

Judicial Council of California • Administrative Office of the Courts

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INVITATION TO COMMENT

SPR11-33

Title	Action Requested
Criminal Procedure: Intercounty Probation Transfer Rule	Review and submit comments by June 20, 2011
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rule 4.530	January 1, 2012
Proposed by	Contact
Criminal Law Advisory Committee Hon. Steven Z. Perren, Chair	Arturo Castro, 415-865-7702 arturo.castro@jud.ca.gov

Summary

The Criminal Law Advisory Committee proposes amendments to rule 4.530 of the California Rules of Court to clarify file transfer requirements and prescribe a procedure for the collection and disbursement of fines, fees, and restitution after intercounty transfer under Penal Code section 1203.9.

Discussion

The Criminal Law Advisory Committee proposes two amendments to rule 4.530, which governs intercounty probation transfer procedure under Penal Code section 1203.9.¹

Collection and Disbursement of Fines, Fees, and Restitution After Transfer

Probationers often owe various fines, fees, and restitution at the time of intercounty transfer. Although rule 4.530 prescribes various transfer requirements—including deadlines, notice, and mandatory orders—the rule fails to specify which entity is responsible for collecting and disbursing fines, fees, and restitution *after* transfer. As a result, transfers cause considerable confusion between local entities² responsible for collections. Some local collection entities prefer to continue to collect after cases are transferred, while others prefer to transfer collection responsibilities to the local collection entity of the receiving county.

¹ In a companion proposal, the Criminal Law Advisory Committee also proposes three new mandatory forms—*Notice and Motion for Transfer* (form CR-250), *Order for Transfer* (form CR-251), and *Receiving Court Comment Form* (CR-252)—for use by petitioners and courts to facilitate intercounty probation transfer procedure under Penal Code section 1203.9 and rule 4.530.

² The collection of fines, fees, and restitution owed by probationers is conducted by local courts, probation departments, county collections programs, or collection agencies.

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.

Complex disbursement requirements, which are unique to each county, add to the confusion. Only the collection entity in the county in which the fines and fees were imposed is sufficiently familiar with local disbursement requirements to properly disburse any money collected.

In the absence of guidance, disparate practices have emerged statewide. As a result, many local courts and probation departments desire uniformity and have requested that rule 4.530 be amended to prescribe a collection and disbursement procedure.³

To promote a uniform posttransfer collection and disbursement procedure, the committee proposes adding the following subdivision to rule 4.530:

(h) Collection of fines, fees, and restitution after transfer

- (1) As used in this subdivision, the phrase “local collection entity” means the superior court, probation department, county collection program, or any other collection agency responsible for collecting fines, fees, and restitution in criminal cases.
- (2) Upon transfer of the case, the local collection entity of the receiving county must collect any fines, fees, and restitution owed by the probationer and must transmit any money collected to the local collection entity of the transferring county for distribution.

The proposed amendment would require collection to occur in the county of the receiving court, which, by statute, must accept entire jurisdiction over a case after transfer. (Pen. Code, §§ 1203.9(b) & (d).) To ensure compliance with complex local disbursement requirements, the proposal would also require that any money collected be transmitted back to the local collection entity of the transferring county for proper disbursement.

To provide local collection agencies with additional guidance—including, for example, instructions and information about accounts receivable and disbursement prioritizations—the committee will also collaborate with the Administrative Office of the Courts to propose future amendments to the Trial Court Financial Policy and Procedure Manual.

File Transfer Requirements

Rule 4.530(g)(5) requires the transferring court to transmit “any records of payments and the *entire court file*, except exhibits, to the receiving court within two weeks of the transfer order.” (Italics added.) The advisory committee comment to the rule explains the provision as follows:

³ To develop the proposal, the Criminal Law Advisory Committee consulted with various stakeholders, including judges, court executive officers, court finance managers, chief probation officers, and representatives of the State Controller’s Office, Probation Business Managers Association, and the AOC Finance Division.

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

The requirement is designed to ensure that receiving courts are provided complete case information while transferring courts do not incur the cost and burden of providing certified copies. Transferring courts, however, often require the original court file to adjudicate codefendant proceedings that are still pending at the time of transfer.

The proposal would amend rule 4.530(g)(5) to emphasize that the transferring court must transmit the entire *original* court file and add an exception to the file transfer requirements for cases involving codefendants. Specifically, the proposal would require transferring courts to transmit certified copies of the entire original court file in cases involving more than one defendant. The proposal would also amend the related advisory committee comment to explain that transferring courts should retain the original court file to properly adjudicate any pending or future codefendant proceedings.

Rule 4.530 of the California Rules of Court would be amended, effective January 1, 2012, to read:

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

2
3 **(a)–(f) * * ***

4
5 **(g) Transfer**

6
7 (1)–(4) * * *

8
9 (5) The transferring court must transmit any records of payments and the entire
10 original court file, except exhibits, to the receiving court within two weeks of
11 the transfer order in all cases in which the probationer is the sole defendant. If
12 transfer is ordered in a case involving more than one defendant, the
13 transferring court must transmit any records of payments and certified copies
14 of the entire original court file, except exhibits, to the receiving court within
15 two weeks of the transfer order.

16
17 (6)–(7) * * *

18
19 **(h) Collection and disbursement of fines, fees, and restitution after transfer**

20
21 (1) As used in this subdivision, the phrase “local collection entity” means the
22 superior court, probation department, county collection program, or any other
23 collection agency responsible for collecting fines, fees, and restitution in
24 criminal cases.

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26 (2) Upon transfer of the case, the local collection entity of the receiving county
27 must collect any fines, fees, and restitution owed by the probationer and must
28 transmit any money collected to the local collection entity of the transferring
29 county for distribution.

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33 **Advisory Committee Comment**

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35 Subdivision (g)(5) requires the transferring court to transmit the entire original court file, except
36 exhibits, to the court of the receiving county in all cases in which the probationer is the sole
37 defendant. Before transmitting the entire original court file, transferring courts should consider
38 retaining copies of the court file in the event of an appeal or a writ. In cases involving more than
39 one defendant, subdivision (g)(5) requires the transferring court to transmit certified copies of the
40 entire original court file to ensure that transferring courts are able to properly adjudicate any
41 pending or future codefendant proceedings.

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

Item SPR11-33 Response Form

Title: Criminal Procedure: Intercounty Probation Transfer Rule (amend Cal. Rules of Court, rule 4.530)

- Agree with proposed changes
- Agree with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: _____

Name: _____ **Title:** _____

Organization: _____

- Commenting on behalf of an organization**

Address: _____

City, State, Zip: _____

To Submit Comments

Comments may be submitted online, written on this form, or prepared in a letter format. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments. You are welcome to email your comments as an attachment.

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DEADLINE FOR COMMENT: 5:00 p.m., Monday, June 20, 2011

Circulation for comment does not imply endorsement by the Judicial Council or the Rules and Projects Committee. All comments will become part of the public record of the council's action.