee Comment**

11  
12 When issuing a criminal protective order under Penal Code section 136.2 or 1203.097(a)(2), the  
13 court is required to order a defendant “to relinquish any firearm in that person’s immediate  
14 possession or control, or subject to that person’s immediate possession or control . . . .” (Code  
15 Civ. Proc., § 527.9(b).) Mandatory Judicial Council form CR-160, *Criminal Protective Order—*  
16 *Domestic Violence*, includes a mandatory order in bold type that the defendant “must surrender to  
17 local law enforcement or sell to a licensed gun dealer any firearm owned or subject to his or her  
18 immediate possession or control within 24 hours after service of this order and must file a receipt  
19 with the court showing compliance with this order within 48 hours of receiving this order.”

20  
21 Courts are encouraged to develop local procedures to calendar review hearings for defendants in  
22 custody beyond the two-court-day time frame to file proof of firearms relinquishment with the  
23 court under Code of Civil Procedure section 527.9.

24  
25 **Rule 5.502. Definitions and use of terms**

26  
27 Definitions (§§ 202(e), 319, 361, 361.5(a)(3), 366(a)(1)(B), 628.1, 636, 726, 727.3(c)(2),  
28 727.4(d); 20 U.S.C. § 1415)

29  
30 As used in these rules, unless the context or subject matter otherwise requires:

31  
32 (1)–(19) \*\*\*

33  
34 (20) “Modification of parental rights” means a modification of parental rights through a  
35 tribal customary adoption under Welfare and Institutions Code section 366.24.

36  
37 ~~(20)~~(21)

38  
39 ~~(21)~~(22)

40  
41 ~~(22)~~(23)

42  
43 ~~(23)~~(24) “Preadoptive parent” means a licensed foster parent who has been approved  
44 to adopt a child by the California State Department of Social Services, when it is  
45 acting as an adoption agency, or by a licensed adoption agency, or, in the case of an  
46 Indian child for whom tribal customary adoption is the permanent plan, the  
47 individual designated by the child’s identified Indian tribe as the prospective  
48 adoptive parent.

1  
2 ~~(24)(25)–(33)(34)~~ \*\*\*

3  
4 (35) “Tribal customary adoption” means adoption by and through the tribal custom,  
5 traditions, or law of an Indian child’s tribe as defined in Welfare and Institutions  
6 Code section 366.24 and to which a juvenile court may give full faith and credit  
7 under 366.26(e)(2). Termination of parental rights is not required to effect a tribal  
8 customary adoption.

9  
10 *Rule 5.502 amended effective July 1, 2010; adopted as rule 1401 effective January 1, 1990;*  
11 *previously amended and renumbered effective January 1, 2007; previously amended effective*  
12 *July 1, 1992, July 1, 1997, January 1, 1998, January 1, 1999, January 1, 2001, July 1, 2002,*  
13 *January 1, 2003, and January 1, 2008.*

14  
15 **Rule 5.565. Hearing on subsequent and supplemental petitions (§§ 342, 364, 386,**  
16 **387)**

17  
18 **(a)–(c) \*\*\***

19  
20 **(d) Initial hearing (§ 387)**

21  
22 Chapter ~~43~~12, article 1 of these rules applies to the case of a child who is the  
23 subject of a supplemental or subsequent petition.

24  
25 *(Subd (d) amended effective July 1, 2010; adopted as subd (d); previously amended and*  
26 *relettered as subd (c) effective January 1, 2001; previously amended and relettered*  
27 *effective January 1, 2006; previously amended effective January 1, 2007.)*

28  
29 **(e) Requirement for bifurcated hearing**

30  
31 The hearing on a subsequent or supplemental petition must be conducted as  
32 follows:

33  
34 (1) The procedures relating to jurisdiction hearings prescribed in chapter ~~43~~12,  
35 article 2 apply to the determination of the allegations of a subsequent or  
36 supplemental petition. At the conclusion of the hearing on a subsequent  
37 petition the court must make a finding that the allegations of the petition are  
38 or are not true. At the conclusion of the hearing on a supplemental petition  
39 the court must make findings that:

40  
41 (A)–(B) \*\*\*

42  
43 (2) The procedures relating to disposition hearings prescribed in chapter ~~43~~12,  
44 article 3 apply to the determination of disposition on a subsequent or  
45 supplemental petition. If the court finds under a subsequent petition that the  
46 child is described by section 300(a), (d), or (e), the court must remove the

1 child from the physical custody of the parent or guardian, if removal was not  
2 ordered under the previous disposition.

3  
4 *(Subd (e) amended effective July 1, 2010; adopted as subd (e); previously amended and*  
5 *relettered as subd (d) effective January 1, 2001; previously relettered effective January 1,*  
6 *2006; previously amended effective January 1, 2007.)*

7  
8 **(f) \*\*\***

9  
10 *Rule 5.565 amended effective July 1, 2010; adopted as rule 1431 effective January 1, 1990;*  
11 *previously amended effective January 1, 1992, July 1, 1995, January 1, 1999, July 1, 1999,*  
12 *January 1, 2001, and January 1, 2006; previously amended and renumbered effective January 1,*  
13 *2007.*

14  
15 **Rule 5.690. General conduct of disposition hearing**

16  
17 **(a)–(b) \*\*\***

18  
19 **(c) Case plan (§ 16501.1)**

20  
21 Whenever child welfare services are provided, the social worker must prepare a  
22 case plan.

23  
24 **(1) \*\*\***

25  
26 **(2) The court must consider the case plan and must find as follows:**

27  
28 **(A) The social worker solicited and integrated into the case plan the input**  
29 **of the child, the child’s family, the child’s identified Indian tribe,**  
30 **including consultation with the child’s tribe on whether tribal**  
31 **customary adoption as defined in section 366.24 is an appropriate**  
32 **permanent plan for the child if reunification is unsuccessful; and other**  
33 **interested parties, or**

34  
35 **(B) \*\*\***

36  
37 **(3) \*\*\***

38  
39 *(Subd (c) amended effective July 1, 2010; adopted effective January 1, 2007; previously*  
40 *amended effective January 1, 2009.)*

41  
42 *Rule 5.690 amended effective July 1, 2010; adopted as rule 1455 effective January 1, 1991;*  
43 *previously amended and renumbered effective January 1, 2007; previously amended effective*  
44 *July 1, 1995, January 1, 2000, and January 1, 2009.*

45  
46 **Rule 5.708. General review hearing requirements**

1 (a)–(b) \*\*\*

2  
3 (c) **Reports (§§ 366.05, 366.1, 366.21, 366.22, 366.25)**

4  
5 Before the hearing, the social worker must investigate and file a report describing  
6 the services offered to the family, progress made, and, if relevant, the prognosis for  
7 return of the child to the parent or legal guardian.

8  
9 (1) \*\*\*

10  
11 (2) At least 10 calendar days before the hearing, the social worker must file the  
12 report and provide copies to the parent or legal guardian and his or her  
13 counsel, to counsel for the child, ~~and~~ to any CASA volunteer, and, in the case  
14 of an Indian child, to the child’s identified Indian tribe. The social worker  
15 must provide a summary of the recommendations to any foster parents,  
16 relative caregivers, or certified foster parents who have been approved for  
17 adoption.

18  
19 (3) \*\*\*

20  
21 *(Subd (c) amended effective July 1, 2010.)*

22  
23 (d)–(f) \*\*\*

24  
25 (g) **Case plan (§§ 16001.9, 16501.1)**

26  
27 The court must consider the case plan submitted for the hearing and must find as  
28 follows:

29  
30 (1)–(4) \*\*\*

31  
32 (5) In the case of an Indian child, the agency consulted with the child’s tribe and  
33 the tribe was actively involved in the development of the case plan and plan  
34 for permanent placement, including consideration of whether tribal  
35 customary adoption is an appropriate permanent plan for the child if  
36 reunification is unsuccessful; or

37  
38 (6) In the case of an Indian child, the agency did not consult with the child’s  
39 tribe. If the court makes such a finding, the court must order the agency to  
40 consult with the tribe, unless the court finds that the tribe is unable,  
41 unavailable, or unwilling to participate; and

42  
43 ~~(5)(7)~~ \*\*\*

44  
45 *(Subd (g) amended effective July 1, 2010.)*

1 (h)–(o) \*\*\*

2  
3 *Rule 5.708 amended effective July 1, 2010; adopted effective January 1, 2010.*

4  
5 **Rule 5.715. Twelve-month permanency hearing**

6  
7 (a) \*\*\*

8  
9 (b) **Determinations and conduct of hearing (§§ 361.5, 366, 366.1, 366.21)**

10  
11 At the hearing, the court and all parties must comply with all relevant requirements  
12 and procedures in rule 5.708, General review hearing requirements. The court must  
13 make all appropriate findings and orders specified in rule 5.708 and proceed as  
14 follows:

15  
16 (1)–(4) \*\*\*

17  
18 (5) If the child is not returned to his or her parent or legal guardian, the court  
19 must consider and state, for the record, in-state and out-of-state options for  
20 permanent placement-, including, in the case of an Indian child, whether:

21  
22 (A) The agency has consulted the child’s tribe about tribal customary  
23 adoption;

24  
25 (B) The child’s tribe concurs with tribal customary adoption; and

26  
27 (C) Tribal customary adoption is an appropriate permanent plan for the  
28 child.

29  
30 *(Subd (b) amended effective July 1, 2010; repealed and adopted as subd (c)(2); previously*  
31 *amended effective January 1, 1992, January 1, 1993, January 1, 1995, July 1, 1995, July 1,*  
32 *1997, January 1, 1999, January 1, 2004, January 1, 2005, and January 1, 2007; previously*  
33 *amended and relettered as subd (c) effective July 1, 1999, as subd (d) effective January 1,*  
34 *2002, as subd (c) effective January 1, 2001, and as subd (b) effective January 1, 2010.)*

35  
36 *Rule 5.715 amended effective July 1, 2010; adopted as rule 1461 effective January 1, 1990;*  
37 *previously amended and renumbered effective January 1, 2007; previously amended effective*  
38 *January 1, 1992, January 1, 1993, January 1, 1994, January 1, 1995, July 1, 1995, July 1, 1997,*  
39 *January 1, 1999, July 1, 1999, January 1, 2000, January 1, 2001, January 1, 2004, January 1,*  
40 *2005, January 1, 2006, and January 1, 2010.*

41  
42 **Rule 5.720. Eighteen-month permanency review hearing**

43  
44 (a) \*\*\*

45  
46 (b) **Determinations and conduct of hearing (§§ 361.5, 366.22)**

1 At the hearing the court and all parties must comply with all relevant requirements  
2 and procedures in rule 5.708, General review hearing requirements. The court must  
3 make all appropriate findings and orders specified in rule 5.708 and proceed as  
4 follows:

5  
6 (1)–(3) \*\*\*

7  
8 (4) If the child is not returned to his or her parent or legal guardian, the court  
9 must consider and state, for the record, in-state and out-of-state options for  
10 permanent placement-, including, in the case of an Indian child, whether:

11  
12 (A) The agency has consulted the child’s tribe about tribal customary  
13 adoption;

14  
15 (B) The child’s tribe concurs with tribal customary adoption; and

16  
17 (C) Tribal customary adoption is an appropriate permanent plan for the  
18 child.

19  
20 *(Subd (b) amended effective July 1, 2010; repealed and adopted as subd (b); previously*  
21 *amended effective July 1, 1991, January 1, 1992, January 1, 1993, January 1, 1995, July 1,*  
22 *1995, January 1, 1999, July 1, 1999, January 1, 2006, July 1, 2006, January 1, 2007, and*  
23 *July 1, 2007; previously amended and relettered as subd (c) effective January 1, 2005, and*  
24 *as subd (b) effective January 1, 2010.)*

25  
26 *Rule 5.720 amended effective July 1, 2010; repealed and adopted as rule 1462 effective January*  
27 *1, 1990; previously amended and renumbered effective January 1, 2007; previously amended*  
28 *effective July 1, 1991, January 1, 1992, January 1, 1993, January 1, 1994, January 1, 1995, July*  
29 *1, 1995, July 1, 1997, January 1, 1999, July 1, 1999, January 1, 2001, January 1, 2005, January*  
30 *1, 2006, July 1, 2006, July 1, 2007, and January 1, 2010.*

31  
32 **Rule 5.722. Twenty-four-month subsequent permanency review hearing**

33  
34 (a) \*\*\*

35  
36 (b) **Determinations and conduct of hearing (§ 366, 366.1, 366.25)**

37  
38 At the hearing, the court and all parties must comply with all relevant requirements  
39 and procedures in rule 5.708, General review hearing requirements. The court must  
40 make all appropriate findings and orders specified in rule 5.708 and proceed as  
41 follows:

42  
43 (1)–(2) \*\*\*

44  
45 (3) If the child is not returned to his or her parent or legal guardian, the court  
46 must consider and state, for the record, in-state and out-of-state options for  
47 permanent placement-, including, in the case of an Indian child, whether:

- 1  
2 (A) The agency has consulted the child’s tribe about tribal customary  
3 adoption;  
4  
5 (B) The child’s tribe concurs with tribal customary adoption; and  
6  
7 (C) Tribal customary adoption is an appropriate permanent plan for the  
8 child.  
9

10 (Subd (b) amended effective July 1, 2010.)

11  
12 Rule 5.722 amended effective July 1, 2010; adopted effective January 1, 2010.

13  
14 **Rule 5.725. Selection of permanent plan (§§ 366.26, 727.31)**

15  
16 (a)–(c) \*\*\*

17  
18 **(d) Conduct of hearing**

19  
20 At the hearing, the court must state on the record that the court has read and  
21 considered the report of petitioner, the report of any CASA volunteer, the case plan  
22 submitted for this hearing, any report submitted by the child's caregiver under  
23 section 366.21(d), and any other evidence, and must proceed as follows:

24  
25 (1) In the case of an Indian child, after the agency has consulted with the tribe,  
26 when the court has determined with the concurrence of the tribe that tribal  
27 customary adoption is the appropriate permanent plan for the child, order a  
28 tribal customary adoption in accordance with section 366.24; or  
29

30 ~~(1)~~(2) Order parental rights terminated and the child placed for adoption if the  
31 court determines, by clear and convincing evidence, that it is likely the child  
32 will be adopted, unless:

33  
34 (A)–(B) \*\*\*

35  
36 (C) The court finds a compelling reason to determine that termination  
37 would be detrimental to the child because of the existence of one of the  
38 following circumstances:

39  
40 (i)–(v) \*\*\*

41  
42 (vi) The child is an Indian child and termination of parental rights  
43 would substantially interfere with the child’s connection to his or  
44 her tribal community or the child’s tribal membership rights, or  
45 the child’s tribe has identified guardianship, long-term foster care  
46 with a fit and willing relative, tribal customary adoption, or

1 another planned permanent living arrangement as the appropriate  
2 permanent plan for the child.

3  
4 ~~(2)~~(3) \*\*\*

5  
6 ~~(3)~~(4) \*\*\*

7  
8 ~~(4)~~(5) If the court finds termination of parental rights to be detrimental to the child  
9 for reasons stated in ~~(4)~~(2)(B), the court must state the reasons in writing or  
10 on the record.

11  
12 ~~(5)~~(6) If termination of parental rights would not be detrimental to the child, but the  
13 child is difficult to place for adoption because the child (1) is a member of a  
14 sibling group that should stay together; (2) has a diagnosed medical, physical,  
15 or mental handicap; or (3) is 7 years of age or older and no prospective  
16 adoptive parent is identified or available, the court may, without terminating  
17 parental rights, identify adoption as a permanent placement goal and order  
18 the public agency responsible for seeking adoptive parents to make efforts to  
19 locate an appropriate adoptive family for a period not to exceed 180 days.  
20 During the 180-day period, in order to identify potential adoptive parents, the  
21 agency responsible for seeking adoptive parents for each child must, to the  
22 extent possible, ask each child who is 10 years of age or older and who is  
23 placed in out-of-home placement for six months or longer to identify any  
24 individuals who are important to the child. The agency may ask any other  
25 child to provide that information, as appropriate. After that period the court  
26 must hold another hearing and proceed according to (1), (2), or ~~(6)~~(7).

27  
28 ~~(6)~~(7) If the court finds that ~~(4)~~(2)(A) or ~~(4)~~(2)(B) applies, the court must appoint  
29 the present custodian or other appropriate person to become the child's legal  
30 guardian or must order the child to remain in foster care.

31  
32 (A)–(E) \*\*\*

33  
34 ~~(7)~~(8) The court must consider the case plan submitted for this hearing and must  
35 find as follows:

36  
37 (A) \*\*\*

38  
39 (B) The child was not actively involved in the development of his or her  
40 own case plan and plan for permanent placement, including being  
41 asked for a statement regarding his or her permanent placement plan  
42 and the case plan does not contain the social worker's assessment of  
43 those stated wishes. If the court makes such a finding, the court must  
44 order the agency to actively involve the child in the development of his  
45 or her own case plan and plan for permanent placement, including  
46 asking the child for a statement regarding his or her permanent plan,

1 unless the court finds that the child is unable, unavailable, or unwilling  
2 to participate. If the court finds that the case plan does not contain the  
3 social worker's assessment of the child's stated wishes, the court must  
4 order the agency to submit the assessment to the court; and  
5

6 (C) In the case of an Indian child, the agency consulted with the child's  
7 tribe and the tribe was actively involved in the development of the case  
8 plan and plan for permanent placement, including consideration of  
9 whether tribal customary adoption is an appropriate permanent plan for  
10 the child if reunification is unsuccessful; or  
11

12 (D) In the case of an Indian child, the agency did not consult with the  
13 child's tribe. If the court makes such a finding, the court must order the  
14 agency to consult with the tribe, unless the court finds that the tribe is  
15 unable, unavailable, or unwilling to participate.  
16

17 ~~(8)~~(9) \*\*\*

18  
19 ~~(9)~~(10) \*\*\*

20  
21 *(Subd (d) amended effective July 1, 2010; repealed and adopted as subd (c); previously*  
22 *amended and relettered as subd (d) effective January 1, 1992, and as subd (e) effective*  
23 *January 1, 2005; previously amended effective July 1, 1994, January 1, 1999, July 1, 1999,*  
24 *July 1, 2002, January 1, 2006, January 1, 2007, and January 1, 2009; previously relettered*  
25 *effective January 1, 2010.)*  
26

27 (e) **Procedures—~~termination of parental rights~~ adoption**

- 28  
29 (1) The court may not terminate parental rights or order adoption if a review of  
30 the prior findings and orders reveals that at each and every prior hearing at  
31 which the court was required to consider reasonable efforts or services the  
32 court found that reasonable efforts had not been made or that reasonable  
33 services had not been offered or provided. If at any prior hearing the court  
34 found that reasonable efforts had been made or that reasonable services had  
35 been offered or provided, the court may terminate parental rights.  
36  
37 (2) An order of the court terminating parental rights, ordering adoption under  
38 section 366.26, or, in the case of an Indian child, ordering tribal customary  
39 adoption under section 366.24 is conclusive and binding on the child, the  
40 parent, and all other persons who have been served under the provisions of  
41 section 294. The order may not be set aside or modified by the court, except  
42 as provided in rules 5.538, 5.540, and 5.542 with regard to orders by a  
43 referee.  
44  
45 (3) If the court declares the child free from custody and control of the parents,  
46 the court must at the same time order the child referred to a licensed county  
47 adoption agency for adoptive placement. A petition for adoption of the child

1 may be filed and heard in the juvenile court; but may not be granted until the  
2 appellate rights of the natural parents have been exhausted.

3  
4 (4) In the case of an Indian child for whom tribal customary adoption has been  
5 ordered in accordance with section 366.24, the court may continue the  
6 hearing for up to 120 days to permit the tribe to complete the process for  
7 tribal customary adoption. In its discretion, the court may grant a further  
8 continuance not exceeding 60 days.

9  
10 (A) No less than 20 days before the date set for the continued hearing, the  
11 tribe must file the completed tribal customary adoption order with the  
12 court.

13  
14 (B) The social worker must file an addendum report with the court at least  
15 7 days before the hearing.

16  
17 (C) If the tribe does not file the tribal customary adoption order within the  
18 designated time period, the court must make new findings and orders  
19 under section 366.26(b) and select a new permanent plan for the child.

20  
21 *(Subd (e) amended effective July 1, 2010; adopted as subd (d); previously amended*  
22 *effective July 1, 1992, January 1, 1995, July 1, 2002, January 1, 2006, and January 1,*  
23 *2007; previously relettered as subd (e) effective January 1, 1992, as subd (f) effective*  
24 *January 1, 2005, and as subd (e) effective January 1, 2010.)*

25  
26 **(f)–(h) \*\*\***

27  
28 *Rule 5.725 amended effective July 1, 2010; repealed and adopted as rule 1463 effective January*  
29 *1, 1991; previously amended and renumbered effective January 1, 2007; previously amended*  
30 *effective January 1, 1992, July 1, 1992, January 1, 1994, July 1, 1994, January 1, 1995, July 1,*  
31 *1995, July 1, 1997, January 1, 1999, July 1, 1999, July 1, 2002, January 1, 2005, January 1,*  
32 *2006, January 1, 2009, and January 1, 2010.*

33  
34 **Rule 5.726. Prospective adoptive parent designation (§ 366.26(n))**

35  
36 **(a) Request procedure**

37  
38 A dependent child's caregiver may be designated as a prospective adoptive parent.  
39 The court may make the designation on its own motion or on a request by a  
40 caregiver, the child, a social worker, the child's identified Indian tribe, or the  
41 attorney for any of these parties.

42  
43 (1) A request for designation as a prospective adoptive parent may be made at a  
44 hearing where parental rights are terminated or a plan of tribal customary  
45 adoption is ordered or thereafter, whether or not the child's removal from the  
46 home of the prospective adoptive parent is at issue.

1 (2)–(4) \*\*\*

2

3 *(Subd (a) amended effective July 1, 2010; previously amended effective January 1, 2007,*  
4 *and January 1, 2008.)*

5

6 **(b) Criteria for designation as prospective adoptive parent**

7

8 A caregiver must meet the following criteria to be designated as a prospective  
9 adoptive parent:

10

11 (1)–(2) \*\*\*

12

13 (3) The caregiver has taken at least one step to facilitate the adoption process.  
14 Steps to facilitate the adoption process include:

15

16 (A)–(C) \*\*\*

17

18 (D) In the case of an Indian child when tribal customary adoption has been  
19 identified as the child’s permanent plan, the child’s identified Indian  
20 tribe has designated the caregiver as the prospective adoptive parent;

21

22 ~~(D)~~(E) \*\*\*

23

24 ~~(E)~~(F) \*\*\*

25

26 ~~(F)~~(G) \*\*\*

27

28 ~~(G)~~(H) \*\*\*

29

30 ~~(H)~~(I) \*\*\*

31

32 *(Subd (b) amended effective July 1, 2010; previously amended effective January 1, 2007.)*

33

34 **(c)–(f) \*\*\***

35

36 *Rule 5.726 amended effective July 1, 2010; adopted as rule 1463.1 effective July 1, 2006;*  
37 *previously amended and renumbered effective January 1, 2007; previously amended effective*  
38 *January 1, 2008.*

39

40 **Rule 5.727. Proposed removal (§ 366.26(n))**

41

42 **(a) Application of rule**

43

44 This rule applies, after termination of parental rights or, in the case of tribal  
45 customary adoption, modification of parental rights, to the removal by the  
46 Department of Social Services (DSS) or a licensed adoption agency of a dependent  
47 child from a prospective adoptive parent under rule 5.726(b) or from a caregiver

1 who may meet the criteria for designation as a prospective adoptive parent under  
2 rule 5.726(b). This rule does not apply if the caregiver requests the child's removal.

3  
4 *(Subd (a) amended effective July 1, 2010; previously amended effective January 1, 2007.)*

5  
6 **(b)–(i) \*\*\***

7  
8 *Rule 5.727 amended effective July 1, 2010; adopted as rule 1463.3 effective July 1, 2006;*  
9 *previously amended and renumbered effective January 1, 2007; previously amended effective*  
10 *January 1, 2008.*

11  
12 **Rule 5.728. Emergency removal (§ 366.26(n))**

13  
14 **(a) Application of rule**

15  
16 This rule applies, after termination of parental rights or, in the case of tribal  
17 customary adoption, modification of parental rights, to the removal by the  
18 Department of Social Services (DSS) or a licensed adoption agency of a dependent  
19 child from a prospective adoptive parent under rule 5.726(b) or from a caregiver  
20 who may meet the criteria for designation as a prospective adoptive parent under  
21 rule 5.726(b) when the DSS or the licensed adoption agency has determined a  
22 removal must occur immediately due to a risk of physical or emotional harm. This  
23 rule does not apply if the child's removal is carried out at the request of the  
24 caregiver.

25  
26 *(Subd (a) amended effective July 1, 2010; previously amended effective January 1, 2007.)*

27  
28 **(b)–(g) \*\*\***

29  
30 *Rule 5.728 amended effective July 1, 2010; adopted as rule 1463.5 effective July 1, 2006;*  
31 *previously amended and renumbered effective January 1, 2007; previously amended effective*  
32 *January 1, 2008.*

33  
34 **Rule 5.730. Adoption**

35  
36 **(a)–(e) \*\*\***

37  
38 **(f) Consent**

39  
40 (1) At the hearing, each adoptive parent ~~and the child, if 12 years of age or older,~~  
41 must execute *Adoption Agreement* (form ADOPT-210) in the presence of and  
42 with the acknowledgment of the court.

43  
44 (2) If the child to be adopted is 12 years of age or older, he or she must also  
45 execute *Adoption Agreement* (form ADOPT-210), except in the case of a  
46 tribal customary adoption.

1  
2 (Subd (f) amended effective July 1, 2010; previously amended effective January 1, 1999,  
3 January 1, 2004, and January 1, 2007.)  
4

5 (g) \*\*\*

6  
7 Rule 5.730 amended effective July 1, 2010; adopted as rule 1464 effective July 1, 1995;  
8 previously amended effective January 1, 1996, January 1, 1999, and January 1, 2004; previously  
9 amended and renumbered effective January 1, 2007.  
10

11 **Advisory Committee Comment**

12  
13 Family Code section 8600.5 exempts tribal customary adoption from various provisions of the  
14 Family Code applicable to adoptions generally, including section 8602, which requires the  
15 consent of a child over the age of 12 to an adoption. However, under Welfare and Institutions  
16 Code section 366.24(c)(7), “[t]he child, birth parents, or Indian custodian and the tribal customary  
17 adoptive parents and their counsel, if applicable, may present evidence to the tribe regarding the  
18 tribal customary adoption and the child’s best interest.” Under Welfare and Institutions Code  
19 section 317(e), for all children over 4 years of age, the attorney for the child must determine the  
20 child’s wishes and advise the court of the child’s wishes. Welfare and Institutions Code section  
21 361.31(e) provides that “[w]here appropriate, the placement preference of the Indian child, when  
22 of sufficient age, . . . shall be considered.” This is consistent with Guideline F-3 of the *Guidelines*  
23 for State Courts; *Indian Child Custody Proceedings* issued by the Bureau of Indian Affairs on  
24 November 26, 1979, which recognizes that the request and wishes of a child of sufficient age are  
25 important in making an effective placement. The committee concludes, therefore, that while the  
26 consent of a child over the age of 12 is not required for a tribal customary adoption, the wishes of  
27 a child are still an important and appropriate factor for the court to consider and for children’s  
28 counsel to ascertain and present to the court when determining whether tribal customary adoption  
29 is the appropriate permanent plan for an Indian child.  
30

31 **Rule 5.740. Hearings subsequent to a permanent plan (§§ 366.26, 366.3, 391)**

32  
33 (a) **Review hearings—adoption and guardianship**

34  
35 Following an order for termination of parental rights or, in the case of tribal  
36 customary adoption, modification of parental rights, or a plan for the establishment  
37 of a guardianship under section 366.26, the court must retain jurisdiction and  
38 conduct review hearings at least every 6 months to ensure the expeditious  
39 completion of the adoption or guardianship.  
40

41 (1)–(4) \*\*\*

42  
43 (Subd (a) amended effective July 1, 2010; repealed and adopted effective January 1, 1991;  
44 previously amended effective January 1, 1992, January 1, 1993, July 1, 1999, January 1,  
45 2005, January 1, 2006, and January 1, 2007.)  
46

47 (b)–(d) \*\*\*  
48

1 *Rule 5.740 amended effective July 1, 2010; adopted as rule 1465 effective January 1, 1991;*  
2 *renumbered as rule 1466 effective July 1, 1995; previously amended effective January 1, 1992,*  
3 *January 1, 1993, January 1, 1994, July 1, 1994, January 1, 1998, January 1, 1999, July 1, 1999,*  
4 *July 1, 2002, January 1, 2005, and January 1, 2006; previously amended and renumbered*  
5 *effective January 1, 2007.*

6  
7 **Rule 7.703. Extraordinary compensation**

8  
9 **(a)–(d) \*\*\***

10  
11 **(e) Use of paralegals in the performance of extraordinary services**

12  
13 Extraordinary legal services may include the services of a paralegal as defined in  
14 Business and Professions Code section 6450(a) acting under the direction and  
15 supervision of an attorney. ~~only if the A request for extraordinary legal fees for a~~  
16 the paralegal's services must:

- 17  
18 (1) Describes the qualifications of the paralegal (including education,  
19 certification, continuing education, and experience). The description must  
20 state that the paralegal:  
21  
22 (A) Acted under the direction and supervision of an attorney;  
23  
24 (B) Satisfies one or more of the minimum qualifications specified in  
25 Business and Professions Code section 6450(c); and  
26  
27 (C) Has completed mandatory continuing education required by Business  
28 and Professions Code section 6450(d) for the last two-year certification  
29 period ending before the year during which any part of the paralegal's  
30 services were performed.  
31  
32 (2) States the hours spent by the paralegal and the hourly rate requested for the  
33 paralegal's services;  
34  
35 (3) Describes the services performed by the paralegal;  
36  
37 (4) States why it was appropriate to use the paralegal's services in the particular  
38 case; and  
39  
40 (5) Demonstrates that the total amount requested for the extraordinary services of  
41 the attorney and the paralegal does not exceed the amount appropriate if the  
42 attorney had performed the services without the paralegal's assistance.

43  
44 *(Subd (e) amended effective July 1, 2010.)*

45  
46 *Rule 7.703 amended effective July 1, 2010; adopted effective January 1, 2003; previously*  
47 *amended effective January 1, 2007.*

1  
2 **Rule 8.25. Service and filing**

3  
4 (a) \*\*\*

5  
6 (b) **Filing**

- 7  
8 (1) A document is deemed filed on the date the clerk receives it.  
9  
10 (2) Unless otherwise provided by these rules or other law, a filing is not timely  
11 unless the clerk receives the document before the time to file it expires.  
12  
13 (3) A brief, a petition for rehearing, an answer to a petition for rehearing, a  
14 petition for review, an answer to a petition for review, or a reply to an answer  
15 to a petition for review is timely if the time to file it has not expired on the  
16 date of:  
17  
18 (A) Its mailing by priority or express mail as shown on the postmark or the  
19 postal receipt; or  
20  
21 (B) Its delivery to a common carrier promising overnight delivery as shown  
22 on the carrier's receipt.  
23  
24 (4) The provisions of (3) do not apply to original proceedings.  
25  
26 (5) If the clerk receives a document by mail from an inmate or a patient in a  
27 custodial institution after the period for filing the document has expired but  
28 the envelope shows that the document was mailed or delivered to custodial  
29 officials for mailing within the period for filing the document, the document  
30 is deemed timely. The clerk must retain in the case file the envelope in which  
31 the document was received.

32  
33 *(Subd (b) amended effective July 1, 2010; previously amended effective January 1, 2007,*  
34 *and January 1, 2009.)*

35  
36 *Rule 8.25 amended effective July 1, 2010; adopted as rule 40.1 effective January 1, 2005;*  
37 *previously amended and renumbered effective January 1, 2007; previously amended effective*  
38 *January 1, 2009.*

39  
40 **Advisory Committee Comment**

41  
42 **Subdivision (a).** \*\*\*

43  
44 **Subdivision (b)(2).** In general, to be filed on time, a document must be received by the clerk  
45 before the time for filing that document expires. There are, however, some limited exceptions to  
46 this general rule. For example, (5) ~~the rules currently provides~~ that if the superior court clerk  
47 receives a ~~notice of appeal in a criminal, juvenile, or conservatorship case or notice of intent in a~~

1 ~~juvenile dependency case document~~ by mail from a custodial institution after the deadline for  
2 filing the ~~notice document~~ has expired but the envelope shows that the ~~notice document~~ was  
3 mailed or delivered to custodial officials for mailing before the deadline expired, the ~~notice~~  
4 ~~document~~ is deemed timely (see rules 8.308(e), 8.400(f), 8.450(e)(5), 8.480(a)). These This  
5 provisions applies to notices of appeal as well as to other documents mailed from a custodial  
6 institution and reflects the “prison-delivery” exception articulated by the California Supreme  
7 Court in *In re Jordan* (1992) 4 Cal.4th 116 and *Silverbrand v. County of Los Angeles* (2009) 46  
8 Cal.4th 106.

9  
10 Note that if a deadline runs from the date of filing, it runs from the date that the document is  
11 actually received and deemed filed under (b)(1); neither (b)(3) nor (b)(5) changes that date. Nor  
12 do these provisions extend the date of finality of an appellate opinion or any other deadline that is  
13 based on finality, such as the deadline for the court to modify its opinion or order rehearing.  
14 Subdivision (b)(5) is also not intended to limit a criminal defendant’s appeal rights under the case  
15 law of constructive filing. (See, e.g., *In re Benoit* (1973) 10 Cal.3d 72.)

## 16 17 18 **Title 8. Appellate Rules**

### 19 20 **Division 1. Rules Relating to the Supreme Court and Courts of Appeal**

#### 21 22 **Chapter 1. General Provisions**

#### 23 24 **Article 4. E-filing Pilot Project in Second Appellate District**

#### 25 26 **Rule 8.70. Purpose, application, and construction**

##### 27 28 **(a) Purpose**

29  
30 The purpose of the rules in this article is to facilitate the implementation and testing  
31 of an e-filing project in the Court of Appeal, Second Appellate District.

##### 32 33 **(b) Application**

34  
35 Notwithstanding any other rules to the contrary, the rules in this article govern  
36 filing and service by electronic means in the Court of Appeal, Second Appellate  
37 District.

##### 38 39 **(c) Construction**

40  
41 The rules in this article must be construed to authorize and permit filing and service  
42 by electronic means to the extent feasible.

43  
44 *Rule 8.70 adopted effective July 1, 2010.*

#### 45 46 **Rule 8.71. Definitions**

47  
48 As used in this article, unless the context otherwise requires:

- 1  
2 (1) “The court” is the Court of Appeal, Second Appellate District.  
3  
4 (2) A document may be in paper or electronic form. A “document” is:  
5  
6 (A) Any filing submitted to the reviewing court, including a brief, a petition, an  
7 appendix, or a motion;  
8  
9 (B) Any document transmitted by a trial court to the reviewing court, including a  
10 notice or a clerk’s or reporter’s transcript; or  
11  
12 (C) Any writing prepared by the reviewing court, including an opinion, an order,  
13 or a notice.  
14  
15 (3) An “electronic filer” is a party filing a document in electronic form directly with  
16 the court, by an agent, or through an electronic filing service provider.  
17  
18 (4) “Electronic filing” is the electronic transmission of a document in electronic form  
19 to a court.  
20  
21 (5) An “electronic filing service provider” is a person or entity that receives an  
22 electronic filing from a party for retransmission to the court. In submission of  
23 filings, the electronic filing service provider does so on behalf of the electronic filer  
24 and not as an agent of the court.  
25  
26 (6) “Electronic service” is the electronic transmission of a document to a party’s  
27 electronic notification address, either directly or through an electronic filing service  
28 provider, for the purpose of effecting service.  
29  
30 (7) “Electronic notification address” of a party means the electronic address at or  
31 through which the party has authorized electronic service.  
32

33 *Rule 8.71 adopted effective July 1, 2010.*  
34

35 **Rule 8.72. Documents that may be filed electronically**  
36

37 **(a) In general**  
38

39 The court may permit electronic filing of a document by a party or trial court in any  
40 appeal or original proceeding unless the rules in this article or other legal authority  
41 expressly prohibit electronic filing.  
42

43 **(b) Application for waiver of court fees and costs**  
44

45 The court may permit electronic filing of an application for waiver of court fees and  
46 costs in any proceeding in which the court accepts electronic filings.  
47

1 **(c) Orders, opinions, and notices**

2  
3 The court may electronically file any notice, order, opinion, or other document  
4 prepared by the court.

5  
6 **(d) Effect of document filed electronically**

7  
8 (1) A document that the court, a party, or a trial court files electronically under  
9 the rules in this article has the same legal effect as a document in paper form.

10  
11 (2) Filing a document electronically does not alter any filing deadline.

12  
13 *Rule 8.72 adopted effective July 1, 2010.*

14  
15 **Rule 8.73. Court order requiring electronic service or filing**

16  
17 **(a) Court order**

18  
19 (1) The court may, on the motion of any party or on its own motion, after finding  
20 that such an order would not cause undue hardship or significant prejudice to  
21 any party, order all parties to:

22  
23 (A) Serve all documents electronically, except when personal service is  
24 required by statute or rule;

25  
26 (B) File all documents electronically; or

27  
28 (C) Serve and file all documents electronically, except when personal  
29 service is required by statute or rule.

30  
31 (2) The court will not:

32  
33 (A) Order a self-represented party to electronically serve or file documents;

34  
35 (B) Order a party to electronically serve or file documents if the party  
36 would be required to pay a fee to an electronic filing service provider to  
37 file or serve the documents and the party objects to paying this fee in its  
38 opposition to the motion under (1); or

39  
40 (C) Order a trial court to electronically serve or file documents.

41  
42 (3) If the reviewing court proposes to make an order under (1) on its own motion,  
43 the court must mail notice to the parties. Any party may serve and file an  
44 opposition within 10 days after the notice is mailed or as the court specifies.

45  
46 **(b) Additional provisions of order**

1           The court’s order may also provide that documents previously filed in paper form  
2           may be resubmitted in electronic form.

3  
4           **(c) Filing in paper form**

5  
6           When it is not feasible for a party to convert a document to electronic form by  
7           scanning, imaging, or another means, the court may allow that party to serve, file,  
8           or serve and file the document in paper form.

9  
10          *Rule 8.73 adopted effective July 1, 2010.*

11  
12          **Rule 8.74. Responsibilities of court**

13  
14          **(a) Publication of electronic filing requirements**

15  
16          When the court permits electronic filing it will publish, in both electronic and print  
17          formats, the court’s electronic filing requirements.

18  
19          **(b) Problems with electronic filing**

20  
21          If the court is aware of a problem that impedes or precludes electronic filing, it  
22          must promptly take reasonable steps to provide notice of the problem.

23  
24          *Rule 8.74 adopted effective July 1, 2010.*

25  
26          **Rule 8.75. Contracts with electronic filing service providers**

27  
28          **(a) Right to contract**

29  
30          (1)   The court may contract with one or more electronic filing service providers to  
31          furnish and maintain an electronic filing system for the court.

32  
33          (2)   If the court contracts with an electronic filing service provider, the court may  
34          require electronic filers to transmit the documents to the provider.

35  
36          (3)   If there is a single provider or an in-house system, the court must accept  
37          filing from other electronic filing service providers to the extent it is  
38          compatible with them.

39  
40          **(b) Provisions of contract**

41  
42          The court’s contract with an electronic filing service provider may allow the  
43          provider to charge electronic filers a reasonable fee in addition to the court’s filing  
44          fee. The contract may also allow the electronic filing service provider to make other  
45          reasonable requirements for use of the electronic filing system.

1 **(c) Transmission of filing to court**

2  
3 An electronic filing service provider must promptly transmit any electronic filing  
4 and the applicable filing fee to the court.

5  
6 **(d) Confirmation of receipt and filing of document**

7  
8 (1) An electronic filing service provider must promptly send to an electronic filer  
9 its confirmation of the receipt of any document that the filer has transmitted  
10 to the provider for filing with the court.

11  
12 (2) The electronic filing service provider must send its confirmation to the filer's  
13 electronic notification address and must indicate the date and time of receipt,  
14 in accordance with rule 8.79(a).

15  
16 (3) After reviewing the documents, the court must promptly transmit to the  
17 electronic filing service provider and the electronic filer the court's  
18 confirmation of filing or notice of rejection of filing, in accordance with rule  
19 8.79.

20  
21 **(e) Ownership of information**

22  
23 All contracts between the court and electronic filing service providers must  
24 acknowledge that the court is the owner of the contents of the filing system and has  
25 the exclusive right to control the system's use.

26  
27 *Rule 8.75 adopted effective July 1, 2010.*

28  
29 **Rule 8.76. Responsibilities of electronic filer**

30  
31 **(a) Conditions of filing**

32  
33 Each electronic filer agrees to, and must:

34  
35 (1) Comply with any court requirements designed to ensure the integrity of  
36 electronic filing and to protect sensitive personal information;

37  
38 (2) Furnish information that the court requires for case processing;

39  
40 (3) Take all reasonable steps to ensure that the filing does not contain computer  
41 code, including viruses, that might be harmful to the court's electronic filing  
42 system and to other users of that system;

43  
44 (4) Furnish one or more electronic notification addresses, in the manner specified  
45 by the court, at which the electronic filer agrees to accept service; and  
46

1           (5) Immediately provide the court and all parties with any change to the  
2           electronic filer’s electronic notification address.

3  
4           **(b) Format of documents to be filed electronically**

5  
6           A document that is filed electronically with the court must be in a format specified  
7           by the court unless it cannot be created in that format. The format adopted by a  
8           court must meet the following requirements:

9  
10          (1) The software for creating and reading documents must be in the public  
11          domain or generally available at a reasonable cost.

12  
13          (2) The printing of documents must not result in the loss of document text,  
14          format, or appearance.

15  
16          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 Rules  
18          of Court, the rules in this article prevail.

19  
20          *Rule 8.76 adopted effective July 1, 2010.*

21  
22          **Rule 8.77. Requirements for signatures on documents**

23  
24          **(a) Documents signed under penalty of perjury**

25  
26          If a document to be filed must be signed under penalty of perjury, the document  
27          may be filed electronically provided that the original, signed verification page or  
28          pages are filed with the court within 5 calendar days.

29  
30          **(b) Documents not signed under penalty of perjury**

31  
32          If a document does not require a signature under penalty of perjury, the document  
33          is deemed signed by the party if the document is filed electronically.

34  
35          **(c) Documents requiring signatures of opposing parties**

36  
37          When a document to be filed electronically, such as a stipulation, requires the  
38          signatures of opposing parties, the following procedure applies:

39  
40          (1) The party filing the document must obtain the signatures of all parties on a  
41          printed form of the document. By electronically filing the document, the  
42          electronic filer indicates that all parties have signed the document and that the  
43          filer has the signed original in his or her possession.

44  
45          (2) The party filing the document must maintain the original, signed document  
46          and must make it available for inspection and copying at the request of the  
47          court or any other party.

1  
2 (3) At any time after the document is filed, any other party may serve a demand  
3 for production of the original signed document. The demand must be served  
4 on all other parties but need not be filed with the court.

5  
6 (4) Within five days of service of the demand under (3), the party on whom the  
7 demand is made must make the original signed document available for  
8 inspection and copying by all other parties.

9  
10 (5) At any time after the document is filed, the court may order the filing party to  
11 produce the original signed document in court for inspection and copying by  
12 the court. The order must specify the date, time, and place for the production  
13 and must be served on all parties.

14  
15 **(d) Digital signature**

16  
17 A party is not required to use a digital signature on an electronically filed  
18 document.

19  
20 **(e) Judicial signatures**

21  
22 If a document requires a signature by a court or a judicial officer, the document  
23 may be electronically signed in any manner permitted by law.

24  
25 *Rule 8.77 adopted effective July 1, 2010.*

26  
27 **Rule 8.78. Payment of filing fees**

28  
29 **(a) Use of credit cards and other methods**

30  
31 The court may permit the use of credit cards, debit cards, electronic fund transfers,  
32 or debit accounts for the payment of filing fees associated with electronic filing, as  
33 provided in Government Code section 6159 and other applicable law. The court  
34 may also authorize other methods of payment.

35  
36 **(b) Fee waivers**

37  
38 Eligible persons may seek a waiver of court fees and costs, as provided in  
39 Government Code section 68634.5 and rule 8.26.

40  
41 *Rule 8.78 adopted effective July 1, 2010.*

42  
43 **Advisory Committee Comment**

44  
45 **Subdivision (b).** A fee charged by an electronic filing service provider under rule 8.75(b) is not a  
46 court fee that can be waived under Government Code section 68634.5 and rule 8.26.

1 **Rule 8.79. Actions by court on receipt of electronic filing**

2  
3 **(a) Confirmation of receipt and filing of document**

4  
5 (1) Confirmation of receipt

6  
7 When the court receives an electronically submitted document, the court must  
8 promptly send the electronic filer confirmation of the court's receipt of the  
9 document, indicating the date and time of receipt. A document is considered  
10 received at the date and time the confirmation of receipt is created.

11  
12 (2) Confirmation of filing

13  
14 If the document received by the court under (1) complies with filing  
15 requirements, the court must promptly send the electronic filer confirmation  
16 that the document has been filed. The filing confirmation must indicate the  
17 date and time of filing and is proof that the document was filed on the date  
18 and at the time specified. The filing confirmation must also specify:

19  
20 (A) Any transaction number associated with the filing;

21  
22 (B) The titles of the documents as filed by the court; and

23  
24 (C) The fees assessed for the filing.

25  
26 (3) Transmission of confirmations

27  
28 The court must send receipt and filing confirmation to the electronic filer at  
29 the electronic notification address that the filer furnished to the court under  
30 rule 8.76(a)(4). The court must maintain a record of all receipt and filing  
31 confirmations.

32  
33 (4) Filer responsible for verification

34  
35 In the absence of the court's confirmation of receipt and filing, there is no  
36 presumption that the court received and filed the document. The electronic  
37 filer is responsible for verifying that the court received and filed any  
38 document that the electronic filer submitted to the court electronically.

39  
40 **(b) Notice of rejection of document for filing**

41  
42 If the clerk does not file a document because it does not comply with applicable  
43 filing requirements, the court must promptly send notice of the rejection of the  
44 document for filing to the electronic filer. The notice must state the reasons that the  
45 document was rejected for filing.

1 **(c) Document filed after close of business**

2  
3 A document that is filed electronically with the court after 11:59 p.m. is deemed to  
4 have been filed on the next court day.

5  
6 **(d) Delayed delivery**

7  
8 If a technical problem with a court's electronic filing system prevents the court  
9 from accepting an electronic filing on a particular court day, and the electronic filer  
10 demonstrates that he or she attempted to electronically file the document on that  
11 day, the court must deem the document as filed on that day.

12  
13 **(e) Endorsement**

14  
15 (1) The court's endorsement of a document electronically filed must contain the  
16 following: "Electronically filed by California Court of Appeal, Second  
17 Appellate District, on \_\_\_\_\_ (date)," followed by the name of the court clerk.

18  
19 (2) The endorsement required under (1) has the same force and effect as a  
20 manually affixed endorsement stamp with the signature and initials of the  
21 court clerk.

22  
23 (3) A record on appeal, brief, or petition in an appeal or original proceeding that  
24 is filed and endorsed electronically may be printed and served on the  
25 appellant or respondent in the same manner as if it had been filed in paper  
26 form.

27  
28 *Rule 8.79 adopted effective July 1, 2010.*

29  
30 **Rule 8.80. Electronic service**

31  
32 **(a) Consent to electronic service**

33  
34 (1) When a notice may be served by mail, express mail, overnight delivery, or  
35 fax transmission, electronic service of the notice is permitted when  
36 authorized by these rules.

37  
38 (2) A party indicates that the party agrees to accept electronic service by:

39  
40 (A) Filing and serving a notice that the party accepts electronic service. The  
41 notice must include the electronic notification address at which the  
42 party agrees to accept service; or

43  
44 (B) Electronically filing any document with the court. The act of electronic  
45 filing is evidence that the party agrees to accept service at the electronic  
46 notification address that the party has furnished to the court under rule  
47 8.76(a)(4).

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(3) A party that has consented to electronic service under (2) and has used an electronic filing service provider to file and serve documents in a case consents to service on that electronic filing service provider as the designated agent for service for the party in the case, until such time as the party designates a different agent for service.

**(b) Maintenance of electronic service lists**

When the court permits electronic filing in a case, it must maintain and make available electronically to the parties an electronic service list that contains the parties' current electronic notification addresses, as provided by the parties that have filed electronically in the case.

**(c) Service by the parties**

(1) Notwithstanding (b), parties are responsible for electronic service on all other parties in the case. A party may serve documents electronically directly, by an agent, or through a designated electronic filing service provider.

(2) A document may not be electronically served on a nonparty unless otherwise provided by law or court order.

**(d) Change of electronic notification address**

(1) A party whose electronic notification address changes while the appeal or original proceeding is pending must promptly file a notice of change of address electronically with the court and must serve this notice electronically on all other parties.

(2) A party's election to contract with an electronic filing service provider to electronically file and serve documents or to receive electronic service of documents on the party's behalf does not relieve the party of its duties under (1).

(3) An electronic notification address is presumed valid for a party if the party files electronic documents with the court from that address and has not filed and served notice that the address is no longer valid.

**(e) When service is complete**

(1) Electronic service is complete at the time of transmission.

(2) Service that occurs after 11:59 p.m. is deemed to have occurred on the next court day.

1 **(f) Proof of service**

2  
3 (1) Proof of electronic service may be by any of the methods provided in Code of  
4 Civil Procedure section 1013a, except that the proof of service must state:

5  
6 (A) The electronic notification address of the person making the service, in  
7 addition to that person’s residence or business address;

8  
9 (B) The date and time of the electronic service, instead of the date and  
10 place of deposit in the mail;

11  
12 (C) The name and electronic notification address of the person served, in  
13 place of that person’s name and address as shown on the envelope; and

14  
15 (D) That the document was served electronically, in place of the statement  
16 that the envelope was sealed and deposited in the mail with postage  
17 fully prepaid.

18  
19 (2) Proof of electronic service may be in electronic form and may be filed  
20 electronically with the court.

21  
22 (3) The party filing the proof of electronic service must maintain the printed  
23 form of the document bearing the declarant’s original signature and must  
24 make the document available for inspection and copying on the request of the  
25 court or any party to the action or proceeding in which it is filed, in the  
26 manner provided in rule 8.77(c).

27  
28 **(g) Electronic service by court**

29  
30 The court may electronically serve any notice, order, opinion, or other document  
31 issued by the court in the same manner that parties may serve documents by  
32 electronic service.

33  
34 *Rule 8.80 adopted effective July 1, 2010.*

35  
36 **Rule 8.104. Time to appeal**

37  
38 **(a)–(b) \*\*\***

39  
40 **Advisory Committee Comment**

41  
42 **Subdivision (a). \*\*\***

43  
44 **Subdivision (b).** See rule 8.25(b)(5) for provisions concerning the timeliness of documents  
45 mailed by inmates and patients from custodial institutions. Subdivision (b) is declarative of the  
46 case law, which holds that the reviewing court lacks jurisdiction to excuse a late-filed notice of

1 appeal. (*Hollister Convalescent Hosp., Inc. v. Rico* (1975) 15 Cal.3d 660, 666–674; *Estate of*  
2 *Hanley* (1943) 23 Cal.2d 120, 122–124.)

3  
4 In criminal cases, the time for filing a notice of appeal is governed by rule 8.308 and by the case  
5 law of “constructive filing.” (See, e.g., *In re Jordan* (1992) 4 Cal.4th 116; *In re Benoit* (1973) 10  
6 Cal.3d 72.)

7  
8 **Rule 8.216. Appeals in which a party is both appellant and respondent**

9  
10 **(a)–(b) \*\*\***

11  
12 **Advisory Committee Comment**

13 \*\*\*

14  
15 **Subdivision (b).** The purpose of subdivision (b)(~~2~~)(3) is to ensure that in its reply brief a party  
16 addresses only issues germane to its own appeal. For example, a cross-appellant may not use its  
17 *cross-appellant’s* reply brief to answer points raised in the *appellant’s* reply brief.

18  
19 **Rule 8.308. Time to appeal**

20  
21 **(a)–(d) \*\*\***

22  
23 **(e) — Receipt by mail from custodial institution**

24  
25 ~~If the superior court clerk receives a notice of appeal by mail from a custodial~~  
26 ~~institution after the period specified in (a) has expired but the envelope shows that~~  
27 ~~the notice was mailed or delivered to custodial officials for mailing within the~~  
28 ~~period specified in (a), the notice is deemed timely. The clerk must retain in the~~  
29 ~~case file the envelope in which the notice was received.~~

30  
31 *Rule 8.308 amended effective July 1, 2010; adopted as rule 30.1 effective January 1, 2004;*  
32 *previously amended and renumbered effective January 1, 2007; previously amended effective*  
33 *January 1, 2005, July 1, 2007, and January 1, 2008.*

34  
35 **Advisory Committee Comment**

36  
37 **Subdivision (c). \*\*\***

38  
39 **Subdivision (d).** See rule 8.25(b)(5) for provisions concerning the timeliness of documents  
40 mailed by inmates or patients from custodial institutions. ~~The subdivision is not intended to limit~~  
41 ~~a defendant’s appeal rights under the case law of constructive filing. (See, e.g., *In re Jordan*~~  
42 ~~(1992) 4 Cal.4th 116; *In re Benoit* (1973) 10 Cal.3d 72.)~~

43  
44 **Rule 8.406. Time to appeal**

45  
46 **(a)–(b) \*\*\***

1 **(e) — Receipt by mail from custodial institution**

2  
3 If the superior court clerk receives a notice of appeal by mail from a custodial  
4 institution after the period specified in (a) has expired but the envelope shows that  
5 the notice was mailed or delivered to custodial officials for mailing within the  
6 period specified in (a), the notice is deemed timely. The clerk must retain in the  
7 case file the envelope in which the notice was received.

8  
9 **(d)(c)\*\*\***

10  
11 *(Subd (c) relettered effective July 1, 2010; adopted as subd (d) effective July 1, 2010.)*

12  
13 **(e)(d)\*\*\***

14  
15 *(Subd (d) relettered effective July 1, 2010; adopted as subd (e) effective July 1, 2010.)*

16  
17 *Rule 8.406 amended effective July 1, 2010; adopted effective July 1, 2010.*

18  
19 **Advisory Committee Comment**

20  
21 **Subdivision (c).** See rule 8.25(b)(5) for provisions concerning the timeliness of documents  
22 mailed by inmates or patients from custodial institutions.

23  
24 **Rule 8.450. Notice of intent to file writ petition to review order setting hearing**  
25 **under Welfare and Institutions Code section 366.26**

26  
27 **(a)–(d) \*\*\***

28  
29 **(e) Notice of intent**

30  
31 **(1)–(4) \*\*\***

32  
33 **(5) —** If the superior court clerk receives a notice of intent by mail from a party in a  
34 custodial institution after the time specified in (4) has expired but the  
35 envelope containing the notice of intent shows that it was mailed or delivered  
36 to custodial officials for mailing within the time specified in (4), the notice is  
37 deemed timely. The clerk must retain in the case file the envelope in which  
38 the notice was received.

39  
40 *(Subd (e) amended effective July 1, 2010; previously amended effective January 1, 2007,*  
41 *and July 1, 2010.)*

42  
43 **(f)–(i) \*\*\***

44  
45 *Rule 8.450 amended effective July 1, 2010; adopted as rule 38 effective January 1, 2005;*  
46 *previously amended and renumbered effective January 1, 2007; previously amended effective*  
47 *January 1, 2006, July 1, 2006, January 1, 2008, January 1, 2009, and July 1, 2010.*

1  
2 **Advisory Committee Comment**  
3

4 **Subdivision (d).** \*\*\*  
5

6 Subdivision (e)(4). See rule 8.25(b)(5) for provisions concerning the timeliness of documents  
7 mailed by inmates or patients from custodial institutions.  
8

9 **Rule 8.454. Notice of intent to file writ petition under Welfare and Institutions Code**  
10 **section 366.28 to review order designating specific placement of a dependent**  
11 **child after termination of parental rights**  
12

13 \*\*\*  
14

15 **Advisory Committee Comment**  
16

17 Subdivision (f)(2). See rule 8.25(b)(5) for provisions concerning the timeliness of documents  
18 mailed by inmates or patients from custodial institutions.  
19

20 **Rule 8.500. Petition for review**  
21

22 \*\*\*  
23

24 **Advisory Committee Comment**  
25

26 **Subdivision (a).** \*\*\*  
27

28 **Subdivision (e).** Subdivision (e)(1) provides that a petition for review must be served and filed  
29 within 10 days after the Court of Appeal decision is *final in that court*. Finality in the Court of  
30 Appeal is generally governed by rules 8.264(b) (civil appeals), 8.366(b) (criminal appeals),  
31 8.387(b) (habeas corpus proceedings), and ~~8.480~~ 8.490(b) (proceedings for writs of mandate,  
32 certiorari, and prohibition). These rules declare the general rule that a Court of Appeal decision is  
33 final in that court 30 days after filing. They then carve out specific exceptions—decisions that  
34 they declare to be final immediately on filing (see rules 8.264(b)(2), 8.366(b)(2), and  
35 8.490(b)(1)). The plain implication is that all other Court of Appeal orders—specifically,  
36 interlocutory orders that may be the subject of a petition for review—are *not* final on filing. This  
37 implication is confirmed by current practice, in which parties may be allowed to apply for—and  
38 the Courts of Appeal may grant—reconsideration of such interlocutory orders; reconsideration, of  
39 course, would be impermissible if the orders were in fact final on filing.  
40

41 Contrary to paragraph (2) of subdivision (e), paragraphs (4) and (5) do not prohibit extending the  
42 time to file an answer or reply; because the subdivision thus expressly forbids an extension of  
43 time only with respect to the petition for review, by clear negative implication it permits an  
44 application to extend the time to file an answer or reply under rule 8.50.  
45

46 See rule 8.25(b)(5) for provisions concerning the timeliness of documents mailed by inmates or  
47 patients from custodial institutions.  
48

49 **Subdivision (f).** \*\*\*

1  
2 **Rule 8.817. Service and filing**

3  
4 (a) \*\*\*

5  
6 (b) **Filing**

7  
8 (1)–(4) \*\*\*

9  
10 (5) If the clerk receives a document by mail from an inmate or a patient in a  
11 custodial institution after the period for filing the document has expired but  
12 the envelope shows that the document was mailed or delivered to custodial  
13 officials for mailing within the period for filing the document, the document  
14 is deemed timely. The clerk must retain in the case file the envelope in which  
15 the document was received.

16  
17 (Subd (b) amended effective July 1, 2010.)

18  
19 *Rule 8.817 amended effective July 1, 2010; adopted effective January 1, 2009.*

20  
21 **Advisory Committee Comment**

22  
23 **Subdivision (a).** \*\*\*

24  
25 **Subdivision (b)(2).** In general, to be filed on time, a document must be received by the clerk  
26 before the time for filing that document expires. There are, however, some limited exceptions to  
27 this general rule. For example, ~~rule 8.853(e)~~ (5) provides that ~~in a misdemeanor appeal,~~ if the  
28 superior court clerk receives a ~~notice of appeal~~ document by mail from a custodial institution  
29 after the deadline for filing the ~~notice~~ document has expired but the envelope shows that the  
30 ~~notice~~ document was mailed or delivered to custodial officials for mailing before the deadline  
31 expired, the ~~notice~~ document is deemed timely. This provision reflects the “prison-delivery”  
32 exception articulated by the California Supreme Court in *In re Jordan* (1992) 4 Cal.4th 116 and  
33 *Silverbrand v. County of Los Angeles* (2009) 46 Cal.4th 106.

34  
35 Note that if a deadline runs from the date of filing, it runs from the date that the document is  
36 actually received and deemed filed under (b)(1); neither (b)(3) nor (b)(5) changes that date. Nor  
37 do these provisions extend the date of finality of an appellate opinion or any other deadline that is  
38 based on finality, such as the deadline for the court to modify its opinion or order rehearing.  
39 Subdivision (b)(5) is also not intended to limit a criminal defendant’s appeal rights under the case  
40 law of constructive filing. (See, e.g., *In re Benoit* (1973) 10 Cal.3d 72.)

41  
42 **Rule 8.822. Time to appeal**

43  
44 \*\*\*

45  
46 **Advisory Committee Comment**

47  
48 Under rule 8.804(23), the term “judgment” includes any order that may be appealed.

1  
2 **Subdivision (d).** See rule 8.817(b)(5) for provisions concerning the timeliness of documents  
3 mailed by inmates or patients from custodial institutions.

4  
5 **Rule 8.835. Record when trial proceedings were officially electronically recorded**

6  
7 (a)–(b) \*\*\*

8  
9 (c) **Use of official recording as record of oral proceedings**

10  
11 If the court has a local rule for the appellate division permitting this, on stipulation  
12 of the parties or on order of the trial court under rule 8.837(d)(6), the original of an  
13 official electronic recording of the trial court proceedings, or a copy made by the  
14 court, may be transmitted as the record of these oral proceedings without being  
15 transcribed. Such an official electronic recording satisfies any requirement in these  
16 rules or in any statute for a reporter’s transcript of these proceedings.

17  
18 *(Subd (c) amended effective July 1, 2010.)*

19  
20 (d) \*\*\*

21  
22 *Rule 8.835 amended effective July 1, 2010; adopted effective January 1, 2009.*

23  
24 **Rule 8.853. Time to appeal**

25  
26 (a)–(d) \*\*\*

27  
28 (e) ~~**Receipt by mail from custodial institution**~~

29  
30 ~~If the trial court clerk receives a notice of appeal by mail from a custodial~~  
31 ~~institution after the period specified in (a) has expired but the envelope shows that~~  
32 ~~the notice was mailed or delivered to custodial officials for mailing within the~~  
33 ~~period specified in (a), the notice is deemed timely. The clerk must retain in the~~  
34 ~~case file the envelope in which the notice was received.~~

35  
36 *Rule 8.853 amended effective July 1, 2010; adopted effective January 1, 2009.*

37  
38 **Advisory Committee Comment**

39  
40 **Subdivision (d).** See rule 8.817(b)(5) for provisions concerning the timeliness of documents  
41 mailed by inmates or patients from custodial institutions.

42  
43 **Rule 8.868. Record when trial proceedings were officially electronically recorded**

44  
45 (a)–(b) \*\*\*

1 (c) Use of official recording as record of oral proceedings

2  
3 If the court has a local rule for the appellate division permitting this, on stipulation  
4 of the parties or on order of the trial court under rule 8.869(d)~~(5)~~(6), the original of  
5 an official electronic recording of the trial court proceedings, or a copy made by the  
6 court, may be transmitted as the record of these oral proceedings without being  
7 transcribed. Such an electronic recording satisfies any requirement in these rules or  
8 in any statute for a reporter’s transcript of these proceedings.

9  
10 (Subd (c) amended effective July 1, 2010.)

11  
12 (d) \*\*\*

13  
14 Rule 8.868 amended effective July 1, 2010; adopted effective January 1, 2009.

15  
16 Rule 8.902. Time to appeal

17  
18 (a)–(d) \*\*\*

19  
20 ~~(e) Receipt by mail from custodial institution~~

21  
22 ~~If the trial court clerk receives a notice of appeal by mail from a custodial~~  
23 ~~institution after the period specified in (a) has expired but the envelope shows that~~  
24 ~~the notice was mailed or delivered to custodial officials for mailing within the~~  
25 ~~period specified in (a), the notice is deemed timely. The clerk must retain in the~~  
26 ~~case file the envelope in which the notice was received.~~

27  
28 Rule 8.902 amended effective July 1, 2010; adopted effective January 1, 2009.

29  
30 Advisory Committee Comment

31  
32 Subdivision (d). See rule 8.817(b)(5) for provisions concerning the timeliness of documents  
33 mailed by inmates or patients from custodial institutions.

34  
35 Rule 8.917. Record when trial proceedings were officially electronically recorded

36  
37 (a)–(b) \*\*\*

38  
39 (c) Use of official recording as record of oral proceedings

40  
41 If the court has a local rule for the appellate division permitting this, on stipulation  
42 of the parties or on order of the trial court under rule 8.916~~(b)~~(d)(6), the original of  
43 an official electronic recording of the trial court proceedings, or a copy made by the  
44 court, may be transmitted as the record of these oral proceedings without being  
45 transcribed. This official electronic recording satisfies any requirement in these  
46 rules or in any statute for a reporter’s transcript of these proceedings.

1 (Subd (c) amended effective July 1, 2010.)  
2

3 (d) \*\*\*

4  
5 Rule 8.917 amended effective July 1, 2010; adopted effective January 1, 2009.  
6

7 **Rule 10.603. Authority and duties of presiding judge**

8  
9 (a)–(b) \*\*\*

10  
11 (c) **Duties**

12  
13 (1)–(3) \*\*\*

14  
15 (4) *Oversight of judicial officers*

16  
17 The presiding judge must:

18  
19 (A)–(B) \*\*\*

20  
21 (C) *Commissioners*

22  
23 (i) Prepare and submit to the judges for consideration and  
24 adoption procedures for receiving, inquiring into, and resolving  
25 complaints lodged against court commissioners and referees,  
26 consistent with rule 10.703; and

27  
28 (ii) Notify the Commission on Judicial Performance if a  
29 commissioner or referee is disciplined or resigns, consistent with  
30 rule 10.703(k).

31  
32 (D)–(E)

33  
34 (5) *Personnel*

35  
36 (A) The presiding judge must provide general direction to and supervision  
37 of the court executive officer, or, if the court has no executive officer,  
38 perform the duties of the court executive regarding personnel as  
39 specified in rule 10.610(c)(1).

40  
41 (B) The presiding judge must approve, in writing, the total compensation  
42 package (salary and all benefits) offered to the court executive officer  
43 at the time of the executive officer's appointment and any subsequent  
44 changes to the executive officer's total compensation package.  
45

1 (6) *Budget and fiscal management*

2  
3 The presiding judge must:

4  
5 (A) \*\*\*

6  
7 (B) Establish responsible budget priorities and submit budget requests that  
8 will best enable the court to achieve its goals; ~~and~~

9  
10 (C) Establish a documented process for setting and approving any changes  
11 to the court executive officer's total compensation package in a fiscally  
12 responsible manner consistent with the court's established budget; and

13  
14 (D) \*\*\*

15  
16 (7)–(11) \*\*\*

17  
18 *(Subd (c) amended effective July 1, 2010; previously amended effective January 1, 2001,*  
19 *January 1, 2002, January 1, 2006, July 1, 2006, and January 1, 2007.)*

20  
21 (d) **Delegation**

22  
23 The presiding judge may delegate any of the specific duties listed in this rule to  
24 another judge. ~~or, Except for the duties listed in (c)(5)(B) and (c)(6)(C), the~~  
25 presiding judge may delegate to the court executive officer any of if the duties  
26 listed in this rule that does not require the exercise of judicial authority, to the court  
27 executive officer. The presiding judge remains responsible for all duties listed in  
28 this rule even if he or she has delegated particular tasks to someone else.

29  
30 *(Subd (d) amended effective July 1, 2010; previously amended effective January 1, 2007.)*

31  
32 *Rule 10.603 amended effective July 1, 2010; adopted as rule 6.603 effective January 1, 2001;*  
33 *previously amended effective January 1, 2002, January 1, 2006, and July 1, 2006; previously*  
34 *amended and renumbered effective January 1, 2007.*

35  
36 **Rule 10.703. ~~Complaints against subordinate judicial officers~~ Subordinate judicial**  
37 **officers: complaints and notice requirements**

38  
39 (a)–(j) \*\*\*

40  
41 (k) **Report Notice to the Commission on Judicial Performance**

42  
43 (1) If ~~after a formal investigation under (j) the complaint results in the a court~~  
44 disciplines a subordinate judicial officer by written reprimand under (i)(4)(B)  
45 or (j)(3)(C) or (D), suspension, or removal of the subordinate judicial officer  
46 for conduct that, if alleged against a judge, would be within the jurisdiction of  
47 the commission under article VI, section 18 of the California Constitution,

1 the presiding judge must promptly forward to the commission a copy of the  
2 portions of the court file ~~on the complaint~~ that reasonably reflect the basis of  
3 the action taken by the court, including the complaint or allegations of  
4 misconduct and the subordinate judicial officer's response. This provision is  
5 applicable even when the disciplinary action does not result from a written  
6 complaint.

- 7
- 8 (2) If ~~the~~ a subordinate judicial officer resigns (A) while an preliminary or  
9 formal investigation under (i) or (j) is pending concerning conduct that, if  
10 alleged against a judge, would be within the jurisdiction of the commission  
11 under article VI, section 18 of the California Constitution, or (B) under  
12 circumstances that would lead a reasonable person to conclude that the  
13 resignation was due, at least in part, to a complaint or allegation of  
14 misconduct that, if alleged against a judge, would be within the jurisdiction  
15 of the commission under article VI, section 18 of the California Constitution,  
16 the presiding judge must, within 15 days of the resignation; or as soon  
17 thereafter as is reasonably possible, forward to the commission the entire  
18 court file on any pending complaint about or allegation of misconduct  
19 committed by the subordinate judicial officer.

- 20
- 21 (3) On request by the commission, the presiding judge must forward to the  
22 commission any requested information ~~about~~ regarding a complaint against  
23 about or allegation of misconduct committed by a subordinate judicial  
24 officer.

25

26 *(Subd (k) amended effective July 1, 2010; previously amended effective January 1, 2007.)*

27

28 (l) \*\*\*

29

30 *Rule 10.703 amended effective July 1, 2010; adopted as rule 6.655 effective November 20, 1998;*  
31 *previously amended effective April 29, 1999, July 1, 2002, and January 1, 2006; previously*  
32 *amended and renumbered effective January 1, 2007.*

33

34 **Rule 10.856. Notice of superior court records destruction**

35

36 (a)–(g) \*\*\*

37

38 (h) **Forms**

39

40 The court must use the following forms to implement the requirements of this rule:

- 41
- 42 (1) *Notice of Intent to Destroy Superior Court Records; Offer to Transfer*  
43 *Possession (form ~~982.8(1)(N)~~ REC-001(N), with a form on the reverse titled*  
44 *Request for Transfer or Extension of Time for Retention of Superior Court*  
45 *Records (form ~~982.8(1)(R)~~ REC-001(R)), for optional use by the recipient of*  
46 *the notice; and*
- 47

1           (2) *Notice of Hearing on Request for Transfer or Extension of Time for Retention*  
2           *of Superior Court Records; Court Order; Release and Receipt of Superior*  
3           *Court Records (form ~~982.8(2)(N)~~ REC-002(N)).*

4  
5           *(Subd (h) amended effective July 1, 2010; adopted as subd (g); previously amended*  
6           *effective January 1, 2001; previously amended and relettered effective January 1, 2007.)*

7  
8           *Rule 10.856 amended effective July 1, 2010; adopted as rule 243.6 effective January 1, 1994;*  
9           *previously amended effective July 1, 2001; previously amended and renumbered as rule 6.756*  
10          *effective January 1, 2001, and as rule 10.856 effective January 1, 2007.*

11