

# JUDICIAL COUNCIL OF CALIFORNIA

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## INVITATION TO COMMENT SP18-11

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Title	Action Requested
Criminal and Appellate Procedure: Record Preparation in Death Penalty Cases	Review and submit comments by Monday, July 23
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rules 8.610, 8.613, 8.616, 8.619, and 8.622; adopt rules 4.119, 4.230, 8.608, and 8.611; repeal rule 8.625; adopt forms CR-600 and CR-605; and approve forms CR-601, CR-602, CR-603, and CR-604	January 1, 2019
Proposed by	Contact
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### Executive Summary and Origin

The Proposition 66 Rules Working Group is proposing the adoption of several new rules and amendments to several existing rules relating to preparation of the record on appeal in death penalty cases. The working group is also proposing the adoption of two new mandatory forms and the approval of four new optional forms designed to assist in the record preparation process. These proposed rules and forms are intended to partially fulfill the Judicial Council's rule-making obligations under Proposition 66 by making the record preparation process in death penalty cases more efficient.

### Background

#### Proposition 66

On November 8, 2016, the California electorate approved Proposition 66, the Death Penalty Reform and Savings Act of 2016. This act made a variety of changes to the statutes relating to review of death penalty (capital) cases in the California courts, many of which were focused on reducing the time spent on this review. Among other things, the act calls for the Judicial Council

*The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.*

to adopt, within 18 months of the act’s effective date, “initial rules and standards of administration designed to expedite the processing of capital appeals and state habeas corpus review.” (Pen. Code, § 190.6(d).)

The act did not take effect immediately upon approval by the electorate because its constitutionality was challenged in a petition filed in the California Supreme Court, *Briggs v. Brown et al.* (S238309). On October 25, 2017, the Supreme Court’s opinion in the *Briggs* case ((2017) 3 Cal.5th 808) became final and the act took effect. Shortly thereafter, the Judicial Council formed the Proposition 66 Rules Working Group to assist the council in carrying out its rule-making responsibilities under the proposition. The council charged the working group with considering what new or amended court rules, judicial administration standards, and Judicial Council forms are needed to address the act’s provisions, including, among other things, those governing the procedures and time frames pertaining to record preparation in capital appeals.

### **Existing Record Preparation Procedures**

The existing procedures for the preparation of the record on appeal in capital cases are established by a combination of state statutes—Penal Code sections 190.7–190.9, which were not modified by the act—California Rules of Court, and practice. The statutes specifically provide for the adoption of rules by the Judicial Council to address record preparation in capital cases:

- Penal Code section 190.7 provides that the Judicial Council may adopt rules “specifically pertaining to the content, preparation and certification of the record on appeal when a judgment of death has been pronounced.”
- Penal Code section 190.8, which addresses preparation and certification of the record in capital cases, provides that it “shall be implemented pursuant to rules of court adopted by the Judicial Council.”

These statutes, rules, and practices address the content of the record and establish a multistep process for preparing and certifying the record in capital cases:

- ***Contents of the record.*** Penal Code section 190.7 generally requires that all papers or other records filed or lodged with the courts and a transcript of all oral proceedings during either the pretrial or trial phase of a capital case must be included in the record on appeal. Rule 8.610 identifies the specific items and oral proceedings that must be included in the clerk’s and reporter’s transcripts in capital cases and addresses the format of the record. To ensure that transcripts of all of the oral proceedings are available, Penal Code section 190.9 requires that “in any case in which a death sentence may be imposed, all proceedings conducted in the superior court, including all conferences and proceedings, whether in open court, in conference in the courtroom, or in chambers, shall be conducted on the record with a court reporter present.” This section further requires the court to “assign a court reporter who uses computer-aided transcription equipment” to report these proceedings and requires that the

court reporter “prepare and certify a daily transcript of all proceedings commencing with the preliminary hearing.”

- ***Record of pretrial proceedings.*** Penal Code section 190.9 requires that when the prosecution notifies the trial court that the death penalty is being sought, the court must order the preparation of the record of all the pretrial proceedings. Unless an extension of time is granted, the court is required to certify this record no later than 120 days following the prosecution’s notification. Rule 8.613 implements this statutory procedure by, among other things, requiring counsel representing the parties during the pretrial proceedings to review this record to identify any errors or omissions and to request that the court make corrections or additions to the record. If any corrections or additions are requested, the court is required to hold a hearing, make the necessary changes, and certify this record of the preliminary proceedings as complete and accurate. This record is later incorporated in the full record when the record of the trial proceedings is completed.
- ***Certification of the record for completeness.*** If, following the trial, a death sentence is imposed, Penal Code section 190.8 requires that, within 30 days of the imposition of that sentence, the clerk of the superior court must provide trial counsel with copies of the clerk’s and reporter’s transcripts of the proceedings. Trial counsel are required to certify that they have “reviewed all docket sheets to ensure that the record contains transcripts for any proceedings, hearings, or discussions that are required to be reported and that have occurred in the course of the case in any court, as well as all documents required by this code and the rules adopted by the Judicial Council.” The trial court is required to hold “one or more hearings for trial counsel to address the completeness of the record and any outstanding errors that have come to their attention.” Rules 8.616 and 8.619 implement this statutory procedure by, among other things, requiring a procedure similar to that for the review of the record of the preliminary proceedings: trial counsel are required to review this record to identify any errors or omissions and to request that the court make corrections or additions to the record. Unless an extension of time is granted, the court is required to certify the record for completeness no later than 90 days after imposition of the death sentence.
- ***Certification of the record for accuracy.*** Penal Code section 190.8 provides that when appellate counsel for the defendant is retained or appointed, the trial court is required to send a copy of the record that was certified for completeness to that appellate counsel. The trial court may hold “one or more status conferences for purposes of timely certification of the record for accuracy, as set forth in the rules of court adopted by the Judicial Council.” Rule 8.622 implements this statutory procedure by, among other things, providing that within 90 days after the clerk delivers the record to appellate counsel, any party may request that the court make corrections or additions to the record and that, if such a request is made, the procedures for the court’s consideration are the same as for certifying the record for completeness. Unless an extension of time is granted, the court is required to certify the record for accuracy no later than 120 days after the record was delivered to appellate counsel.
- ***Review of the record by Supreme Court staff.*** Rule 8.622 provides that when the record is certified as accurate, the clerk must promptly send the original to the Supreme Court. Staff in

the Supreme Court clerk's office review the record to ensure that it is complete before it is accepted for filing.

## **The Proposal**

This proposal is intended to help fulfill the Judicial Council's rule-making obligations under Proposition 66 by proposing rule changes and forms designed to make the record preparation process in capital cases more efficient.

Currently, the record on appeal in capital cases is not typically filed in the Supreme Court until approximately six years after the sentence of death is imposed. Close to two thirds of this time elapses between the imposition of the death sentence and the appointment of appellate counsel for capital defendants. As noted above, by statute the certification of the record for accuracy occurs only after appellate counsel is appointed, so the record preparation process does not move forward until that appointment takes place. However, approximately one third of this time, or, on average, approximately two years, elapses between the appointment of appellate counsel and the filing of the record. This is the period when the record is being reviewed and certified for accuracy and reviewed by the Supreme Court clerk's office prior to filing. In the experience of working group members, a substantial number of errors and omissions are identified and need to be corrected during these two stages of the record preparation process. It is also the experience of working group members that it is often more difficult to identify errors or omissions and make necessary corrections and additions at these stages because many years have typically elapsed since the proceedings in the trial court took place: memories have faded and the judges, attorneys, court reporters, and court staff who participated in the proceedings may no longer be available.

The proposal is based on two main premises:

- It is more efficient for necessary items to be identified and included in the record from the outset, rather than having to later identify that these items are missing and have counsel request their inclusion in the record and the court consider whether to grant this request; and
- Counsel participating in the capital pretrial and trial proceedings, the trial court judge, court reporters, and court staff are in the best position during and immediately after the proceedings to identify and include necessary items in the record, and to identify and correct errors in the record.

Within the proposed rules, there are drafters' notes in blue text. These notes identify the source for some of the language in the proposed rules and provide other information relevant to the proposed changes. These notes are published with this proposal to help readers better understand the proposal and will not be included any rules ultimately adopted by the Judicial Council.

## **Facilitating preparation of a complete and accurate record during the pretrial and trial proceedings**

The working group is proposing the adoption of two new rules of court and several forms designed to facilitate the preparation of a complete and accurate record while the pretrial and trial proceedings are taking place. These proposed rules and forms are modeled on Superior Court of Los Angeles County local rule 8.40 and Appendix 8.A, which address record preparation in capital cases.

***Mandatory checklists.*** To provide counsel with a reminder of their many record-related obligations in a capital case, proposed new rules 4.119 and 4.230 of the California Rules of Court would require defense counsel and prosecutors, at both the pretrial and trial stages in a case in which the death penalty might be imposed, to sign and submit to the court a checklist of these obligations. The court can then use this list to check off items that are required to be submitted to the court. Proposed new mandatory forms *Capital Case Attorney Pretrial Checklist* (form CR-600) and *Capital Case Attorney Trial Checklist* (form CR-605) would implement this requirement.

Obligations noted on the proposed forms include reviewing and correcting daily transcripts, ensuring that all exhibits offered are properly marked, complying with rule 2.1040 relating to electronic audio or audio and visual recordings presented to the jury, and preparing and submitting lists of appearances, exhibits, motions, and jury instructions (discussed below). The working group would particularly appreciate comments about whether counsel should be required to sign and submit these checklists. If so, should only primary counsel or all counsel sign and submit these checklists, or should these checklists instead be informational forms? The working group would also appreciate comments about whether any additional obligations should be identified on the proposed forms or whether any items on the proposed forms should be removed.

The proposed new rules would be placed in Title 4 of the California Rules of Court, the Criminal Rules, because they address trial counsel's responsibilities during the trial court proceedings. Separate forms are proposed for pretrial and trial proceedings because there are differences in the underlying procedures for preparation of the record in pretrial and trial proceedings that are reflected on the forms, and because the pretrial information would need to be submitted at a much earlier time in the record preparation process.

***Lists of appearances, exhibits, motions, and jury instructions.*** To help the court and counsel identify documents and oral proceedings that need to be included in the record on appeal in capital cases, proposed new rules 4.119 and 4.230 would require counsel—during both the pretrial and trial stages in a case in which the death penalty might be imposed—to prepare lists of all the court appearances and motions that they make and all the exhibits they offer and, at the trial stage, jury instructions that they offer. By preparing these lists during the course of the proceedings, most of the documents and oral proceedings that are required to be included in the record on appeal will have been identified then and can be included when the record is initially

prepared. Proposed new optional forms *Capital Case Attorney List of Appearances* (form CR-601), *Capital Case Attorney List of Exhibits* (form CR-602), *Capital Case Attorney List of Motions* (form CR-603), and *Capital Case Attorney List of Jury Instructions* (form CR-604) could be used by counsel to comply with these requirements. The working group would appreciate comments on whether these forms should instead be mandatory forms.

These lists would also be available during counsels' and the court's initial review of the record shortly after the proceedings take place, allowing early corrections or additions to the record. The rules would require counsel to submit the lists relating to pretrial proceedings to the court within 21 days after notification by the clerk and the lists relating to trial proceedings within 21 days after imposition of the death sentence. The clerk would then send these lists to counsel when the clerk sends the reporter's transcripts.

The working group would particularly appreciate comments about whether counsel should be required to submit these lists of appearances, exhibits, motions, and jury instructions, about the proposed time frames for submission of these lists, and about proposed requirements for the clerk's notification and distribution responsibilities.

***Review of daily transcripts.*** Penal Code section 190.8(c) provides:

During the course of a trial in which the death penalty is being sought, trial counsel shall alert the court's attention to any errors in the transcripts incidentally discovered by counsel while reviewing them in the ordinary course of trial preparation. The court shall periodically request that trial counsel provide a list of errors in the trial transcript during the course of trial and may hold hearings in connection therewith.

Corrections to the record shall not be required to include immaterial typographical errors that cannot conceivably cause confusion.

Currently, rule 8.619(a), regarding certifying the trial record for completeness, includes the following language that is designed to implement this statutory requirement:

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

Because this provision addresses a procedure that takes place during the trial of a capital case, the working group is proposing that this provision be moved from rule 8.619 and incorporated into proposed new rule 4.230. The working group is also proposing adding a new sentence calling attention to Penal Code section 190.8(c)'s provision regarding immaterial typographical errors. Currently, this provision does not specify a time frame for when counsel must call the court's attention to errors or omissions in a daily transcript. The working group would

particularly appreciate comments about whether the rule should set a specific time frame for counsel to do this.

### **Contents of the record**

The working group is proposing additions and clarifications to the specific list of items that rule 8.610 requires be included in the clerk's transcript in capital cases. Proposed additions to this list include:

- Court-ordered diagnostic or psychological reports required under Penal Code section 1369;
- Visual aids used in presentations to the jury;
- The table correlating juror's names and identifying numbers; and
- Documents filed or lodged under Penal Code sections 987.9 or 987.2.

The working group would particularly appreciate comments about whether any of the proposed additions to the clerk's transcript are unnecessary and whether any other items should be included in the clerk's transcript.

The working group is also proposing that rule 8.622 be amended to provide that, at the time the record is reviewed for accuracy, counsel could request that copies of particular documentary exhibits be included in the clerk's transcript. Currently, rule 8.610(a)(3) provides that all exhibits are considered part of the record on appeal, but that they may only be transmitted to the court at the time oral argument is set, which is after all briefing is completed. The proposed amendment would allow copies of key documentary exhibits to be included in the clerk's transcript, making it easier for counsel to cite to these exhibits in their briefs. The working group would particularly appreciate comments about whether counsel should be required to provide a justification for requesting that documentary exhibits be included in the clerk's transcript at the certification for accuracy stage and, if so, whether the rule should include more specifics about what needs to be shown to justify such a request.

### **Record review and certification process**

***Meet and confer.*** The working group is proposing that the rules regarding the preparation and certification of the record of the pretrial proceedings, certification of the record for completeness, and certification for accuracy all be amended to include provisions requiring counsel to meet and confer regarding errors or omissions from the record. Each of these proposed provisions is slightly different in terms of timing, but all are designed to provide counsel with an opportunity to reach agreement regarding corrections or additions to the record before the court holds its hearing to certify the record. In rule 8.613, regarding the record of the preliminary proceedings, and rule 8.619, regarding certification of the record for completeness, the meet-and-confer session would be required to take place before a request for corrections or additions was filed. In rule 8.622, regarding certification of the record for accuracy, unless otherwise ordered by the

court, the meet-and-confer session would be required after a request for corrections or additions was filed.

The working group would particularly appreciate comments about whether a meet-and-confer requirement will be helpful at each of these stages in the record preparation process and about the timing of the meet-and-confer process.

***Requests for corrections or additions.*** Currently, rules 8.613, 8.619, and 8.622 provide for each party to file a separate request for corrections or additions to the record. The working group is proposing adding a new sentence calling attention to Penal Code section 190.8(c)'s provision regarding immaterial typographical errors. This proposal would also add a provision to these rules encouraging parties to file joint requests. The working group would particularly appreciate comments about whether parties should be required to file a joint request.

***Deadlines for review and certification.*** Currently, consistent with Penal Code section 190.8, rules 8.619 and 8.622 include provisions allowing for extension of the deadlines relating to review and certification of the record for completeness and accuracy. Both of these provisions permit extensions of time when the combined clerk's and reporter's transcripts exceed 10,000 pages and provide for a specified number of additional days for a specified number of additional pages of total record. The working group is proposing that these extensions based on the record size instead be built into the deadlines without the need for making a request. This would save time and resources for both counsel, who would otherwise need to prepare a request for an extension of time, and for the courts, that would otherwise need to consider these requests.

The working group is also proposing that the deadline for the trial judge to certify the record be measured from counsel's submission of a request for corrections or additions, rather than being measured from the imposition of the death sentence or the transmission of the record to appellate counsel. Under the current rule structure, the courts' certification deadline does not take into account any extension of counsel's time frames for reviewing or requesting corrections or additions to the record. In these circumstances, unless the judge receives an extension of time, there will not be sufficient time after submission of a request for corrections or additions for the judge to take the steps required for certification of the record under the rules.

***Review of sealed records.*** The working group is proposing that, at the time appellate counsel review the record for accuracy, they also consider all the sealed records that they are entitled to access to determine whether there are records that no longer need to be sealed. Ordinarily, under rule 8.46, requests to unseal such records would need to be filed in the reviewing court. This proposal would allow such requests in capital cases to be filed in and considered by the trial court. Identifying records that can be unsealed would simplify preparation of the final record on appeal and also simplify the briefing involving such records.



## Other proposed changes

***New rule regarding juror-identifying information.*** Rule 8.610(c) currently contemplates that courts will comply with the requirements of rule 8.332, which addresses the removal of juror-identifying information from the record on appeal in noncapital felony cases. However, rule 8.332 does not clearly apply in capital cases. To prevent any confusion, the working group is proposing the adoption of new rule 8.611, which would specifically address the removal of juror-identifying information in the record on appeal in capital cases.

***Repeal of rule 8.625.*** Rule 8.625 addresses the certification of the record in capital cases in which the judgment of death was imposed after a trial that began before January 1, 1997. The record on appeal in all cases that meet this criteria has already been prepared, so this rule is no longer needed. The working group is therefore proposing that this rule be repealed.

## Alternatives Considered

The working group considered not proposing any changes to the rules relating to preparation of the record on appeal in capital cases, but concluded that it would help fulfill the Judicial Council's rule-making obligations under Proposition 66 to propose rule changes that might improve the efficiency of this procedure.

The working group also considered whether guidelines, best practices, or additional education or training for judicial officers, court staff, or counsel might be a substitute for some or all of the proposed rule changes or forms. The working group concluded, however, that these other approaches would be helpful supplements to the proposed rule changes and forms, but would not be a substitute for them.

The working group considered a number of different options for specific rule and form language when it was developing this proposal, including the following:

- *Permitting or requiring all documentary exhibits to be included in the clerk's transcript at the time the record is certified for accuracy.* Working group members noted that counsel appointed to represent a petitioner in a death penalty–related habeas corpus proceeding will need to review all of the exhibits from the trial court within a short time frame after their appointment, and that inclusion of the exhibits in the record on appeal would reduce the time needed to obtain copies of these exhibits. The working group ultimately concluded, however, that requiring a justification for inclusion of exhibits in the record on appeal was preferable because inclusion of exhibits that are not relevant to the issues on appeal would make these records even larger, increasing record review time and storage costs.
- *Making the use of a checklist optional or having an informational form, rather than making the submission of the form mandatory.* The working group concluded that a mandatory checklist would be most effective in ensuring that trial counsel are fully informed of and compliant with their record preparation obligations.

- *Making the preparation and submission of lists of appearances, exhibits, motions, and jury instructions optional rather than mandatory.* The working group concluded that making these lists mandatory would be most effective in facilitating the preparation of a complete and accurate record.
- *Not including a requirement for a list of jury instructions.* The working group considered relying on the jury instruction cover sheet that rule 2.1055 requires, rather than requiring counsel to submit prepare a list of written jury instructions submitted to the court. The working group concluded that preparation of this list would be beneficial as a way to cross-check that all cover sheets have been submitted and are complete.
- *Not including meet-and-confer requirements at some or all of the record certification stages.* The working group concluded that such meetings would likely facilitate reaching agreement on needed corrections and additions to the record and so decided to include these requirements at all stages of the record certification process.

### **Fiscal and Operational Impacts**

The changes made by Proposition 66 to the procedures for review of death penalty cases, particularly making the superior courts generally responsible for appointing counsel and hearing habeas corpus proceedings in these cases, will likely have substantial costs, operational impacts, and implementation requirements for courts and justice system partners. These proposed rule changes and forms are likely to require some initial training for judicial officers and court staff, and they would impose new requirements on trial counsel from counties other than Los Angeles in terms of preparing and submitting the required checklists and lists of appearances, exhibits, motions, and jury instructions. However, it is anticipated that these rule changes and forms will reduce court and counsel costs in the long term by making the record preparation process more efficient.

### **Request for Specific Comments**

In addition to comments on the proposal as a whole, the working group is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- Should counsel be required to sign and submit proposed *Capital Case Attorney Pretrial Checklist* (form CR-600) and *Capital Case Attorney Trial Checklist* (form CR-605), and if so, should only primary counsel or all counsel submit these checklists, or should these instead be informational forms?
- Should any additional obligations be identified in proposed *Capital Case Attorney Pretrial Checklist* (form CR-600) and *Capital Case Attorney Trial Checklist* (form CR-605), or should any items on the proposed forms be removed?
- Should counsel be required to submit lists of appearances, exhibits, motions, and jury instructions to the court and serve them on opposing counsel?
- Should use of proposed *Capital Case Attorney List of Appearances* (form CR-601), *Capital Case Attorney List of Exhibits* (form CR-602), *Capital Case Attorney List of*

*Motions* (form CR-603), and *Capital Case Attorney List of Jury Instructions* (form CR-604) be mandatory or should these be optional forms?

- Are the proposed time frames for submission of these lists to the court appropriate?
- Are the proposed requirements for the clerk to notify counsel that they must submit these lists and to distribute the lists to counsel with the reporter's transcript appropriate?
- Should the rules specify a timeframe for when counsel must call the court's attention to errors or omissions in a daily transcript?
- Are any of the proposed additions to the clerk's transcript unnecessary?
- Should any other items be included in the clerk's transcript?
- Will it be helpful for counsel to meet and confer during the process of certifying the record of the pretrial proceedings, certifying the trial record for completeness, and certifying the trial record for accuracy?
- When should the meet-and-confer process take place at each of these stages?
- Should counsel be required, rather than encouraged, to submit a joint request for corrections or additions to the record rather than separate requests?
- Should counsel be required to provide a justification for requesting that documentary exhibits be included in the clerk's transcript at the certification for accuracy stage and, if so, should the rule include more specifics about what needs to be shown to justify such a request?

The working group also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so, please quantify.
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

### **Attachments and Links**

- Cal. Rules of Court, rules 4.119, 4.230, 8.608, 8.610, 8.611, 8.613, 8.616, 8.619, 8.622, and 8.625, at pages 12–42
- Forms CR-600, CR-601, CR-602, CR-603, CR-604 and CR-605, at pages 43–56
- Link A: [Ballot description and arguments for and against Proposition 66 and text of proposition from November 2016 Official Voter Information Guide, beginning on pages 104 and 212, respectively, of linked document](#)

Rules 4.119, 4.230, 8.608, and 8.611 of the California Rules of Court would be adopted; rules 8.610, 8.613, 8.616, 8.619, and 8.622 would be amended; and rule 8.625 would be repealed, effective January 1, 2019, to read:

1 **Title 4. Criminal Rules**

2  
3 **Division 2. Pretrial**

4  
5 **Chapter 1. Pretrial Proceedings**

6  
7 DRAFTERS' NOTES ON PROPOSED RULES 4.119 AND 4.230: The Proposition 66  
8 Rules Working Group (working group) is proposing new rules 4.119 and 4.230 to  
9 implement requirements similar to those in the Los Angeles superior court local rule 8.40  
10 and the related appendix. To help ensure that the record on appeal in a capital case is  
11 complete, the Los Angeles superior court local rule requires counsel in capital cases to  
12 prepare lists of appearances, exhibits, motions, and jury instructions. The appendix to  
13 the Los Angeles local rule also includes a checklist, divided by phase of the capital  
14 proceedings, which restates the requirements that counsel prepare lists of appearances,  
15 exhibits, motions, and jury instructions, as well as other requirements relating to capital  
16 case record preparation from applicable statutes and California Rules of Court. Counsel  
17 are required to sign the checklist and submit it to the court. The court then checks off  
18 items as they are completed. In addition, the appendix includes model logs/lists for use  
19 by counsel in complying with the local rule requirements.

20  
21 This proposal includes requirement for a checklist and lists of appearances, exhibits,  
22 motions, and jury instructions similar to those used in Los Angeles. Proposed new rules  
23 4.119 and 4.230 have been placed in Title 4 of the California Rules of Court, the  
24 Criminal Rules, because they address trial counsel's responsibilities during the trial court  
25 proceedings. The proposed rules, like Los Angeles superior court local rule 8.40,  
26 separately address the preparation of these lists during the pretrial and trial proceedings.  
27 Judicial Council forms for the checklist that could be used by counsel for lists of  
28 appearances, exhibits, motions, and jury instructions are also included in the proposal.

29  
30 Proposed rule 4.119 addresses the submission of the checklist and preparation of lists of  
31 appearances, exhibits, and motions during the pretrial proceedings in capital cases. The  
32 phrase "cases in which the death penalty may be imposed" in subdivision (a) of this rule  
33 is modeled on the language of Penal Code section 190.9 and rule 8.613(b), regarding  
34 preparing and certifying the record of preliminary proceedings. Paragraph (c)(3) in rule  
35 4.119 sets the deadline for submitting the lists to the court as no later than 21 days after  
36 the clerk sends notice to counsel to submit the lists. This formulation is modeled on  
37 California Rules of Court, rule 8.613(d) which sets the deadline for the court reporter to  
38 prepare the transcript of the preliminary proceedings in capital cases. Using this  
39 deadline is intended to result in these lists being available at the same time as the  
40 reporter's transcript so that counsel can review them both as part of reviewing the record  
41 of the preliminary proceedings for completeness and accuracy.

1 **Rule 4.119. Additional requirements in pretrial proceedings in capital cases**

2  
3 **(a) Application**

4  
5 This rule applies only in pretrial proceedings in cases in which the death penalty  
6 may be imposed.

7  
8 **(b) Checklist**

9  
10 Within 10 days of counsel's first appearance in court, primary counsel for each  
11 defendant and the prosecution must each sign and submit *Capital Case Attorney*  
12 *Pretrial Checklist* (form CR-600).

13  
14 **(c) Lists of appearances, exhibits, and motions**

15  
16 (1) Primary counsel for each defendant and the prosecution must each prepare  
17 the lists identified in (A)–(C):

18  
19 (A) A list of that party's appearances during the pretrial proceedings. The  
20 list must include the date of each appearance, the department in which  
21 it was made, the name of counsel making the appearance, and a brief  
22 description of the nature of the appearance. A separate list of Penal  
23 Code section 987.9 appearances must be maintained under seal for each  
24 defendant.

25  
26 (B) A list of all exhibits offered by that party during the pretrial  
27 proceedings. The list must indicate whether the exhibit was admitted in  
28 evidence, refused, lodged, or withdrawn.

29  
30 (C) A list of all motions made by that party during the pretrial proceedings.  
31 The list must indicate all motions that are awaiting resolution.

32  
33 (2) In the event of any substitution of attorney during the pretrial proceedings,  
34 the relieved attorney must provide the lists of all appearances, exhibits, and  
35 motions to substituting counsel within five days of being relieved.

36  
37 (3) No later than 21 days after the clerk notifies trial counsel that it must submit  
38 the lists to the court, counsel must submit the lists to the court and serve a  
39 copy of all the lists except the list of Penal Code section 987.9 appearances  
40 on all parties. Unless otherwise provided by local rule, the lists must be  
41 submitted to the court in electronic form.

1 **Advisory Committee Comment**

2  
3 **Subdivision (c)(1).** *Capital Case Attorney List of Appearances* (form CR-601), *Capital Case*  
4 *Attorney List of Exhibits* (form CR-602), and *Capital Case Attorney List of Motions* (form CR-  
5 603), may be used to comply with the requirements in this subdivision.

6  
7 **Subdivision (c)(3).** Rule 8.613(d) requires the clerk to notify counsel to submit the lists of  
8 appearances, exhibits, and motions.

9  
10  
11 DRAFTERS' NOTES ON PROPOSED NEW RULE 4.230: Proposed new rule 4.230  
12 addresses the submission of the checklist and preparation of lists of appearances,  
13 exhibits, motions, and jury instructions and other counsel responsibilities during the trial  
14 in a capital case.

15  
16 The first two sentences of subdivision (c) below are taken from current rule 8.619,  
17 regarding certifying the trial record for completeness. The working group is proposing  
18 that this content be moved from rule 8.619 and incorporated into new rule 4.230  
19 because, like the preparation of lists of appearances, etc., it addresses a procedure that  
20 is intended to take place during the trial of a capital case.

21  
22 The last sentence in subdivision (c) is new and is based on the following sentence in  
23 Penal Code section 190.8(c):

24  
25 Corrections to the record shall not be required to include immaterial typographical  
26 errors that cannot conceivably cause confusion.

27  
28 Paragraph (d)(2) below provides that the deadline for submission of the lists to the court  
29 is 21 days after imposition of the death judgment. This date is suggested so that the lists  
30 can be delivered to counsel by the clerk along with the copies of the clerk's and  
31 reporter's transcripts already delivered to counsel by the clerk. This will allow counsel to  
32 use the lists when they are reviewing the record for completeness.

33  
34 Subdivision (e) would require counsel to provide the court with copies of visual aids used  
35 in presentations to the jury so that these can be included in the record on appeal.

36  
37 **Division 3. Trials**

38  
39 **Rule 4.230. Additional requirements in capital cases**

40  
41 **(a) Application**

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

1  
2 **(b) Checklist**  
3

4 Within 10 days of counsel's first appearance in court, primary counsel for each  
5 defendant and the prosecution must each sign and submit to the court *Capital Case*  
6 *Attorney Trial Checklist* (form CR-605).  
7

8 **(c) Review of daily transcripts by counsel during trial**  
9

10 During trial, counsel must call the court's attention to any errors or omissions they  
11 may find in the daily transcripts. The court must periodically ask counsel for lists of  
12 any such errors or omissions and may hold hearings to verify them. Immaterial  
13 typographical errors that cannot conceivably cause confusion are not required to be  
14 brought to the court's attention or corrected.  
15

16 **(d) Lists of appearances, exhibits, motions, and jury instructions**  
17

18 (1) Primary counsel for each defendant and the prosecution must each prepare  
19 the lists identified in (A)–(D).  
20

21 (A) A list of that party's appearances. The list must include the date of each  
22 appearance, the department in which it was made, the name of counsel  
23 making the appearance, and a brief description of the nature of the  
24 appearance. A separate list of Penal Code section 987.9 appearances  
25 must be maintained under seal for each defendant. In the event of any  
26 substitution of attorney at any stage of the case, the relieved attorney  
27 must provide a log of all appearances to substituting counsel within five  
28 days of being relieved.  
29

30 (B) A list of all exhibits offered by that party. The list must indicate  
31 whether the exhibit was admitted in evidence, refused, lodged, or  
32 withdrawn.  
33

34 (C) A list of all motions made by that party.  
35

36 (D) A list of all jury instructions submitted in writing by that party. The list  
37 must indicate whether the instruction was given, given as modified,  
38 refused, or withdrawn.  
39

40 (2) No later than 21 days after the imposition of a sentence of death, counsel  
41 must submit the lists to the court and serve a copy of all the lists except the  
42 list of Penal Code section 987.9 appearances on all parties. Unless otherwise

1 provided by local rule, the lists must be submitted to the court in electronic  
2 form.

3  
4 **(e) Copies of visual aids**

5  
6 Primary counsel must provide the clerk with copies of any visual aids used in  
7 presentations to the jury, including PowerPoint or other similar digital or electronic  
8 presentations. If a visual aid is oversized, a photograph of that visual aid must be  
9 provided in place of the original. For PowerPoint or other similar presentations,  
10 counsel must supply both a copy of the presentation in its native format and  
11 printouts showing the full text of each slide.

12  
13 **Advisory Committee Comment**

14  
15 **Subdivision (d).** *Capital Case Attorney List of Appearances (form CR-601), Capital Case*  
16 *Attorney List of Exhibits (form CR-602), Capital Case Attorney List of Motions (form CR-603),*  
17 *and Capital Case Attorney List of Jury Instructions (form CR-604) may be used to comply with*  
18 *the requirements in this subdivision.*

19  
20  
21 DRAFTERS' NOTE ON DIVISION 2: This proposal includes the creation of a new  
22 Division 2 within the Appellate Rules, which would focus on capital appeals and habeas  
23 corpus proceedings related to death sentences. The division would begin with the  
24 existing rules on capital appeals. The Working Group's companion proposals relating to  
25 qualifications of counsel in capital appeals and habeas corpus proceedings and  
26 appointment of counsel in capital habeas corpus proceedings include provisions in other  
27 chapters and articles within this proposed new Division. This proposal addresses only  
28 the rules in Chapter 1, Article 2, relating to the record on appeal.

29  
30 **Title 8. Appellate Rules**

31  
32 **Division 2. Rules Relating to Death Penalty Appeals and Habeas Corpus**  
33 **Proceedings**

34  
35 **Chapter ~~10~~1. Automatic Appeals From Judgments of Death**

36  
37 **Article 1. General Provisions \* \* \***

38  
39 **Article 2. Record on Appeal**

40  
41 **Rule 8.608. General provisions**

42 **Rule 8.610. Contents and form of the record**



- 1 **Rule 8.611. Juror-identifying information**
- 2 ***Rule 8.613. Preparing and certifying the record of preliminary proceedings***
- 3 ***Rule 8.616. Preparing the trial record***
- 4 ***Rule 8.619. Certifying the trial record for completeness***
- 5 ***Rule 8.622. Certifying the trial record for accuracy***
- 6 **~~*Rule 8.625. Certifying the record in pre-1997 trials*~~**

7  
8  
9 **DRAFTERS' NOTES ON PROPOSED RULE 8.608**

10 The provisions in this rule not new, they would be moved here from current rule 8.600(c),  
11 (d) and (e).

12  
13 **Rule 8.608. General provisions**

14  
15 **(a) Supervising preparation of record**

16  
17 The clerk/executive officer of the Supreme Court, under the supervision of the  
18 Chief Justice, must take all appropriate steps to ensure that superior court clerks  
19 and reporters promptly perform their duties under the rules in this article. This  
20 provision does not affect the superior courts' responsibility for the prompt  
21 preparation of appellate records in capital cases.

22  
23 **(b) Extensions of time**

24  
25 When a rule in this article authorizes a trial court to grant an extension of a  
26 specified time period, the court must consider the relevant policies and factors  
27 stated in rule 8.63.

28  
29 **(c) Delivery date**

30  
31 The delivery date of a transcript sent by mail is the mailing date plus five days.

32  
33  
34 **DRAFTERS' NOTES ON PROPOSED AMENDMENTS TO RULE 8.610:**

35 In paragraph (a)(1), the working group is proposing additions to the specific list of items  
36 that must be included in the clerk's transcript in capital cases. This is intended to reduce  
37 attorney and court resources spent on augmentation motions by including in the record  
38 items that are regularly needed in capital appeals. The language of the proposed  
39 amendments and new subparagraphs below is based on the following:

- 40 • (D) is modeled on the language of rule 8.320 (b)(4), relating to the clerk's transcript  
41 in noncapital felony cases;

- 1 • The proposed amendments to (E) would expand it to require inclusion in the  
2 transcript of written communication between the court and parties, and also clarify  
3 that written communication includes e-mails and texts;
- 4 • (J) is intended to address inconsistencies that working group members have  
5 experienced with the inclusion of transcripts of witness statements in the clerk's  
6 transcript.
- 7 • (P) is modeled on the language of rule 8.320(b)(13)(E), relating to the clerk's  
8 transcript in noncapital felony cases;
- 9 • (Q) is intended to address inconsistencies that working group members have  
10 experienced with the inclusion of visual aids in the clerk's transcript;
- 11 • (R) is intended to make more visible language regarding juror questionnaires, which  
12 is now in the "catch-all" provision of current subparagraph (P) by moving it to a  
13 separate subparagraph;
- 14 • (S) is intended to address inconsistencies that working group members have  
15 experienced with the inclusion of the table correlating jurors' names and identifying  
16 numbers in the clerk's transcript;
- 17 • (T) is modeled on the language of rule 8.1222 (b), relating to the clerk's transcript in  
18 civil cases; and
- 19 • (U) is intended to address inconsistencies that working group members have  
20 experienced with the inclusion of materials relating to defense requests for  
21 investigation and expert costs in the clerk's transcript. The advisory committee  
22 comment has also been amended to highlight that these documents are confidential  
23 and that rules 8.45–8.47 govern the handling of such documents.

24  
25 In paragraph (a)(3), the proposed amendment reflects proposed amendments to rule  
26 8.622, which would permit documentary exhibits to be included in the clerk's transcript at  
27 the time that the record is certified for accuracy. In subdivision (c), the amendment  
28 reflects the proposed adoption of rule 8.611, below.

## 29 30 **Rule 8.610. Contents and form of the record**

### 31 32 **(a) Contents of the record**

- 33  
34 (1) The record must include a clerk's transcript containing:
  - 35  
36 (A) The accusatory pleading and any amendment.
  - 37  
38 (B) Any demurrer or other plea.
  - 39  
40 (C) All court minutes.

- 1 (D) All instructions submitted in writing, ~~each one~~ and the cover page  
2 required by rule 2.1055(b)(2) indicating the party requesting ~~it~~ each  
3 instruction, and any written jury instructions given by the court.  
4
- 5 (E) Any written communication, including printouts of any e-mail or text  
6 messages and their attachments, between the court and the parties, the  
7 jury, or any individual juror or prospective juror.  
8
- 9 (F) Any verdict.  
10
- 11 (G) Any written opinion of the court.  
12
- 13 (H) The judgment or order appealed from and any abstract of judgment or  
14 commitment.  
15
- 16 (I) Any motion for new trial, with supporting and opposing memoranda  
17 and attachments.  
18
- 19 (J) Any transcript of a sound or sound-and-video recording furnished to  
20 the jury or tendered to the court under rule 2.1040, including witness  
21 statements.  
22
- 23 (K) Any application for additional record and any order on the application.  
24
- 25 (L) Any written defense motion or any written motion by the People, with  
26 supporting and opposing memoranda and attachments.  
27
- 28 (M) If related to a motion under (L), any search warrant and return and the  
29 reporter's transcript of any preliminary examination or grand jury  
30 hearing.  
31
- 32 (N) Any document admitted in evidence to prove a prior juvenile  
33 adjudication, criminal conviction, or prison term.  
34
- 35 (O) The probation officer's report. ~~and~~  
36
- 37 (P) Any court-ordered diagnostic or psychological report required under  
38 Penal Code section 1369.  
39
- 40 (Q) Any visual aids used in presentations to the jury, including PowerPoint  
41 and other similar digital or electronic presentations. If a visual aid is  
42 oversized, a photograph of that visual aid must be included in place of

1                    the original. For PowerPoint or other similar presentations, printouts  
2                    showing the full text of each slide must be included.

3  
4                    (R) Each juror questionnaire, whether or not the juror was selected.

5  
6                    (S) The table correlating the jurors' names with their identifying numbers  
7                    required by rule 8.611.

8  
9                    (T) The register of actions.

10  
11                   (U) All documents filed under Penal Code section 987.9 or 987.2.

12  
13                   ~~(P)(V)~~      Any other document filed or lodged in the case, ~~including each~~  
14                   ~~juror questionnaire, whether or not the juror was selected.~~

15  
16                   (2) The record must include a reporter's transcript containing:

17  
18                   (A) The oral proceedings on the entry of any plea other than a not guilty  
19                   plea;

20  
21                   (B) The oral proceedings on any motion in limine;

22  
23                   (C) The voir dire examination of jurors;

24  
25                   (D) Any opening statement;

26  
27                   (E) The oral proceedings at trial;

28  
29                   (F) All instructions given orally;

30  
31                   (G) Any oral communication between the court and the jury or any  
32                   individual juror;

33  
34                   (H) Any oral opinion of the court;

35  
36                   (I) The oral proceedings on any motion for new trial;

37  
38                   (J) The oral proceedings at sentencing, granting or denying of probation,  
39                   or other dispositional hearing;

40  
41                   (K) The oral proceedings on any motion under Penal Code section 1538.5  
42                   denied in whole or in part;

43

- 1 (L) The closing arguments;  
2  
3 (M) Any comment on the evidence by the court to the jury;  
4  
5 (N) The oral proceedings on motions in addition to those listed above; and  
6  
7 (O) Any other oral proceedings in the case, including any proceedings that  
8 did not result in a verdict or sentence of death because the court ordered  
9 a mistrial or a new trial.

10  
11 (3) All exhibits admitted in evidence, refused, or lodged are deemed part of the  
12 record, but, except as provided in rule 8.622, may be transmitted to the  
13 reviewing court only as provided in rule 8.634.

14  
15 (4) The superior court or the Supreme Court may order that the record include  
16 additional material.

17  
18 **(b) Sealed and confidential records**

19  
20 Rules 8.45–8.47 govern sealed and confidential records in appeals under this  
21 chapter.

22  
23 **(c) Juror-identifying information**

24  
25 Any document in the record containing juror-identifying information must be  
26 edited in compliance with rule ~~8.332~~ 8.611. Unedited copies of all such documents  
27 and a copy of the table required by the rule, under seal and bound together if filed  
28 in paper form, must be included in the record sent to the Supreme Court.

29  
30 **(d) Form of record**

31  
32 The clerk’s transcript and the reporter’s transcript must comply with rules 8.45–  
33 8.47, relating to sealed and confidential records, and rule 8.144.

34  
35 **Advisory Committee Comment**

36  
37 **Subdivision (a).** Subdivision (a) ~~restates~~ implements Penal Code section 190.7(a).

38  
39 **Subdivision (b).** The clerk’s and reporter’s transcripts may contain records that are sealed or  
40 confidential. Rules 8.45–8.47 address the handling of such records, including requirements for the  
41 format, labeling, and transmission of and access to such records. Examples of confidential records  
42 include Penal Code section 1203.03 diagnostic reports, records closed to inspection by court  
43 order under *People v. Marsden* (1970) 2 Cal.3d 118 or *Pitchess v. Superior Court* (1974) 11

1 Cal.3d 531, in-camera proceedings on a confidential informant, and defense investigation and  
2 expert funding requests (Pen. Code, §§ 987.2 and 987.9; Puett v. Superior Court (1979) 96  
3 Cal.App.3d 936, 940, fn. 2; Keenan v. Superior Court (1982) 31 Cal.3d 424, 430).

4  
5  
6 **DRAFTERS' NOTE ON PROPOSED NEW RULE 8.611:** This proposed new rule is  
7 taken from rule 8.332, which is part of the rules regarding the record on appeal in  
8 noncapital felony cases. That rule does not clearly apply in capital cases, although rule  
9 8.610(c) currently contemplates that courts will comply with its requirements in capital  
10 cases. Adding this specific rule for capital cases will make the application of these  
11 requirements clearer.

12  
13 **Rule 8.611. Juror-identifying information**

14  
15 **(a) Application**

16  
17 A clerk's transcript, a reporter's transcript, or any other document in the record that  
18 contains juror-identifying information must comply with this rule.

19  
20 **(b) Juror names, addresses, and telephone numbers**

21  
22 (1) The name of each trial juror or alternate sworn to hear the case must be  
23 replaced with an identifying number wherever it appears in any document.  
24 The superior court clerk must prepare and keep under seal in the case file a  
25 table correlating the jurors' names with their identifying numbers. The clerk  
26 and the reporter must use the table in preparing all transcripts or other  
27 documents.

28  
29 (2) The addresses and telephone numbers of trial jurors and alternates sworn to  
30 hear the case must be deleted from all documents.

31  
32 **(c) Potential jurors**

33  
34 Information identifying potential jurors called but not sworn as trial jurors or  
35 alternates must not be sealed unless otherwise ordered under Code of Civil  
36 Procedure section 237(a)(1).

37  
38 **Advisory Committee Comment**

39  
40 Rule 8.611 implements Code of Civil Procedure section 237.

1 DRAFTERS' NOTES ON PROPOSED AMENDMENTS TO RULE 8.613:

2 Proposed new paragraph (d)(2) below is intended to provide the trigger for counsel's  
3 submission of the lists required by proposed new rule 4.119 above. See drafters' notes  
4 accompanying proposed rule 4.119.

5  
6 In paragraph (e)(1) below, the proposed additions of the references to transcripts in  
7 electronic form are intended to make the language used here consistent with the  
8 language used in the other rules on record preparation in capital cases.

9  
10 The proposed changes to paragraph (f)(1) below would require the clerk to send copies  
11 of the lists prepared by counsel under proposed rule 4.119 to counsel when the clerk  
12 sends the reporter's transcript to counsel. Please see the drafters' notes accompanying  
13 proposed rule 4.119.

14  
15 The proposed changes to paragraph (f)(2), addition of (f)(3), and changes to (g) below  
16 are all intended to establish a new meet-and-confer process and also to utilize the lists  
17 of appearances, exhibits, and motions required under proposed new rule 4.119 within  
18 the process for certifying the record of the pretrial proceedings. Some of the language is  
19 modeled on rule 3.724, which establishes a meet-and-confer requirement as part of the  
20 rules on management of civil cases. The last sentence in subdivision (g)(1)(B)(i) is new  
21 and is based on the following sentence in Penal Code section 190.8(c):

22  
23       Corrections to the record shall not be required to include immaterial typographical  
24 errors that cannot conceivably cause confusion.

25  
26 The proposed changes to subdivision (j) below reflect the fact that, under paragraph (i),  
27 all of the copies of the reporter's transcript are in electronic form, so the stricken  
28 language in (1) does not seem necessary.

29  
30 The proposed changes to subdivision (l) below reflect the fact that, under subdivision (d),  
31 it is the clerk that notifies the court reporter to begin preparation of the record.

32  
33 The proposed changes to the advisory committee comment below are intended to reflect  
34 the proposed repeal of rule 8.625 and the fact that there are no longer any capital cases  
35 in which the trial began before January 1, 1997, in which the record has not been  
36 certified for accuracy.

37  
38 **Rule 8.613. Preparing and certifying the record of preliminary proceedings**

39  
40 **(a) Definitions**

41  
42       For purposes of this rule:  
43

- 1 (1) The “preliminary proceedings” are all proceedings held before and including  
2 the filing of the information or indictment, whether in open court or  
3 otherwise, and include the preliminary examination or grand jury proceeding;  
4  
5 (2) The “record of the preliminary proceedings” is the court file and the  
6 reporter’s transcript of the preliminary proceedings;  
7  
8 (3) The “responsible judge” is the judge assigned to try the case or, if none is  
9 assigned, the presiding superior court judge or designee of the presiding  
10 judge; and  
11  
12 (4) The “designated judge” is the judge designated by the presiding judge to  
13 supervise preparation of the record of preliminary proceedings.  
14

15 **(b) Notice of intent to seek death penalty**

16  
17 In any case in which the death penalty may be imposed:  
18

- 19 (1) If the prosecution notifies the responsible judge that it intends to seek the  
20 death penalty, the judge must notify the presiding judge and the clerk. The  
21 clerk must promptly enter the information in the court file.  
22  
23 (2) If the prosecution does not give notice under (1)—and does not give notice to  
24 the contrary—the clerk must notify the responsible judge 60 days before the  
25 first date set for trial that the prosecution is presumed to seek the death  
26 penalty. The judge must notify the presiding judge, and the clerk must  
27 promptly enter the information in the court file.  
28

29 **(c) Assignment of judge designated to supervise preparation of record of**  
30 **preliminary proceedings**

- 31  
32 (1) Within five days after receiving notice under (b), the presiding judge must  
33 designate a judge to supervise preparation of the record of the preliminary  
34 proceedings.  
35  
36 (2) If there was a preliminary examination, the designated judge must be the  
37 judge who conducted it.  
38

39 **(d) Notice to prepare transcript and lists**

40  
41 Within five days after receiving notice under (b)(1) or notifying the judge under  
42 (b)(2), the clerk must do the following:  
43



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

5  
6 (2) Notify trial counsel to submit the lists of appearances, exhibits, and motions  
7 required by rule 4.119.  
8

9 (e) **Reporter's duties**

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

17  
18 (2) The reporter must certify the original and all copies of the reporter's  
19 transcript as correct.  
20

21 (3) Within 20 days after receiving the notice to prepare the reporter's transcript,  
22 the reporter must deliver the original and all copies of the transcript to the  
23 clerk.  
24

25 (f) **Review by counsel**

26  
27 (1) Within five days after the reporter delivers the transcript, the clerk must  
28 deliver the original transcript and the lists of appearances, exhibits, and  
29 motions required by rule 4.119 to the designated judge and one copy of the  
30 transcript and each list required by rule 4.119 that is not required to be sealed  
31 to each trial counsel. If a different attorney represented the defendant or the  
32 People in the preliminary proceedings, both attorneys must perform the tasks  
33 required by (2).  
34

35 (2) Each trial counsel must promptly:

36  
37 (A) Review the reporter's transcript and the lists of appearances, exhibits,  
38 and motions to identify any ~~for~~ errors or omissions in the transcript;  
39

40 (B) Review the docket sheets and minute orders to determine whether all  
41 preliminary proceedings have been transcribed; and  
42

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

3  
4 ~~(D)~~(C) Review the court file to determine whether it is complete.

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

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

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

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

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

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

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

30  
31 (C) Instead of each party filing a separate statement or request for  
32 corrections or additions under (B), trial counsel are encouraged to file a  
33 joint statement or request.

34  
35 (2) If a different attorney represented the defendant in the preliminary  
36 proceedings, that attorney must also file the declaration required by (1).

37  
38 (3) A request for additions to the reporter's transcript must state the nature and  
39 date of the proceedings and, if known, the identity of the reporter who  
40 reported them.

41  
42 (4) If any counsel fails to timely file a declaration under (1), the designated judge  
43 must not certify the record and must set the matter for hearing, require a

1 showing of good cause why counsel has not complied, and fix a date for  
2 compliance.

3  
4 **(h) Corrections or additions to the record of preliminary proceedings**

5  
6 If any counsel files a request for corrections or additions:

- 7  
8 (1) Within 15 days after the last request is filed, the designated judge must hold a  
9 hearing and order any necessary corrections or additions.  
10  
11 (2) If any portion of the proceedings cannot be transcribed, the judge may order  
12 preparation of a settled statement under rule 8.346.  
13  
14 (3) Within 20 days after the hearing under (1), the original reporter's transcript  
15 and court file must be corrected or augmented to reflect all corrections or  
16 additions ordered. The clerk must promptly send copies of the corrected or  
17 additional pages to trial counsel.  
18  
19 (4) The judge may order any further proceedings to correct or complete the  
20 record of the preliminary proceedings.  
21  
22 (5) When the judge is satisfied that all corrections and additions ordered have  
23 been made and copies of all corrected or additional pages have been sent to  
24 the parties, the judge must certify the record of the preliminary proceedings  
25 as complete and accurate.  
26  
27 (6) The record of the preliminary proceedings must be certified as complete and  
28 accurate within 120 days after the presiding judge orders preparation of the  
29 record.  
30

31 **(i) Transcript delivered in electronic form**

- 32  
33 (1) When the record of the preliminary proceedings is certified as complete and  
34 accurate, the clerk must promptly notify the reporter to prepare five copies of  
35 the transcript in electronic form and two additional copies in electronic form  
36 for each codefendant against whom the death penalty is sought.  
37  
38 (2) Each transcript delivered in electronic form must comply with the applicable  
39 requirements of rule 8.144 and any additional requirements prescribed by the  
40 Supreme Court, and must be further labeled to show the date it was made.  
41  
42 (3) A copy of a sealed or confidential transcript delivered in electronic form must  
43 be placed on a separate disk and clearly labeled as sealed or confidential.

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43

- (4) The reporter is to be compensated for copies delivered in electronic form as provided in Government Code section 69954(b).
- (5) Within 20 days after the clerk notifies the reporter under (1), the reporter must deliver the copies in electronic form to the clerk.

**(j) Delivery to the superior court**

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

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

**(k) Extension of time**

- (1) Except as provided in (2), the designated judge may extend for good cause any of the periods specified in this rule.
- (2) The period specified in (h)(6) may be extended only as follows:
  - (A) The designated judge may request an extension of the period by presenting a declaration to the responsible judge explaining why the time limit cannot be met; and
  - (B) The responsible judge may order an extension not exceeding 90 additional days; in an exceptional case the judge may order an extension exceeding 90 days, but must state on the record the specific reason for the greater extension.

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

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

**Advisory Committee Comment**

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

7  
8 **Subdivision (f).** As used in subdivision (f)—as in all rules in this chapter—trial counsel “means  
9 both the defendant’s trial counsel and the prosecuting attorney.” (Rule 8.600(e)(2).)

10  
11 **Subdivision (i).** Subdivision (i)(4) restates a provision of former rule 35(b), second paragraph, as  
12 it was in effect on December 31, 2003.

13  
14  
15 **DRAFTERS’ NOTES ON PROPOSED AMENDMENTS TO RULE 8.616:**

16 Proposed new paragraph (a)(1)(B) is intended to provide the trigger for counsel’s  
17 submission of the lists required by proposed new rule 4.230 above. See drafters’ notes  
18 under that proposed rule.

19  
20 The changes to paragraph (a)(2) are intended to encourage trial courts to prepare and  
21 transmit the clerk’s transcript in electronic format, if possible.

22  
23 In paragraph (b)(1), the additions of references to transcripts in electronic form are  
24 intended to make the language used here consistent with the language used in the other  
25 rules on record preparation in capital cases.

26  
27 The changes to subdivision (c) would require the clerk to send copies of the lists  
28 prepared by counsel under proposed rule 4.230 to counsel when the clerk sends the  
29 reporter’s transcript to counsel. Please see the drafters’ notes accompanying proposed  
30 rule 4.230.

31  
32 **Rule 8.616. Preparing the trial record**

33  
34 **(a) Clerk’s duties**

35  
36 (1) The clerk must promptly—and no later than five days after the judgment of  
37 death is rendered:—

38  
39 (A) Notify the reporter to prepare the reporter’s transcript; and

40  
41 (B) Notify trial counsel to submit the lists of appearances, exhibits, and  
42 motions required by rule 4.230.  
43

1 (2) The clerk must prepare an original and eight copies of the clerk’s transcript  
2 and two additional copies for each codefendant sentenced to death. The clerk  
3 is encouraged to send the clerk’s transcript in electronic form if the court is  
4 able to do so.  
5

6 (3) The clerk must certify the original and all copies of the clerk’s transcript as  
7 correct.  
8

9 **(b) Reporter’s duties**

10  
11 (1) The reporter must prepare an original and five copies of the reporter’s  
12 transcript in electronic form and two additional copies in electronic form for  
13 each codefendant sentenced to death.  
14

15 (2) Any portion of the transcript transcribed during trial must not be retyped  
16 unless necessary to correct errors, but must be repaginated and combined  
17 with any portion of the transcript not previously transcribed. Any additional  
18 copies needed must not be retyped but, if the transcript is in paper form, must  
19 be prepared by photocopying or an equivalent process.  
20

21 (3) The reporter must certify the original and all copies of the reporter’s  
22 transcript as correct and deliver them to the clerk.  
23

24 **(c) Sending the record to trial counsel**

25  
26 Within 30 days after the judgment of death is rendered, the clerk must deliver one  
27 copy of the clerk’s and reporter’s transcripts and one copy of the lists of  
28 appearances, exhibits, and motions required by rule 4.230 to each trial counsel.  
29 The clerk must retain~~ing~~ the original transcripts and the any remaining copies. If  
30 counsel does not receive the transcripts within that period, counsel must promptly  
31 notify the superior court.  
32

33 **(d) Extension of time**

34  
35 (1) On request of the clerk or a reporter and for good cause, the superior court  
36 may extend the period prescribed in (c) for no more than 30 days. For any  
37 further extension the clerk or reporter must file a request in the Supreme  
38 Court, showing good cause.  
39

40 (2) A request under (1) must be supported by a declaration explaining why the  
41 extension is necessary. The court may presume good cause if the clerk’s and  
42 reporter’s transcripts combined will likely exceed 10,000 pages.  
43

1 (3) If the superior court orders an extension under (1), the order must specify the  
2 reason justifying the extension. The clerk must promptly send a copy of the  
3 order to the Supreme Court.  
4

5 **Advisory Committee Comment**  
6

7 Rule 8.616 implements Penal Code section 190.8(b).  
8  
9

10 **DRAFTERS' NOTES ON PROPOSED AMENDMENTS TO RULE 8.619:**

11 Current subdivision (a) addresses activity by counsel during trial. As indicated in the  
12 drafters' notes accompanying proposed new rule 4.230, this provision has been  
13 incorporated into rule 4.230 because that proposed new rule addresses procedures that  
14 are intended to take place during the trial of a capital case.  
15

16 The proposed amendments to subdivision (a) and (b)(1) below (current (b) and (c)(1))  
17 are intended to implement a proposed new meet-and-confer requirement and also to  
18 utilize the lists of appearances, exhibits, and motions required under proposed new rule  
19 4.230 within the process for certifying the record for completeness. As with the draft  
20 amendments to rule 8.613 above, some of the language is modeled on rule 3.724, which  
21 establishes a meet-and-confer requirement as part of the rules on management of civil  
22 cases. The last sentence in (b)(1)(B)(i) is new and is based on the following sentence in  
23 Penal Code section 190.8(c):  
24

25 Corrections to the record shall not be required to include immaterial typographical  
26 errors that cannot conceivably cause confusion.  
27

28 Proposed new paragraph (b)(2) would build into the deadline for counsel's review of the  
29 record the additional time that counsel can currently obtain under (f)(2) by filing a  
30 request for an extension of time. The concept is to save the time and expense that would  
31 be incurred by counsel in preparing these requests and by the court in considering them  
32 in circumstances in which the requests are regularly granted. The language is modeled  
33 on rule 8.630(c)(1)(3), which automatically extends the deadline for filing briefs in capital  
34 cases with records over 10,000 pages.  
35

36 The proposed amendments to paragraph (c)(7) (currently (d)(7)) are intended to make  
37 the judge's deadline for certifying the record appropriately reflect any extension of time  
38 that clerks or court reporters receive for preparing the record, or that counsel receive for  
39 reviewing the record. Currently, the judge's deadline is measured from the imposition of  
40 the death sentence, regardless of when the judge actually receives any request for  
41 additions or corrections to the record. Under the proposed amendment, it would instead  
42 be measured from when the last request for additions or corrections to the record is filed.  
43

1 If there are no extensions of time for delivery of the record to counsel or for counsels'  
2 review of the record, when the periods for completing these earlier steps and the 30-day  
3 period for the judge's consideration of requests for additions or corrections are added  
4 together, the total time elapsed will be the same as in current (d)(7)—90 days from  
5 imposition of the death penalty. If there are extensions to these earlier deadlines in the  
6 certification process, however, either due to the length of the record or for other good  
7 cause, under this proposed amendment, the judge's deadline for certification will reflect  
8 that because it will be calculated from the filing of requests for additions or corrections.  
9 Subdivision (e) (currently (f)) would also continue to permit extension of this and other  
10 deadlines for good cause. All of this is consistent with Penal Code section 190.8(d),  
11 which provides that the judge must certify the record for completeness:

12  
13 [N]o later than 90 days after entry of the imposition of the death sentence  
14 unless good cause is shown. However, this time period may be extended  
15 for proceedings in which the trial transcript exceeds 10,000 pages in  
16 accordance with the timetable set forth in, or for good cause pursuant to  
17 the procedures set forth in, the rules of court adopted by the Judicial  
18 Council.

19  
20 The proposed amendments to subdivision (e) (currently (f)) reflect the proposal that  
21 subdivision (b) include an automatic extension of the deadline for reviewing the record  
22 when that combined record exceeds 10,000 pages, rather than requiring that an  
23 extension request be filed for that purpose.

24  
25 The proposed amendments to subdivision (f) (currently (g)) would eliminate the required  
26 second copy of the reporter's transcript in paper format. Instead, each recipient would  
27 get one copy of the reporter's transcript in electronic format and one copy of the clerk's  
28 transcript in either paper or electronic format. As in the proposed amendments to rule  
29 8.616, trial courts would be encouraged to prepare and transmit the clerk's transcript in  
30 electronic format, if possible.

31  
32 **Rule 8.619. Certifying the trial record for completeness**

33  
34 **~~(a)~~—Review by counsel during trial**

35  
36 ~~During trial, counsel must call the court's attention to any errors or omissions they~~  
37 ~~may find in the transcripts. The court must periodically ask counsel for lists of any~~  
38 ~~such errors or omissions and may hold hearings to verify them.~~

39  
40 **~~(b)~~(a)Review by counsel after trial**



1 (1) When the clerk delivers the clerk's and reporter's transcripts and the lists of  
2 appearances, exhibits, motions, and jury instructions required by rule 4.230 to  
3 trial counsel, each counsel must promptly:  
4

5 ~~(1)~~(A) Review the docket sheets, ~~and~~ minute orders, and the lists of  
6 appearances, exhibits, motions, and jury instructions to determine  
7 whether the reporter's transcript is complete; and  
8

9 ~~(2)~~ ~~Consult with opposing counsel to determine whether any other proceedings~~  
10 ~~or discussions should have been transcribed; and~~  
11

12 ~~(3)~~(B) Review the court file to determine whether the clerk's transcript  
13 is complete.  
14

15 (2) Within 21 days after the clerk delivers the transcripts and lists under (1), trial  
16 counsel must meet and confer, in person or by telephone, to discuss any  
17 errors or omissions in the reporter's transcript or clerk's transcript identified  
18 by trial counsel during the review required under (1).  
19

20 **~~(e)~~(b) Declaration and request for additions or corrections**  
21

22 (1) Within 30 days after the clerk delivers the transcripts, each trial counsel must  
23 serve and file;  
24

25 (A) A declaration stating that counsel or another person under counsel's  
26 supervision has performed the tasks required by ~~(b)~~(a), including  
27 meeting and conferring with opposing counsel; and ~~must serve and file~~  
28

29 (B) Either:  
30

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

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

39 (C) Instead of each party filing a separate statement or request for  
40 corrections or additions under (B), trial counsel are encouraged to file a  
41 joint statement or request.  
42

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

5           ~~(2)~~(3) A request for additions to the reporter’s transcript must state the nature and  
6           date of the proceedings and, if known, the identity of the reporter who  
7           reported them.  
8

9           ~~(3)~~(4) If any counsel fails to timely file a declaration under (1), the judge must not  
10          certify the record and must set the matter for hearing, require a showing of  
11          good cause why counsel has not complied, and fix a date for compliance.  
12

13       ~~(d)~~(c) **Completion of the record**  
14

15          If any counsel files a request for additions or corrections:  
16

- 17          (1) The clerk must promptly deliver the original transcripts to the judge who  
18          presided at the trial.  
19
- 20          (2) Within 15 days after the last request is filed, the judge must hold a hearing  
21          and order any necessary additions or corrections. The order must require that  
22          any additions or corrections be made within 10 days of its date.  
23
- 24          (3) The clerk must promptly—and in any event within five days—notify the  
25          reporter of an order under (2). If any portion of the proceedings cannot be  
26          transcribed, the judge may order preparation of a settled statement under rule  
27          8.346.  
28
- 29          (4) The original transcripts must be augmented or corrected to reflect all  
30          additions or corrections ordered. The clerk must promptly send copies of the  
31          additional or corrected pages to trial counsel.  
32
- 33          (5) Within five days after the augmented or corrected transcripts are filed, the  
34          judge must set another hearing to determine whether the record has been  
35          completed or corrected as ordered. The judge may order further proceedings  
36          to complete or correct the record.  
37
- 38          (6) When the judge is satisfied that all additions or corrections ordered have been  
39          made and copies of all additional or corrected pages have been sent to trial  
40          counsel, the judge must certify the record as complete and redeliver the  
41          original transcripts to the clerk.  
42

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

6 **~~(e)~~(d) Transcript delivered in electronic form**  
7

- 8 (1) When the record is certified as complete, the clerk must promptly notify the  
9 reporter to prepare five copies of the transcript in electronic form and two  
10 additional copies in electronic form for each codefendant sentenced to death.  
11  
12 (2) Each copy delivered in electronic form must comply with the applicable  
13 requirements of rule 8.144 and any additional requirements prescribed by the  
14 Supreme Court, and must be further labeled to show the date it was made.  
15  
16 (3) A copy of a sealed or confidential transcript delivered in electronic form must  
17 be placed on a separate disk and clearly labeled as sealed or confidential.  
18  
19 (4) The reporter is to be compensated for copies delivered in electronic form as  
20 provided in Government Code section 69954(b).  
21  
22 (5) Within 10 days after the clerk notifies the reporter under (1), the reporter  
23 must deliver the copies in electronic form to the clerk.  
24

25 **~~(f)~~(e) Extension of time**  
26

- 27 (1) The court may extend for good cause any of the periods specified in this rule.  
28  
29 (2) An application to extend the ~~30-day~~ period to review the record under ~~(e)~~(a)  
30 or the period to file a declaration under (b) must be served and filed within  
31 that the relevant period. If the clerk's and reporter's transcripts combined  
32 exceed 10,000 pages, the court may grant an additional three days for each  
33 1,000 pages over 10,000.  
34  
35 (3) If the court orders an extension of time, the order must specify the  
36 justification for the extension. The clerk must promptly send a copy of the  
37 order to the Supreme Court.  
38

39 **~~(g)~~(f) Sending the certified record**  
40

- 41 (1) When the record is certified as complete, the clerk must promptly send one  
42 copy of the clerk's transcript and one copy of the reporter's transcript:  
43

1 (A) To each defendant’s appellate counsel and each defendant’s habeas  
2 corpus counsel: ~~one paper copy of the entire record and one copy of the~~  
3 ~~reporter’s transcript in electronic form.~~ If either counsel has not been  
4 retained or appointed, the clerk must keep that counsel’s copies until  
5 counsel is retained or appointed.

6  
7 (B) To the Attorney General, the Habeas Corpus Resource Center, and the  
8 California Appellate Project in San Francisco: ~~one paper copy of the~~  
9 ~~clerk’s transcript and one copy of the reporter’s transcript in electronic~~  
10 ~~form.~~

11  
12 (2) The reporter’s transcript must be in electronic form. The clerk is encouraged  
13 to send the clerk’s transcript in electronic form if the court is able to do so.  
14

15 ~~(h)~~(g) **Notice of delivery**

16  
17 When the clerk sends the record to the defendant’s appellate counsel, the clerk must  
18 serve a notice of delivery on the clerk/executive officer of the Supreme Court.  
19

20 **Advisory Committee Comment**

21  
22 Rule 8.619 implements Penal Code section 190.8(c)–(e).

23  
24 Subdivision ~~(e)~~(d)(4) restates a provision of former rule 35(b), second paragraph, as it was in  
25 effect on December 31, 2003.

26  
27  
28 **DRAFTERS’ NOTES ON PROPOSED AMENDMENTS TO RULE 8.622:**

29 Paragraphs (a)(1) and (3) below are intended to implement a proposed meet-and-confer  
30 requirement within the process for certifying the record for accuracy. As with the draft  
31 amendments to rules 8.613 and 8.619 above, some of the language is modeled on rules  
32 3.724 and 3.725, which establish meet-and-confer and case management statement  
33 requirements as part of the rules on management of civil cases. In this rule, however,  
34 the meet and confer would take place after the filing of a request for additions or  
35 corrections to the record. The proposed deadline for this meet-and-confer—10 days after  
36 the filing of the request—is designed to ensure that the meeting takes place before the  
37 hearing to consider the request. Under 8.619(c)(2) (currently (d)(2)), which 8.622 makes  
38 applicable to the correction for accuracy process, that hearing must be set within 15  
39 days after the filing of the request for additions or corrections to the record.

40  
41 The second sentence in (a)(1)(A) is new and is based on the following sentence in Penal  
42 Code section 190.8(c):  
43

1 Corrections to the record shall not be required to include immaterial typographical  
2 errors that cannot conceivably cause confusion.

3  
4 The proposed additions to subparagraph (a)(2)(A) and paragraph (4) would permit the  
5 inclusion in the clerk's transcript of documentary exhibits at the request of a party. This is  
6 intended to make it easier for counsel to appropriately cite to exhibits in their briefs and  
7 for the court to locate such exhibits. The requesting party would be required to indicate  
8 the reason that the exhibit needs to be included in the clerk's transcript.

9  
10 Proposed new subparagraph (a)(2)(B) below would require counsel to identify any  
11 previously sealed records that no longer need to be sealed on appeal and give the trial  
12 court the authority to unseal such records even though, under rule 8.46, this is ordinarily  
13 the province of the reviewing court. This new procedure is intended to make the record  
14 preparation process more efficient by identifying items that can be unsealed before the  
15 record is transmitted to the Supreme Court.

16  
17 Proposed new paragraph (a)(3), like proposed 8.619(b)(2), would build into the deadline  
18 for counsel's review of the record the additional time that counsel can currently obtain  
19 under (d)(2) by filing a request for an extension of time. The concept is to save the time  
20 and expense that would be incurred by counsel in preparing these requests and by the  
21 court in considering them in circumstances in which the requests are regularly granted.  
22 The language is modeled on rule 8.630(c)(1)(3) which automatically extends the  
23 deadline for filing briefs in capital cases with records over 10,000 pages.

24  
25 The proposed amendments to paragraph (b)(4), like proposed 8.619(c)(7) above, are  
26 intended to make the judge's deadline for certifying the record appropriately reflect any  
27 extension of time that counsel receive for reviewing the record. Currently, the judge's  
28 deadline is measured from the delivery of the record to defendant's appellate counsel,  
29 regardless of when the judge actually receives any request for additions or corrections to  
30 the record. Under the proposed amendment, it would instead be measured from when  
31 the last request for additions or corrections to the record is filed. If there are no  
32 extensions of time for counsel's review of the record, when the base 90-day period for  
33 completing this review and the 30-day period for the judge's consideration of requests  
34 for additions or corrections are added together, the total time elapsed will be the same  
35 as in current (b)(4)—120 days from delivery of the record to the defendant's appellate  
36 counsel. If, however, counsel's deadline for reviewing the record is extended, either due  
37 to the length of the record or for other good cause, under this proposed amendment, the  
38 judge's deadline for certification will reflect that because it will be calculated from the  
39 filing of requests for additions or corrections. Subdivision (d) would also continue to  
40 permit extension of this and other deadlines for good cause. All of this is consistent with  
41 Penal Code section 190.8(g), which provides that:

1 The trial court shall certify the record for accuracy no later than 120 days  
2 after the record has been delivered to appellate counsel. However, this  
3 time may be extended pursuant to the timetable and procedures set forth  
4 in the rules of court adopted by the Judicial Council.  
5

6 The amendments to subdivision (d) reflect the proposal that paragraph (a)(3) would  
7 include an automatic extension of the deadline for reviewing the record when that  
8 combined record exceeds 10,000 pages, rather than requiring that an extension request  
9 be filed for that purpose.  
10

11 The proposed amendments to subdivision (e) would eliminate the Supreme Court's  
12 second copy of the reporter's transcript in paper format and encourage the delivery of  
13 the clerk's transcript in electronic form.  
14

15 **Rule 8.622. Certifying the trial record for accuracy**

16  
17 **(a) Request for corrections or additions**

18  
19 (1) Within 90 days after the clerk delivers the record to defendant's appellate  
20 counsel;

21  
22 (A) Any party may serve and file a request for corrections or additions to  
23 the record. Immaterial typographical errors that cannot conceivably  
24 cause confusion are not required to be brought to the court's attention  
25 or corrected. Items that a party may request to be added to the clerk's  
26 transcript include a copy of any exhibit admitted in evidence, refused,  
27 or lodged that is a document in paper or electronic format. The  
28 requesting party must state the reason that the exhibit needs to be  
29 included in the clerk's transcript. Instead of parties filing separate  
30 requests for corrections or additions, counsel are encouraged to file a  
31 joint request.  
32

33 (B) Appellate counsel must review all sealed records that they are entitled  
34 to access under rule 8.45 and file an application to unseal any such  
35 records counsel determines no longer meet the criteria for sealing  
36 specified in rule 2.550(d). Notwithstanding rule 8.46(e), this  
37 application must be filed in the trial court and these records may be  
38 unsealed on order of the trial court.  
39

40 (2) A request for additions to the reporter's transcript must state the nature and  
41 date of the proceedings and, if known, the identity of the reporter who  
42 reported them. A request for an exhibit to be included in the clerk's transcript  
43 must specify that exhibit by number or letter.

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43

(3) Unless otherwise ordered by the court, within 10 days after a party serves and files a request for corrections or additions to the record, defendant’s appellate counsel and the trial counsel from the prosecutor’s office must meet and confer, in person or by telephone, to discuss the request and any application to unseal records served on the prosecutor’s office.

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

**(b) Correction of the record**

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

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

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

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

**(c) Computer-readable Copies of the record**

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

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

**(d) Extension of time**

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

(2) An application to extend the ~~90-day~~ period to request corrections or additions under (a) must be served and filed within that period. ~~If the clerk’s and~~

1 ~~reporter's transcripts combined exceed 10,000 pages, the court may grant an~~  
2 ~~additional 15 days for each 1,000 pages over 10,000.~~

- 3
- 4 (3) If the court orders an extension of time, the order must specify the  
5 justification for the extension. The clerk must promptly send a copy of the  
6 order to the Supreme Court.
- 7
- 8 (4) If the court orders an extension of time, the court may conduct a status  
9 conference or require the counsel who requested the extension to file a status  
10 report on counsel's progress in reviewing the record.

11

12 **(e) Sending the certified record**

13

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

- 15
- 16 (1) To the Supreme Court: the corrected original record, including the judge's  
17 certificate of accuracy, ~~and a copy of~~ The reporter's transcript must be in  
18 electronic form. The clerk is encouraged to send the clerk's transcript in  
19 electronic form if the court is able to do so.
- 20
- 21 (2) To each defendant's appellate counsel, each defendant's habeas corpus  
22 counsel, the Attorney General, the Habeas Corpus Resource Center, and the  
23 California Appellate Project in San Francisco: a copy of the order certifying  
24 the record and a copy of the reporter's transcript in electronic form.
- 25
- 26 (3) To the Governor: the copies of the transcripts required by Penal Code section  
27 1218, with copies of any corrected or augmented pages inserted.

28

29 **Advisory Committee Comment**

30

31 Rule 8.622 implements Penal Code section 190.8(g).

32

33

34 **DRAFTERS' NOTE:** Rule 8.625 is proposed to be repealed because the records have  
35 been certified in all the capital cases in which the trial began before January 1, 1997.

36

37 **~~Rule 8.625. Certifying the record in pre-1997 trials~~**

38

39 **~~(a) Application~~**

40

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



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

2  
3 (1) — ~~When the clerk and the reporter certify that their respective transcripts are~~  
4 ~~correct, the clerk must promptly send a copy of each transcript to each~~  
5 ~~defendant’s trial counsel, to the Attorney General, to the district attorney, to~~  
6 ~~the California Appellate Project in San Francisco, and to the Habeas Corpus~~  
7 ~~Resource Center, noting the sending date on the originals.~~  
8

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

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

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

23  
24 (1) — ~~Within 90 days after the clerk delivers the transcripts to each defendant’s~~  
25 ~~appellate counsel, any party may serve and file a request for correction or~~  
26 ~~augmentation of the record. Any request for extension of time must be served~~  
27 ~~and filed in the Supreme Court no later than five days before the 90-day~~  
28 ~~period expires.~~  
29

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

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

38 (4) — ~~Within 60 days after receiving a request and transcripts under (3), the judge~~  
39 ~~must order the reporter, clerk, or party to make any necessary corrections or~~  
40 ~~do any act necessary to complete the record, fixing the time for performance.~~  
41 ~~If any portion of the oral proceedings cannot be transcribed, the judge may~~  
42 ~~order preparation of a settled statement under rule 8.346.~~  
43

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

4  
5           (6) ~~The original transcripts must be corrected or augmented to reflect all~~  
6           ~~corrections or augmentations ordered. The clerk must promptly send copies~~  
7           ~~of all corrected or augmented pages to the parties.~~

8  
9           (7) ~~The judge must allow the parties a reasonable time to review the corrections~~  
10          ~~or augmentations. If no party objects to the corrections or augmentations as~~  
11          ~~prepared, the judge must certify that the record is complete and accurate. If~~  
12          ~~any party objects, the judge must resolve the objections before certifying the~~  
13          ~~record.~~

14  
15          (8) ~~If the record is not certified within 90 days after the clerk sends the~~  
16          ~~transcripts to appellate counsel under (b)(2), the judge must monitor~~  
17          ~~preparation of the record to expedite certification and report the status of the~~  
18          ~~record monthly to the Supreme Court.~~

19  
20       **~~(d) — Sending the certified record~~**

21  
22       ~~When the clerk certifies that no party objected to the record or the judge certifies~~  
23       ~~that the record is complete and accurate, the clerk must promptly send:~~

24  
25          (1) ~~To the Supreme Court: the original record, including the original certification~~  
26          ~~by the trial judge.~~

27  
28          (2) ~~To each defendant’s appellate counsel, the Attorney General, and the~~  
29          ~~California Appellate Project in San Francisco: a copy of the order certifying~~  
30          ~~the record.~~

31  
32          (3) ~~To the Governor: the copies of the transcripts required by Penal Code section~~  
33          ~~1218, with copies of any corrected or augmented pages inserted.~~

34  
35       **~~(e) — Subsequent trial court orders; omissions~~**

36  
37          (1) ~~If, after the record is certified, the trial court amends or recalls the judgment~~  
38          ~~or makes any other order in the case, including an order affecting the~~  
39          ~~sentence, the clerk must promptly certify and send a copy of the amended~~  
40          ~~abstract of judgment or other order — as an augmentation of the record — to~~  
41          ~~the persons and entities listed in (d).~~

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8

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

<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	<i>FOR COURT USE ONLY</i>  <b>DRAFT</b>  <b>6/28/18</b>  <b>Not approved by the Judicial Council</b>
<b>PEOPLE OF THE STATE OF CALIFORNIA</b> v. Defendant(s):	
<b>CAPITAL CASE ATTORNEY PRETRIAL CHECKLIST</b>	CASE NUMBER:

**Instructions:** This checklist is designed to be a tool for counsel throughout the pretrial proceedings in death penalty cases to ensure timely compliance with record preparation requirements and to make the certification of the record of the pretrial proceedings in these cases easier and more efficient for both counsel and the court. Primary counsel for each defendant and the prosecution in the pretrial proceedings in a case in which the death penalty may be imposed must review, sign, and file this checklist. The court may, but is not required, to use the right hand column on the filed checklist to monitor whether counsel has filed required documents.

ATTORNEY TASK	FOR COURT USE ONLY
<b>DURING PRETRIAL PROCEEDINGS</b>	
<b>1. File checklist</b> - Within 10 days of your first appearance in court, review, sign, and submit this checklist. (Cal. Rules of Court, rule 4.119(b).)	Checklist submitted <input type="checkbox"/>
<b>2. Ensure all exhibits are marked</b> - Make sure that all exhibits that you offer during the pretrial proceedings are properly marked for identification.	
<b>3. Prepare a list of appearances, exhibits, and motions</b> - Prepare the lists specified in a, b, and c below.	
<b>a. A list of appearances by the party you represent during pretrial proceedings.</b> <ul style="list-style-type: none"> <li>• The list must include the date of each appearance, the department in which it was made, the name of the attorney making the appearance, and a brief description of the nature of the appearance. <i>Capital Case Attorney List of Appearances</i> (form CR-601) may be used to comply with this requirement.</li> <li>• A separate list of Penal Code section 987.9 appearances must be maintained under seal for each defendant.</li> </ul>	
<b>b. A list of all exhibits offered by the party you represent during pretrial proceedings.</b> <ul style="list-style-type: none"> <li>• The list must include all exhibits offered at any pretrial proceedings and must indicate whether the exhibit was admitted in evidence, refused, lodged, or withdrawn. <i>Capital Case Attorney List of Exhibits</i> (form CR-602) may be used to comply with this requirement. (Cal. Rules of Court, rule 4.119(c)(1)(B).)</li> <li>• Make sure that all exhibits that you offer during the pretrial proceedings are properly marked for identification.</li> </ul>	
<b>c. A list of all motions made by the party you represent during the pretrial proceedings.</b> <ul style="list-style-type: none"> <li>• The list must indicate all motions that are awaiting resolution. <i>Capital Case Attorney List of Motions</i> (form CR-603) may be used to comply with this requirement. (Cal. Rules of Court, rule 4.119(c)(1)(C).)</li> </ul>	

PEOPLE OF THE STATE OF CALIFORNIA v. Defendant(s):	CASE NUMBER:
ATTORNEY TASK	FOR COURT USE ONLY
<b>d. Providing lists to substituting counsel.</b> <ul style="list-style-type: none"> <li>In the event of any substitution of attorney during the pretrial proceedings, the relieved attorney must provide the lists of all appearances, exhibits, and motions to substituting counsel within five days of being relieved. (Cal. Rules of Court, rule 4.119(c)(1)(A).)</li> </ul>	
<b>AFTER COMPLETION OF PRETRIAL PROCEEDINGS</b>	
<b>4. Prosecution's notification of intent to seek death penalty.</b> <ul style="list-style-type: none"> <li>Primary counsel for the prosecution should notify the judge assigned to try the case or, if none is yet assigned, the presiding superior court judge or designee of the presiding judge, about whether the prosecution intends to seek the death penalty.</li> <li>After the presiding judge has ordered preparation of the pretrial record, primary counsel for the prosecution should notify the judge assigned to try the case if the death penalty is no longer being sought.</li> </ul>	
<b>5. Submit and serve completed lists of appearances, exhibits, and motions.</b> <ul style="list-style-type: none"> <li>No later than 21 days after the clerk notifies you to do so, submit the completed lists to the court. Serve a copy of all the completed lists, except the list of Penal Code section 987.9 appearances, on all parties.</li> <li>Unless otherwise provided by local rule, submit the lists to the court in electronic form. (Cal. Rules of Court, rule 4.119(c).)</li> </ul>	
<b>a. The completed list of appearances by the party you represented during pretrial proceedings.</b>	List of appearances submitted <input type="checkbox"/>
<b>b. The completed list of all exhibits offered by the party you represented during pretrial proceedings.</b>	List of exhibits submitted <input type="checkbox"/>
<b>c. The completed list of all motions filed by the party you represented during the pretrial proceedings.</b>	List of motions submitted <input type="checkbox"/>
<b>6. Review reporter's transcript, court file, and lists</b> - When the clerk delivers the reporter's transcript of the pretrial proceedings and the lists to you, you must: <ul style="list-style-type: none"> <li>Review the reporter's transcript and the lists of appearances, exhibits, and motions to identify any errors or omissions in the transcripts;</li> <li>Review the docket sheets and minute orders to determine whether all preliminary proceedings have been transcribed; and</li> <li>Review the court file to determine whether it is complete. (Cal. Rules of Court, rule 8.613(f)(2).)</li> </ul>	
<b>7. Meet and confer</b> - You must meet and confer with opposing counsel, in person or by telephone, within 21 days after the clerk delivers the reporter's transcripts and lists to you to discuss any errors or omissions in the reporter's transcript or court file identified during the review and determine whether any other proceedings or discussions should have been transcribed. (Cal. Rules of Court, rule 8.613(f)(3).)	
<b>8. Declaration and request for corrections or additions/statement</b> - Within 30 days after the clerk delivers the reporter's transcript and lists, each trial counsel must serve and file both of the following:	
a. A declaration stating that counsel or another person under counsel's supervision has performed the tasks required by 8.613(f), including meeting and conferring with opposing counsel if ordered by the court. (Cal. Rules of Court, rule 8.613(g)(1)(A).)	Declaration filed <input type="checkbox"/>

<b>PEOPLE OF THE STATE OF CALIFORNIA v.</b> Defendant(s):	CASE NUMBER:
<b>TASK</b>	<b>FOR COURT USE ONLY</b>
b. ONE of the following: <ul style="list-style-type: none"> <li>• <i>A request for corrections or additions to the reporter's transcript or court file. A request for additions to the reporter's transcript must state the nature and date of the proceedings and, if known, the identity of the reporter who reported them, OR</i></li> <li>• <i>A statement that counsel does not request any corrections or additions. Instead of each party filing a separate statement or request for corrections or additions, trial counsel are encouraged to file a joint statement or request. (Cal. Rules of Court, rule 8.613(g)(1)(B) and (C).)</i></li> </ul>	Request or statement filed  <div style="text-align: center;"> <input type="checkbox"/> </div>

Date:

\_\_\_\_\_

(TYPE OR PRINT NAME)



\_\_\_\_\_

(SIGNATURE OF ATTORNEY)



<b>PEOPLE OF THE STATE OF CALIFORNIA v.</b> Defendant(s):	CASE NUMBER:
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Date	Court Dept./Div.	Name of Attorney Making Appearance	Nature of Appearance

Check here if you need more space. Attach a sheet of paper and write "CR-601, List of Appearances" for a title.

Date: \_\_\_\_\_

\_\_\_\_\_, attorney for \_\_\_\_\_

(TYPE OR PRINT NAME)

  
 (SIGNATURE OF ATTORNEY)



<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	<i>FOR COURT USE ONLY</i>  <b>DRAFT</b>  <b>06/26/18</b>  <b>Not approved by the Judicial Council</b>
<b>PEOPLE OF THE STATE OF CALIFORNIA</b> v. Defendant:	CASE NUMBER:
<b>CAPITAL CASE ATTORNEY LIST OF EXHIBITS</b> <input type="checkbox"/> Pretrial <input type="checkbox"/> Trial	

**Instructions:** For each exhibit you offer on behalf of your client in a case in which the death penalty may be imposed, provide the exhibit number and a brief description of the exhibit and indicate whether the exhibit was admitted in evidence, lodged, refused, or withdrawn.

Exhibit #	Description	Outcome
		<input type="checkbox"/> Admitted <input type="checkbox"/> Lodged <input type="checkbox"/> Refused <input type="checkbox"/> Withdrawn
		<input type="checkbox"/> Admitted <input type="checkbox"/> Lodged <input type="checkbox"/> Refused <input type="checkbox"/> Withdrawn
		<input type="checkbox"/> Admitted <input type="checkbox"/> Lodged <input type="checkbox"/> Refused <input type="checkbox"/> Withdrawn
		<input type="checkbox"/> Admitted <input type="checkbox"/> Lodged <input type="checkbox"/> Refused <input type="checkbox"/> Withdrawn
		<input type="checkbox"/> Admitted <input type="checkbox"/> Lodged <input type="checkbox"/> Refused <input type="checkbox"/> Withdrawn
		<input type="checkbox"/> Admitted <input type="checkbox"/> Lodged <input type="checkbox"/> Refused <input type="checkbox"/> Withdrawn
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		<input type="checkbox"/> Admitted <input type="checkbox"/> Lodged <input type="checkbox"/> Refused <input type="checkbox"/> Withdrawn
		<input type="checkbox"/> Admitted <input type="checkbox"/> Lodged <input type="checkbox"/> Refused <input type="checkbox"/> Withdrawn

(continued on reverse)

<b>PEOPLE OF THE STATE OF CALIFORNIA v.</b> Defendant(s):	CASE NUMBER:
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Exhibit #	Description	Outcome
		<input type="checkbox"/> Admitted <input type="checkbox"/> Lodged <input type="checkbox"/> Refused <input type="checkbox"/> Withdrawn
		<input type="checkbox"/> Admitted <input type="checkbox"/> Lodged <input type="checkbox"/> Refused <input type="checkbox"/> Withdrawn
		<input type="checkbox"/> Admitted <input type="checkbox"/> Lodged <input type="checkbox"/> Refused <input type="checkbox"/> Withdrawn
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		<input type="checkbox"/> Admitted <input type="checkbox"/> Lodged <input type="checkbox"/> Refused <input type="checkbox"/> Withdrawn

Check here if you need more space. Attach a sheet of paper and write "CR-602, List of Exhibits" for a title.

Date:

\_\_\_\_\_, attorney for \_\_\_\_\_  
(TYPE OR PRINT NAME)

  
(SIGNATURE OF ATTORNEY)

<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	<i>FOR COURT USE ONLY</i>  <b>DRAFT</b>  <b>6/26/18</b>  <b>Not approved by the Judicial Council</b>
<b>PEOPLE OF THE STATE OF CALIFORNIA</b> v. Defendant:	CASE NUMBER:
<b>CAPITAL CASE ATTORNEY LIST OF MOTIONS</b> <input type="checkbox"/> Pretrial <input type="checkbox"/> Trial	

**Instructions:** For each motion you make on behalf of your client in a case in which the death penalty may be imposed, provide the date the motion was made, the department in which it was made, and a brief description of the motion. For pretrial motions, check the box if the motion is awaiting resolution.

Date	Court Dept./Div.	Description	Awaiting Resolution
			<input type="checkbox"/>
			<input type="checkbox"/>
			<input type="checkbox"/>
			<input type="checkbox"/>
			<input type="checkbox"/>
			<input type="checkbox"/>
			<input type="checkbox"/>
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			<input type="checkbox"/>

(continued on reverse)

<b>PEOPLE OF THE STATE OF CALIFORNIA v.</b> Defendant(s):	CASE NUMBER:
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Date	Court Dept./Div.	Description	Awaiting Resolution
			<input type="checkbox"/>
			<input type="checkbox"/>
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			<input type="checkbox"/>
			<input type="checkbox"/>
			<input type="checkbox"/>

Check here if you need more space. Attach a sheet of paper and write "CR-603, List of Motions" for a title.

Date:

\_\_\_\_\_, attorney for \_\_\_\_\_  
(TYPE OR PRINT NAME)

  
(SIGNATURE OF ATTORNEY)

<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	<i>FOR COURT USE ONLY</i>  <b>DRAFT</b>  <b>6/26/18</b>  <b>Not approved by the Judicial Council</b>
<b>PEOPLE OF THE STATE OF CALIFORNIA</b> v. Defendant:	
<b>CAPITAL CASE ATTORNEY LIST OF JURY INSTRUCTIONS</b>	CASE NUMBER:

**Instructions:** For each jury instruction you submit in writing in a case in which the death penalty may be imposed, provide the instruction number and a brief description of the instruction and indicate whether the instruction was given, given as modified, refused, or withdrawn.

Instruction #	Description	Outcome
		<input type="checkbox"/> Given <input type="checkbox"/> Given as modified <input type="checkbox"/> Refused <input type="checkbox"/> Withdrawn
		<input type="checkbox"/> Given <input type="checkbox"/> Given as modified <input type="checkbox"/> Refused <input type="checkbox"/> Withdrawn
		<input type="checkbox"/> Given <input type="checkbox"/> Given as modified <input type="checkbox"/> Refused <input type="checkbox"/> Withdrawn
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		<input type="checkbox"/> Given <input type="checkbox"/> Given as modified <input type="checkbox"/> Refused <input type="checkbox"/> Withdrawn
		<input type="checkbox"/> Given <input type="checkbox"/> Given as modified <input type="checkbox"/> Refused <input type="checkbox"/> Withdrawn

(continued on reverse)

<b>PEOPLE OF THE STATE OF CALIFORNIA v.</b> Defendant(s):	CASE NUMBER:
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Instruction #	Description	Outcome
		<input type="checkbox"/> Given <input type="checkbox"/> Given as modified <input type="checkbox"/> Refused <input type="checkbox"/> Withdrawn
		<input type="checkbox"/> Given <input type="checkbox"/> Given as modified <input type="checkbox"/> Refused <input type="checkbox"/> Withdrawn
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		<input type="checkbox"/> Given <input type="checkbox"/> Given as modified <input type="checkbox"/> Refused <input type="checkbox"/> Withdrawn
		<input type="checkbox"/> Given <input type="checkbox"/> Given as modified <input type="checkbox"/> Refused <input type="checkbox"/> Withdrawn

Check here if you need more space. Attach a sheet of paper and write "CR-604, List of Jury Instructions" for a title.

Date:

\_\_\_\_\_, attorney for \_\_\_\_\_  
 (TYPE OR PRINT NAME)

  
 (SIGNATURE OF ATTORNEY)

<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	<i>FOR COURT USE ONLY</i>  <b>DRAFT</b>  <b>06/28/18</b>  <b>Not approved by the Judicial Council</b>
<b>PEOPLE OF THE STATE OF CALIFORNIA</b> v. Defendant(s):	
<b>CAPITAL CASE ATTORNEY TRIAL CHECKLIST</b>	CASE NUMBER:

**Note:** Under Penal Code section 1240.1(e)(1), in capital cases, the obligations of defendant's trial counsel, whether retained by the defendant or court-appointed, and the prosecutor include taking all steps necessary to facilitate the preparation and timely certification of the record of all trial court proceedings.

**Instructions:** This checklist is designed to be a tool for counsel throughout the trial in death penalty cases to ensure timely compliance with record preparation requirements and to make the certification of the record of the trial in these cases easier and more efficient for both counsel and the court. Primary counsel for each defendant and the prosecution in the trial in a case in which the death penalty may be imposed must review, sign, and file this checklist. The court may, but is not required, to use the right hand column on the filed checklist to monitor whether counsel has filed required documents. The court may, but is not required, to use the right hand column on the filed checklist to monitor whether counsel has filed required documents.

ATTORNEY TASK	FOR COURT USE ONLY
<b>DURING TRIAL</b>	
<b>1. File checklist</b> - Within 10 days of your first appearance in court, review, sign, and submit this checklist. (Cal. Rules of Court, rule 4.230 (b).)	Checklist submitted <input type="checkbox"/>
<b>2. Review daily transcripts and identify errors or omissions</b> - During trial, you are required to call the court's attention to any errors or omissions you find in the daily reporter's transcripts. Immaterial typographical errors that cannot conceivably cause confusion are not required to be brought to the court's attention or corrected.	
<b>3. Ensure all exhibits are marked</b> - Make sure that all exhibits that you offer during the trial are properly marked for identification.	
<b>4. Provide copies of visual aids to the court</b> - If you use any visual aids in presentations to the jury, including PowerPoint or other similar digital or electronic presentations, provide a copy of the visual aid to the court for inclusion in the record on appeal. If a visual aid is oversized, provide a photograph of that visual aid in place of the original. For PowerPoint or other similar digital or electronic presentations, provide the presentation in its native electronic format and a printout showing the full text of all slides.	
<b>5. Comply with rule 2.1040</b> - If you present or offer into evidence an electronic sound or sound-and-video recording, including a recording of a deposition or other prior testimony, you must comply with Cal. Rules of Court, rule 2.1040. Among other things, this rule requires that you provide a transcript of the electronic recording which, under rule 8.610, must be included in the record on appeal.	
<b>6. Prepare lists of appearances, exhibits, motions, and jury instructions</b> - Prepare the lists specified in a, b, c, and d below.	
<b>a. A list of appearances by the party you represent during the trial.</b> <ul style="list-style-type: none"> <li>• The list must include the date of each appearance, the department in which it was made, the name of the attorney making the appearance, and a brief description of the nature of the appearance. <i>Capital Case Attorney List of Appearances</i> (form CR-601) may be used to comply with this requirement.</li> <li>• A separate list of Penal Code section 987.9 appearances must be maintained under seal for each defendant.</li> </ul>	

<p>PEOPLE OF THE STATE OF CALIFORNIA v. Defendant(s):</p>	<p>CASE NUMBER:</p>
<p>ATTORNEY TASK</p>	<p>FOR COURT USE ONLY</p>
<p><b>b. A list of all exhibits offered by the party you represent during the trial.</b></p> <ul style="list-style-type: none"> <li>The list must include all exhibits offered during the trial and must indicate whether the exhibit was admitted in evidence, refused, lodged, or withdrawn. <i>Capital Case Attorney List of Exhibits</i> (form CR-602) may be used to comply with this requirement. (Cal. Rules of Court, rule 4.230(d)(1)(B).)</li> <li>Make sure that all exhibits that you offer during the trial are properly marked for identification.</li> </ul>	
<p><b>c. A list of all motions made by the party you represent during the trial.</b> <i>Capital Case Attorney List of Motions</i> (form CR-603) may be used to comply with this requirement. (Cal. Rules of Court, rule 4.230(d)(1)(C).)</p>	
<p><b>d. A list of all jury instructions submitted in writing by the party you represent during the trial.</b> The list must indicate whether the instruction was given, given as modified, refused, or withdrawn. <i>Capital Case Attorney List of Jury Instructions</i> (form CR-604) may be used to comply with this requirement. (Cal. Rules of Court, rule 4.230(d)(1)(D).)</p>	
<p><b>e. Providing lists to substituting counsel.</b> In the event of any substitution of attorney during the trial, the relieved attorney must provide the lists of all appearances, exhibits, motions, and jury instructions to substituting counsel within five days of being relieved. (Cal. Rules of Court, rule 4.230(d)(1)(A).)</p>	
<p><b>AFTER COMPLETION OF TRIAL IF DEATH PENALTY IS IMPOSED</b></p> <p>Note that under Penal Code section 1240.1(e)(1), in order to expedite certification of the entire record on appeal in all capital cases, the defendant's trial counsel, whether retained by the defendant or court-appointed, and the prosecutor shall continue to represent the respective parties until the record is certified.</p>	
<p><b>7. Submit and serve completed lists of appearances, exhibits, and motions.</b></p> <ul style="list-style-type: none"> <li>No later than 21 days after the imposition of a sentence of death, you must submit the lists to the court and serve a copy of all the lists, except the list of Penal Code § 987.9 appearances, on all parties. If the clerk's and reporter's transcripts combined exceed 10,000 pages, this time limit is extended by 3 days for each 1,000 pages of combined transcripts over 10,000 pages.</li> <li>Unless otherwise provided by local rule, submit the lists to the court in electronic form. (Cal. Rules of Court, rule 4.230(d)(2))</li> </ul>	
<p><b>a. The completed list of appearances by the party you represent during the trial.</b></p>	<p>List of appearances submitted <input type="checkbox"/></p>
<p><b>b. The completed list of all exhibits offered by the party you represent during the trial.</b></p>	<p>List of exhibits submitted <input type="checkbox"/></p>
<p><b>c. The completed list of all motions made by the party you represent during the trial.</b></p>	<p>List of motions submitted <input type="checkbox"/></p>
<p><b>d. The completed list of all jury instructions submitted in writing by the party you represent during the trial.</b></p>	<p>List of jury instructions submitted <input type="checkbox"/></p>
<p><b>8. Review reporter's transcript, clerk's transcript, and lists -</b> When the clerk delivers the clerk's and reporter's transcript and the lists to you, you must:</p> <ul style="list-style-type: none"> <li>Review the docket sheets, minute orders, and the lists of appearances, exhibits, motions, and jury instructions to determine whether the reporter's transcript is complete; and</li> <li>Review the court file to determine whether the clerk's transcript is complete. (Cal. Rules of Court, rule 8.619(a)(1).)</li> </ul>	



<p><b>PEOPLE OF THE STATE OF CALIFORNIA v.</b> Defendant(s):</p>	<p>CASE NUMBER:</p>
<p align="center"><b>ATTORNEY TASK</b></p>	<p align="center"><b>FOR COURT USE ONLY</b></p>
<p><b>9. Meet and confer</b> - Within 21 days after the clerk delivers the transcripts and lists, you must meet and confer, in person or by telephone, with opposing counsel to discuss any errors or omissions in the reporter's transcript or clerk's transcript identified during your review. If the clerk's and reporter's transcripts combined exceed 10,000 pages, this time limit is extended by 3 days for each 1,000 pages of combined transcript over 10,000 pages. (Cal. Rules of Court, rule 8.619(a)(2).)</p>	
<p><b>10. Serve and file declaration and request for corrections or additions/statement</b> - Within 30 days after the clerk delivers the transcripts and lists to you, each trial counsel must serve and file both of the following (if the clerk's and reporter's transcripts combined exceed 10,000 pages, this time limit is extended by 3 days for each 1,000 pages of combined transcript over 10,000 pages):</p>	
<p><b>a.</b> A declaration stating that counsel or another person under counsel's supervision has performed the tasks required by 8.613(f), including meeting and conferring with opposing counsel. (Cal. Rules of Court, rule 8.619(b)(1)(A).)</p>	<p align="center">Declaration filed <input type="checkbox"/></p>
<p><b>b.</b> ONE of the following:</p> <ul style="list-style-type: none"> <li>• A request to include additional materials in the record or to correct errors that have come to counsel's attention. A request for additions to the reporter's transcript must state the nature and date of the proceedings and, if known, the identity of the reporter who reported them. OR</li> <li>• A statement that counsel does not request any corrections or additions.</li> </ul> <p>In lieu of each party filing a separate statement or request for corrections or additions, trial counsel are encouraged to file a joint statement or request. (Cal. Rules of Court, rule 8.619(b)(1)(B) and (C).)</p>	<p align="center">Request or statement filed <input type="checkbox"/></p>
<p><b>11. Participate in hearing to certify the record for completeness</b> - If any party files a request for corrections or additions to the record, the trial court will set a hearing to consider the request. (Cal. Rules of Court, rule 8.619(c).)</p>	
<p><b>12. Participate, as necessary, in certification of the record for accuracy.</b></p> <ul style="list-style-type: none"> <li>• When appellate counsel for the defendant is retained or appointed, the trial court will send that counsel a copy of the record that has been certified for completeness. Within 90 days after that, appellate counsel or any other party may serve and file a request for corrections or additions to the record. If the clerk's and reporter's transcripts combined exceed 10,000 pages, this time limit is extended by 15 days for each 1,000 pages of combined transcripts over 10,000 pages.</li> <li>• If a request for corrections or additions to the record is filed, unless otherwise ordered by the trial court, within 10 days after that request is filed, defendant's appellate counsel and the trial counsel from the prosecutor's office must meet and confer, in person or by telephone, to discuss the request and any application to unseal records served on the prosecutor's office.</li> </ul>	

Date:

\_\_\_\_\_ (TYPE OR PRINT NAME)



\_\_\_\_\_ (SIGNATURE OF ATTORNEY)