

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1	Rule 1.3. Authority	2
2	Rule 1.4. Contents of the rules.....	2
3	Rule 1.20. Filing.....	2
4	<u>Rule 1.200. Format of citations</u>	4
5	Rule 2.111. Format of first page	4
6	Rule 2.250. Definitions	5
7	Rule 2.253. Court order requiring electronic filing and service <u>service or</u>	
8	<u>filing</u>	5
9	Rule 2.256. Responsibilities of electronic filer.....	6
10	Rule 2.257. Requirements for signatures on documents	7
11	Rule 2.259. Actions by court on receipt of electronic filing.....	7
12	Rule 2.260. Electronic service	8
13	Rule 2.306. Service of papers by fax transmission.....	10
14	Rule 2.400. Court records	12
15	Rule 2.503. Public access.....	12
16	Rule 3.58. Hearing on application	13
17	Rule 3.60. Confidentiality.....	14
18	Rule 3.300. Related cases	14
19	Rule 3.512. Electronic submission of documents to the Chair of	
20	the Judicial Council.....	15
21	Rule 3.670. Telephone appearance	15
22	Rule 3.722. Case management conference	21
23	Rule 3.816. Disqualification for conflict of interest	21
24	Rule 3.823. Rules of evidence at arbitration hearing.....	22
25	Rule 3.867. Confidentiality of complaint procedures, information,	
26	and records	23
27	Rule 3.924. Certification and disclosure by referee.....	24
28	Rule 3.1113. Memorandum	24
29	Rule 3.1203. Time of notice to other parties	25
30	Rule 3.1207. Personal appearance requirements	26
31	Rule 3.1350. Motion for summary judgment or summary adjudication	26
32	Rule 3.1380. Mandatory settlement conferences.....	29
33	Rule 4.151. Motion for change of venue	30
34	Rule 5.10. Definitions and use of terms.....	30
35	<u>Rule 5.240. Appointment of counsel to represent a child in family law</u>	
36	<u>proceedings</u>	31
37	<u>Rule 5.241. Compensation of counsel appointed to represent a child</u>	
38	<u>in a family law proceeding</u>	34
39	<u>Rule 5.242. Qualifications, rights, and responsibilities of counsel</u>	
40	<u>appointed to represent a child in family law proceedings</u>	36
41	Rule 5.324. Telephone appearance in title IV-D hearings and conferences.	45

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
 Adopted by the Judicial Council on October 26, 2007,
 effective on January 1, 2008.

1	<u>Rule 5.410. Request for sibling contact information under Family Code</u>	
2	<u>section 9205</u>	46
3	Rule 5.475. Custody and visitation orders following termination of	
4	a juvenile court proceeding or probate court guardianship proceeding	
5	(Fam. Code, § 3105; Welf. & Inst. Code, § 364.4 <u>362.4</u> ; Prob. Code,	
6	§ 1602)	50
7	<u>Rule 5.480. Application (Fam. Code, §§ 170, 177, 3041; Prob. Code,</u>	
8	<u>§ 1459.5; Welf. & Inst. Code, §§ 224, 224.1)</u>	50
9	<u>Rule 5.481. Inquiry and notice (Fam. Code, §§ 177(a), 180; Prob. Code,</u>	
10	<u>§§ 1459.5(b), 1460.2; Welf. & Inst. Code, §§ 224.2, 224.3)</u>	51
11	<u>Rule 5.482. Proceedings after notice (Fam. Code, §§ 177(a), 180(d), (e);</u>	
12	<u>Prob. Code, §§ 1459.5(b), 1460.2(d), (e); Welf. & Inst. Code, §§ 224.2(c),</u>	
13	<u>(d); 25 U.S.C. § 1916(b))</u>	54
14	<u>Rule 5.483. Transfer of case (Fam. Code, § 177(a); Prob. Code, § 1459.5(b);</u>	
15	<u>Welf. & Inst. Code, § 305.5; Guidelines for State Courts; Indian Child</u>	
16	<u>Custody Proceedings, 44 Fed.Reg. 67584 (Nov. 26, 1979) Bureau of</u>	
17	<u>Indian Affairs Guideline C)</u>	57
18	<u>Rule 5.484. Placement of an Indian child (Fam. Code, § 177(a);</u>	
19	<u>Prob. Code, § 1459.5(b); Welf. & Inst. Code, §§ 361, 361.31, 361.7(c))</u> ..	60
20	<u>Rule 5.485. Termination of parental rights (Fam. Code, § 7892.5;</u>	
21	<u>Welf. & Inst. Code, §§ 361.7, 366.26(c)(2)(B))</u>	62
22	<u>Rule 5.486. Petition to invalidate orders (Fam. Code, § 175(e); Prob. Code,</u>	
23	<u>§ 1459(e); Welf. & Inst. Code, § 224(e))</u>	63
24	<u>Rule 5.487. Adoption record keeping (Fam. Code, § 9208)</u>	64
25	Rule 5.502. Definitions and use of terms.....	65
26	Rule 5.518. Court-connected child protection/dependency mediation.....	67
27	Rule 5.534. General provisions—all proceedings	68
28	Rule 5.640. Psychotropic medications.....	70
29	Rule 5.650. Appointment of responsible adult as educational representative	
30	75
31	<u>Rule 5.651. Educational rights of children before the juvenile court</u>	85
32	Rule 5.664. Indian Child Welfare Act (25 U.S.C. § 1901 et seq.)	94
33	Rule 5.668. Commencement of hearing—explanation of proceedings	
34	(§§ 316, 316.2).....	107
35	Rule 5.695. Orders of the court.....	108
36	Rule 5.726. Prospective adoptive parent designation (§ 366.26(n)).....	108
37	Rule 5.727. Proposed removal (§ 366.26(n)).....	110
38	Rule 5.728. Emergency removal (§ 366.26(n))	111
39	Rule 5.790. Orders of the court.....	113
40	<u>Rule 7.10. Ex parte communications in proceedings under</u>	
41	<u>the probate code and certain other proceedings</u>	113

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,

effective on January 1, 2008.

1	<u>Rule 7.207. Bonds of conservators and guardians</u>	117
2	<u>Rule 7.575. Accounts of conservators and guardians</u>	118
3	<u>Former rule 7.756. Renumbered effective January 1, 2008</u>	120
4	<u>Rule 7.756. Compensation of conservators and guardians</u>	120
5	<u>Rule 7.756. 7.776. Compensation of trustees</u>	121
6	<u>Rule 7.1009. Standards of conduct for the guardian of the estate</u>	121
7	<u>Rule 7.1012. The good cause exception to notice of the hearing</u>	
8	<u>on a petition for appointment of a temporary guardian</u>	123
9	<u>Rule 7.1013. Change of ward's residence</u>	125
10	<u>Rule 7.1015. Indian Child Welfare Act in guardianship and certain</u>	
11	<u>conservatorship proceedings (Prob. Code, §§ 1459.5, 1460.2)</u>	127
12	<u>Rule 7.1059. Standards of conduct for the conservator of the estate</u>	132
13	<u>Rule 7.1062. The good cause exception to notice of the hearing</u>	
14	<u>on a petition for appointment of a temporary conservator</u>	136
15	<u>Rule 7.1063. Change of conservatee's residence</u>	138
16	Rule 8.32. Address and telephone number of record; notice of change	141
17	Rule 8.100. Filing the appeal	141
18	Rule 8.108. Extending the time to appeal	144
19	Rule 8.112. Petition for writ of supersedeas	148
20	Former rule 8.120. Renumbered effective January 1, 2008.....	149
21	<u>Rule 8.120. Record on appeal</u>	149
22	<u>Rule 8.121. Notice designating the record on appeal</u>	150
23	Rule 8.120. <u>8.122. Clerk's transcript</u>	152
24	<u>Rule 8.123. Record of administrative proceedings</u>	154
25	Rule 8.124. Appendixes instead of clerk's transcript	155
26	Rule 8.128. Superior court file instead of clerk's transcript	159
27	Rule 8.130. Reporter's transcript	159
28	Rule 8.134. Agreed statement	162
29	Rule 8.137. Settled statement.....	163
30	Rule 8.140. Failure to procure the record	164
31	Rule 8.144. Form of the record	165
32	Rule 8.147. Record in multiple or later appeals in same case	166
33	Rule 8.155. Augmenting and correcting the record.....	166
34	Rule 8.200. Briefs by parties and amici curiae	167
35	Rule 8.204. Contents and form of briefs.....	168
36	Rule 8.208. Certificate of Interested Entities or Persons	169
37	Rule 8.212. Service and filing of briefs	170
38	Rule 8.220. Failure to file a brief.....	172
39	Rule 8.224. Transmitting exhibits.....	173
40	Rule 8.272. Remittitur.....	174
41	Rule 8.276. Costs and <u>Sanctions</u>	174

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1	<u>Rule 8.278. Costs on appeal</u>	178
2	Rule 8.308. Time to appeal.....	180
3	Rule 8.320. Normal record; exhibits.....	181
4	Rule 8.366. Hearing and decision in the Court of Appeal.....	181
5	<u>Rule 8.386. Remittitur in habeas corpus proceedings</u>	182
6	Rule 8.400. Appeals in juvenile cases generally	182
7	Rule 8.450. Notice of intent to file writ petition to review order setting	
8	hearing under Welfare and Institutions Code section 366.26.....	183
9	Rule 8.454. Notice of intent to file writ petition under Welfare and	
10	Institutions Code section 366.28 to review order designating specific	
11	placement of a dependent child after termination of parental rights	184
12	Rule 8.490. Petitions for writ of mandate, certiorari, or prohibition	185
13	<u>Rule 8.499. Remittitur</u>	188
14	Rule 8.520. Briefs by parties and amici curiae; judicial notice	188
15	Rule 8.630. Briefs by parties and amici curiae	188
16	<u>Rule 8.631. Applications to file overlength briefs in appeals from</u>	
17	<u>a judgment of death</u>	190
18	Rule 8.1008. Transfer	193
19	Rule 10.44. Probate and Mental Health Advisory Committee	194
20	Rule 10.48. Court Executives Advisory Committee.....	195
21	Rule 10.780. Administration of alternative dispute resolution (ADR)	
22	programs.....	196
23	Rule 10.951. Duties of supervising judge of the criminal division	196
24	<u>Rule 10.960. Court self-help centers</u>	196
25	Standard 3.1. Appearance by telephone.....	198
26	Standard 5.10. Guidelines for determining payment for costs	
27	of appointed counsel for children in family court	199
28	Standard 5.11. Guidelines for appointment of counsel for minors	
29	when time with or responsibility for the minor is disputed	200

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 **Rule 1.3. Authority**

2
3 The rules in the California Rules of Court are adopted by the Judicial Council of
4 California under the authority of article VI, section 6, of the Constitution of the
5 State of California, unless otherwise indicated. The rules in division 5 of title 8
6 and in title 9, ~~and the Code of Judicial Ethics~~, were adopted by the Supreme Court.

7
8 *Rule 1.3 amended effective January 1, 2008; adopted effective January 1, 2007.*
9

10
11 **Rule 1.4. Contents of the rules**

12
13 (a) * * *

14
15 (b) * * *

16
17 ~~(c) Code of Judicial Ethics~~

18
19 ~~The California Rules of Court includes the Code of Judicial Ethics adopted~~
20 ~~by the Supreme Court.~~

21
22 ~~(d)(c)~~ * * *

23 *(Subd (c) relettered effective January 1, 2008; adopted as subd (d) effective January 1,*
24 *2007.)*

25
26 ~~(e)(d)~~ * * *

27 *(Subd (d) relettered effective January 1, 2008; adopted as subd (e) effective January 1,*
28 *2007.)*

29
30 *Rule 1.4 amended effective January 1, 2008; adopted effective January 1, 2007.*
31

32
33 **Rule 1.20. Filing**

34
35 (a) **Effective date of filing**

36
37 Unless otherwise provided, a document is deemed filed on the date it is
38 received by the court clerk.

39
40 *(Subd (a) lettered effective January 1, 2008; adopted as unlettered subd effective January*
41 *1, 2007.)*
42

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on October 26, 2007,
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1 **(b) Protection of privacy**
2

3 (1) Scope
4

5 The requirements of this subdivision that parties or their attorneys must
6 not include, or must redact, certain identifiers from documents or
7 records filed with the court do not apply to documents or records that
8 by court order or operation of law are filed in their entirety either
9 confidentially or under seal.

10
11 (2) Exclusion or redaction of identifiers
12

13 To protect personal privacy and other legitimate interests, parties and
14 their attorneys must not include, or must redact where inclusion is
15 necessary, the following identifiers from all pleadings and other papers
16 filed in the court's public file, whether filed in paper or electronic form,
17 unless otherwise provided by law or ordered by the court:

18
19 (A) Social security numbers. If an individual's social security number
20 is required in a pleading or other paper filed in the public file,
21 only the last four digits of that number may be used.

22
23 (B) Financial account numbers. If financial account numbers are
24 required in a pleading or other paper filed in the public file, only
25 the last four digits of these numbers may be used.

26
27 (3) Responsibility of the filer
28

29 The responsibility for excluding or redacting identifiers identified in
30 (b)(2) from all documents filed with the court rests solely with the
31 parties and their attorneys. The court clerk will not review each
32 pleading or other paper for compliance with this provision.

33
34 (4) Confidential reference list
35

36 If the court orders on a showing of good cause, a party filing a
37 document containing identifiers listed in (b)(2) may file, along with the
38 redacted document that will be placed in the public file, a reference list.
39 The reference list is confidential. A party filing a confidential reference
40 list must use *Confidential Reference List of Identifiers* (form MC-120)
41 for that purpose. The confidential list must identify each item of

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on October 26, 2007,
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1 redacted information and specify an appropriate reference that uniquely
2 corresponds to each item of redacted information listed. All references
3 in the case to the redacted identifiers included in the confidential
4 reference list will be understood to refer to the corresponding complete
5 identifier. A party may amend its reference list as of right.

6
7 *(Subd (b) adopted effective January 1, 2008.)*
8
9

10 *Rule 1.20 amended effective January 1, 2008; adopted effective January 1, 2007.*
11

12
13 **Chapter 7. Form and Format of Papers**

14
15 *Chapter 7 adopted effective January 1, 2008.*
16
17

18 **Rule 1.200. Format of citations**

19
20 Citations to cases and other authorities in all documents filed in the courts must be
21 in the style established by either the *California Style Manual* or *The Bluebook: A*
22 *Uniform System of Citation*, at the option of the party filing the document. The
23 same style must be used consistently throughout the document.
24

25 *Rule 1.200 adopted effective January 1, 2008.*
26

27 **Rule 2.111. Format of first page**

28
29 The first page of each paper must be in the following form:
30

31 (1)–(8) * * *

32
33 (9) On the complaint, petition, or application filed in a limited civil case, below
34 the character of the action or proceeding, the amount demanded in the
35 complaint, petition, or application, stated as follows: “Amount demanded
36 exceeds \$10,000” or “Amount demanded does not exceed \$10,000,” as
37 required by Government Code section ~~72055~~ 70613.
38

39 (10)–(11) * * *

40
41 *Rule 2.111 amended effective January 1, 2008; adopted effective January 1, 2007.*
42

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on October 26, 2007,
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1
2 **Rule 2.250. Definitions**

3
4 (1)–(2) * * *

5
6 (3) An “electronic filer” is a party filing a document in electronic form directly
7 with the court, by an agent, or through an electronic filing service provider.

8
9 (4)–(7) * * *

10
11 (8) “Electronic notification address” of a party means the electronic address at or
12 through which the party has authorized electronic service.

13
14 *Rule 2.250 amended effective January 1, 2008; adopted as rule 2050 effective January 1, 2003;*
15 *previously amended effective January 1, 2006; previously amended and renumbered effective*
16 *January 1, 2007.*

17
18
19 **Rule 2.253. Court order requiring electronic ~~filing and service~~ service or**
20 **filing**

21
22 (a) **Court order**

23
24 The court may, on the motion of any party or on its own motion, after
25 finding that such an order would not cause undue hardship or significant
26 prejudice to any party, order all parties to serve and file all documents
27 electronically in any class action, a consolidated action, a group of actions, a
28 coordinated action, or an action that is complex under rule 3.403, after
29 finding that such an order would not cause undue hardship or significant
30 prejudice to any party. The court’s order may also provide that: to:

31
32 (1) Serve all documents electronically, except when personal service is
33 required by statute or rule;

34
35 (2) File all documents electronically; or

36
37 (3) Serve and file all documents electronically, except when personal
38 service is required by statute or rule.

39
40 *(Subd (a) amended effective January 1, 2008; previously amended effective January 1,*
41 *2007.)*

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on October 26, 2007,
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1 **(b) Additional provisions of order**

2
3 The court's order may also provide that:

4
5 (1) * * *

6
7 (2) When the court sends confirmation of filing to all parties, receipt of the
8 confirmation constitutes service of the filing if the filed document is
9 available electronically.

10
11 *(Subd (b) relettered and amended effective January 1, 2008; adopted as part of subd (a)*
12 *effective January 1, 2003.)*

13
14 **~~(b)~~(c) Filing in paper form**

15
16 When it is not feasible for a party to convert a document to electronic form
17 by scanning, imaging, or another means, a court may allow that party to
18 serve, file, or serve and file the document in paper form.

19
20 *(Subd (c) relettered and amended effective January 1, 2008; adopted as subd (b) effective*
21 *January 1, 2003.)*

22
23 *Rule 2.253 amended effective January 1, 2008; adopted as rule 2053 effective January 1, 2003;*
24 *previously amended and renumbered effective January 1, 2007.*

25
26
27 **Rule 2.256. Responsibilities of electronic filer**

28
29 **(a)** * * *

30
31 **(b) Format of documents to be filed electronically**

32
33 A document that is filed electronically with the court must be in a format
34 specified by the court unless it cannot be created in that format. The format
35 adopted by a court must meet the following requirements:

36
37 (1)–(2) * * *

38
39 (3) The printing of documents must not result in the loss of document text,
40 format, or appearance.

41

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
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1 If a document is filed electronically under the rules in this chapter and cannot
2 be formatted to be consistent with a formatting rule elsewhere in the
3 California Rules of Court, the rules in this chapter prevail.

4
5 *(Subd (b) amended effective January 1, 2008; previously amended effective January 1,*
6 *2006.)*

7
8 *Rule 2.256 amended effective January 1, 2008; adopted as rule 2056 effective January 1, 2003;*
9 *previously amended effective January 1, 2006; previously amended and renumbered effective*
10 *January 1, 2007.*

11
12
13 **Rule 2.257. Requirements for signatures on documents**

14
15 **(a)–(d) * * ***

16
17 **(e) Judicial signatures**

18
19 If a document requires a signature by a court or a judicial officer, the
20 document may be electronically signed in any manner permitted by law.

21
22 *(Subd (e) adopted effective January 1, 2008.)*

23
24 *Rule 2.257 amended effective January 1, 2008; adopted as rule 2057 effective January 1, 2003;*
25 *previously amended and renumbered effective January 1, 2007.*

26
27
28 **Rule 2.259. Actions by court on receipt of electronic filing**

29
30 **(a) Confirmation of receipt and filing of document**

31
32 **(1) Confirmation of receipt**

33
34 When a court receives an electronically submitted document ~~directly~~
35 ~~from the filer and not through an electronic filing service provider~~, the
36 court must promptly send the electronic filer confirmation of the court's
37 receipt of the document, indicating the date and time of receipt. A
38 document is considered received at the date and time the confirmation
39 of receipt is created.

40
41 **(2)–(4) * * ***

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
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1 *(Subd (a) amended effective January 1, 2008; previously amended effective January 1,*
2 *2007.)*

3
4 **(b)–(f) * * ***

5
6 *Rule 2.259 amended effective January 1, 2008; adopted as rule 2059 effective January 1, 2003;*
7 *previously amended and renumbered effective January 1, 2007.*

8
9
10 **Rule 2.260. Electronic service**

11
12 **(a) Consent to electronic service**

13
14 (1) When a notice may be served by mail, express mail, overnight delivery,
15 or fax transmission, electronic service of the notice is permitted when
16 authorized by these rules.

17
18 (2) A party indicates that ~~he or she~~ the party agrees to accept electronic
19 service by:

20
21 (A)–(B) * * *

22
23 (3) A party that has consented to electronic service under (2) and has used
24 an electronic filing service provider to file and serve documents in a
25 case consents to service on that electronic filing service provider as the
26 designated agent for service for the party in the case, until such time as
27 the party designates a different agent for service.

28
29 *(Subd (a) amended effective January 1, 2008; previously amended effective January 1,*
30 *2007.)*

31
32 **(b) Maintenance of electronic service lists**

33
34 By January 1, 2009, or before if possible, a court that permits electronic
35 filing in a case must maintain and make available electronically to the parties
36 an electronic service list that contains the parties' current electronic
37 notification addresses, as provided by the parties that have filed
38 electronically in the case.

39
40 *(Subd (b) adopted effective January 1, 2008.)*

41

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
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1 **(c) Service by the parties**
2

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

7
8 *(Subd (c) adopted effective January 1, 2008.)*
9

10 **(d) Change of electronic notification address**
11

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

16
17 (2) A party's election to contract with an electronic filing service provider
18 to electronically file and serve documents or to receive electronic
19 service of documents on the party's behalf does not relieve the party of
20 its duties under (1).

21
22 (3) An electronic notification address is presumed valid for a party if the
23 party files electronic documents with the court from that address and
24 has not filed and served notice that the address is no longer valid.

25
26 *(Subd (d) adopted effective January 1, 2008.)*
27

28 ~~(b)~~**(e)** * * *

29
30 *(Subd (e) relettered effective January 1, 2008; adopted as subd (b) effective January 1,*
31 *2003; previously amended effective January 1, 2007.)*
32

33 ~~(e)~~**(f)** * * *

34
35 *(Subd (f) relettered effective January 1, 2008; adopted as subd (c) effective January 1,*
36 *2003; previously amended effective January 1, 2007.)*
37

38 ~~(d)~~ **Change of electronic notification address**
39

40 ~~(1) A party whose electronic notification address changes while the action~~
41 ~~or proceeding is pending must promptly file a notice of change of~~

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

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effective on January 1, 2008.

1 ~~address with the court electronically and must serve this notice on all~~
2 ~~other parties.~~

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

7
8 ~~(e)(g)~~ * * *

9
10 *(Subd (g) relettered effective January 1, 2008; adopted as subd (e) effective January 1,*
11 *2003; previously amended effective January 1, 2007.)*

12
13 *Rule 2.260 amended effective January 1, 2008; adopted as rule 2060 effective January 1, 2003;*
14 *previously amended and renumbered effective January 1, 2007.*

15
16
17 **Rule 2.306. Service of papers by fax transmission**

18
19 (a) * * *

20
21 **(b) Service lists**

22
23 (1) Duties of first-named plaintiff or petitioner

24
25 In a case in which the parties have agreed to service by fax, the plaintiff
26 or petitioner named first in the complaint or petition, in addition to its
27 responsibilities under rule 3.254, must:

28
29 (A) Maintain a current list of the parties that includes their fax numbers
30 for service of notice on each party; and

31
32 (B) Furnish a copy of the list on request to any party or the court.

33
34 (2) Duties of each party

35
36 In a case in which the parties have agreed to service by fax, each party,
37 in addition to its responsibilities under rule 3.254, must:

38
39 (A) Furnish the first-named plaintiff or petitioner with the party's
40 current fax number for service of notice when it first appears in the
41 action; and
42

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
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1 (B) If the party serves an order, notice, or pleading on a party that has
2 not yet appeared in the action, serve a copy of the service list under
3 (1) at the same time that the order, notice, or pleading is served.
4

5 *(Subd (b) adopted effective January 1, 2008.)*
6

7 ~~(b)~~(c) * * *

8
9 *(Subd (c) relettered effective January 1, 2008; adopted as subd (b) effective January 1,*
10 *2007.)*
11

12 ~~(e)~~(d) * * *

13
14 *(Subd (d) relettered effective January 1, 2008; adopted as part of subd (b) effective March*
15 *1, 1992; previously amended and lettered as subd (c) effective January 1, 2007.)*
16

17 ~~(d)~~(e) * * *

18
19 *(Subd (e) relettered effective January 1, 2008; adopted as part of subd (b) effective March*
20 *1, 1992; previously amended and lettered as subd (d) effective January 1, 2007.)*
21

22 ~~(e)~~(f) * * *

23
24 *(Subd (f) relettered effective January 1, 2008; adopted as subd (c) effective March 1, 1992;*
25 *previously amended and relettered as subd (e) effective January 1, 2007.)*
26

27 ~~(f)~~(g) * * *

28
29 *(Subd (g) relettered effective January 1, 2008; adopted as subd (d) effective March 1,*
30 *1992; previously amended effective July 1, 1997; previously amended and relettered as*
31 *subd (f) effective January 1, 2007.)*
32

33 ~~(g)~~(h) * * *

34
35 *(Subd (h) relettered effective January 1, 2008; adopted as subd (e) effective March 1,*
36 *1992; previously amended effective July 1, 1997, and May 1, 1998; previously amended*
37 *and relettered as subd (g) effective January 1, 2007.)*
38

39 *Rule 2.306 amended effective January 1, 2008; adopted as rule 2008 effective March 1, 1992;*
40 *previously amended effective July 1, 1997, and May 1, 1998; previously amended and*
41 *renumbered effective January 1, 2007.*
42
43

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 **Rule 2.400. Court records**

2
3 **(a) Removal of papers**

4
5 Only the clerk may remove and replace papers in the court's files. Unless
6 otherwise ordered by the court, filed papers may only be inspected by the
7 public in the office of the clerk and released to a court officer or attaché
8 authorized court personnel for use in a court facility. No original papers filed
9 with the clerk may be used in any location other than a court facility, unless
10 so ordered by the presiding judge.

11
12 *(Subd (a) amended effective January 1, 2008; previously amended effective July 1, 1993,*
13 *and January 1, 2007.)*

14
15 **(b)–(c) * * ***

16
17 *Rule 2.400 amended effective January 1, 2008; adopted as rule 243 effective January 1, 1949;*
18 *previously amended effective July 1, 1993; previously amended and renumbered effective*
19 *January 1, 2007.*

20
21
22 **Rule 2.503. Public access**

23
24 **(a) * * ***

25
26 **(b) Electronic access required to extent feasible**

27
28 A court that maintains the following records in electronic form must provide
29 electronic access to them, both remotely and at the courthouse, to the extent
30 it is feasible to do so:

31
32 (1) * * *

33
34 (2) All records in civil cases, except those listed in (c)(1)–~~(6)~~(8).

35
36 *(Subd (b) amended effective January 1, 2008; previously amended effective July 1, 2004,*
37 *and January 1, 2007.)*

38
39 **(c) Courthouse electronic access only**

40
41 A court that maintains the following records in electronic form must provide
42 electronic access to them at the courthouse, to the extent it is feasible to do

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 so, but may provide remote electronic access only to the records governed by
2 (b):

3
4 (1) Records in a proceeding under the Family Code, including proceedings
5 for dissolution, legal separation, and nullity of marriage; child and
6 spousal support proceedings; ~~and~~ child custody proceedings; and
7 domestic violence prevention proceedings;

8
9 (2)–(4) * * *

10
11 (5) Records in a criminal proceeding; ~~and~~

12
13 (6) Records in a civil harassment proceeding under Code of Civil
14 Procedure section 527.6.;

15
16 (7) Records in a workplace violence prevention proceeding under Code of
17 Civil Procedure section 527.8; and

18
19 (8) Records in an elder or dependent adult abuse prevention proceeding
20 under Welfare and Institutions Code section 15657.03.

21
22 *(Subd (c) amended effective January 1, 2008; previously amended effective July 1, 2004,*
23 *and January 1, 2007.)*

24
25 **(d)–(i) * * ***

26
27 *Rule 2.503 amended effective January 1, 2008; adopted as rule 2073 effective July 1, 2002;*
28 *previously amended effective July 1, 2004, and January 1, 2005; previously amended and*
29 *renumbered effective January 1, 2007.*

30
31
32 **Rule 3.58. Hearing on application**

33
34 **(a) * * ***

35
36 **(b) Confidentiality of hearing**

37
38 To ensure confidentiality of the applicant's financial information, the hearing
39 must be held in private and the court must exclude all persons except
40 authorized court attachés personnel, the applicant, those present with the
41 applicant's consent, and any witness being examined.
42

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 *(Subd (b) amended effective January 1, 2008.)*

2
3 *Rule 3.58 amended effective January 1, 2008; adopted effective January 1, 2007.*

4
5
6 **Rule 3.60. Confidentiality**

7
8 No person may have access to an application to proceed in forma pauperis except
9 the court and authorized ~~attaches~~ court personnel, persons authorized to verify the
10 information under rules 3.53 and 3.59(c) and under Government Code section
11 68511.3, and any person authorized by the applicant. No person may reveal any
12 information contained in the application except as authorized by law.

13
14 *Rule 3.60 amended effective January 1, 2008; adopted effective January 1, 2007.*

15
16
17 **Rule 3.300. Related cases**

18
19 **(a)–(g) * * ***

20
21 **(h) Judicial action**

22
23 (1) *Related cases pending in one superior court*

24
25 If all the related cases have been filed in one superior court, the court,
26 on notice to all parties, may order that the cases, including probate and
27 family law cases, be related and may assign them to a single judge or
28 department. In a superior court where there is a master calendar, the
29 presiding judge may order the cases related. In a court in which cases
30 are assigned to a single judge or department, cases may be ordered
31 related as follows:

32
33 (A)–(D) * * *

34
35 (E) If the procedures for relating pending cases under this rule do not
36 apply, the procedures under Code of Civil Procedure section 1048
37 and rule ~~367~~ 3.350 must be followed to consolidate cases pending
38 in the same superior court.

39
40 (2)–(3) * * *

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 *(Subd (h) amended effective January 1, 2008; adopted as subd (d) effective January 1,*
2 *1996; previously amended and relettered as subd (e) effective January 1, 2007.)*

3
4 **(i)–(k) * * ***

5
6 *Rule 3.300 amended effective January 1, 2008; adopted as rule 804 effective January 1, 1996;*
7 *previously amended and renumbered effective January 1, 2007.*

8
9
10 **Rule 3.512. Electronic submission of documents to the Chair of the Judicial**
11 **Council**

12
13 **(a) Documents that may be submitted electronically**

14
15 Any paper listed in rule ~~4511(a)~~3.511(a) may be submitted electronically to
16 coordination@jud.ca.gov.

17
18 *(Subd (a) amended effective January 1, 2008; previously amended effective January 1,*
19 *2007.)*

20
21 **(b)–(f) * * ***

22
23 *Rule 3.512 amended effective January 1, 2008; adopted as rule 1511.5 effective July 1, 2005;*
24 *previously amended and renumbered effective January 1, 2007.*

25
26
27 **Rule 3.670. Telephone appearance**

28
29 **(a) Policy favoring telephone appearances**

30
31 The intent of this rule is to promote uniformity in the practices and
32 procedures relating to telephone appearances in civil cases. To improve
33 access to the courts and reduce litigation costs, courts should permit parties,
34 to the extent feasible, to appear by telephone at appropriate conferences,
35 hearings, and proceedings in civil cases.

36
37 *(Subd (a) adopted effective January 1, 2008.)*

38
39 **(a)(b) Application**

40
41 This rule applies to all general civil cases as defined in rule 1.6 and to
42 unlawful detainer and probate proceedings.

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 *(Subd (b) relettered effective January 1, 2008; previously repealed and adopted as subd*
2 *(a) effective July 1, 1998; previously amended effective January 1, 1999, January 1, 2001,*
3 *January 1, 2003, and January 1, 2007.)*
4

5 **(b)(c) General provision authorizing parties to appear by telephone**
6

7 ~~Except as provided in (c), a party may appear by telephone in any conference~~
8 ~~or hearing at which witnesses are not expected to be called to testify. Except~~
9 ~~as provided in (e)(2), a party may appear by telephone at the following~~
10 ~~conferences, hearings, and proceedings:~~

11
12 (1) Case management conferences, provided the party has made a good
13 faith effort to meet and confer and has timely served and filed a case
14 management statement before the conference date;
15

16 (2) Trial setting conferences;
17

18 (3) Hearings on law and motion, except motions in limine;
19

20 (4) Hearings on discovery motions;
21

22 (5) Status conferences, including conferences to review the status of an
23 arbitration or a mediation; and
24

25 (6) Hearings to review the dismissal of an action.
26

27 *(Subd (c) amended and relettered effective January 1, 2008; previously repealed and*
28 *adopted as subd (b) effective July 1, 1998; previously amended effective July 1, 1999, and*
29 *January 1, 2003.)*
30

31 **(e)(d) Exceptions Required personal appearances**
32

33 Except as provided in (e)(3), a personal appearance is required for hearings,
34 conferences, and proceedings not listed in (c), including the following:
35

36 (1) Trials and hearings at which witnesses are expected to testify;
37

38 (2) Hearings on temporary restraining orders;
39

40 ~~(1)(3) Settlement conferences, unless the court orders otherwise;~~
41

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

- 1 (2) ~~Case management conferences, unless the court permits telephone~~
2 ~~appearances at those conferences; and~~
3
4 (3) ~~Any hearing or conference for which the court, in its discretion,~~
5 ~~determines that a personal appearance would materially assist in a~~
6 ~~determination of the proceeding or in resolution of the case. The court~~
7 ~~must make this determination on a case-by-case basis.~~
8
9 (4) Trial management conferences;
10
11 (5) Hearings on motions in limine; and
12
13 (6) Hearings on petitions to confirm the sale of property under the Probate
14 Code.

15
16 In addition, except as provided in (e)(3), a personal appearance is required
17 for the following persons:
18

- 19 (7) Applicants seeking an ex parte order, except when the applicant is
20 seeking an order:
21
22 (A) For permission to file a memorandum in excess of the applicable
23 page limits;
24
25 (B) For an extension of time to serve pleadings;
26
27 (C) To set hearing dates on alternative writs and orders to show cause;
28 or
29
30 (D) By stipulation of the parties;
31
32 (8) Persons ordered to appear to show cause why sanctions should not be
33 imposed for violation of a court order or a rule; or
34
35 (9) Persons ordered to appear in an order or citation issued under the
36 Probate Code.
37

38 At the proceedings under (7), (8), and (9), parties who are not required to
39 appear in person under this rule may appear by telephone.
40

41 *(Subd (d) amended and relettered effective January 1, 2008; adopted as subd (c) effective*
42 *July 1, 1998; previously amended effective July 1, 2002, and January 1, 2003.)*

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1
2 **(e) Court discretion to modify rule**
3

4 (1) Policy favoring telephone appearances in civil cases
5

6 In exercising its discretion under this provision, the court should
7 consider the general policy favoring telephone appearances in civil
8 cases.
9

10 (2) Court may require personal appearances
11

12 The court may require a party to appear in person at a hearing,
13 conference, or proceeding listed in (c) if the court determines on a
14 hearing-by-hearing basis that a personal appearance would materially
15 assist in the determination of the proceedings or in the effective
16 management or resolution of the particular case.
17

18 (3) Court may permit appearances by telephone
19

20 The court may permit a party to appear by telephone at a hearing,
21 conference, or proceeding under (d) if the court determines that a
22 telephone appearance is appropriate.
23

24 *(Subd (e) adopted effective January 1, 2008.)*
25

26 **(f) Need for personal appearance**
27

28 If, at any time during a hearing, conference, or proceeding conducted by
29 telephone, the court determines that a personal appearance is necessary, the
30 court may continue the matter and require a personal appearance.
31

32 *(Subd (f) adopted effective January 1, 2008.)*
33

34 **(d)(g) Notice by party**
35

36 (1) A party choosing to appear by telephone at a hearing, conference, or
37 proceeding under this rule must either:
38

39 (A) Place the phrase “Telephone Appearance” below the title of the
40 moving, ~~or~~ opposing, or reply papers; or
41

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 (B) At least ~~five~~ three court days before the appearance, notify the
2 court and all other parties of the party's intent to appear by
3 telephone. If the notice is oral, it must be given either in person or
4 by telephone. If the notice is in writing, it must be given by filing
5 a "Notice of Intent to Appear by Telephone" with the court at
6 least ~~five~~ three court days before the ~~hearing~~ appearance and by
7 serving the notice at the same time on all other parties by personal
8 delivery, fax transmission, express mail, or other means
9 reasonably calculated to ensure delivery to the parties no later
10 than the close of the next business day.

11
12 (2) If after receiving notice from another party as provided under (1) a
13 party that has not given notice also decides to appear by telephone, the
14 party may do so by notifying the court and all other parties that have
15 appeared in the action, no later than noon on the court day before the
16 appearance, of its intent to appear by telephone.

17
18 ~~(2)~~(3) If a party that has given notice that it intends to appear by telephone
19 under (1) subsequently chooses to appear in person, the party must so
20 notify the court and all other parties that have appeared in the action, by
21 telephone, at least two court days before the ~~hearing~~ appearance.

22
23 ~~(3)~~(4) The court, on a showing of good cause, may permit a party to appear
24 by telephone at a conference, hearing, or proceeding even if the party
25 has not given the notice required under (1) or (2) and may permit a
26 party to appear in person even if the party has not given the notice
27 required in (3).

28
29 *(Subd (g) amended and relettered effective January 1, 2008; adopted as subd (d) effective*
30 *July 1, 1998; previously amended effective January 1, 1999, July 1, 1999, January 1, 2003,*
31 *and January 1, 2007.)*

32
33 **(e)(h) Notice by court**

34
35 After a party has requested a telephone appearance under ~~(d)~~(g), if the court
36 requires the personal appearance of the party, the court must ~~notify~~ give
37 reasonable notice to all parties by telephone at least one court day before the
38 hearing and may continue the hearing if necessary to accommodate the
39 personal appearance. The court may direct the court clerk, a court-appointed
40 vendor, a party, or an attorney to provide the notification. In courts using a
41 telephonic tentative ruling system for law and motion matters, court
42 notification that parties must appear in person may be given as part of the

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 court's tentative ruling on a specific law and motion matter if that
2 notification is given one court day before the hearing.

3
4 *(Subd (h) amended and relettered effective January 1, 2008; adopted as subd (e) effective*
5 *July 1, 1998; previously amended effective January 1, 1999, and January 1, 2003.)*
6

7 **~~(f)~~(i) Private vendor; charges for service**

8
9 A court may provide teleconferencing for court appearances by entering into
10 a contract with a private vendor. The contract may provide that the vendor
11 may charge the party appearing by telephone a reasonable fee, specified in
12 the contract, for its services.

13
14 *(Subd (i) relettered effective January 1, 2008; adopted as subd (f) effective July 1, 1998;*
15 *previously amended effective January 1, 2003.)*
16

17 **~~(g)~~(j) Audibility and procedure**

18
19 The court must ensure that the statements of participants are audible to all
20 other participants and the court staff and that the statements made by a
21 participant are identified as being made by that participant.

22
23 *(Subd (j) amended and relettered effective January 1, 2008; adopted as subd (f) effective*
24 *March 1, 1988; previously relettered as subd (c) effective January 1, 1989, and as subd (g)*
25 *effective July 1, 1998; previously amended effective January 1, 2003, and January 1,*
26 *2007.)*
27

28 **~~(h)~~(k) Reporting**

29
30 All proceedings involving telephone appearances must be reported to the
31 same extent and in the same manner as if the participants had appeared in
32 person.

33
34 *(Subd (k) relettered effective January 1, 2008; adopted as subd (h) effective July 1, 1998;*
35 *previously amended effective January 1, 2003.)*
36

37 **~~(i)~~(l) Conference call provider**

38
39 A court, by local rule, may designate a particular conference call provider
40 that must be used for telephone appearances.

41
42 *(Subd (l) relettered effective January 1, 2008; adopted as subd (i) effective July 1, 1998;*
43 *previously amended effective January 1, 1999, and January 1, 2003.)*

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1
2 **(j)(m) Information on telephone appearances**
3

4 The court must publish notice providing parties with the particular
5 information necessary for them to appear by telephone at conferences, ~~and~~
6 hearings, and proceedings in that court under this rule.
7

8 *(Subd (m) amended and relettered effective January 1, 2008; adopted as subd (j) effective*
9 *March 1, 1998; previously amended effective January 1, 2003, and January 1, 2007.)*

10
11 *Rule 3.670 amended effective January 1, 2008; adopted as rule 298 effective March 1, 1988;*
12 *previously amended effective January 1, 1989, July 1, 1998, January 1, 1999, July 1, 1999,*
13 *January 1, 2001, July 1, 2002, and January 1, 2003; previously amended and renumbered*
14 *effective January 1, 2007.*

15
16
17 **Rule 3.722. Case management conference**

18
19 **(a)–(b) * * ***
20

21 **(c) Preparation for the conference**
22

23 At the conference, counsel for each party and each self-represented party
24 must appear by telephone or personally ~~or, if permitted as provided in under~~
25 ~~rule 3.670(e)(2), by telephone~~; must be familiar with the case; and must be
26 prepared to discuss and commit to the party's position on the issues listed in
27 rules 3.724 and 3.727.
28

29 *(Subd (c) amended effective January 1, 2008.)*
30

31 **(d)–(e) * * ***
32

33 *Rule 3.722 amended effective January 1, 2008; adopted effective January 1, 2007.*
34
35

36 **Rule 3.816. Disqualification for conflict of interest**
37

38 **(a) * * ***
39

40 **(b) Disclosures by arbitrator**
41

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 In addition to any other disclosure required by law, no later than five days
2 before the deadline for parties to file a motion for disqualification of the
3 arbitrator under Code of Civil Procedure section 170.6 or, if the arbitrator is
4 not aware of his or her appointment or of a matter subject to disclosure at
5 that time, as soon as practicable thereafter, an arbitrator must disclose to the
6 parties:

7
8 (1) Any matter subject to disclosure under subdivisions (D)~~(2)(f)~~(5)(a) and
9 (D)~~(2)(g)~~(5)(b) of canon 6 of the Code of Judicial Ethics; and

10
11 (2) * * *

12
13 *(Subd (b) amended effective January 1, 2008; adopted effective July 1, 2001; previously*
14 *amended effective January 1, 2007.)*

15
16 **(c)–(d) * * ***

17
18 *Rule 3.816 amended effective January 1, 2008; adopted as rule 1606 effective July 1, 1976;*
19 *previously amended effective July 1, 1979, July 1, 1990, January 1, 1994, July 1, 2001, January*
20 *1, 2004, and July 1, 2004; previously amended and renumbered effective January 1, 2007.*

21
22
23 **Rule 3.823. Rules of evidence at arbitration hearing**

24
25 **(a) * * ***

26
27 **(b) Application of civil rules of evidence**

28
29 The rules of evidence governing civil cases apply to the conduct of the
30 arbitration hearing, except:

31
32 (1)–(2) * * *

33
34 (3) *Depositions*

35
36 (A) The deposition of any witness may be offered by any party and
37 must be received in evidence, subject to objections available
38 under Code of Civil Procedure section ~~2025(g)~~ 2025.410,
39 notwithstanding that the deponent is not “unavailable as a
40 witness” within the meaning of Evidence Code section 240 and
41 no exceptional circumstances exist, if:
42

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 (i)–(ii) * * *

2
3 (B) The opposing party, upon receiving the notice, may subpoena the
4 deponent and, at the discretion of the arbitrator, either the
5 deposition may be excluded from evidence or the deposition may
6 be admitted and the deponent may be further cross-examined by
7 the subpoenaing party. These limitations are not applicable to a
8 deposition admissible under the terms of Code of Civil Procedure
9 section ~~2025(u)~~ 2025.620.

10
11 *(Subd (b) amended effective January 1, 2008; previously amended effective July 1, 1979,*
12 *January 1, 1984, January 1, 1988, July 1, 1990, January 1, 2004, and January 1, 2007.)*

13
14 (c)–(d) * * *

15
16 *Rule 3.823 amended effective January 1, 2008; adopted as rule 1613 effective July 1, 1976;*
17 *previously amended effective July 1, 1979, January 1, 1984, January 1, 1988, July 1, 1990, and*
18 *January 1, 2004; previously amended and renumbered effective January 1, 2007.*

19
20
21 **Rule 3.867. Confidentiality of complaint procedures, information, and**
22 **records**

23
24 (a)–(e) * * *

25
26 *Rule 3.867 amended effective January 1, 2008; adopted as rule 1622.2 effective January 1, 2006;*
27 *previously amended and renumbered effective January 1, 2007.*

28
29 **Advisory Committee Comment**

30
31 See Evidence Code sections 1115 and 1119 concerning the scope and types of mediation
32 communications protected by mediation confidentiality.

33
34 **Subdivision (b).** Private meetings, or “caucuses,” between a mediator and subgroups of
35 participants are common in court-connected mediations, and it is frequently understood that these
36 communications will not be disclosed to other participants in the mediation. (See Cal. Rules of
37 Court, rule 3.854(c).) It is important to protect the confidentiality of these communications in rule
38 3.865 complaint procedures, so that one participants in the mediation does not learn what another
39 participants discussed in confidence with the mediator.

40
41 **Subdivisions (c)–(e).** * * *

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 **Rule 3.924. Certification and disclosure by referee**

2
3 (a) * * *

4
5 (b) **Disclosure by referee**

6
7 In addition to any other disclosure required by law, no later than five days
8 before the deadline for parties to file a motion for disqualification of the
9 referee under Code of Civil Procedure section 170.6 or, if the referee is not
10 aware of his or her appointment or of a matter subject to disclosure at that
11 time, as soon as practicable thereafter, a referee must disclose to the parties:

12
13 (1) Any matter subject to disclosure under subdivisions (D)~~(2)(f)~~(5)(a) and
14 (D)~~(2)(g)~~(5)(b) of canon 6 of the Code of Judicial Ethics; and

15
16 (2) * * *

17
18 *(Subd (b) amended effective January 1, 2008.)*

19
20 *Rule 3.924 amended effective January 1, 2008; adopted effective January 1, 2007.*

21
22
23 **Rule 3.1113. Memorandum**

24
25 (a)–(h) * * *

26
27 ~~(i) **Use of *California Style Manual***~~

28
29 ~~A memorandum must follow the style prescribed by either the *California*~~
30 ~~*Style Manual* or *The Bluebook: Uniform System of Citation*, at the option of~~
31 ~~the party filing the document. The same style must be used consistently~~
32 ~~throughout the memorandum.~~

33
34 ~~(j)(i) * * *~~

35
36 ~~*(Subd (i) relettered effective January 1, 2008; adopted as part of subd (e) effective January*~~
37 ~~*1, 1992; previously amended effective July 1, 1997; previously relettered as part of subd*~~
38 ~~*(f) effective July 1, 2000; previously amended and relettered as subd (h) effective January*~~
39 ~~*1, 2004, and as subd (j) effective January 1, 2007.)*~~

40
41 ~~(k)(j) * * *~~

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 *(Subd (j) relettered effective January 1, 2008; adopted as subd (f) effective July 1, 1997;*
2 *previously relettered as subd (g) effective July 1, 2000; previously amended and relettered*
3 *as subd (i) effective January 1, 2004, and as subd (k) effective January 1, 2007.)*

4
5 **(j)(k) * * ***

6
7 *(Subd (k) relettered effective January 1, 2008; adopted as subd (g) effective July 1, 1997;*
8 *previously relettered as subd (h) effective July 1, 2000, and as subd (l) effective January 1,*
9 *2007; previously amended and relettered as subd (j) effective January 1, 2004.)*

10
11 **(m)(j) * * ***

12
13 *(Subd (l) relettered effective January 1, 2008; adopted as subd (h) effective July 1, 1997;*
14 *relettered as subd (i) effective July 1, 2000; previously amended effective January 1, 2003;*
15 *previously amended and relettered as subd (k) effective January 1, 2004, and as subd (m)*
16 *effective January 1, 2007.)*

17
18 **(n)(m) * * ***

19
20 *(Subd (m) relettered effective January 1, 2008; adopted as subd (i) effective July 1, 1997;*
21 *previously relettered as subd (j) effective July 1, 2000, and as subd (n) effective January 1,*
22 *2007; previously amended and relettered as subd (l) effective January 1, 2004.)*

23
24 *Rule 3.1113 amended effective January 1, 2008; adopted as rule 313 effective January 1, 1984;*
25 *previously amended effective July 1, 1984, January 1, 1992, July 1, 1997, July 1, 2000, January*
26 *1, 2003, and January 1, 2004; previously amended and renumbered effective January 1, 2007.*

27
28 **Advisory Committee Comment**

29
30 See also rule 1.200 concerning the format of citations.

31
32
33 **Rule 3.1203. Time of notice to other parties**

34
35 **(a) Time of notice**

36
37 A party seeking an ex parte order must notify all parties no later than 10:00
38 a.m. the court day before the ex parte appearance, absent a showing of
39 exceptional circumstances that justify a shorter time for notice.

40
41 *(Subd (a) amended effective January 1, 2008.)*

42
43 **(b) * * ***

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 *Rule 3.1203 amended effective January 1, 2008; adopted effective January 1, 2007.*
2
3

4 **Rule 3.1207. Personal appearance requirements**
5

6 An ex parte application will be considered without a personal appearance of the
7 applicant in the following cases only:
8

9 (1) Applications to file a memorandum in excess of the applicable page limit;
10

11 (2) Applications for extensions of time to serve pleadings;
12

13 ~~(2)~~(3) Setting of hearing dates on alternative writs and orders to show cause; and
14

15 ~~(3)~~(4) Stipulations by the parties for an order.
16

17 *Rule 3.1207 amended effective January 1, 2008; adopted effective January 1, 2007.*
18
19

20 **Rule 3.1350. Motion for summary judgment or summary adjudication**
21

22 **(a)–(c) * * ***
23

24 **(d) Separate statement in support of motion**
25

26 The Separate Statement of Undisputed Material Facts in support of a motion
27 must separately identify each cause of action, claim, issue of duty, or
28 affirmative defense, and each supporting material fact claimed to be without
29 dispute with respect to the cause of action, claim, issue of duty, or
30 affirmative defense. In a two-column format, the statement must state in
31 numerical sequence the undisputed material facts in the first column ~~and~~
32 followed by the evidence that establishes those undisputed facts in ~~the~~
33 second that same column. Citation to the evidence in support of each
34 material fact must include reference to the exhibit, title, page, and line
35 numbers.
36

37 *(Subd (d) amended effective January 1, 2008; previously amended effective January 1,*
38 *2002, and January 1, 2007.)*
39

40 **(e)–(g) * * ***
41

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 **(h) Format for separate statements**

2 Supporting and opposing separate statements in a motion for summary
3 judgment must follow this format:

4
5 Supporting statement:

6
7 Moving Party's Undisputed Material
8 Facts and Supporting Evidence:

Opposing Party's Response and
Supporting Evidence:

9
10 1. Plaintiff and defendant entered into a
11 written contract for the sale of widgets.
12 Jackson declaration, 2:17-21; contract,
13 Ex. A to Jackson declaration.

~~Jackson declaration, 2:17-21; contract,~~
~~Ex. A to Jackson declaration.~~

14
15 2. No widgets were ever received.
16 Jackson declaration, 3:7-21.

~~Jackson declaration, 3:7-21.~~

17
18 Opposing statement:

19
20 Moving Party's Undisputed Material
21 Facts and Alleged Supporting Evidence:

Opposing Party's Response and
Evidence:

22
23
24 1. Plaintiff and defendant entered into a
25 written contract for the sale of widgets.
26 Jackson declaration, 2:17-21; contract,
27 Ex. A to Jackson declaration.

Undisputed.

28
29 2. No widgets were ever received.
30 Jackson declaration, 3:7-21.

Disputed. The widgets were received in
New Zealand on August 31, 2001.

31 ~~Baygi declaration, 7:2-5.~~

Baygi declaration, 7:2-5.

32
33 Supporting and opposing separate statements in a motion for summary
34 adjudication must follow this format:

35
36 Supporting statement:

37
38 ISSUE 1—THE FIRST CAUSE OF ACTION FOR

39
40 NEGLIGENCE IS BARRED BECAUSE PLAINTIFF

41

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

EXPRESSLY ASSUMED THE RISK OF INJURY

Moving Party's Undisputed Material
Facts and Supporting Evidence:

Opposing Party's Response and
Supporting Evidence:

1. Plaintiff was injured while mountain climbing on a trip with Any Company USA. Plaintiff's deposition, 12:3-4.

~~Plaintiff's deposition, 12:3-4.~~

2. Before leaving on the mountain climbing trip, plaintiff signed a complete waiver of liability. Smith declaration, 5:4-5; waiver of liability, Ex. A to Smith declaration.

~~Smith declaration, 5:4-5; waiver of liability, Ex. A to Smith declaration.~~

Opposing statement:

ISSUE 1—THE FIRST CAUSE OF ACTION FOR

NEGLIGENCE IS BARRED BECAUSE PLAINTIFF

EXPRESSLY ASSUMED THE RISK OF INJURY

Moving Party's Undisputed Material
Facts and Alleged Supporting Evidence:

Opposing Party's Response and
Evidence:

1. Plaintiff was injured while mountain climbing on a trip with Any Company USA. Plaintiff's deposition, 12:3-4.

Undisputed.

2. Before leaving on the mountain climbing trip, plaintiff signed a ~~complete~~ waiver of liability for acts of negligence. Smith declaration, ~~3:6-7~~ 5:4-5; waiver of liability, Ex. A to Smith declaration.

Disputed. Plaintiff did not sign the waiver of liability; the signature on the waiver is forged. Jones declaration, ~~5:4-5; waiver of liability~~ 3:6-7.

(Subd (h) amended effective January 1, 2008; previously amended effective January 1, 1999, and January 1, 2002.)

(i) * * *

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 *Rule 3.1350 amended effective January 1, 2008; adopted as rule 342 effective July 1, 1997;*
2 *previously amended effective January 1, 1999, and January 1, 2002; previously amended and*
3 *renumbered effective January 1, 2007.*

4
5
6 **Rule 3.1380. Mandatory settlement conferences**

7
8 **(a) ~~Settlement~~ Setting conferences**

9
10 On the court's own motion or at the request of any party, the court may set a
11 one or more mandatory settlement conferences.

12
13 *(Subd (a) amended effective January 1, 2008; previously amended effective January 1,*
14 *1995, and July 1, 2002.)*

15
16 **(b) * * ***

17
18 **(c) Settlement conference statement**

19
20 No later than five court days before the initial date set for the settlement
21 conference, each party must submit to the court and serve on each party a
22 mandatory settlement conference statement containing:

23
24 (1)–(4) * * *

25
26 The settlement conference statement must comply with any additional
27 requirement imposed by local rule.

28
29 *(Subd (c) amended effective January 1, 2008; adopted as subd (d) effective January 1,*
30 *1985; previously amended effective January 1, 1995 and January 1, 2007; previously*
31 *amended and relettered effective July 1, 2002.)*

32
33 **(d) Restrictions on appointments**

34
35 A court must not:

36
37 (1) Appoint a person to conduct a settlement conference under this rule at
38 the same time as that person is serving as a mediator in the same action;
39 or

40
41 (2) Appoint a person to conduct a mediation under this rule.

42
43 *(Subd (d) adopted effective January 1, 2008.)*

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1
2 *Rule 3.1380 amended effective January 1, 2008; adopted as rule 222 effective January 1, 1985;*
3 *previously amended effective January 1, 1995, July 1, 2001, and July 1, 2002; previously*
4 *amended and renumbered effective January 1, 2007.*

5
6 **Advisory Committee Comment**

7
8 **Subdivision (d)** This provision is not intended to discourage settlement conferences or
9 mediations. However, problems have arisen in several cases, such as *Jeld-Wen v. Superior Court*
10 *of San Diego County* (2007) 146 Cal.App.4th 536, when distinctions between different ADR
11 processes have been blurred. To prevent confusion about the confidentiality of the proceedings, it
12 is important to clearly distinguish between settlement conferences held under this rule and
13 mediations. The special confidentiality requirements for mediations established by Evidence
14 Code sections 1115–1128 expressly do not apply to settlement conferences under this rule. This
15 provision is not intended to prohibit a court from appointing a person who has previously served
16 as a mediator in a case to conduct a settlement conference in that case following the conclusion of
17 the mediation.

18
19
20 **Rule 4.151. Motion for change of venue**

21
22 **(a)–(b) * * ***

23
24 *Rule 4.151 amended effective January 1, 2008; adopted as rule 841 effective March 4, 1972;*
25 *previously amended and renumbered effective January 1, 2001; previously amended effective*
26 *January 1, 2006, and January 1, 2007.*

27
28 **Advisory Committee Comment**

29
30 Rule 4.151(b) is not intended to imply that the court should attempt to impanel a jury in every
31 case before granting a change of venue ~~in every case.~~

32
33
34 **Rule 5.10. Definitions and use of terms**

35
36 As used in this division, unless the context or subject matter otherwise requires,
37 the following definitions apply:

38
39 **(1)–(3) * * ***

40
41 **(4) “Best interest of the child” is described in Family Code section 3011.**

42
43 *Rule 5.10 amended effective January 1, 2008; adopted as rule 1201 effective January 1, 1970;*
44 *previously amended effective January 1, 1994, January 1, 1999, and January 1, 2007; previously*
45 *amended and renumbered effective January 1, 2003.*

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1
2
3 **Rule 5.240. Appointment of counsel to represent a child in family law**
4 **proceedings**
5

6 **(a) Appointment considerations**
7

8 In considering appointing counsel under Family Code section 3150, the court
9 should take into account the following factors, including whether:
10

- 11 (1) The issues of child custody and visitation are highly contested or
12 protracted;
13
14 (2) The child is subjected to stress as a result of the dispute that might be
15 alleviated by the intervention of counsel representing the child;
16
17 (3) Counsel representing the child would be likely to provide the court with
18 relevant information not otherwise readily available or likely to be
19 presented;
20
21 (4) The dispute involves allegations of physical, emotional, or sexual abuse
22 or neglect of the child.
23
24 (5) It appears that one or both parents are incapable of providing a stable,
25 safe, and secure environment;
26
27 (6) Counsel is available for appointment who is knowledgeable about the
28 issues being raised regarding the child in the proceeding;
29
30 (7) The best interest of the child appears to require independent
31 representation; and
32
33 (8) If there are two or more children, any child would require separate
34 counsel to avoid a conflict of interest.
35

36 **(b) Request for appointment of counsel**
37

38 The court may appoint counsel to represent the best interest of a child in a
39 family law proceeding on the court's own motion or if requested to do so by:
40

- 41 (1) A party;

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

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- (2) The attorney for a party;
- (3) The child, or any relative of the child;
- (4) A mediator under Family Code section 3184;
- (5) A professional person making a custody recommendation under Family Code sections 3111 and 3118, Evidence Code section 730, or Code of Civil Procedure section 2032.010 et seq.;
- (6) A county counsel, district attorney, city attorney, or city prosecutor authorized to prosecute child abuse and neglect or child abduction cases under state law; or
- (7) A court-appointed guardian ad litem or special advocate;
- (8) Any other person who the court deems appropriate.

(c) Orders appointing counsel for a child

The court must issue written orders when appointing and terminating counsel for a child.

- (1) The appointment orders must specify the:
 - (A) Appointed counsel’s name, address, and telephone number;
 - (B) Name of the child for whom counsel is appointed; and
 - (C) Child’s date of birth.
- (2) The appointment orders may include the:
 - (A) Child’s address, if appropriate;
 - (B) Issues to be addressed in the case;
 - (C) Tasks related to the case that would benefit from the services of counsel for the child;

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

- 1 (D) Responsibilities and rights of the child’s counsel;
2
3 (E) Counsel’s rate or amount of compensation;
4
5 (F) Allocation of fees payable by each party or the court;
6
7 (G) Source of funds and manner of reimbursement for costs and
8 attorney’s fees;
9
10 (H) Allocation of payment of attorney’s fees to one party subject to
11 reimbursement by the other party;
12
13 (I) Terms and amount of any progress or installment payments; and
14
15 (J) Ability of the court to reserve jurisdiction to retroactively modify
16 the order on fees and payment.
17
18 (3) Courts may use *Order Appointing Counsel for a Child* (form FL-323)
19 or may supplement form FL-323 with local forms developed under rule
20 10.613.
21
22 **(d) Panel of counsel eligible for appointment**
23
24 (1) Each court may create and maintain a list or panel of counsel meeting
25 the minimum qualifications of this rule for appointment.
26
27 (2) If a list or panel of counsel is maintained, a court may appoint counsel
28 not on the list or panel in special circumstances, taking into
29 consideration factors including language, culture, and the special needs
30 of a child in the following areas:
31
32 (A) Child abuse;
33
34 (B) Domestic violence;
35
36 (C) Drug abuse of a parent or the child;
37
38 (D) Mental health issues of a parent or the child;
39
40 (E) Particular medical issues of the child; and
41

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 (F) Educational issues.

2
3 (3) If the court maintains a panel of counsel eligible for appointment and
4 the court appoints counsel who is not on the panel, the court must state
5 the reason for not appointing a panel counsel in writing or on the
6 record.

7
8 **(e) Complaint procedures**

9
10 By January 1, 2010, each court must develop local court rules in accordance
11 with rule 10.613 that provide for acceptance and response to complaints
12 about the performance of the court-appointed counsel for a child.

13
14 **(f) Termination of appointment**

15
16 On entering an appearance on behalf of a child, counsel must continue to
17 represent that child until:

- 18
19 (1) The conclusion of the proceeding for which counsel was appointed;
20
21 (2) Relieved by the court;
22
23 (3) Substituted by the court with other counsel;
24
25 (4) Removed on the court's own motion or request of counsel or parties for
26 good cause shown; or
27
28 (5) The child reaches the age of majority or is emancipated.

29
30 *Rule 5.240 adopted effective January 1, 2008.*

31
32
33 **Rule 5.241. Compensation of counsel appointed to represent a child in a**
34 **family law proceeding**

35
36 **(a) Determination of counsel's compensation**

37
38 The court must determine the reasonable sum for compensation and expenses
39 for counsel appointed to represent the child in a family law proceeding, and
40 the ability of the parties to pay all or a portion of counsel's compensation and
41 expenses.

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

- 1
2 (1) The court must set the compensation for the child's counsel:
3
4 (A) At the time of appointment;
5
6 (B) At the time the court determines the parties' ability to pay; or
7
8 (C) Within a reasonable time after appointment.
9
10 (2) No later than 30 days after counsel is relieved as attorney of record, the
11 court may make a redetermination of counsel's compensation:
12
13 (A) On the court's own motion;
14
15 (B) At the request of a party or a party's counsel; or
16
17 (C) At the request of counsel for the child.
18

19 **(b) Determination of ability to pay**

20
21 The court must determine the respective financial ability of the parties to pay
22 all or a portion of counsel's compensation.
23

- 24 (1) Before determining the parties' ability to pay:
25
26 (A) The court should consider factors such as the parties' income and
27 assets reasonably available at the time of the determination, and
28 eligibility for or existence of a fee waiver under Government
29 Code section 68511.3; and
30
31 (B) The parties must have on file a current *Income and Expense*
32 *Declaration* (form FL-150) or *Financial Statement (Simplified)*
33 (form FL-155).
34
35 (2) The court should determine the parties' ability to pay:
36
37 (A) At the time counsel is appointed;
38
39 (B) Within 30 days after appointment; or
40
41 (C) At the next subsequent hearing.

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1
2 (3) No later than 30 days after counsel is relieved as attorney of record, the
3 court may redetermine the parties' ability to pay:

4
5 (A) On the court's own motion; or

6
7 (B) At the request of counsel or the parties.

8
9 (c) **Payment to counsel**

10
11 (1) If the court determines that the parties have the ability to pay all or a
12 portion of the fees, the court must order that the parties pay in any
13 manner the court determines to be reasonable and compatible with the
14 parties' financial ability, including progress or installment payments.

15
16 (2) The court may use its own funds to pay counsel for a child and seek
17 reimbursement from the parties.

18
19 (3) The court must inform the parties that the failure to pay fees to the
20 appointed counsel or to the court may result in the attorney or the court
21 initiating legal action against them to collect the money.

22
23 (d) **Parties' inability to pay**

24
25 If the court finds that the parties are unable to pay all or a portion of the cost
26 of the child's counsel, the court must pay the portion the parties are unable to
27 pay.

28
29 *Rule 5.241 adopted effective January 1, 2008.*

30
31
32 **Rule 5.242. Qualifications, rights, and responsibilities of counsel appointed to**
33 **represent a child in family law proceedings**

34
35 (a) **Purpose**

36
37 This rule governs counsel appointed to represent the best interest of the child
38 in a custody or visitation proceeding under Family Code section 3150.

39
40 (b) **General appointment requirements**

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 To be eligible for appointment as counsel for a child, counsel must:
2

- 3 (1) Be an active member in good standing of the State Bar of California;
4
5 (2) Have professional liability insurance or demonstrate to the court that he
6 or she is adequately self-insured; and
7
8 (3) Meet the education, training, and experience requirements of this rule.
9

10 **(c) Education and training requirements**
11

12 Effective January 1, 2009, before being appointed as counsel for a child in a
13 family law proceeding, counsel must have completed at least 12 hours of
14 applicable education and training which must include all the following
15 subjects:
16

- 17 (1) Statutes, rules of court, and case law relating to child custody and
18 visitation litigation;
19
20 (2) Representation of a child in custody and visitation proceedings;
21
22 (3) Special issues in representing a child, including the following:
23
24 (A) Various stages of child development;
25
26 (B) Communicating with a child at various developmental stages and
27 presenting the child's view;
28
29 (C) Recognizing, evaluating and understanding evidence of child
30 abuse and neglect, family violence and substance abuse, cultural
31 and ethnic diversity, and gender-specific issues;
32
33 (D) The effects of domestic violence and child abuse and neglect on
34 children; and
35
36 (E) How to work effectively with multidisciplinary experts.
37

38 **(d) Annual education and training requirements**
39

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 Effective January 1, 2010, to remain eligible for appointment as counsel for a
2 child, counsel must complete during each calendar year a minimum of eight
3 hours of applicable education and training in the subjects listed in (c).
4

5 **(e) Applicable education and training**

6
7 (1) Education and training that addresses the subjects listed in (c) may be
8 applied toward the requirements of this rule if completed through:
9

10 (A) A professional continuing education group;

11 (B) An educational institution;

12 (C) A professional association;

13 (D) A court-connected group; or

14 (E) A public or private for-profit or not-for-profit group.
15

16
17 (2) A maximum of two of the hours may be by self-study under the
18 supervision of an education provider that provides evidence of
19 completion.
20

21 (3) Counsel may complete education and training courses that satisfy the
22 requirements of this rule offered by the education providers in (1) by
23 means of video presentations or other delivery means at remote
24 locations. Such courses are not self-study within the meaning of this
25 rule.
26

27 (4) Counsel who serve as an instructor in an education and training course
28 that satisfies the requirements of this rule may receive 1.5 hours of
29 course participation credit for each hour of course instruction. All other
30 counsel may claim credit for actual time he or she attended the
31 education and training course.
32

33 **(f) Experience requirements**

34
35 (1) Persons appointed as counsel for a child in a family law proceeding
36 must have represented a party or a child in at least six proceedings
37 involving child custody within the preceding five years as follows:
38
39
40
41

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 (A) At least two of the six proceedings must have involved contested
2 child custody and visitation issues in family law; and

3
4 (B) Child custody proceedings in dependency or guardianship cases
5 can count for no more than three of the six required for
6 appointment.

7
8 (2) Courts may develop local rules that impose additional experience
9 requirements for persons appointed as counsel for a child in a family
10 law proceeding.

11
12 **(g) Alternative experience requirements**

13
14 Counsel who does not meet the initial experience requirements in (f) may be
15 appointed to represent a child in a family law proceeding if he or she meets
16 one of the following alternative experience requirements. Counsel must:

17
18 (1) Be employed by a legal services organization, a governmental agency,
19 or a private law firm that has been approved by the presiding or
20 supervising judge of the local family court as qualified to represent a
21 child in family law proceedings and be directly supervised by an
22 attorney in an organization, an agency, or a private law firm who meets
23 the initial experience requirements in (f);

24
25 (2) Be an attorney working in consultation with an attorney approved by
26 the presiding or supervising judge of the local family court as qualified
27 to represent a child in family law proceedings; or

28
29 (3) Demonstrate substantial equivalent experience as determined by local
30 court rule or procedure.

31
32 **(h) Compliance with appointment requirements**

33
34 A person appointed as counsel for a child must:

35
36 (1) File a declaration with the court indicating compliance with the
37 requirements of this rule no later than 10 days after being appointed
38 and before beginning work on the case. Counsel may complete the
39 *Declaration of Counsel for a Child Regarding Qualifications* (form FL-
40 322) or other local court forms for this purpose; and

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

- 1 (2) Notify the court within five days of any disciplinary action taken by the
2 State Bar of California, stating the basis of the complaint, result, and
3 notice of any reproof, probation, or suspension.
4

5 **(i) Rights of counsel for a child**

6
7 Counsel has rights relating to the representation of a child's best interest
8 under Family Code sections 3111, 3151, 3151.5, 3153, and Welfare and
9 Institutions Code section 827, which include the right to:

- 10
11 (1) Reasonable access to the child;
12
13 (2) Seek affirmative relief on behalf of the child;
14
15 (3) Notice to any proceeding, and all phases of that proceeding, including a
16 request for examination affecting the child;
17
18 (4) Take any action that is available to a party to the proceeding, including
19 filing pleadings, making evidentiary objections, and presenting
20 evidence;
21
22 (5) Be heard in the proceeding, which may include presenting motions and
23 orders to show cause and participating in settlement conferences and
24 trials, seeking writs, appeals, and arbitrations;
25
26 (6) Access the child's medical, dental, mental health, and other health-care
27 records, and school and educational records;
28
29 (7) Inspect juvenile case files subject to the provisions of Welfare and
30 Institutions Code section 827;
31
32 (8) Interview school personnel, caretakers, health-care providers, mental
33 health professionals, and others who have assessed the child or
34 provided care to the child; however, the release of this information to
35 counsel does not constitute a waiver of the confidentiality of the
36 reports, files, and any disclosed communications;
37
38 (9) Interview mediators, subject to the provisions of Family Code sections
39 3177 and 3182;
40

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

- 1 (10) Receive reasonable advance notice of and the right to refuse any
2 physical or psychological examination or evaluation, for purposes of
3 the proceeding, that has not been ordered by the court;
4
5 (11) Assert or waive any privilege on behalf of the child;
6
7 (12) Seek independent psychological or physical examination or evaluation
8 of the child for purposes of the proceeding on approval by the court;
9
10 (13) Receive child custody evaluation reports;
11
12 (14) Not be called as a witness in the proceedings;
13
14 (15) Request the court to authorize release of relevant reports or files,
15 concerning the child represented by the counsel, of the relevant local
16 child protective services agency; and
17
18 (16) Receive reasonable compensation and expenses for representing the
19 child, the amount of which will be determined by the court.
20

21 **(j) Responsibilities of counsel for a child**
22

23 Counsel is charged with the representation of the best interest of the child.
24 The role of the child's counsel is to gather facts that bear on the best interest
25 of the child and present those facts to the court, including the child's wishes
26 when counsel deems it appropriate for consideration by the court under
27 Family Code section 3042. Counsel's duties, unless under the circumstances
28 it is inappropriate to exercise the duties, include those under Family Code
29 section 3151;
30

- 31 (1) Interviewing the child;
32
33 (2) Reviewing the court files and all accessible relevant records available
34 to both parties;
35
36 (3) Making any further investigations that counsel considers necessary to
37 ascertain the facts relevant to the custody or visitation hearings;
38
39 (4) Participating in the proceeding to the degree necessary to adequately
40 represent the child, including introducing and examining counsel's own

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 witnesses and presenting arguments to the court concerning the child's
2 welfare; and

3
4 (5) Preparing, at the court's request, a written statement of issues and
5 contentions setting forth the facts that bear on the best interest of the
6 child.

7
8 **(k) Other considerations**

9
10 Counsel is not required to assume the responsibilities of a social worker,
11 probation officer, child custody evaluator, or mediator and is not expected to
12 provide nonlegal services to the child. Subject to the terms of the court's
13 order of appointment, counsel for a child may take the following actions to
14 implement his or her statutory duties in representing a child in a family law
15 proceeding:

16
17 (1) Interview or observe the child as appropriate to the age and
18 circumstances of the child. In doing so, counsel should consider all
19 possible interview or observation environments and select a location
20 most conducive to both conducting a meaningful interview of the child
21 and investigating the issues relevant to the case at that time.

22
23 (2) In a manner and to the extent consistent with the child's age, level of
24 maturity, and ability to understand, and consistent with the order of
25 appointment for the case:

26
27 (A) Explain to the child at their first meeting counsel's role and the
28 nature of the attorney-client relationship (including confidentiality
29 issues); and

30
31 (B) Advise the child on a continuing basis of possible courses of
32 action and of the risks and benefits of each course of action.

33
34 (3) Actively participate in the representation of the child at any hearings
35 that affect custody and visitation of the child and attend and participate
36 in any other hearings relevant to the child. In doing so, counsel may, as
37 appropriate:

38
39 (A) Take positions relevant to the child on legal issues before the
40 court;

41

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

- 1 (B) Seek and advocate for services for the child;
2
3 (C) Prepare for any hearings or trials;
4
5 (D) Work to settle contested issues and to define trial issues;
6
7 (E) Prepare witnesses, including the child if the child is to testify;
8
9 (F) Introduce and examine witnesses on behalf of the child;
10
11 (G) Cross-examine other witnesses;
12
13 (H) Make appropriate evidentiary objections;
14
15 (I) Review court files and other pertinent records;
16
17 (J) Prepare motions to advance the child's interest, including motions
18 to quash subpoenas for the child and other protective orders;
19
20 (K) Present arguments to advance the child's interest;
21
22 (L) Prepare trial briefs and other documents if appropriate; and
23
24 (M) Request appointment of separate appellate counsel.
25
26 (4) Conduct thorough, continuing, and independent investigations and
27 discovery to protect the child's interest, which may include:
28
29 (A) Obtaining necessary authorizations for the release of information.
30
31 (B) Reviewing the child's social services, mental health, drug and
32 alcohol, medical, law enforcement, education, and other records
33 relevant to the case;
34
35 (C) Reviewing the court files of the child and his or her siblings, case-
36 related records of the social service agency, and case-related
37 records of other service providers;
38
39 (D) Contacting attorneys for the parties and nonlawyer guardians ad
40 litem, Court Appointed Special Advocates (CASAs), and other

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

- 1 service professionals, to the extent permitted by local rule, for
2 background information;
3
4 (E) Contacting and meeting with the child’s parents, legal guardians,
5 or caretakers, with permission of their attorneys;
6
7 (F) Interviewing witnesses and individuals involved with the child,
8 including school personnel, child welfare caseworkers, foster
9 parents and other caretakers, neighbors, relatives, coaches, clergy,
10 mental health professionals, physicians, law enforcement officers,
11 and other potential witnesses;
12
13 (G) Reviewing relevant photographs, video- or audiotapes, and other
14 evidence;
15
16 (H) Documenting the results of these investigations;
17
18 (I) Monitoring compliance with court orders as appropriate,
19 including the provision for and effectiveness of any court-ordered
20 services;
21
22 (J) Promoting the timely progression of the case through the judicial
23 system;
24
25 (K) Investigating the interests of the child beyond the scope of the
26 proceeding and reporting to the court other interests of the child
27 that may need to be protected by the institution of other
28 administrative or judicial proceedings; however, counsel is not
29 responsible for instituting those proceedings or representing the
30 child in them unless expressly appointed by the court for that
31 purpose; and
32
33 (L) After learning of other existing administrative or judicial
34 proceedings involving the child, communicating and cooperating
35 with others to the extent necessary and appropriate to protect the
36 child’s interest.
37
38 (5) Taking all other steps to represent the child adequately as appropriate to
39 the case, including becoming knowledgeable in other areas affecting
40 minors including:
41

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 (A) The Indian Child Welfare Act;

2
3 (B) Information about local experts who can provide evaluation,
4 consultation, and testimony; and

5
6 (C) Delinquency, dependency, probate, family law, and other
7 proceedings.

8
9 *Rule 5.242 adopted effective January 1, 2008.*

10
11
12 **Rule 5.324. Telephone appearance in title IV-D hearings and conferences**

13
14 **(a)–(c) * * ***

15
16 **(d) Exceptions**

17
18 A telephone appearance is not permitted for any of the following except as
19 permitted by Family Code section 4930:

20
21 (1)–(2) * * *

22
23 *(Subd (d) amended effective January 1, 2008.)*

24
25 **(e) Request for telephone appearance**

26
27 (1) A party, an attorney, a witness, a parent who has not been joined to the
28 action, or a representative of a local child support agency or
29 government agency may request permission of the court to appear and
30 testify by telephone. The local child support agency may request a
31 telephone appearance on behalf of a party, a parent, or a witness when
32 the local child support agency is appearing in the title IV-D support
33 action, as defined by rule 5.300(c). The court may also, on its own
34 motion, allow a telephone appearance.

35
36 (2) A party, an attorney, a witness, a parent who has not been joined to the
37 action, or a representative of a local child support agency or
38 government agency who wishes to appear by telephone at a hearing
39 must file a request with the court clerk at least 12 court days before the
40 hearing. A local child support agency that files the request for
41 telephone appearance on behalf of a party, a parent, or a witness must
42 file the request with the court clerk at least 12 court days before the

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 hearing. This request must be served on the other parties, the local child
2 support agency, and attorneys, if any. Service must be by personal
3 delivery, fax, express mail, or other means reasonably calculated to
4 ensure delivery by the close of the next court day.

5
6 (3) * * *

7
8 *(Subd (e) amended effective January 1, 2008.)*
9

10 (f)–(k) * * *

11
12 *Rule 5.324 amended effective January 1, 2008; adopted effective July 1, 2005; previously*
13 *amended effective January 1, 2007.*
14

15
16 **Rule 5.410. Request for sibling contact information under Family Code**
17 **section 9205**

18
19 (a) **Applicability of rule**

20
21 This rule applies to all persons wishing to exchange contact information with
22 their adopted siblings and all adopted persons wishing to have contact with
23 their siblings, regardless of whether the adoption occurred in juvenile or
24 family court.

25
26 (b) **Definitions**

27
28 As used in this rule:

29
30 (1) “Adoptee” means any person adopted under California law.

31
32 (2) “Department” means the California Department of Social Services
33 (CDSS).

34
35 (3) “Licensed adoption agency” means an agency licensed by the
36 department to provide adoption services and includes a licensed county
37 adoption agency and a licensed private adoption agency under Family
38 Code sections 8521, 8530, and 8533.

39
40 (4) “Confidential intermediary” means either the department or a licensed
41 adoption agency that provided adoption services for either sibling.
42

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

- 1 (5) “Alternate confidential intermediary” means a named entity or person
2 designated by the court in place of a licensed adoption agency when the
3 court finds that the agency would experience economic hardship by
4 servng as confidential intermediary.
5
- 6 (6) “Sibling” means a biological sibling, half-sibling, or stepsibling of the
7 adoptee.
8
- 9 (7) “Waiver” means *Waiver of Rights to Confidentiality for Siblings,*
10 department form AD 904A (used for adoptees or siblings over the age
11 of 18 years) or AD 904B (used for adoptees or siblings under the age of
12 18).
13
- 14 (8) “Consent” means the consent contained within the Department form
15 AD 904B. It is the approval of the filing of a waiver by a person under
16 the age of 18 years obtained from an adoptive parent, a legal parent, a
17 legal guardian, or a dependency court when a child is currently a
18 dependent of the court.
19
- 20 (9) “Petition” means Judicial Council form *Request for Appointment of*
21 *Confidential Intermediary* (form ADOPT-330).
22
- 23 (10) “Order” means Judicial Council form *Order for Appointment of*
24 *Confidential Intermediary* (form ADOPT-331).
25
- 26 (c) **Waiver submitted by person under the age of 18 years under Family**
27 **Code section 9205(f)**
28
- 29 (1) *Adoptee or sibling waiver*
30
- 31 Each adoptee or sibling under the age of 18 years may submit a waiver
32 to the department or the licensed adoption agency, provided that a
33 consent is also completed.
34
- 35 (2) *Court consent*
36
- 37 If the sibling is currently under the jurisdiction of the juvenile court and
38 his or her parent or legal guardian is unable or unavailable to sign the
39 consent, the court may sign it.
40

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,

effective on January 1, 2008.

1 **(d) No waiver on file—sibling requesting contact under Family Code section**
2 **9205(g)**

3
4 If, after contacting the department or licensed adoption agency, the sibling
5 who is seeking contact learns that no waiver is on file for the other sibling,
6 the sibling seeking contact should use the following procedure to ask the
7 court that finalized the adoption of either sibling to designate a confidential
8 intermediary to help locate the other sibling:

9
10 **(1) Sibling's request**

11
12 **(A) A sibling requesting contact under Family Code section 9205**
13 **must file a petition and submit a blank order to the court that**
14 **finalized the adoption of either sibling.**

15
16 **(B) If the sibling requesting contact is under the age of 18 years, the**
17 **petition must be filed through the sibling's duly appointed**
18 **guardian ad litem under Code of Civil Procedure section 373 or**
19 **through the sibling's attorney.**

20
21 **(2) Appointment of a confidential intermediary**

22
23 **(A) The court must grant the petition unless the court finds that it**
24 **would be detrimental to the adoptee or sibling with whom contact**
25 **is sought. The court may consider any and all relevant**
26 **information in making this determination, including, but not**
27 **limited to, a review of the court file.**

28
29 **(B) The court will appoint the department or licensed adoption agency**
30 **that provided adoption services for either sibling as the**
31 **confidential intermediary.**

32
33 **(C) If the court finds that the licensed adoption agency that conducted**
34 **the adoptee's adoption is unable to serve as the intermediary,**
35 **owing to economic hardship, the court may then appoint any one**
36 **of the following who agrees to serve as an alternate confidential**
37 **intermediary:**

38
39 **(i) A CASA volunteer or CASA program staff member;**

40
41 **(ii) A court-connected mediator;**

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

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(iii) An adoption service provider as defined in Family Code section 8502(a);

(iv) An attorney; or

(v) Another California licensed adoption agency or the California Department of Social Services' Adoptions Support Bureau when no other individuals are available.

(D) When an alternate confidential intermediary is appointed, the licensed adoption agency must provide to the court all records related to the adoptee or sibling for inspection by the alternate confidential intermediary.

(3) Role of the confidential intermediary

(A) The confidential intermediary must:

(i) Have access to all records of the adoptee or the sibling, including the court adoption file and adoption agency or CDSS files of either sibling;

(ii) Make all reasonable efforts to locate the adoptee, the sibling, or the adoptive or birth parent;

(iii) Attempt to obtain the consent of the adoptee, the sibling, or the adoptive or birth parent; and

(iv) Notify any located adoptee, sibling, or adoptive or birth parent that consent is optional, not required by law, and does not affect the status of the adoption.

(B) The confidential intermediary must not make any further attempts to obtain consent if the individual denies the request for consent.

(C) The confidential intermediary must use information found in the records of the adoptee or the sibling for authorized purposes only and must not disclose any information obtained in this procedure unless specifically authorized.

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 (4) Adopted sibling seeking contact with a sibling who is a dependent child

2
3 An adoptee seeking contact with his or her sibling who is a dependent
4 child must follow the procedure set forth under Welfare and Institutions
5 Code section 388(b) to seek contact with the sibling.
6

7 *Rule 5.410 adopted effective January 1, 2008.*
8
9

10 **Title 5. Family and Juvenile Rules**

11
12 **Division 2. Rules Applicable in Family and Juvenile Proceedings**

13
14 **Chapter 1. Contact and Coordination**

15
16 *Chapter 1 adopted effective January 1, 2008.*
17
18

19 **Rule 5.475. Custody and visitation orders following termination of a juvenile**
20 **court proceeding or probate court guardianship proceeding (Fam.**
21 **Code, § 3105; Welf. & Inst. Code, § ~~364.4~~ 362.4; Prob. Code, § 1602)**
22

23 **(a)–(c) * * ***
24

25 *Rule 5.475 amended effective January 1, 2008; adopted effective January 1, 2006; previously*
26 *amended effective January 1, 2007.*
27
28

29 **Chapter 2. Indian Child Welfare Act**

30 *Chapter 2 adopted effective January 1, 2008.*
31

32 **Rule 5.480. Application (Fam. Code, §§ 170, 177, 3041; Prob. Code, § 1459.5;**
33 **Welf. & Inst. Code, §§ 224, 224.1)**
34

35 This chapter addressing the Indian Child Welfare Act (25 United States Code
36 section 1901 et seq.) as codified in various sections of the California Family,
37 Probate, and Welfare and Institutions Codes, applies to all proceedings involving
38 Indian children that may result in an involuntary foster care placement;
39 guardianship or conservatorship placement; custody placement under Family Code
40 section 3041; declaration freeing a child from the custody and control of one or
41 both parents; termination of parental rights; or adoptive placement, including:
42

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 (1) Proceedings under Welfare and Institutions Code section 300 et seq., and
2 sections 601 and 602 et seq. in which the child is at risk of entering foster
3 care or is in foster care, including detention hearings, jurisdiction hearings,
4 disposition hearings, review hearings, hearings under section 366.26, and
5 subsequent hearings affecting the status of the Indian child;

6
7 (2) Proceedings under Family Code section 3041;

8
9 (3) Proceedings under the Family Code resulting in adoption or termination of
10 parental rights; and

11
12 (4) Proceedings listed in Probate Code section 1459.5 and rule 7.1015.

13
14 This chapter does not apply to voluntary foster care and guardianship placements
15 where the child can be returned to the parent or Indian custodian on demand.

16
17 *Rule 5.480 adopted effective January 1, 2008.*

18
19
20 **Rule 5.481. Inquiry and notice (Fam. Code, §§ 177(a), 180; Prob. Code, §§**
21 **1459.5(b), 1460.2; Welf. & Inst. Code, §§ 224.2, 224.3)**

22
23 (a) **Inquiry (Fam. Code, § 177(a); Prob. Code, § 1459.5(b); Welf. & Inst.**
24 **Code, § 224.3)**

25
26 The court, court-connected investigator, and party seeking a foster-care
27 placement, guardianship, conservatorship, custody placement under Family
28 Code section 3041, declaration freeing a child from the custody or control of
29 one or both parents, termination of parental rights, or adoption have an
30 affirmative and continuing duty to inquire whether a child is or may be an
31 Indian child in all proceedings identified in rule 5.480. The court, court-
32 connected investigator, and party include the county welfare department,
33 probation department, licensed adoption agency, adoption service provider,
34 investigator, petitioner, appointed guardian or conservator of the person, and
35 appointed fiduciary.

36
37 (1) The party seeking a foster-care placement, guardianship,
38 conservatorship, custody placement under Family Code section 3041,
39 declaration freeing a child from the custody or control of one or both
40 parents, termination of parental rights, or adoption must ask the child, if
41 the child is old enough, and the parents, Indian custodian, or legal

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 guardians whether the child is or may be an Indian child and must
2 complete the *Indian Child Inquiry Attachment* (form ICWA-010(A))
3 and attach it to the petition unless the party is filing a subsequent
4 petition, and there is no new information.

5
6 (2) At the first appearance by a parent, Indian custodian, or guardian in any
7 dependency case; or in juvenile wardship proceedings in which the
8 child is at risk of entering foster care or is in foster care; or at the
9 initiation of any guardianship, conservatorship, proceeding for custody
10 under Family Code section 3041, proceeding to terminate parental
11 rights proceeding to declare a child free of the custody and control of
12 one or both parents, or adoption proceeding; the court must order the
13 parent, Indian custodian, or guardian if available, to complete *Parental*
14 *Notification of Indian Status* (form ICWA-020).

15
16 (3) If the parent, Indian custodian, or guardian does not appear at the first
17 hearing, or is unavailable at the initiation of a proceeding, the court
18 must order the person or entity that has the inquiry duty under this rule
19 to use reasonable diligence to find and inform the parent, Indian
20 custodian, or guardian that the court has ordered the parent, Indian
21 custodian, or guardian to complete *Parental Notification of Indian*
22 *Status* (form ICWA-020).

23
24 (4) If the social worker, probation officer, licensed adoption agency,
25 adoption service provider, investigator, or petitioner knows or has
26 reason to know that an Indian child is or may be involved, that person
27 or entity must make further inquiry as soon as practicable by:

28
29 (A) Interviewing the parents, Indian custodian, and “extended family
30 members” as defined in 25 United States Code sections 1901 and
31 1903(2), to gather the information listed in Welfare and
32 Institutions Code section 224.2(a)(5), Family Code section
33 180(b)(5), or Probate Code section 1460.2(b)(5), which is
34 required to complete the *Notice of Child Custody Proceeding for*
35 *Indian Child* (form ICWA-030);

36
37 (B) Contacting the Bureau of Indian Affairs and the California
38 Department of Social Services for assistance in identifying the
39 names and contact information of the tribes in which the child
40 may be a member or eligible for membership; and
41

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,

effective on January 1, 2008.

1 (C) Contacting the tribes and any other person that reasonably can be
2 expected to have information regarding the child's membership
3 status or eligibility.
4

5 (5) The circumstances that may provide reason to know the child is an
6 Indian child include the following:
7

8 (A) The child or a person having an interest in the child, including an
9 Indian tribe, an Indian organization, an officer of the court, a
10 public or private agency, or a member of the child's extended
11 family, informs or otherwise provides information suggesting that
12 the child is an Indian child to the court, the county welfare
13 agency, the probation department, the licensed adoption agency or
14 adoption service provider, the investigator, the petitioner, or any
15 appointed guardian or conservator;
16

17 (B) The residence or domicile of the child, the child's parents, or an
18 Indian custodian is or was in a predominantly Indian community;
19 or
20

21 (C) The child or the child's family has received services or benefits
22 from a tribe or services that are available to Indians from tribes or
23 the federal government, such as the U.S. Department of Health
24 and Human Services, Indian Health Service, or Tribal Temporary
25 Assistance to Needy Families benefits.
26

27 **(b) Notice (Fam. Code, § 180; Prob. Code, § 1460.2; Welf. & Inst. Code, §**
28 **224.2)**
29

30 (1) If it is known or there is reason to know that an Indian child is involved
31 in a proceeding listed in rule 5.480, except for a wardship proceeding
32 under Welfare and Institutions Code sections 601 and 602 et seq., the
33 social worker, petitioner, or in probate guardianship and
34 conservatorship proceedings, if the petitioner is unrepresented, the
35 court must send *Notice of Child Custody Proceeding for Indian Child*
36 (form ICWA-030) to the parent or legal guardian and Indian custodian
37 of an Indian child, and the Indian child's tribe, in the manner specified
38 in Welfare and Institutions Code section 224.2, Family Law Code
39 section 180, and Probate Code section 1460.2.
40

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 (2) If it is known or there is reason to know that an Indian child is involved
2 in a wardship proceeding under Welfare and Institutions Code sections
3 601 and 602 et seq., and the probation officer has assessed that it is
4 probable the child will be entering foster care, or if the child is already
5 in foster care, the probation officer must send *Notice of Child Custody*
6 *Proceeding for Indian Child* (form ICWA-030) to the parent or legal
7 guardian, Indian custodian, if any, and the child's tribe, in accordance
8 with Welfare and Institutions Code section 727.4(a)(2).

9
10 (3) The circumstances that may provide reason to know the child is an
11 Indian child include the circumstances specified in (a)(5).

12
13 (4) Notice to an Indian child's tribe must be sent to the tribal chairperson
14 unless the tribe has designated another agent for service.

15
16 *Rule 5.481 adopted effective January 1, 2008.*

17
18
19 **Rule 5.482. Proceedings after notice (Fam. Code, §§ 177(a), 180(d), (e); Prob.**
20 **Code, §§ 1459.5(b), 1460.2(d), (e); Welf. & Inst. Code, §§ 224.2(c), (d);**
21 **25 U.S.C. § 1916(b))**

22
23 **(a) Timing of Proceedings (Fam. Code, § 180(d), (e); Prob. Code, §**
24 **1460.2(d), (e); Welf. & Inst. Code, § 224.2(c), (d))**

25
26 (1) If it is known or there is reason to know that a child is an Indian child,
27 the court hearing must not proceed until at least 10 days after the
28 parent, Indian custodian, the tribe, or the Bureau of Indian Affairs have
29 received notice, except as stated in sections (a)(2) and (3).

30
31 (2) The detention hearing in dependency cases and in delinquency cases in
32 which the probation officer has assessed that the child is in foster care
33 or it is probable the child will be entering foster care may proceed
34 without delay, provided that:

35
36 (A) Notice of the detention hearing must be given as soon as possible
37 after the filing of the petition initiating the proceeding; and

38
39 (B) Proof of notice must be filed with the court within 10 days after
40 the filing of the petition.

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 (3) The parent, Indian custodian, or tribe must be granted a continuance, if
2 requested, of up to 20 days to prepare for the proceeding, except for
3 specified hearings in the following circumstances:
4

5 (A) The detention hearing in dependency cases and in delinquency
6 cases in which the probation officer has assessed that the child is
7 in foster care or it is probable the child will be entering foster;
8

9 (B) The jurisdiction hearing in a delinquency case in which the court
10 finds the continuance would not conform to speedy trial
11 considerations under Welfare and Institutions Code section 657;
12 and
13

14 (C) The disposition hearing in a delinquency case in which the court
15 finds good cause to deny the continuance under Welfare and
16 Institutions Code section 682. A good cause reason includes when
17 probation is recommending the release of a detained child to his
18 or her parent or to a less restrictive placement. The court must
19 follow the placement preferences under rule 5.484 when holding
20 the disposition hearing.
21

22 **(b) Proof of notice (Fam. Code, § 180(d); Prob. Code, § 1460.2(d); Welf. &**
23 **Inst. Code, § 224.2(c))**
24

25 Proof of notice filed with the court must include *Notice of Child Custody*
26 *Proceeding for Indian Child* (form ICWA-030), return receipts, and any
27 responses received from the Bureau of Indian Affairs and tribes.
28

29 **(c) When there is information or a response from a tribe that requires**
30 **additional steps**
31

32 If after notice has been provided as required by federal and state law a tribe
33 responds indicating that the child is eligible for membership if certain steps
34 are followed, the court must proceed as if the child is an Indian child and
35 direct the appropriate individual or agency to provide active efforts under
36 rule 5.484(c) to secure tribal membership for the child.
37

38 **(d) When there is no information or response from a tribe (Fam. Code, §**
39 **177(a); Prob. Code, § 1459.5(b); Welf. & Inst., Code § 224.3(e)(3))**
40

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 (1) If after notice has been provided as required by federal and state law
2 and neither the tribe nor the Bureau of Indian Affairs has provided a
3 determinative response within 60 days after receiving that notice, then
4 the court may determine that the Indian Child Welfare Act does not
5 apply to the proceedings, provided that the court must reverse its
6 determination of the inapplicability of the act and must apply it
7 prospectively if a tribe or the Bureau of Indian Affairs subsequently
8 confirms that the child is an Indian child.

9
10 (2) If at any time, based on the petition or other information, the court
11 knows or has reason to know the child is an Indian child, the court must
12 proceed as if the child were an Indian child.

13
14 (3) The court is not required to delay proceedings until a response to notice
15 is received.

16
17 **(e) Intervention (Fam. Code, § 177(a); Prob. Code, § 1459.5(b); Welf. &**
18 **Inst. Code, § 224.4)**

19
20 The Indian child's tribe and Indian custodian may intervene, orally or in
21 writing, at any point in the proceedings and may, but are not required to, file
22 with the court the Notice of Designation of Tribal Representative and Notice
23 of Intervention in a Court Proceeding Involving an Indian Child (form
24 ICWA-040) to give notice of their intent to intervene.

25
26 **(f) Posthearing actions (25 U.S.C. § 1916(b))**

27
28 Whenever an Indian child is removed from a guardian, conservator, other
29 custodian, foster home, or institution for placement with a different guardian,
30 conservator, custodian, foster home, institution, or preadoptive or adoptive
31 home, the placement must comply with the placement preferences and
32 standards specified in Welfare and Institutions Code section 361.31.

33
34 **(g) Consultation with tribe**

35
36 Any person or court involved in the placement of an Indian child must use
37 the services of the Indian child's tribe, whenever available through the tribe,
38 in seeking to secure placement within the order of placement preference
39 specified in rule 5.484.

40
41 *Rule 5.482 adopted effective January 1, 2008.*

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1
2
3 **Rule 5.483. Transfer of case (Fam. Code, § 177(a); Prob. Code, § 1459.5(b);**
4 **Welf. & Inst. Code, § 305.5; Guidelines for State Courts; Indian Child**
5 **Custody Proceedings, 44 Fed.Reg. 67584 (Nov. 26, 1979) Bureau of**
6 **Indian Affairs Guideline C)**

7
8 **(a) Mandatory transfer of case to tribal court with exclusive jurisdiction**

9
10 The court must order transfer of a case to the tribal court of the child's tribe
11 if:

- 12
13 (1) The Indian child is a ward of the tribal court; or
14
15 (2) The Indian child is domiciled or resides within a reservation of an
16 Indian tribe that has exclusive jurisdiction over Indian child custody
17 proceedings under section 1911 or 1918 of title 25 of the United States
18 Code.

19
20 **(b) Presumptive transfer of case to tribal court with concurrent state and**
21 **tribal jurisdiction**

22
23 Unless the court finds good cause under subdivision (d), the court must order
24 transfer of a case to the tribal court of the child's tribe if the parent, the
25 Indian custodian, or the child's tribe requests.

26
27 **(c) Documentation of request to transfer a case to tribal court**

28
29 The parent, the Indian custodian, or the child's tribe may request transfer of
30 the case, either orally or in writing or by filing *Notice of Petition and*
31 *Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction*
32 (form ICWA-050).

33
34 If the request is made orally, the court must document the request and make
35 it part of the record.

36
37 **(d) Cause to deny a request to transfer to tribal court with concurrent state**
38 **and tribal jurisdiction under subdivision (b)**

- 39
40 (1) One or more of the following circumstances constitutes mandatory
41 good cause to deny a request to transfer:

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

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41

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

(B) The child’s tribe does not have a “tribal court” or any other administrative body as defined in section 1903 of the Indian Child Welfare Act: “a court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings;” or

(C) The tribal court of the child’s tribe declines the transfer.

(2) One or more of the following circumstances may constitute discretionary good cause to deny a request to transfer:

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

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

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

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

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,

effective on January 1, 2008.

1 (3) If it appears that there is good cause to deny a transfer, the court must
2 hold an evidentiary hearing on the transfer and make its findings on the
3 record.

4
5 **(e) Evidentiary considerations under subdivision (b)**

6
7 The court may not consider socioeconomic conditions and the perceived
8 adequacy of tribal social services, tribal probation, or the tribal judicial
9 systems in its determination that good cause exists to deny a request to
10 transfer to tribal court with concurrent state and tribal jurisdiction.

11
12 **(f) Evidentiary burdens under subdivision (b)**

13
14 (1) The burden of establishing good cause to deny a request to transfer is
15 on the party opposing the transfer.

16
17 (2) If the court believes, or any party asserts, that good cause to deny the
18 request exists, the reasons for that belief or assertion must be stated in
19 writing, in advance of the hearing, and made available to all parties
20 who are requesting the transfer, and the petitioner must have the
21 opportunity to provide information or evidence in rebuttal of the belief
22 or assertion.

23
24 **(g) Order on request to transfer**

25
26 The court must issue its final order on the *Order on Petition to Transfer Case*
27 *Involving an Indian Child to Tribal Jurisdiction* (form ICWA-060).

28
29 **(h) Proceeding after transfer**

30
31 When, under Welfare and Institutions Code section 305.5, Family Code
32 section 177(a), or Probate Code section 1459.5(b), the court transfers any
33 proceeding listed in rule 5.480, the court must proceed as follows:

34
35 (1) Dismiss the proceeding or terminate jurisdiction if the court has
36 received proof that the tribal court has accepted the transfer of
37 jurisdiction;

38
39 (2) Make an order transferring the physical custody of the child to a
40 designated representative of the tribal court (not necessarily the same
41 “designated representative” identified in the *Notice of Designation of*

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,

effective on January 1, 2008.

1 Tribal Representative and Notice of Intervention in a Court Proceeding
2 Involving an Indian Child (form ICWA-040)); and

- 3
4 (3) Include in the Order on Petition to Transfer Case Involving an Indian
5 Child to Tribal Jurisdiction (form ICWA-060) all contact information
6 for the designated tribal court representative.

7
8 *Rule 5.483 adopted effective January 1, 2008.*
9

10
11 **Rule 5.484. Placement of an Indian child (Fam. Code, § 177(a); Prob. Code, §**
12 **1459.5(b); Welf. & Inst. Code, §§ 361, 361.31, 361.7(c))**

- 13
14 (a) **Evidentiary burdens (Fam. Code, § 177(a); Prob. Code, § 1459.5(b);**
15 **Welf. & Inst. Code, §§ 361, 361.31, 361.7(c))**

16
17 In any child custody proceeding listed in rule 5.480, the court may not order
18 placement of an Indian child unless it finds by clear and convincing evidence
19 that continued custody with the parent or Indian custodian is likely to cause
20 the Indian child serious emotional or physical damage and it considers
21 evidence regarding prevailing social and cultural standards of the child's
22 tribe, including that tribe's family organization and child-rearing practices.

- 23
24 (1) Testimony by a "qualified expert witness," as defined in Welfare and
25 Institutions Code section 224.6, Family Code section 177(a), and
26 Probate Code section 1459.5(b), is required before a court orders a
27 child placed in foster care or terminates parental rights.
28
29 (2) Stipulation by the parent, Indian custodian, or tribe, or failure to object,
30 may waive the requirement of producing evidence of the likelihood of
31 serious damage only if the court is satisfied that the person or tribe has
32 been fully advised of the requirements of the Indian Child Welfare Act
33 and has knowingly, intelligently, and voluntarily waived them. Any
34 such stipulation must be agreed to in writing.
35
36 (3) Failure to meet non-Indian family and child-rearing community
37 standards, or the existence of other behavior or conditions that meet the
38 removal standards of Welfare and Institutions Code section 361, will
39 not support an order for placement absent the finding that continued
40 custody with the parent or Indian custodian is likely to cause serious
41 emotional or physical damage.

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1
2 **(b) Standards and preferences in placement of an Indian child (Fam. Code,**
3 **§ 177(a); Prob. Code, § 1459(b); Welf. & Inst. Code, § 361.31)**
4

- 5 (1) Unless the court finds good cause to the contrary, all placements of
6 Indian children in any proceeding listed in rule 5.480 must follow the
7 specified placement preferences in Family Code section 177(a), Probate
8 Code section 1459(b), and Welfare and Institutions Code section
9 361.31.
- 10
- 11 (2) The court may deviate from the preference order only for good cause,
12 which may include the following considerations:
- 13
- 14 (A) The requests of the parent or Indian custodian;
- 15
- 16 (B) The requests of the Indian child, when of sufficient age;
- 17
- 18 (C) The extraordinary physical or emotional needs of the Indian child
19 as established by a qualified expert witness; or
- 20
- 21 (D) The unavailability of suitable families based on a documented
22 diligent effort to identify families meeting the preference criteria.
- 23
- 24 (3) The burden of establishing good cause for the court to deviate from the
25 preference order is on the party requesting that the preference order not
26 be followed.
- 27
- 28 (4) The tribe, by resolution, may establish a different preference order,
29 which must be followed if it provides for the least restrictive setting.
- 30
- 31 (5) The preferences and wishes of the Indian child, when of sufficient age,
32 and the parent must be considered, and weight given to a consenting
33 parent's request for anonymity.
- 34
- 35 (6) When no preferred placement is available, active efforts must be made
36 and documented to place the child with a family committed to enabling
37 the child to have visitation with "extended family members," as defined
38 in rule 5.481(a)(4)(A), and participation in the cultural and ceremonial
39 events of the child's tribe.
- 40

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 **(c) Active efforts (Fam. Code, § 177(a); Prob. Code, § 1459.5(b); Welf. &**
2 **Inst. Code, § 361.7)**

3
4 In addition to any other required findings to place an Indian child with
5 someone other than a parent or Indian custodian, or to terminate parental
6 rights, the court must find that active efforts have been made, in any
7 proceeding listed in rule 5.480, to provide remedial services and
8 rehabilitative programs designed to prevent the breakup of the Indian family,
9 and must find that these efforts were unsuccessful.

10
11 (1) The court must consider whether active efforts were made in a manner
12 consistent with the prevailing social and cultural conditions and way of
13 life of the Indian child’s tribe.

14
15 (2) Efforts to provide services must include pursuit of any steps necessary
16 to secure tribal membership for a child if the child is eligible for
17 membership in a given tribe, as well as attempts to use the available
18 resources of extended family members, the tribe, tribal and other Indian
19 social service agencies, and individual Indian caregivers.

20
21 *Rule 5.484 adopted effective January 1, 2008.*

22
23
24 **Rule 5.485. Termination of parental rights (Fam. Code, § 7892.5; Welf. &**
25 **Inst. Code, §§ 361.7, 366.26(c)(2)(B))**

26
27 **(a) Evidentiary burdens**

28
29 The court may only terminate parental rights to an Indian child or declare an
30 Indian child free of the custody and control of one or both parents if at the
31 hearing terminating parental rights or declaring the child free of the custody
32 and control of one or both parents, the court:

33
34 (1) Finds by clear and convincing evidence that active efforts to provide
35 remedial services and rehabilitative programs designed to prevent the
36 breakup of the Indian family were made; and

37
38 (2) Makes a determination, supported by evidence beyond a reasonable
39 doubt, including testimony of one or more “qualified expert witnesses”
40 as defined in Welfare and Institutions Code section 224.6 and Family
41 Code section 177(a), that the continued custody of the child by the

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 parent is likely to result in serious emotional or physical damage to the
2 child.

3
4 **(b) When parental rights may not be terminated**

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

10
11 (1) Termination of parental rights would substantially interfere with the
12 child's connection to his or her tribal community or the child's tribal
13 membership rights; or

14
15 (2) The child's tribe has identified guardianship, long-term foster care with
16 a fit and willing relative, or another planned permanent living
17 arrangement for the child.

18
19 *Rule 5.485 adopted effective January 1, 2008.*

20
21
22 **Rule 5.486. Petition to invalidate orders (Fam. Code, § 175(e); Prob. Code, §**
23 **1459(e); Welf. & Inst. Code, § 224(e))**

24
25 **(a) Who may petition**

26
27 Any Indian child who is the subject of any action for foster-care placement,
28 guardianship placement, or termination of parental rights; any parent or
29 Indian custodian from whose custody such child was removed; and the
30 Indian child's tribe may petition the court to invalidate the action on a
31 showing that the action violated the Indian Child Welfare Act.

32
33 **(b) Court of competent jurisdiction**

34
35 If the Indian child is a dependent child or ward of the juvenile court or the
36 subject of a pending petition, the juvenile court is a court of competent
37 jurisdiction with the authority to hear the request to invalidate the foster
38 placement or termination of parental rights.

39
40 **(c) Request to return custody of the Indian child**

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 If a final decree of adoption is vacated or set aside, or if the adoptive parents
2 voluntarily consent to the termination of their parental rights, a biological
3 parent or prior Indian custodian may request a return of custody of the Indian
4 child.

5
6 (1) The court must reinstate jurisdiction.

7
8 (2) In a juvenile case, the juvenile court must hold a new disposition
9 hearing in accordance with 25 United States Code section 1901 et seq.
10 where the court may consider all placement options as stated in Welfare
11 and Institutions Code sections 361.31(b), (c), (d), and (h).

12
13 (3) The court may consider placement with a biological parent or prior
14 Indian custodian if the biological parent or prior Indian custodian can
15 show that placement with him or her is not detrimental to the child and
16 that the placement is in the best interests of the child.

17
18 (4) The hearing on the request to return custody of an Indian child must be
19 conducted in accordance with statutory requirements and the relevant
20 sections of this rule.

21
22 *Rule 5.486 adopted effective January 1, 2008.*

23
24
25 **Rule 5.487. Adoption record keeping (Fam. Code, § 9208)**

26
27 (a) **Copies of adoption decree and other information to the Secretary of the**
28 **Interior**

29
30 After granting a decree of adoption of an Indian child, the court must provide
31 the Secretary of the Interior with a copy of the decree and the following
32 information:

33
34 (1) The name and tribal affiliation of the Indian child;

35
36 (2) The names and addresses of the biological parents;

37
38 (3) The names and addresses of the adoptive parents; and

39
40 (4) The agency maintaining files and records regarding the adoptive
41 placement.

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1
2 **(b) Affidavit of confidentiality to the Bureau of Indian Affairs**

3
4 If a biological parent has executed an affidavit requesting that his or her
5 identity remain confidential, the court must provide the affidavit to the
6 Bureau of Indian Affairs, which must ensure the confidentiality of the
7 information.

8
9 *Rule 5.487 adopted effective January 1, 2008.*

10
11 **Advisory Committee Comment**

12
13 This chapter was adopted, effective January 1, 2008, as the result of the passage of Senate Bill
14 678 (Ducheny; Stats. 2006, ch. 838), which codified the federal Indian Child Welfare Act into
15 California's Family, Probate, and Welfare and Institutions Codes affecting all proceedings listed
16 in rule 5.480. Rule 5.664, which applied the Indian Child Welfare Act but was limited in its effect
17 to juvenile proceedings, was repealed effective January 1, 2008, and was replaced by this chapter.

18
19 As of January 1, 2008, only the Washoe Tribe of Nevada and California is authorized under the
20 Indian Child Welfare Act to exercise exclusive jurisdiction as discussed in rule 5.483.

21
22
23 **Rule 5.502. Definitions and use of terms**

24
25 Definitions (§§ 202(e), 319, 361, 361.5(a)(3), 366(a)(1)(B), 628.1, 636, 726,

26 727.3(c)(2), 727.4(d); 20 U.S.C. § 1415)

27
28 As used in these rules, unless the context or subject matter otherwise requires:

29
30 (1)–(12) * * *

31
32 (13) “Educational representative” means the responsible adult who holds the
33 educational rights for a child when the parent’s or guardian’s educational
34 rights have been limited by the court. The educational representative acts as
35 the child’s spokesperson, educational decision maker, and parent in regard to
36 all educational matters, including those defined in sections 319, 361, and
37 726; Education Code section 56055; Government Code section 7579.5; and
38 title 20 (commencing with section 1400) of the United States Code and part
39 300 (commencing with section 300.1) of title 34 of the Code of Federal
40 Regulations. The educational representative holds educational and privacy
41 rights as the child’s parent as defined in title 20 United States Code section
42 1232g and 34 Code of Federal Regulations section 99.3.

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,

effective on January 1, 2008.

1 ~~(13)~~(14) * * *

2

3 ~~(14)~~(15) * * *

4

5 ~~(15)~~(16) * * *

6

7 ~~(16)~~(17) * * *

8

9 ~~(17)~~(18) “Initial removal” means the date on which the child, who is the subject
10 of a petition filed under section 300 or 600, was taken into custody by the
11 social worker or a peace officer, or was deemed to have been taken into
12 custody under section 309(b) or 628(c), if removal results in the filing of the
13 petition before the court.

14

15 ~~(18)~~(19) * * *

16

17 ~~(19)~~(20) * * *

18

19 ~~(20)~~(21) * * *

20

21 ~~(21)~~(22) * * *

22

23 ~~(22)~~(23) * * *

24

25 ~~(23)~~(24) * * *

26

27 ~~(24)~~(25) * * *

28

29 ~~(25)~~(26) * * *

30

31 ~~(26)~~(27) * * *

32

33 ~~(27)~~(28) * * *

34

35 ~~(28)~~(29) * * *

36

37 ~~(29)~~(30) * * *

38

39 ~~(30)~~(31) * * *

40

41 ~~(31)~~(32) * * *

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1
2 (32)(33) * * *

3
4 *Rule 5.502 amended effective January 1, 2008; adopted as rule 1401 effective January 1, 1990;*
5 *previously amended effective July 1, 1992, July 1, 1997, January 1, 1998, January 1, 1999,*
6 *January 1, 2001, July 1, 2002, and January 1, 2003; previously amended and renumbered*
7 *effective January 1, 2007.*

8
9
10 **Rule 5.518. Court-connected child protection/dependency mediation**

11
12 (a) * * *

13
14 (b) **Definitions**

15
16 (1) * * *

17
18 (2) “Safety and best interest of the child” refers to the child’s physical,
19 psychological, and emotional well-being. Determining the safety and
20 best interest of the child includes consideration of all of the following:

21
22 (A)–(B) * * *

23
24 (C) The child’s need for safety, stability, and permanency; ~~and~~

25
26 (D) The ongoing need of the child to cope with the issues that caused
27 his or her involvement in the juvenile dependency system;:

28
29 (E) The child’s need for continuity of care and the effect that removal
30 and subsequent placements have had, or may have, on the child;
31 and

32
33 (F) The child’s education, which includes the child’s participation,
34 progress, need for assistance, cognitive development and, if
35 applicable, early childhood education and care, the need for
36 special education and related services, and the extent to which the
37 child has or has had limited English proficiency (LEP).

38
39 (3)–(5) * * *

40
41 (Subd (b) amended effective January 1, 2008; previously amended effective January 1,
42 2007.)

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1
2 (c)–(d) * * *

3
4 (e) **Education, experience, and training requirements for dependency**
5 **mediators**

6
7 Dependency mediators must meet the following minimum qualifications:

8
9 (1)–(2) * * *

10
11 (3) Completion of at least 40 hours of initial dependency mediation
12 training before or within 12 months of beginning practice as a
13 dependency mediator. Currently practicing dependency mediators must
14 complete the required 40 hours of initial training by January 1, 2006.
15 The training must cover the following subject areas as they relate to the
16 practice of dependency mediation:

17
18 (A) Multiparty, multi-issue, multiagency, and high-conflict cases,
19 including:

20
21 (i)–(v) * * *

22
23 (vi) The requirements of the ~~Americans With Disabilities Act~~
24 laws incorporated in rule 5.651(a)(3) and strategies for
25 handling situations involving disability issues or special
26 appropriately addressing the individual needs of persons
27 with disabilities;

28
29 (B)–(K) * * *

30
31 *(Subd (e) amended effective January 1, 2008; previously amended effective January 1,*
32 *2005, and January 1, 2007.)*

33
34 (f)–(j) * * *

35
36 *Rule 5.518 amended effective January 1, 2008; adopted as rule 1405.5 effective January 1, 2004;*
37 *previously amended effective January 1, 2005; previously amended and renumbered effective*
38 *January 1, 2007.*

39
40
41 **Rule 5.534. General provisions—all proceedings**
42

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 (a)–(i) * * *

2
3 **(j) Appointment of educational representative (§§ 319, 361, 366, 366.27,**
4 **726; Gov. Code, § 7579.5)**

5
6 If the court limits the right of a parent or guardian to make educational
7 decisions for the child, the court must immediately proceed under rule
8 5.650(b) to appoint an educational representative for the child.

9
10 *(Subd (j) adopted effective January 1, 2008.)*

11
12 ~~(j)~~**(k)** * * *

13
14 *(Subd (k) relettered effective January 1, 2007; adopted as subd (i) effective January 1,*
15 *1991; previously relettered as subd (j) effective January 1, 1997; previously amended*
16 *effective July 1, 2002, and January 1, 2007.)*

17
18 ~~(k)~~**(l)** * * *

19
20 *(Subd (l) relettered effective January 1, 2008; adopted as subd (j) effective January 1,*
21 *1991; previously relettered as subd (k) effective January 1, 1997, previously amended*
22 *effective July 1, 2002, and January 1, 2007.)*

23
24 ~~(l)~~**(m)** * * *

25
26 *(Subd (m) relettered effective January 1, 2008; adopted as subd (k) effective January 1,*
27 *1994; previously relettered as subd (l) effective January 1, 1997; previously amended*
28 *effective July 1, 2002, and January 1, 2007.)*

29
30 ~~(m)~~**(n)** * * *

31
32 *(Subd (n) relettered effective January 1, 2008; adopted as subd (m) effective October 1,*
33 *2007.)*

34
35 ~~(n)~~**(o)** * * *

36
37 *(Subd (o) relettered effective January 1, 2008; adopted as subd (k) effective January 1,*
38 *1991; previously relettered as subd (l) effective January 1, 1994, as subd (m) effective*
39 *January 1, 1997, and as subd (n) effective October 1, 2007.)*

40
41 ~~(o)~~**(p)** * * *

42
43 *(Subd (p) relettered effective October 1, 2007; adopted as subd (n) effective January 1,*
44 *2005; previously relettered subd (o) effective October 1, 2007.)*

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1
2 *Rule 5.534 amended effective January 1, 2008; previously amended and renumbered effective*
3 *January 1, 2007; adopted as rule 1412 effective January 1, 1991; previously amended effective*
4 *January 1, 1994, July 1, 1995, January 1, 1997, January 1, 2000, July 1, 2002, January 1, 2005,*
5 *and October 1, 2007.*

6
7
8 **Rule 5.640. Psychotropic medications**

9
10 **(a)–(b) * * ***

11
12 **(c) Procedure to obtain authorization**

13
14 (1) Application Regarding Psychotropic Medication (form JV-220),
15 Prescribing Physician’s Statement—Attachment (form JV-220(A)),
16 Proof of Notice: Application Regarding Psychotropic Medication (form
17 JV-221), Opposition to Application Regarding Psychotropic
18 Medication (form JV-222), and Order Regarding Application for
19 Psychotropic Medication (form JV-223) must be used to obtain
20 authorization to administer psychotropic medication to a dependent of
21 the court.

22
23 (2) Additional information may be provided to the court through the use of
24 local forms that are consistent with this rule.

25
26 (3) Local county practice and local rules of court determine the procedures
27 for completing and filing the forms and for the provision of notice,
28 except as otherwise provided in this rule.

29
30 (4) An application must be completed and presented to the court, using
31 Application and Order for Authorization to Administer Psychotropic
32 Medication—Juvenile (form JV-220) Application Regarding
33 Psychotropic Medication (form JV-220) and Prescribing Physician’s
34 Statement—Attachment (form JV-220(A)). The court must approve,
35 deny, or set the matter for a hearing within seven court days of the
36 receipt of the completed application.

37
38 ~~(5) If possible, the physician recommending that the medication be~~
39 ~~administered to the dependent should sign the application. The social~~
40 ~~worker may act as applicant and sign the application, with an~~
41 ~~attachment or notation identifying the physician who is requesting the~~
42 ~~authorization. Application Regarding Psychotropic Medication (form~~

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 JV-220) may be completed by the prescribing physician, medical office
2 staff, child welfare services staff, probation officer, or the child's
3 caregiver. The physician prescribing the administration of psychotropic
4 medication for the dependent child must complete and sign *Prescribing*
5 *Physician's Statement—Attachment* (form JV-220(A)).

6
7 ~~(2)~~ (6) The application *Prescribing Physician's Statement—Attachment*
8 (form JV-220(A)) must include all of the following:

9
10 (A) * * *

11
12 (B) The specific medication recommended, with the recommended
13 maximum daily dosage and anticipated length of time this course
14 of treatment will continue;

15
16 (C)–(E) * * *

17
18 (F) ~~A description of any other treatment plans for the child that are~~
19 ~~relevant to the medication regimen (e.g., discontinuing or~~
20 ~~reducing presently prescribed medications; group or individual~~
21 ~~therapy);~~ A description of any other therapeutic services related to
22 the child's mental health status; and

23
24 (G) A statement that the child has been informed in an age-
25 appropriate manner of the recommended course of treatment, the
26 basis for it, and its possible results. The child's response must be
27 included; ~~and.~~

28
29 (H) ~~A statement that the child's parents or guardian have also been~~
30 ~~informed as in (G), or a statement describing efforts to inform the~~
31 ~~parents. The response of any parent or guardian must be included.~~

32
33 ~~(3)~~ (7) The applicant must notice the attorneys of record and the parties to
34 the proceeding before the submission of the application and make
35 available a copy of *Opposition to Application for Order for*
36 *Authorization to Administer Psychotropic Medication—Juvenile* (form
37 JV-220A) to those receiving notice. Notice must be provided as
38 follows:

39
40 (A) Notice to the parents or legal guardians and their attorneys of
41 record must include:

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

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41

- (i) A statement that a physician is asking to treat the child's emotional or behavioral problems by beginning or continuing the administration of psychotropic medication to the child and the name of the psychotropic medication;
- (ii) A statement that an *Application Regarding Psychotropic Medication* (form JV-220) and a *Prescribing Physician's Statement—Attachment* (form JV-220(A)) are pending before the court;
- (iii) A copy of *Information About Psychotropic Medication Forms* (form JV-219-INFO) or information on how to obtain a copy of the form; and
- (iv) A blank copy of *Opposition to Application Regarding Psychotropic Medication* (form JV-222) or information on how to obtain a copy of the form.

(B) Notice to the child's current caregiver and Court Appointed Special Advocate, if one has been appointed, must include only:

- (i) A statement that a physician is asking to treat the child's emotional or behavioral problems by beginning or continuing the administration of psychotropic medication to the child and the name of the psychotropic medication; and
- (ii) A statement that an *Application Regarding Psychotropic Medication* (form JV-220) and a *Prescribing Physician's Statement—Attachment* (form JV-220(A)) are pending before the court;

(C) Notice to the child's attorney of record and any Child Abuse Prevention and Treatment Act guardian ad litem for the child must include:

- (i) A completed copy of the *Application Regarding Psychotropic Medication* (form JV-220);
- (ii) A completed copy of the *Prescribing Physician's Statement—Attachment* (form JV-220(A));

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

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(iii) A copy of *Information About Psychotropic Medication Forms* (form JV-219-INFO) or information on how to obtain a copy of the form; and

(iv) A blank copy of *Opposition to Application Regarding Psychiatric Medication* (form JV-222) or information on how to obtain a copy of the form.

(D) Proof of notice of the application regarding psychotropic medication must be filed with the court using *Proof of Notice: Application Regarding Psychotropic Medication* (form JV-221).

~~(4)~~ (8) Any attorney or party who opposes the application must file within two court days of notice of application (1) a statement of opposition and (2) notice to all parties and attorneys of record of the opposition. A parent or guardian, his or her attorney of record, a child’s attorney of record, or a child’s Child Abuse Prevention and Treatment Act guardian ad litem appointed under rule 5.662 of the California Rules of Court who is opposed to the administration of the proposed psychotropic medication must file a completed *Opposition to Application Regarding Psychotropic Medication* (form JV-222) within two court days of receiving notice of the pending application for psychotropic medication.

~~(5)~~ If a party or attorney requests additional information before agreeing to or opposing the application, the request must be noted on the application, and the court may delay its decision to grant, deny, or set the matter for a hearing until the party or attorney is provided with the additional information and communicates to the social worker his or her consent, opposition, or request for a hearing. The social worker must then resubmit the application to the court, noting the response of the party or attorney.

~~(6)~~ (9) The court may grant the application without a hearing or may set the matter for hearing at the court’s discretion. If the court sets the matter for a hearing, it is the obligation of the opposing party to notice all other parties the clerk of the court must provide notice of the date, time, and location of the hearing to the parents or legal guardians, their attorneys of record, the child if 12 years of age or older, the child’s attorney of record, the child’s current caregiver, the child’s social

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,

effective on January 1, 2008.

1 worker, the social worker's attorney of record, the child's Child Abuse
2 Prevention and Treatment Act guardian ad litem, and the child's Court
3 Appointed Special Advocate, if any, at least two court days before the
4 hearing. Notice must be provided to the child's probation officer and
5 the district attorney, if the child is a delinquent child.

6
7 *(Subd (c) amended effective January 1, 2008; previously amended effective January 1,*
8 *2007.)*

9
10 **(d) * * ***

11
12 **(e) Delegation of authority (§ 369.5)**

13
14 After consideration of ~~the~~ an application and attachments and a review of the
15 case file, the court may order that the parent be authorized to approve or
16 deny the administration of psychotropic medication. The order must be based
17 on the following findings, which must be included in the order: (1) the parent
18 poses no danger to the child, and (2) the parent has the capacity to
19 understand the request and the information provided and to authorize the
20 administration of psychotropic medication to the child, consistent with the
21 best interest of the child.

22
23 *(Subd (e) amended effective January 1, 2008.)*

24
25 **(f) * * ***

26
27 **(g) Emergency treatment**

28
29 ~~In emergency situations, psychotropic medications may be administered to a~~
30 ~~dependent with or without court authorization or court delegation of~~
31 ~~authority to a parent in accordance with section 369(d).~~

32
33 (1) Psychotropic medications may be administered without court
34 authorization in an emergency situation. An emergency situation occurs
35 when:

36
37 (A) A physician finds that the child requires psychotropic medication
38 to treat a psychiatric disorder or illness; and

39
40 (B) The purpose of the medication is:

41 (i) To protect the life of the child or others, or
42

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1
2 (ii) To prevent serious harm to the child or others, or

3
4 (iii) To treat current or imminent substantial suffering; and

5
6 (C) It is impractical to obtain authorization from the court before
7 administering the psychotropic medication to the child.

8
9 (2) Court authorization must be sought as soon as practical but in no case
10 more than two court days after the emergency administration of the
11 psychotropic medication.

12
13 *(Subd (g) amended effective January 1, 2008; previously amended effective January 1,*
14 *2007.)*

15
16 **~~(h)~~—Local forms**

17
18 ~~*Application and Order for Authorization to Administer Psychotropic*~~
19 ~~*Medication—Juvenile (form JV 220) and Opposition to Application for*~~
20 ~~*Order for Authorization to Administer Psychotropic Medication—Juvenile*~~
21 ~~*(form JV 220A) must be filed with the court. Additional information may be*~~
22 ~~*provided to the court through the use of local forms that are consistent with*~~
23 ~~*this rule.*~~

24
25 **~~(h)~~ * * ***

26
27 *(Subd (h) relettered effective January 1, 2008; adopted as subd (i) effective January 1,*
28 *2001; previously amended effective January 1, 2007.)*

29
30 *Rule 5.640 amended effective January 1, 2008; adopted as rule 1432.5 effective January 1, 2001;*
31 *previously amended effective January 1, 2003; previously amended and renumbered effective*
32 *January 1, 2007.*

33
34
35 **Rule 5.650. Appointment of ~~responsible adult~~ as educational representative**

36
37 **(a) Parent's or guardian's educational rights limited (§§ 319, 361, 366,**
38 **366.27, 726; 20 U.S.C. § 1415; 34 C.F.R. §§ 300.519, 300.300)**

39
40 The juvenile court may specifically limit a parent's or guardian's right to
41 make educational decisions for a child who is declared a dependent or ward
42 of the court under section 300, 601, or 602, but the limitations may not

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,

effective on January 1, 2008.

1 exceed those necessary to protect the child. Before disposition, the court may
2 temporarily limit a parent's or guardian's right to make educational decisions
3 under section 319(g). ~~The court must order any limitation on *Order Limiting*~~
4 ~~*Parent's Right to Make Educational Decisions for the Child and Appointing*~~
5 ~~*Responsible Adult as Educational Representative—Juvenile* (form JV 535).~~
6 The court may limit a parent's or guardian's educational rights regardless of
7 whether the child is, or may be eligible for, special education and related
8 services.

9
10 (1) If the court temporarily limits the parent's or guardian's right to make
11 educational decisions under section 319(g), the court must reconsider
12 the need, if any, to limit educational rights at the disposition hearing.

13
14 (2) The child's initial evaluation for special education services need not be
15 postponed to await parental or guardian consent or appointment of an
16 educational representative if one or more of the following
17 circumstances are met:

18
19 (A) The court has limited or temporarily limited the educational rights
20 of the parent or guardian, and consent for an initial assessment
21 has been given by an individual appointed by the court to
22 represent the child;

23
24 (B) The local education agency cannot discover the whereabouts of
25 the parent or guardian; or

26
27 (C) The parent's rights have been terminated or the guardianship has
28 been set aside.

29
30 (3) If the court determines that the child is in need of any assessments,
31 evaluations, or services, including special education, mental health, and
32 other related services, the court must direct an appropriate person to
33 take the necessary steps to request those assessments, evaluations, or
34 services.

35
36 (Subd (a) amended effective January 1, 2008; previously amended effective January 1,
37 2004, and January 1, 2007.)

38
39 (b) **Appointment of ~~responsible adult~~ as educational representative (§§ 319,**
40 **361, ~~366, 366.27, 726~~; 20 U.S.C. § 1415; 34 C.F.R. § 300.519)**

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,

effective on January 1, 2008.

1 ~~Whenever~~ The court limits the right of a parent or guardian to make
2 educational decisions for the child, the court must at the same time use
3 *Findings and Orders Limiting Right to Make Educational Decisions for the*
4 *Child, Appointing Educational Representative, and Determining Child's*
5 *Educational Needs* (form JV-535) to appoint a responsible adult as an
6 educational representative when it limits the rights of a parent or guardian to
7 make educational decisions for the child. ~~until~~ In its order, the court must
8 document that one of the following actions in (1) or (2) has been taken, or, in
9 the alternative, that a finding under (3) has been made:

10
11 (1) ~~The child reaches 18 years of age, unless the child then chooses not to~~
12 ~~make educational decisions or is deemed incompetent by the court;~~ The
13 court has appointed an educational representative for the child;
14

15 (2) ~~The court appoints another responsible adult to make educational~~
16 ~~decisions for the child under this rule;~~ The court has ordered a
17 permanent plan for the child, and the court finds that the foster parent,
18 relative caregiver, or nonrelative extended family member may exercise
19 educational rights as provided in Education Code section 56055 and
20 rule 5.502(13) and is not prohibited from exercising educational rights
21 by section 361 or 726 or by 34 Code of Federal Regulations section
22 300.519 or 303.19; or
23

24 (3) ~~The court restores the right of the parent or guardian to make~~
25 ~~educational decisions for the child;~~ The court cannot identify a
26 responsible adult to serve as the child's educational representative; and
27

28 (A) The child is or may be eligible for special education and related
29 services, and the court is referring the child to the responsible
30 local educational agency for appointment of a surrogate parent
31 under section 361 or 726, title 20 United States Code section
32 1415, and rules 5.502 and 5.650; or
33

34 (B) The child is not eligible for special education and related services,
35 there is no foster parent to exercise the authority granted by
36 section 56055 of the Education Code, and the court will, with the
37 input of any interested person, make educational decisions for the
38 child.
39

40 (4) ~~The court appoints a successor guardian or conservator; or~~
41

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,

effective on January 1, 2008.

1 ~~(5) — The child is placed in a planned permanent living arrangement under~~
2 ~~section 366.21(g)(3), 366.22, 366.26, 727.3(b)(5), or 727.3(b)(6), in~~
3 ~~which case the foster parent, relative caregiver, or nonrelative extended~~
4 ~~family member has the right to make educational decisions for the child~~
5 ~~under Education Code section 56055(a) unless excluded by the court.~~

6
7 *(Subd (b) amended effective January 1, 2008; adopted effective January 1, 2004;*
8 *previously amended effective January 1, 2007.)*

9
10 **(c) Limits on appointment (§§ 361, 726; Ed. Code, § 56055; Gov. Code, §**
11 **7579.5(i)–(j); 34 C.F.R. §§ 300.519, 303.19)**

12
13 (1) * * *

14
15 (2) The court may not appoint any individual as the educational
16 representative if that person is excluded under, or would have a conflict
17 of interest as defined by section 361(a) or 726(b); Education Code
18 section 56055; Government Code section 7579.5(i)–(j); title 20 United
19 States Code section 1415(b)(2); or 34 Code of Federal Regulations
20 section 300.519 or 303.19.

21
22 *(Subd (c) amended effective January 1, 2008; adopted effective January 1, 2004;*
23 *previously amended effective January 1, 2007.)*

24
25 **(d) ~~Appointment of surrogate parent~~ Referral to local educational agency to**
26 **appoint a surrogate parent for a child who is or may be eligible for**
27 **special education and related services (§§ 361, 726; Gov. Code, §**
28 **7579.5; 20 U.S.C. § 1415)**

29
30 (1) If the court has ~~specifically~~ limited a parent's or guardian's right to
31 make educational decisions for a child but cannot identify an
32 ~~responsible adult to make educational decisions~~ educational
33 representative for the child and the child is or may be eligible for
34 special education and related services or already has an individualized
35 education program, the court must use form JV-535 to refer the child to
36 the responsible local educational agency for prompt appointment of a
37 surrogate parent under Government Code section 7579.5.

38
39 (2) If the court refers a child to the local educational agency for
40 appointment of a surrogate parent, the court must order that *Local*
41 *Educational Agency Response to JV-535—Appointment of Surrogate*
42 *Parent* (form JV-536) be served by first-class mail on the local

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 educational agency along with form JV-535, no later than seven
2 calendar days after the date of the order.

- 3
4 (3) The court must direct the local education agency that when the local
5 education agency receives form JV-535, requesting prompt
6 appointment of a surrogate parent, the local education agency must
7 make reasonable efforts to assign a surrogate parent within 30 calendar
8 days after the court's referral.

9
10 (A) Whenever the local educational agency appoints a surrogate
11 parent for a dependent or ward under Government Code section
12 7579.5(a)(1), it must notify the court on form JV-536 within ~~21~~
13 seven calendar days of the ~~date of the~~ appointment and must send
14 copies of the notice to the social worker or probation officer
15 identified on the form.

16
17 (B) If the local education agency does not appoint a surrogate parent
18 within 30 days of receipt of the form, within the next seven
19 calendar days it must notify the court on form JV-536 of the
20 following:

21
22 (i) Its inability to appoint a surrogate parent; and

23
24 (ii) Its continuing reasonable efforts to assign a surrogate parent.

- 25
26 (4) Whenever the surrogate parent resigns or the local education agency
27 terminates the appointment of a surrogate parent for a dependent or
28 ward under Government Code section 7579.5(h) or replaces the
29 surrogate parent for any other reason, it must notify the court and the
30 child's attorney on form JV-536 within ~~21~~ seven calendar days of the
31 ~~date of the~~ resignation, termination, or replacement. The child's
32 attorney may request a hearing for appointment of a new educational
33 representative by filing *Request for Hearing Regarding Child's*
34 *Education* (form JV-539) and must provide notice of the hearing as
35 provided in (g)(2). The court on its own motion may direct the clerk to
36 set a hearing.

37
38 *(Subd (d) amended effective January 1, 2008; adopted as subd (b) effective July 1, 2002;*
39 *previously amended and relettered effective January 1, 2004; previously amended effective*
40 *January 1, 2007.)*

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,

effective on January 1, 2008.

1 (e) **Unavailability of responsible adult (§§ 361, 726) Transfer of parent’s or**
2 **guardian’s educational rights to educational representative**
3

4 If the court cannot identify a responsible adult to make educational decisions
5 for the child, the appointment of a surrogate parent is not legally warranted,
6 and there is no foster parent to exercise the authority granted by Education
7 Code section 56055, the court may, with the input of any interested person,
8 make educational decisions for the child. When an educational representative
9 is appointed, the educational rights of the parent or guardian—including the
10 right to notice of educational meetings and activities, participation in
11 educational meetings and activities, and decisionmaking authority regarding
12 the child’s education, including the authority under title 20 United States
13 Code sections 1232g and 1401(23), 34 Code of Federal Regulations section
14 300.30, and Education Code section 56028—are transferred to the
15 educational representative.
16

17 (1) When returning a child to a parent or guardian, the court must consider
18 the child’s educational needs. The parent’s or guardian’s educational
19 rights are reinstated when the court returns custody to the parent or
20 guardian unless the court finds that the parent is not able to act in the
21 child’s best interest regarding education.
22

23 (2) If the court appoints a guardian for the child under rule 5.735 or 5.815,
24 all of the parent’s or guardian’s educational rights transfer to the newly
25 appointed guardian unless the court determines that the guardian is not
26 able to act in the child’s best interest regarding education.
27

28 *(Subd (e) amended effective January 1, 2008; adopted effective January 1, 2004;*
29 *previously amended effective January 1, 2007.)*
30

31 (f) **Authority and responsibilities of educational representative (§§ 319, 360,**
32 **361, 635, 706.5, 726; Ed. Code, § 56055; Gov. Code, 7579.5; 34 C.F.R. §**
33 **300.519)**
34

35 (1) The educational representative is responsible for representing the child
36 in the identification, evaluation, and educational placement of the child
37 and with the provision of the child’s free, appropriate public education.
38 This includes representing the child in all matters relating to the child’s
39 education including:
40

41 (A) The stability of the child’s school placement;
42

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

- 1 (B) Placement in the least restrictive educational program appropriate
2 to the child’s individual needs;
3
4 (C) The child’s access to academic resources, services, and
5 extracurricular and enrichment activities;
6
7 (D) The child’s access to educational supports necessary to meet state
8 academic achievement standards;
9
10 (E) School disciplinary matters; and
11
12 (F) Other aspects of the provision of a free, appropriate public
13 education.
14
15 (2) The educational representative has the following additional
16 responsibilities:
17
18 (A) Meeting with the child at least once and as often as necessary to
19 make educational decisions that are in the best interest of the
20 child;
21
22 (B) Being culturally sensitive to the child;
23
24 (C) Complying with federal and state confidentiality laws including
25 section 827 and Government Code section 7579.1(f);
26
27 (D) Participating in, and making decisions regarding, all matters
28 affecting the child’s educational needs in a manner consistent
29 with the child’s best interest; and
30
31 (E) Having knowledge and skills that ensure adequate representation
32 of the child.
33
34 (3) The educational representative acts as the parent or guardian in all
35 educational matters regarding the child and has a right to the following:
36
37 (A) To the rights afforded the parent or guardian under the Family
38 Education Rights and Privacy Act, title 20 United States Code
39 section 1232g;
40

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,

effective on January 1, 2008.

- 1 (B) To the rights of a parent relating to school discipline issues,
2 meetings, and proceedings;
3
4 (C) To represent a child with exceptional needs in matters relating to
5 identification and assessment of those needs, instructional
6 planning and development, educational placement, reviewing and
7 revising the individualized education program, and other aspects
8 of the provision of a free, appropriate public education;
9
10 (D) To attend the child’s individualized education program and other
11 educational meetings, to consult with persons involved in the
12 child’s education, and to sign any consents to education-related
13 services and plans; and
14
15 (E) Notwithstanding any other provision of law, to consent to the
16 child’s individualized education program, nonemergency medical
17 services, mental health treatment services, and occupational or
18 physical therapy services provided under chapter 26.5 of title 1 of
19 the Government Code.

20
21 *(Subd (f) adopted effective January 1, 2008.)*
22

23 **(g) Educational representative’s term of service (§§ 361, 726; Gov. Code §**
24 **7579.5)**

- 25
26 (1) The educational representative must make educational decisions for the
27 child until:
28
29 (A) The court restores the right of the parent or guardian to make
30 educational decisions for the child;
31
32 (B) The child reaches 18 years of age, unless the child chooses not to
33 make his or her own educational decisions or is deemed
34 incompetent by the court;
35
36 (C) The court appoints another educational representative for the
37 child under this rule;
38
39 (D) The court appoints a successor guardian or conservator; or
40
41 (E) The court finds that the foster parent, relative caregiver, or
42 nonrelative extended family member may make educational

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 decisions for the child under Education Code section 56055(a)
2 because:

3
4 (i) The child is placed in a planned permanent living
5 arrangement under section 366.21(g)(3), 366.22, 366.26,
6 727.3(b)(5), or 727.3(b)(6);

7
8 (ii) The court has limited the parent's or guardian's educational
9 rights; and

10
11 (iii) The foster parent, relative caregiver, or nonrelative extended
12 family member is not otherwise excluded from making
13 education decisions by the court, by section 361 or 726, or
14 by 34 Code of Federal Regulations section 300.519 or
15 303.19.

16
17 (2) If the educational representative resigns from the appointment, he or
18 she must provide notice to the court and to the child's attorney and may
19 use *Educational Representative or Surrogate Parent Information* (form
20 JV-537) to provide this notice. Once notice is received, the child's
21 attorney may request a hearing for appointment of a new educational
22 representative by filing form JV-539 and must provide notice of the
23 hearing to the following: the parents or guardians, unless otherwise
24 indicated on the most recent form JV-535; the social worker; the
25 probation officer; the Court Appointed Special Advocate (CASA)
26 volunteer; and all other persons required to be given notice under
27 section 293. The hearing must be set within 14 days of receipt of the
28 request for hearing. The court on its own motion may direct the clerk to
29 set a hearing.

30
31 *(Subd (g) adopted effective January 1, 2008.)*

32
33 **(h) Service of order**

34
35 The clerk will provide a copy of the completed form JV-535 and any
36 received form JV-536 or JV-537 to the child if 10 years or older, the child's
37 attorney, the social worker and the probation officer, the foster youth liaison,
38 as defined in Education Code section 48853.5, and the educational
39 representative at the end of the proceeding or no later than seven calendar
40 days after the date of the order. The clerk will make the form available to the
41 parents or guardians, unless otherwise indicated on the form; the CASA

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 volunteer; and, if requested, all other persons provided notice under section
2 293. Whoever is directed by the court on form JV-535 must provide a copy
3 of the form to the local education agency.

4
5 *(Subd (h) adopted effective January 1, 2008.)*

6
7 **(i) Education and training of educational representative**

8
9 If the educational representative asks for assistance in obtaining education
10 and training in the laws incorporated in rule 5.651(a), the court must direct
11 the clerk, social worker, or probation officer to inform the educational
12 representative of all available resources, including resources available
13 through the California Department of Education and the local education
14 agency.

15
16 *(Subd (i) adopted effective January 1, 2008.)*

17
18 **(j) Notice and participation in juvenile court hearings**

19
20 (1) The educational representative must receive notice of all juvenile court
21 hearings regarding or affecting the child's education. This includes the
22 notice and participation provided in rule 5.530 for all regularly
23 scheduled juvenile hearings, rule 5.512 for joint assessment hearings,
24 and rule 5.575 for joinder proceedings.

25
26 (2) The educational representative may use form JV-537 to explain the
27 child's educational needs. The court may allow the educational
28 representative to be present for the purposes of participating in the
29 portions of the juvenile court hearing that concern the child's
30 education, including school placement, and of responding to questions
31 or issues raised by the form. The court may allow the educational
32 representative to participate in any mediation as provided in rule 5.518.

33
34 *(Subd (j) adopted effective January 1, 2008.)*

35
36 *Rule 5.650 amended effective January 1, 2008; adopted as rule 1499 effective July 1, 2002;*
37 *previously amended effective January 1, 2004; previously amended and renumbered effective*
38 *January 1, 2007.*

39
40
41 **Advisory Committee Comment**

42 Under the Individuals With Disabilities Education Act (IDEA), the court may appoint a surrogate
43 parent for a child to represent the child in all matters relating to the identification, evaluation, and

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,

effective on January 1, 2008.

1 educational placement of the child and to the provision of the child's free, appropriate public
2 education. (20 U.S.C. § 1415(b)(2); 34 C.F.R. § 300.519.) Under Welfare and Institutions Code
3 sections 361 and 726, the court may appoint a responsible adult as an educational representative
4 to represent the child's educational needs when the parent's educational rights have been limited.
5 When the court appoints an educational representative, that person is responsible for representing
6 all the child's educational needs, including any special education and related services needs.
7 When making this appointment, the court and all court participants are encouraged to look to all
8 persons in the child's life, including relatives, nonrelated extended family members, and those
9 persons with whom the child has an important relationship, to represent the child's educational
10 needs.

11
12 If the court cannot find anyone to appoint as the child's educational representative and special
13 education needs are not indicated, sections 361 and 726 state that the court can make education
14 decisions for the child with the input of interested persons. However, if the court cannot find
15 someone to appoint as educational representative and special education is indicated, the court
16 must refer the matter to the local education agency (LEA) for appointment of a surrogate parent.
17 Sections 361 and 726 do not permit the court to make educational decisions for a child in these
18 cases. The surrogate parent assigned by the LEA acts as a parent for the purpose of making
19 educational decisions on behalf of the child. (Gov. Code, § 7579.5(c); Ed. Code, § 56028; 34
20 C.F.R. § 300.30(b)(2); see 20 U.S.C. §§ 1401(9), 1414(d).)

21
22
23 **Rule 5.651. Educational rights of children before the juvenile court**

24
25 **(a) Applicability (§§ 213.5, 319, 358, 358.1, 364, 366.21, 366.22, 366.23,**
26 **366.26, 366.28, 366.3, 727.2, 11404.1; Gov. Code, § 7579.1; 20 U.S.C. §**
27 **1400 et seq.; 29 U.S.C. § 794; 42 U.S.C. § 12101 et seq.)**

28
29 This rule has the following applicability and incorporates the rights
30 established by the following laws:

- 31
32 (1) The rule applies to all children for whom petitions have been filed
33 under section 300, 601, or 602;
34
35 (2) The rule applies to every hearing before the court affecting or related to
36 the child's education, including detention, jurisdiction, disposition, and
37 all regularly scheduled review hearings; and
38
39 (3) The rule incorporates the rights established by the following laws: the
40 Individuals With Disabilities Education Act (20 U.S.C. § 1400 et seq.),
41 the Americans With Disabilities Act (42 U.S.C. § 12101 et seq.),
42 section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.),
43 and the education rights of foster children as provided in Assembly Bill

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 490 (Stats. 2003, ch. 862) and Assembly Bill 1858 (Stats. 2004, ch.
2 914).

3
4 **(b) Conduct of hearings related to, or that may affect, a child's education**

5
6 (1) To the extent the information is available, at the initial or detention
7 hearing the court must consider:

8
9 (A) Who holds educational rights;

10
11 (B) If the child was enrolled in, and is attending, the child's school of
12 origin as defined in Education code section 48853.5(e);

13
14 (C) If the child is no longer attending the school of origin, whether;

15
16 (i) In accordance with the child's best interest, the educational
17 liaison, as defined in Education Code section 48853.5(b), in
18 consultation with, and with the agreement of, the child and
19 the parent or guardian or other educational representative,
20 recommends that the child's right to attend the school of
21 origin be waived;

22
23 (ii) Prior to making any recommendation to move a foster child
24 from his or her school of origin, the educational liaison
25 provided the child and the person holding the right to make
26 educational decisions for the child with a written
27 explanation stating the basis for the recommendation and
28 how this recommendation serves the foster child's best
29 interest as provided in Education Code section
30 48853.5(d)(3);

31
32 (iii) Without obtaining a waiver, the child was not afforded his
33 or her right to attend his or her school of origin under
34 Education Code section 48853.5(d)(1); and

35
36 (iv) The child was immediately enrolled in the new school as
37 provided in Education Code section 48853.5(d)(4).

38
39 (D) Whether the parent's or guardian's educational rights should be
40 temporarily limited; and

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

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(E) Taking into account other statutory considerations regarding placement, whether the out-of-home placement:

(i) Is the environment best suited to meet the unique needs of children with disabilities and to serve the child's best interest if he or she has a disability; and

(ii) Promotes educational stability through proximity to the child's school.

(2) At the disposition hearing and at all subsequent hearings provided for in (a), the juvenile court must address and determine the child's general and special education needs, identify a plan for meeting those needs, and provide a clear, written statement using *Findings and Orders Limiting Right to Make Educational Decisions for the Child, Appointing Educational Representative, and Determining Child's Educational Needs* (form JV-535), specifying the person who holds the educational rights for the child. The court's findings and orders must address the following:

(A) Whether the child's educational, physical, mental health, and developmental needs are being met;

(B) Any services, assessments, or evaluations, including those for special education and related services, that the child may need;

(C) Who is directed to take the necessary steps for the child to begin receiving any necessary assessments, evaluations, or services;

(D) If the child's educational placement changed during the reporting period, whether

(i) The child's educational records, including any evaluations of a child with a disability, were transferred to the new educational placement within two business days of the request for the child's enrollment in the new educational placement; and

(ii) The child is enrolled in and attending school; and

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,

effective on January 1, 2008.

1 (E) Whether the parent's or guardian's educational rights should be
2 limited;

3
4 (i) If the court finds the parent's or guardian's educational
5 rights should not be limited, the court must direct the parent
6 to his or her rights and responsibilities in regard to the
7 child's education as provided in rule 5.650(e) and (f); or

8
9 (ii) If the court finds the parent's or guardian's educational
10 rights should be limited, the court must determine who will
11 hold the child's educational rights. The court must explain
12 to the parent or guardian why the court is limiting his or her
13 educational rights and must direct the parent or guardian to
14 the rights and responsibilities of the education representative
15 as provided in rule 5.650(e) and (f).

16
17 **(c) Reports for hearings related to, or that may affect, a child's education**

18
19 This subdivision applies at all hearings, including disposition and joint
20 assessment hearings. The court must ensure that, to the extent the
21 information was available, the social worker and the probation officer
22 provided the following information in the report for the hearing:

23
24 (1) The child's age, behavior, educational and developmental achievement,
25 and any discrepancies in achievement in education and in cognitive,
26 physical, and emotional development;

27
28 (2) Identification of the child's educational, physical, mental health, or
29 developmental needs;

30
31 (3) Whether the child is participating in developmentally appropriate
32 extracurricular and social activities;

33
34 (4) Whether the child is attending a comprehensive, regular, public or
35 private school;

36
37 (5) Whether the child may have physical, mental, or learning-related
38 disabilities or other special education needs and is in need of or is
39 already receiving special education and related services as provided by
40 the laws incorporated in rule 5.651(a)(3);

41

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

- 1 (6) If the child is 0 to 3 years old, whether the child may be eligible for or
2 is already receiving services available under the California Early
3 Intervention Services Act (Gov. Code, § 95000 et seq.), and whether
4 those services are appropriate;
5
6 (7) If the child is between 3 and 5 years and is or may be eligible for
7 special education services, whether the child is receiving the early
8 educational opportunities provided by Education Code section 56001;
9
10 (8) Whether the child is receiving appropriate services through a current
11 individualized education program;
12
13 (9) Whether the child is or may be eligible for regional center services or is
14 already receiving regional center services. Copies of the current
15 individual family plan as defined in section 1436 under title 20 of the
16 United States Code and the current life quality assessments as defined
17 in Welfare and Institutions Code section 4570 should be attached to the
18 report;
19
20 (10) Whether the parent's or guardian's educational rights have been or
21 should be limited;
22
23 (11) If the social worker or probation officer recommends limiting the
24 parent's or guardian's right to make educational decisions, the reasons
25 those rights should be limited and the actions that the parent or
26 guardian may take to restore those rights if they are limited;
27
28 (12) If the parent's or guardian's educational rights have been limited, who
29 holds the child's educational rights;
30
31 (13) Recommendations and case plan goals to meet the child's identified
32 educational, physical, mental health, and developmental needs;
33
34 (14) Whether any orders to direct an appropriate person to take the
35 necessary steps for the child to begin receiving assessments,
36 evaluations, or services, including those for special education and
37 related services, are requested; and
38
39 (15) In the case of joint assessments, a separate statement by each of the two
40 departments regarding whether the respective social worker and
41 probation officer believe that the child may have a disability and

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 whether the child is in need of special education and related services or
2 requires evaluation as required by title 20 United States Code section
3 1412(a)(3), Education Code section 56425, or section 504 of the
4 Rehabilitation Act of 1973.

5
6 **(d) Continuances or stay of jurisdiction**

7
8 If any continuance provided for in rules 5.686 and 5.782 or stay of
9 jurisdiction provided for in rule 5.645 is granted, the child must continue to
10 receive all services or accommodations required by the laws incorporated in
11 rule 5.651(a)(3).

12
13 **(e) Change of placement affecting the child's right to attend the school of**
14 **origin**

15
16 This subdivision applies to all changes of placement including the initial
17 placement and all subsequent changes of placement.

18
19 (1) At any hearing that relates to or may affect the child's education and
20 that follows a removal of the child from the school of origin the court
21 must find that:

22
23 (A) The social worker or probation officer notified the court, the
24 child's attorney, and the educational representative or surrogate
25 parent that the proposed placement or change of placement would
26 result in a removal of the child from the child's school of origin.
27 The court must find that the notice was provided within 24 hours,
28 excluding nonjudicial days, of the social worker's or probation
29 officer's determination that the proposed change of placement
30 would result in removal of the child from the school of origin.

31
32 (B) If the child had a disability and an active individualized education
33 program prior to removal, the social worker or probation officer,
34 at least 10 days before the change of placement, notified in
35 writing the local educational agency that provided a special
36 education program for the child prior to removal and the receiving
37 special education local plan area, as defined in Government Code
38 section 7579.1, of the impending change of placement.

39
40 (2) After receipt of the notice in (1):
41

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

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(A) The child's attorney must, as appropriate, discuss the proposed move from the school of origin with the child and the person who holds educational rights. The child's attorney may request a hearing by filing *Request for Hearing Regarding Child's Education* (form JV-539). If requesting a hearing, the child's attorney must:

(i) File form JV-539 no later than two court days after receipt of the notice in (1); and

(ii) Provide notice of the court date, which will be no later than seven calendar days after the form was filed, to the parents or guardians, unless otherwise indicated on form JV-535; the social worker; the probation officer; the educational representative or surrogate parent; the foster youth liaison, as defined in Education Code section 48853.5; the Court Appointed Special Advocate (CASA) volunteer; and all other persons required by section 293.

(B) The person who holds educational rights may request a hearing by filing form JV-539 no later than two court days after receipt of the notice in (1). After receipt of the form, the clerk must notify the persons in (e)(2)(A)(ii) of the hearing date.

(C) The court on its own motion may direct the clerk to set a hearing.

(3) If removal from the school of origin is disputed, the child must be allowed to remain in the school of origin pending this hearing and pending any disagreement between the child, parent, guardian, or educational representative and the school district.

(4) If the court, the child's attorney, or the person who holds educational rights requests a hearing, at the hearing the court must find that the social worker or probation officer provided a report no later than two court days after form JV-539 was filed and that the report included the information required by (b)(1)(C)(i) and (ii) and:

(A) Whether the foster child has been allowed to continue his or her education in the school of origin for the duration of the academic school year;

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

- 1 (B) Whether a dispute exists regarding the request of a foster child to
2 remain in the school of origin and whether the foster child has
3 been afforded the right to remain in the school of origin pending
4 resolution of the dispute;
5
6 (C) Information addressing whether the information sharing and other
7 requirements in section 16501.1(c)(2) and Education Code section
8 49069.5 have been followed;
9
10 (D) Information addressing how the proposed change serves the best
11 interest of the child;
12
13 (E) The responses to the proposed change of placement from the child
14 if over 10 years old, the child’s attorney, the parent or guardian,
15 the foster youth liaison, as defined in Education Code section
16 48853.5, and the child’s CASA volunteer, specifying whether
17 each person agrees or disagrees with the proposed change and, if
18 any person disagrees, stating why;
19
20 (F) A statement from the person holding educational rights regarding
21 whether the proposed change of placement is in the child’s best
22 interest and what efforts have been made to keep the child in the
23 school of origin; and
24
25 (G) A statement from the social worker or probation officer
26 confirming that the child has not been segregated in a separate
27 school, or in a separate program within a school, based on the
28 child’s status as a child in foster care.
29
30 (f) **Court review of proposed change of placement affecting the child’s right**
31 **to attend the school of origin**
32
33 (1) At the hearing set under (e)(2), the court must:
34
35 (A) Determine whether the proposed placement meets the
36 requirements of this rule and Education Code sections 48853.5
37 and 49069.5 and whether the proposed plan is based on the best
38 interest of the child;
39
40 (B) Determine what actions are necessary to ensure the child’s
41 educational and disability rights; and

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1
2 (C) Make the necessary findings and orders to enforce these rights,
3 which may include an order to set a hearing under section 362 to
4 join the necessary agencies regarding provision of services,
5 including the provision of transportation services, so that the child
6 may remain in his or her school of origin.

7
8 (2) When considering whether it is in the child's best interest to remain in
9 the school of origin, the court must consider the following:

10
11 (A) Whether the parent, guardian, or other educational representative
12 believes that remaining in the school of origin is in the child's
13 best interest;

14
15 (B) How the proposed change of placement will affect the stability of
16 the child's school placement and the child's access to academic
17 resources, services, and extracurricular and enrichment activities;

18
19 (C) Whether the proposed school placement would allow the child to
20 be placed in the least restrictive educational program; and

21
22 (D) Whether the child has the educational supports necessary,
23 including those for special education and related services, to meet
24 state academic achievement standards.

25
26 (3) The court may make its findings and orders on *Findings and Orders*
27 *Regarding Transfer From School of Origin* (form JV-538).

28
29 *Rule 5.651 adopted effective January 1, 2008.*

30
31
32 **Advisory Committee Comment**

33
34 This rule incorporates the requirement of, and rights established by, Assembly Bill 490
35 (Steinberg; Stats. 2003, ch. 862), Assembly Bill 1858 (Steinberg; Stats. 2004, ch. 914), the
36 Individuals With Disabilities Education Act (IDEA), the Americans With Disabilities Act (ADA),
37 and section 504 of the Rehabilitation Act of 1973. This rule does not limit these requirements or
38 rights. To the extent necessary, this rule establishes procedures to make these laws meaningful to
39 children in foster care.

40
41 With the passage of Assembly Bill 490, a child in, or at risk of entering, foster care has a statutory
42 right to a meaningful opportunity to meet the state's academic achievement standards to which all
43 students are held. To afford the child this right, the juvenile court, advocates, placing agencies,

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,

effective on January 1, 2008.

1 care providers, and educators must work together to maintain stable school placements and ensure
2 that the child is placed in the least restrictive educational programs and has access to the
3 academic resources, services, and extracurricular and enrichment activities that are available to
4 other students. This rule, sections 362 and 727, and rule 5.575 provide procedures for ensuring
5 that the child’s educational needs are met.

6
7 Congress has found that improving the educational performance of children with disabilities is an
8 essential prerequisite to ensuring their equality of opportunity, full participation in education, and
9 economic self-sufficiency. Children in foster care are disproportionately represented in the
10 population of children with disabilities and inherently face systemic challenges to attaining self-
11 sufficiency. Children in foster care have rights arising out of the IDEA, the ADA, and section 504
12 of the Rehabilitation Act of 1973. To comply with federal requirements regarding the
13 identification of children with disabilities and the provision of services to those children who
14 qualify, the court, parent or guardian, placing agency, attorneys, CASA volunteer, local education
15 agencies, and educational representatives must affirmatively address the child’s educational
16 needs. The court must continually inquire about the education of the child and the progress being
17 made to enforce any rights the child has under these laws.

18
19
20 **Title 5. Family and Juvenile Rules**

21
22 **Division 3. Juvenile Rules**

23
24 **~~Chapter 12. Indian Child Welfare Act~~**

25
26 **~~Rule 5.664. Indian Child Welfare Act (25 U.S.C. § 1901 et seq.)~~**

27
28 **~~(a) Definitions; 25 U.S.C. § 1903~~**

29
30 ~~As used in this rule, unless the context or subject matter otherwise requires:~~

31
32 ~~(1) “Indian child” means an unmarried person under the age of 18 who:~~

33
34 ~~(A) Is a member of an Indian tribe; or~~

35
36 ~~(B) Is eligible for membership in an Indian tribe and is the biological~~
37 ~~child of a member of an Indian tribe.~~

38
39 ~~(2) “Indian child’s tribe” means:~~

40
41 ~~(A) The Indian tribe in which the child is a member or is eligible for~~
42 ~~membership; or~~
43

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,

effective on January 1, 2008.

- 1 ~~(B) In the case of an Indian child who is a member of or eligible for~~
2 ~~membership in more than one tribe, the Indian tribe with which~~
3 ~~the Indian child has more significant contacts.~~
4
- 5 ~~(3) “Indian custodian” means any Indian person who has:~~
6
- 7 ~~(A) Legal custody of an Indian child under tribal law or custom, or~~
8 ~~under state law; or~~
9
- 10 ~~(B) Temporary physical care, custody, and control of an Indian child~~
11 ~~whose parent or parents have transferred custody to that person.~~
12
- 13 ~~(4) “Parent of an Indian child” means the biological parent of an Indian~~
14 ~~child or any Indian person who has lawfully adopted an Indian child,~~
15 ~~including adoptions under tribal law or custom. (This definition does~~
16 ~~not include a non-Indian adoptive parent or an unwed alleged father~~
17 ~~where paternity has not been determined or acknowledged.)~~
18
- 19 ~~(5) “Custody” means legal or physical custody or both as provided under~~
20 ~~state law or tribal law or custom.~~
21
- 22 ~~(6) “Indian tribe” means any tribe, band, nation, or other organized group~~
23 ~~or community of Indians eligible for services provided to Indians by the~~
24 ~~Secretary of the Interior because of their status as Indians, including~~
25 ~~any Alaskan Native Villages as defined by section 1602(c) of title 43 of~~
26 ~~the United States Code.~~
27
- 28 ~~(7) “Extended family” means those persons defined by the law or custom~~
29 ~~of the Indian child’s tribe or, in the absence of such law or custom, an~~
30 ~~adult grandparent, aunt, uncle, brother, sister, sister-in-law, brother-in-~~
31 ~~law, niece, nephew, first or second cousin, or stepparent of the Indian~~
32 ~~child.~~
33
- 34 ~~(8) “Child custody proceeding” means and includes a proceeding at which~~
35 ~~the court considers foster care placement, appointment of a guardian,~~
36 ~~termination of parental rights, preadoptive placement, or adoptive~~
37 ~~placement.~~
38
- 39 ~~(9) “Foster care placement” means any temporary placement from which a~~
40 ~~child may not be removed by the parent or Indian custodian on demand,~~

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,

effective on January 1, 2008.

1 including a shelter care home, a foster home, or an institution or the
2 home of a guardian or conservator.

3
4 (10) ~~“Qualified expert witness” means a person qualified to address the~~
5 ~~issue of whether continued custody by a parent or Indian custodian is~~
6 ~~likely to result in serious physical or emotional damage to the child.~~
7 ~~Persons most likely to be considered such experts are:~~

8
9 (A) ~~A member of a tribe with knowledge of Indian family~~
10 ~~organization and child rearing;~~

11
12 (B) ~~A lay expert with substantial experience in Indian child and~~
13 ~~family services and extensive knowledge of the social and cultural~~
14 ~~standards and child rearing practices of Indian tribes, specifically~~
15 ~~the child’s tribe, if possible;~~

16
17 (C) ~~A professional person with substantial education and experience~~
18 ~~in Indian child and family services and in the social and cultural~~
19 ~~standards of Indian tribes, specifically the child’s tribe, if~~
20 ~~possible; or~~

21
22 (D) ~~A professional person having substantial education and~~
23 ~~experience in the area of his or her specialty.~~

24
25 (11) ~~“Act” means the Indian Child Welfare Act (25 U.S.C. §§ 1901–1963).~~

26
27 (12) ~~“Tribal court” means a court with jurisdiction over child custody~~
28 ~~proceedings, identified as a Court of Indian Offenses, a court~~
29 ~~established and operated under the code or custom of an Indian tribe, or~~
30 ~~any other administrative body of a tribe that is vested with authority~~
31 ~~over child custody proceedings. If applicable, the tribal court has met~~
32 ~~the requirements for resumption of jurisdiction over child custody~~
33 ~~proceedings as approved by the Department of the Interior.~~

34
35 **(b) ~~Applicability of rule; 25 U.S.C. §§ 1911, 1912~~**

36
37 ~~This rule applies to all proceedings under section 300 et seq. and to~~
38 ~~proceedings under section 601 and section 602 et seq. in which the child is at~~
39 ~~risk of entering foster care or is in foster care, including detention hearings,~~
40 ~~jurisdiction hearings, disposition hearings, reviews, hearings under section~~
41 ~~366.26, and subsequent hearings affecting the status of the Indian child.~~

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1
2 **(e) — Jurisdiction; 25 U.S.C. § 1911**
3

4 ~~(1) — If the Indian child resides or is domiciled on an Indian reservation that~~
5 ~~exercises exclusive jurisdiction under the act over child custody~~
6 ~~proceedings, the petition under section 300 must be dismissed.~~
7

8 ~~(A) — If the Indian child is temporarily off a reservation that exercises~~
9 ~~exclusive jurisdiction, the juvenile court must exercise temporary~~
10 ~~jurisdiction if there is an immediate threat of serious physical~~
11 ~~harm to the child.~~
12

13 ~~(B) — Absent extraordinary circumstances, temporary emergency~~
14 ~~e custody must terminate within 90 days, unless the court~~
15 ~~determines by clear and convincing evidence, including the~~
16 ~~testimony of at least one qualified expert witness, that return of~~
17 ~~the child is likely to cause serious damage to the child.~~
18

19 ~~(C) — The child must be returned immediately to the parent or Indian~~
20 ~~custodian when the emergency placement is no longer necessary~~
21 ~~to prevent serious harm to the child.~~
22

23 ~~(2) — If the Indian child is not domiciled or residing on a reservation that~~
24 ~~exercises exclusive jurisdiction, the tribe, parent, or Indian custodian~~
25 ~~may petition the court to transfer the proceedings to the tribal~~
26 ~~jurisdiction, and the juvenile court must transfer the proceedings to~~
27 ~~tribal jurisdiction unless there is good cause not to do so.~~
28

29 ~~(A) — Either parent may object to the transfer.~~
30

31 ~~(B) — The tribe may decline the transfer of the proceedings.~~
32

33 ~~(3) — If the tribe does not intervene or the tribal court does not request~~
34 ~~transfer to tribal jurisdiction, the court should proceed to exercise its~~
35 ~~jurisdiction regarding the Indian child under section 300 et seq., in~~
36 ~~accordance with the procedures and standards of proof as required by~~
37 ~~both juvenile court law and the act.~~
38

39 **(d) — Inquiry**
40

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,

effective on January 1, 2008.

1 ~~The court, the county welfare department, and the probation department have~~
2 ~~an affirmative and continuing duty to inquire whether a child for whom a~~
3 ~~petition under section 300, 601, or 602 is to be, or has been, filed is or may~~
4 ~~be an Indian child.~~

5
6 ~~(1) In juvenile wardship proceedings, if the probation officer believes that~~
7 ~~the child is at risk of entering foster care or is in foster care, he or she~~
8 ~~must ask the child, if the child is old enough, and the parents or legal~~
9 ~~guardians whether the child may be an Indian child or may have Indian~~
10 ~~ancestors.~~

11
12 ~~(2) In dependency cases, the social worker must ask the child, if the child~~
13 ~~is old enough, and the parents or legal guardians whether the child may~~
14 ~~be an Indian child or may have Indian ancestors.~~

15
16 ~~(3) At the first appearance by a parent or guardian in any dependency case,~~
17 ~~or in juvenile wardship proceedings in which the child is at risk of~~
18 ~~entering foster care or is in foster care, the parent or guardian must be~~
19 ~~ordered to complete *Parental Notification of Indian Status (Juvenile*~~
20 ~~*Court*) (form JV 130).~~

21
22 ~~(4) The circumstances that may provide probable cause for the court to~~
23 ~~believe the child is an Indian child include, but are not limited to, the~~
24 ~~following:~~

25
26 ~~(A) A person having an interest in the child, including the child, an~~
27 ~~Indian tribe, an Indian organization, an officer of the court, or a~~
28 ~~public or private agency, informs the court or the county welfare~~
29 ~~agency or the probation department or provides information~~
30 ~~suggesting that the child is an Indian child;~~

31
32 ~~(B) The residence of the child, the child's parents, or an Indian~~
33 ~~eustodian is in a predominantly Indian community; or~~

34
35 ~~(C) The child or the child's family has received services or benefits~~
36 ~~from a tribe or services that are available to Indians from tribes or~~
37 ~~the federal government, such as the Indian Health Service.~~

38
39 ~~(e) **Petition**~~
40

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,

effective on January 1, 2008.

- 1 (1) ~~Section 1(l) or 1(m) on either the initial or an amended *Juvenile*~~
2 ~~*Dependency Petition (Version One)* (form JV 100) or section 1(i) or~~
3 ~~1(j) of the initial or an amended *Juvenile Dependency Petition (Version*~~
4 ~~*Two)* (form JV 110) must be checked if the county welfare department~~
5 ~~knows or has reason to know that the child may be a member of or~~
6 ~~eligible for membership in a federally recognized Indian tribe or if~~
7 ~~there is reason to believe the child may be of Indian ancestry, as~~
8 ~~appropriate.~~
9
- 10 (2) ~~Section 1(m) or 1(n) on either the initial or an amended *Juvenile*~~
11 ~~*Wardship Petition* (form JV 600) must be checked if the county~~
12 ~~probation department knows or has reason to know that the child may~~
13 ~~be a member of or eligible for membership in a federally recognized~~
14 ~~Indian tribe or if there is reason to believe the child may be of Indian~~
15 ~~ancestry, as appropriate.~~
16
- 17 (3) ~~If section 1(l) of the *Juvenile Dependency Petition (Version One)* (form~~
18 ~~JV 100) or section 1(i) of the *Juvenile Dependency Petition (Version*~~
19 ~~*Two)* (form JV 110) or section 1(m) of the *Juvenile Wardship Petition*~~
20 ~~(form JV 600) is checked, or if, on inquiry, or based on other~~
21 ~~information, the court has reason to know the child may be an Indian~~
22 ~~child, the court must proceed as if the child were an Indian child and~~
23 ~~must proceed with all dependency and wardship hearings, observing~~
24 ~~the Welfare and Institutions Code timelines while complying with the~~
25 ~~act and this rule.~~
26
- 27 (A) ~~A determination by the identified tribe or tribes that the child is or~~
28 ~~is not an Indian child is definitive.~~
29
- 30 (B) ~~If no particular tribe can be reasonably identified, a determination~~
31 ~~by the Bureau of Indian Affairs (BIA) that the child is not an~~
32 ~~Indian child is definitive.~~
33
- 34 (4) ~~If section 1(m) of the *Juvenile Dependency Petition (Version One)*~~
35 ~~(form JV 100) is checked and section 1(l) is not, or section 1(j) of the~~
36 ~~*Juvenile Dependency Petition (Version Two)* (form JV 110) is checked~~
37 ~~and section 1(i) is not, or if section 1(n) of the *Juvenile Wardship*~~
38 ~~*Petition* (form JV 600) is checked and section 1(m) is not, notice of the~~
39 ~~proceedings to the Bureau of Indian Affairs and further inquiry~~
40 ~~regarding the possible Indian status of the child are the only~~
41 ~~requirements.~~

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,

effective on January 1, 2008.

1
2 ~~(f) — Notice; 25 U.S.C. § 1912~~

3
4 If there is reason to know that an Indian child is involved, the social worker
5 or probation officer must send *Notice of Involuntary Child Custody*
6 *Proceedings for an Indian Child (Juvenile Court)* (form JV 135) to the
7 parent or legal guardian and Indian custodian of an Indian child, and the
8 Indian child's tribe, in accordance with Welfare and Institutions Code
9 section 224.2.

10
11 ~~(g) — Determination of status; 25 U.S.C. § 1911 (Welf. & Inst. Code, §~~
12 ~~360.6(e))~~

13
14 Determination of tribal membership or eligibility for membership is made
15 exclusively by the tribe.

16
17 (1) — A tribe's determination that the child is or is not a member of or
18 eligible for membership in the tribe is conclusive.

19
20 (2) — Information that the child is not enrolled in the tribe is not
21 determinative of Indian child status.

22
23 (3) — The tribe must be a federally recognized tribe, group, or community as
24 defined by the Bureau of Indian Affairs of the Department of the
25 Interior as eligible for services provided to Indians by the Secretary of
26 the Interior because of their status as Indians, including any Alaskan
27 Native Villages as defined by section 1602(c) of title 43 of the United
28 States Code.

29
30 (4) — Absent a contrary determination by the tribe, a determination by the
31 BIA that a child is or is not an Indian is conclusive.

32
33 (5) — The Indian Child Welfare Act applies when a tribe determines that an
34 unmarried minor is:

35
36 (A) — A member of an Indian tribe; or

37
38 (B) — Eligible for membership in an Indian tribe and a biological child
39 of a member of an Indian tribe.
40

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,

effective on January 1, 2008.

1 ~~(h) Proceedings after notice; 25 U.S.C. § 1911~~

2
3 ~~If it is determined that the act applies, the juvenile court hearing must not~~
4 ~~proceed until at least 10 days after those entitled to notice under the act have~~
5 ~~received notice. If requested, the parent, Indian custodian, or tribe must be~~
6 ~~granted a continuance of up to 20 days to prepare for the proceeding. The~~
7 ~~tribe may intervene at any point in the proceeding.~~

8
9 ~~(1) An indigent parent and an indigent Indian custodian have a right to~~
10 ~~court appointed counsel.~~

11
12 ~~(2) All parties, including the parent, Indian child, Indian custodian, and~~
13 ~~tribe, and their respective attorneys, have the right to examine all court~~
14 ~~documents related to the dependency case.~~

15
16 ~~(i) Required procedures, findings, and orders for foster care placement and~~
17 ~~guardianships; 25 U.S.C. § 1912~~

18
19 ~~The court may not order foster care placement of an Indian child, or establish~~
20 ~~a guardianship of an Indian child, unless the court finds by clear and~~
21 ~~convincing evidence that continued custody with the parent or Indian~~
22 ~~custodian is likely to cause the Indian child serious emotional or physical~~
23 ~~damage.~~

24
25 ~~(1) Testimony by a qualified expert witness is required.~~

26
27 ~~(2) Stipulation by the parent or Indian custodian or failure to object may~~
28 ~~waive the requirement of producing evidence of the likelihood of~~
29 ~~serious damage only if the court is satisfied that the party has been fully~~
30 ~~advised of the requirements of the act and has knowingly, intelligently,~~
31 ~~and voluntarily waived them.~~

32
33 ~~(3) Failure to meet non-Indian family and community child-rearing~~
34 ~~standards, or the existence of other behavior or conditions that meet the~~
35 ~~removal standards of section 361, will not support an order for~~
36 ~~placement absent the finding that continued custody with the parent or~~
37 ~~Indian custodian is likely to cause serious emotional or physical~~
38 ~~damage.~~

39
40 ~~(4) In addition to the findings required under section 361, in order to place~~
41 ~~an Indian child out of the custody of a parent or Indian custodian, the~~

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 ~~court must find that active efforts have been made to provide remedial~~
2 ~~services and rehabilitative programs designed to prevent the breakup of~~
3 ~~the Indian family, and that these efforts were unsuccessful. Stipulation~~
4 ~~by the parent or Indian custodian or failure to object may waive the~~
5 ~~requirement of this finding only if the court is satisfied that the party~~
6 ~~has been fully advised of the requirements of the act and has~~
7 ~~knowingly, intelligently, and voluntarily waived them.~~

8
9 (A) ~~The court must consider all available information regarding the~~
10 ~~prevailing social and cultural conditions of the Indian child's~~
11 ~~tribe.~~

12
13 (B) ~~Efforts to provide services must include attempts to use the~~
14 ~~available resources of extended family members, the tribe, Indian~~
15 ~~social service agencies, and individual Indian caregivers.~~

16
17 ~~(j) — Placement of an Indian child in a foster care placement; 25 U.S.C. §~~
18 ~~1912~~

19
20 ~~If it is determined that the act applies, the court may not order foster care~~
21 ~~placement of an Indian child unless the court finds by clear and convincing~~
22 ~~evidence that continued custody with the parent or Indian custodian is likely~~
23 ~~to cause the Indian child serious emotional or physical damage.~~

24
25 (1) ~~Testimony by a qualified expert witness is required.~~

26
27 (2) ~~Stipulation by the parent, Indian custodian, or tribe or failure to object~~
28 ~~may waive the requirement of producing evidence of the likelihood of~~
29 ~~serious damage only if the court is satisfied that the party has been fully~~
30 ~~advised of the requirements of the act and has knowingly, intelligently,~~
31 ~~and voluntarily waived them.~~

32
33 (3) ~~If it is determined that the act applies, failure to meet non-Indian family~~
34 ~~and child-rearing community standards, or the existence of other~~
35 ~~behavior or conditions that meet the removal standards of section 361,~~
36 ~~will not support an order for placement absent the finding that~~
37 ~~continued custody with the parent or Indian custodian is likely to cause~~
38 ~~serious emotional or physical damage.~~

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 ~~(k) Standards and preferences in placement of an Indian child; 25 U.S.C. §~~
2 ~~1915~~

3
4 ~~Foster and adoptive placements of Indian children must follow a specified~~
5 ~~order in the absence of good cause to the contrary. Placement standards must~~
6 ~~be the prevailing social and cultural standards of the Indian community in~~
7 ~~which the parent or extended family member resides, or with which the~~
8 ~~parent or extended family member maintains social and cultural contacts.~~
9 ~~The foster or preadoptive placement must be in the least restrictive setting,~~
10 ~~within reasonable proximity to the Indian child's home, and capable of~~
11 ~~meeting any special needs of the Indian child.~~

12
13 ~~(1) In a foster or preadoptive placement, preference must be given in the~~
14 ~~following order:~~

15
16 ~~(A) To a member of the Indian child's extended family;~~

17
18 ~~(B) To a foster home licensed or approved by the Indian child's tribe;~~

19
20 ~~(C) To a state or county licensed or certified Indian foster home; or~~

21
22 ~~(D) To a children's institution approved by the tribe or operated by an~~
23 ~~Indian organization and offering a program to meet the Indian~~
24 ~~child's needs.~~

25
26 ~~(2) In an adoptive placement, preference must be given in the following~~
27 ~~order:~~

28
29 ~~(A) To a member of the Indian child's extended family;~~

30
31 ~~(B) To other members of the Indian child's tribe; or~~

32
33 ~~(C) To other Indian families.~~

34
35 ~~(3) An Indian child may be placed in a non-Indian home only if the court~~
36 ~~finds that a diligent search has failed to locate a suitable Indian home.~~

37
38 ~~(4) The court may modify the preference order only for good cause, which~~
39 ~~may include the following considerations:~~

40
41 ~~(A) The requests of the parent or Indian custodian;~~

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

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~~(B) — The requests of the Indian child;~~

~~(C) — The extraordinary physical or emotional needs of the Indian child as established by a qualified expert witness; or~~

~~(D) — The unavailability of suitable families based on a diligent effort to identify families meeting the preference criteria.~~

~~(5) — The burden of establishing good cause for the court to alter the preference order is on the party requesting that a different order be considered.~~

~~(6) — The tribe, by resolution, may establish a different preference order, which, absent good cause, must be followed if it provides for the least restrictive setting.~~

~~(7) — The preferences and wishes of the Indian child and the parent must be considered, and weight given to a consenting parent’s request for anonymity.~~

~~**(A) — Active efforts; 25 U.S.C. § 1912**~~

~~In addition to the findings required under section 361, in order to place an Indian child out of the custody of a parent or Indian custodian, or to issue orders under section 366.26, the court must find that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family, and that these efforts were unsuccessful.~~

~~(1) — The court must consider the prevailing social and cultural conditions of the Indian child’s tribe.~~

~~(2) — Efforts to provide services must include attempts to use the available resources of extended family members, the tribe, Indian social service agencies, and individual Indian caregivers.~~

~~**(m) — Termination of parental rights; 25 U.S.C., § 1912**~~

~~The court may not terminate parental rights to an Indian child unless there is proof beyond a reasonable doubt that continued custody by the parent or~~

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,

effective on January 1, 2008.

1 ~~Indian custodian is likely to result in serious emotional or physical damage to~~
2 ~~the child.~~

3
4 ~~(1) The evidence must be supported by the testimony of a qualified expert~~
5 ~~witness.~~

6
7 ~~(2) Stipulation by the parent or Indian custodian or failure to object may~~
8 ~~waive the requirement of producing evidence of the likelihood of~~
9 ~~serious damage only if the court is satisfied that the party has been fully~~
10 ~~advised of the requirements of the act and has knowingly, intelligently,~~
11 ~~and voluntarily waived them.~~

12
13 ~~(3) Consent to a voluntary termination of parental rights, relinquishment of~~
14 ~~parental rights, or consent to adoption must be executed in writing and~~
15 ~~recorded before a judicial officer of competent jurisdiction. The court~~
16 ~~must certify that the terms and consequences of the consent were~~
17 ~~explained in detail, in the language of the parent or Indian custodian,~~
18 ~~and fully understood by the parent or Indian custodian. If~~
19 ~~confidentiality is requested or appropriate, the consent may be executed~~
20 ~~in chambers.~~

21
22 ~~(4) In order to terminate parental rights to an Indian child, the court must~~
23 ~~find that active efforts have been made to provide remedial services and~~
24 ~~rehabilitative programs designed to prevent the breakup of the Indian~~
25 ~~family, and that these efforts were unsuccessful. Stipulation by the~~
26 ~~parent or Indian custodian or failure to object may waive the~~
27 ~~requirement of this finding only if the court is satisfied that the party~~
28 ~~has been fully advised of the requirements of the act and has~~
29 ~~knowingly, intelligently, and voluntarily waived them.~~

30
31 ~~(n) **Petition to invalidate orders of removal or termination of parental**~~
32 ~~**rights; 25 U.S.C., § 1914**~~

33
34 ~~If it is determined that the act applies, the Indian child, a parent, an Indian~~
35 ~~custodian, or the child's tribe may petition any court of competent~~
36 ~~jurisdiction to invalidate a foster placement or termination of parental rights.~~

37
38 ~~(1) If the Indian child is a dependent child of the juvenile court or the~~
39 ~~subject of a pending petition, the juvenile court is the only court of~~
40 ~~competent jurisdiction with the authority to hear the petition to~~
41 ~~invalidate the foster placement or termination of parental rights.~~

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,

effective on January 1, 2008.

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~~(2) — If a final decree of adoption is set aside, or if the adoptive parents voluntarily consent to the termination of their parental rights, a biological parent or prior Indian custodian may petition for a return of custody of the Indian child.~~

~~(A) — The court must grant the petition for return unless there is a showing that return is contrary to the best interest of the Indian child.~~

~~(B) — The hearing on the petition to return must be conducted in accordance with the act and the relevant sections of this rule.~~

~~(o) — **Post-hearing actions; 25 U.S.C., § 1916**~~

~~Whenever an Indian child is removed from a foster home or institution for placement in a different foster home, institution, or preadoptive or adoptive home, the placement must be in accordance with the act and the relevant sections of this rule.~~

~~(p) — **Record keeping; 25 U.S.C., § 1951**~~

~~(1) — After granting a decree of adoption of an Indian child, the court must provide the Secretary of the Interior with a copy of the decree and other information needed to show:~~

~~(A) — The name and tribal affiliation of the Indian child;~~

~~(B) — The names and addresses of the biological parents;~~

~~(C) — The names and addresses of the adoptive parents; and~~

~~(D) — The agency maintaining files and records regarding the adoptive placement.~~

~~(2) — If a biological parent has executed an affidavit requesting that his or her identity remain confidential, the court must provide the affidavit to the Secretary of the Interior, who must ensure the confidentiality of the information.~~

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 *Rule 5.664 repealed effective January 1, 2008; adopted as rule 1439 effective January 1, 1995;*
2 *amended and renumbered effective January 1, 2007; previously amended effective January 1,*
3 *1997, January 1, 1999, January 1, 2001, January 1, 2005, and February 23, 2007.*

4
5 **Advisory Committee Comment**

6
7 ~~As of January 1, 2004, only the Washoe Tribe of Nevada and California is authorized under the~~
8 ~~act to exercise exclusive jurisdiction. An updated list of tribes authorized to exercise exclusive~~
9 ~~jurisdiction can be found on the Web site of the Administrative Office of the Courts, Center for~~
10 ~~Families, Children & the Courts at www.courtinfo.ca.gov/programs/efee.~~

11
12
13 **Chapter ~~13~~12. Cases Petitioned Under Section 300**

14
15 *Chapter 12 renumbered effective January 1, 2008; Adopted as Chapter 7 effective July, 1989;*
16 *previously renumbered as Chapter 8 effective July 1, 1994, and as Chapter 9 effective January 1,*
17 *2000; previously renumbered and amended as Chapter 13 effective January 1, 2007.*

18
19
20 **Rule 5.668. Commencement of hearing—explanation of proceedings (§§ 316,**
21 **316.2)**

22
23 **(a)–(b) * * ***

24
25 **(c) Health and education information (§ 16010)**

26
27 The court must order each parent and guardian present either to complete ~~the~~
28 ~~Health and Education Questionnaire~~ *Your Child's Health and Education*
29 (form JV-225) or to provide the information necessary for the social worker
30 or probation officer, court staff, or representative of the local child welfare
31 agency to complete the form. The social worker or probation officer assigned
32 to the dependency matter must provide the child's attorney with a copy of
33 the completed form. Before each periodic status review hearing, the social
34 worker or probation officer must obtain and include in the reports prepared
35 for the hearing all information necessary to maintain the accuracy of form
36 JV-225.

37
38 *(Subd (c) amended effective January 1, 2008; adopted effective January 1, 2002;*
39 *previously amended effective January 1, 2007.)*

40
41 *Rule 5.668 amended effective January 1, 2008; repealed and adopted as rule 1441 effective*
42 *January 1, 1998; previously amended effective January 1, 1999, January 1, 2001, and January 1,*
43 *2002; previously amended and renumbered effective January 1, 2007.*

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1
2 **Rule 5.695. Orders of the court**

3
4 (a)–(b) * * *

5
6 (c) **Limitations on parental control (§§ 245.5, 319, 361, 362; Gov. Code, §**
7 **7579.5)**

8
9 (1)–(2) * * *

10
11 (3) The court must consider whether it is necessary to limit the right of the
12 parent or guardian to make educational decisions for the child. If the
13 court limits the right, it must ~~appoint a responsible adult as the~~
14 ~~educational representative under~~ follow the procedures stated in rule
15 ~~5.650 to make educational decisions for the child.~~

16
17 *(Subd (c) amended effective January 1, 2008; adopted as subd (b) effective January 1,*
18 *1991; relettered effective July 1, 1995; previously amended effective July 1, 2002, January*
19 *1, 2004, and January 1, 2007.)*

20
21 (d)–(j) * * *

22
23 *Rule 5.695 amended effective January 1, 2008; adopted as rule 1456 effective January 1, 1991;*
24 *previously amended effective January 1, 1993, July 1, 1993, January 1, 1994, January 1, 1995,*
25 *July 1, 1995, January 1, 1996, January 1, 1997, July 1, 1997, January 1, 1999, July 1, 1999,*
26 *January 1, 2001, July 1, 2001, July 1, 2002, January 1, 2004, and January 1, 2006; previously*
27 *amended and renumbered effective January 1, 2007.*

28
29
30 **Rule 5.726. Prospective adoptive parent designation (§ 366.26(n))**

31
32 (a) **Request procedure**

33
34 A dependent child’s caregiver may be designated as a prospective adoptive
35 parent. The court may make the designation on its own motion or on a
36 request by a caregiver, the child, a social worker, or the attorney for any of
37 these parties.

38
39 (1)–(2) * * *

40
41 (3) If a request for prospective adoptive parent designation is made in
42 writing, it must be made on *Request for Prospective Adoptive Parent*

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 ~~*Designation, Notice, and Order Request for Prospective Adoptive*~~
2 ~~*Parent Designation*~~ (form JV-321).
3

4 (4) * * *

5
6 (*Subd (a) amended effective January 1, 2008; previously amended effective January 1,*
7 *2007.*)
8

9 (b)–(c) * * *

10
11 (d) **Notice of designation hearing**

12
13 After the court has ordered a hearing on a request for prospective-adoptive-
14 parent designation, notice of the hearing must be as described below.
15

16 (1)–(2) * * *

17
18 (3) If the request for designation was made before a request for removal
19 was filed or before an emergency removal occurred, notice must be as
20 follows:
21

22 (A) * * *

23
24 (B) ~~*Request for Prospective Adoptive Parent Designation, Notice, and*~~
25 ~~*Order (form JV-321);*~~ *Prospective Adoptive Parent Designation*
26 *Order (form JV-327)* must be used to provide notice of a hearing
27 on the request for prospective adoptive parent designation.
28

29 (C)–(D) * * *

30
31 (E) *Proof of Notice of Hearing (form JV-325);* *Proof of Notice (form*
32 *JV-326)* must be filed with the court before the hearing on the
33 request for prospective adoptive parent designation.
34

35 (*Subd (d) amended effective January 1, 2008; previously amended effective January 1,*
36 *2007.*)
37

38 (e)–(f) * * *

39
40 *Rule 5.726 amended effective January 1, 2008; adopted as rule 1463.1 effective July 1, 2006;*
41 *previously amended and renumbered effective January 1, 2007.*
42

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1
2 **Rule 5.727. Proposed removal (§ 366.26(n))**

3
4 (a)–(b) * * *

5
6 (c) **Form of notice**

7
8 DSS or the agency must provide notice on ~~Notice of Intent to Remove Child~~
9 ~~and Proof of Notice, Objection to Removal, and Order After Hearing (form~~
10 ~~JV-323)~~. Notice of Intent to Remove Child (form JV-323). A blank copy of
11 Objection to Removal (form JV-325) and Request for Prospective Adoptive
12 Parent Designation (form JV-321) must also be provided.

13
14 (Subd (c) amended effective January 1, 2008; previously amended effective January 1,
15 2007.)

16
17 (d) **Service of notice**

18
19 DSS or the agency must serve notice of its intent to remove a child as
20 follows:

21
22 (1)–(3) * * *

23
24 (4) Proof of service of the notice on ~~Notice of Intent to Remove Child and~~
25 ~~Proof of Notice, Objection to Removal, and Order After Hearing (form~~
26 ~~JV-323)~~ Proof of Notice (form JV-326) must be filed with the court.

27
28 (Subd (d) amended effective January 1, 2008; previously amended effective January 1,
29 2007.)

30
31 (e) **Objection to proposed removal**

32
33 Each participant who receives notice under (b) may object to the ~~intent to~~
34 ~~remove~~ proposed removal of the child and may request a hearing.

35
36 (1) A request for hearing on the proposed removal must be made on ~~Notice~~
37 ~~of Intent to Remove Child and Proof of Notice, Objection to Removal,~~
38 ~~and Order After Hearing (form JV-323)~~ Objection to Removal (form
39 JV-325).

40
41 (2)–(3) * * *

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 (Subd (e) amended effective January 1, 2008; previously amended effective January 1,
2 2007.)

3
4 **(f) Notice of hearing on proposed removal**

5
6 After the court has ordered a hearing on ~~an intent to remove a child a~~
7 proposed removal, notice of the hearing must be as follows:

8
9 (1)–(2) * * *

10
11 (3) Notice must be either by personal service of ~~Notice of Intent to Remove~~
12 ~~Child and Proof of Notice, Objection to Removal, and Order After~~
13 ~~Hearing~~, (form JV-323) or by telephone. Notice by personal service
14 must include a copy of the forms Notice of Intent to Remove Child
15 (form JV-323) and Objection to Removal (form JV-325). Telephone
16 notice must include the reasons for and against the removal, as
17 indicated on ~~the form~~ forms JV-323 and JV-325.

18
19 (4) Proof of notice on ~~Proof of Notice of Hearing (form JV-325)~~ Proof of
20 Notice (form JV-326) must be filed with the court before the hearing on
21 ~~the intent to remove the child~~ proposed removal.

22
23 (Subd (f) amended effective January 1, 2008; previously amended effective January 1,
24 2007.)

25
26 **(g)–(i) * * ***

27
28 *Rule 5.727 amended effective January 1, 2008; adopted as rule 1463.3 effective July 1, 2006;*
29 *previously amended and renumbered effective January 1, 2007.*

30
31
32 **Rule 5.728. Emergency removal (§ 366.26(n))**

33
34 **(a)–(b) * * ***

35
36 **(c) Form of notice**

37
38 ~~Notice of Emergency Removal, Objection to Removal, and Order After~~
39 ~~Hearing (form JV-324)~~ Notice of Emergency Removal (form JV-324) must
40 be used to provide notice of an emergency removal, as described below.

41
42 (1)–(5) * * *

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1
2 (Subd (c) amended effective January 1, 2008; previously amended effective January 1,
3 2007.)
4

5 **(d) Objection to emergency removal**
6

7 Each participant who receives notice under (b) may object to the removal of
8 the child and may request a hearing.
9

10 (1) A request for hearing on the emergency removal must be made on
11 ~~Notice of Emergency Removal, Objection to Removal, and Order After~~
12 ~~Hearing (form JV-324)~~ Objection to Removal (form JV-325).
13

14 (2) * * *

15
16 (Subd (d) amended effective January 1, 2008; previously amended effective January 1,
17 2007.)
18

19 **(e) Notice of emergency removal hearing**
20

21 After the court has ordered a hearing on an emergency removal, notice of the
22 hearing must be as follows:
23

24 (1) Notice must be either by personal service of ~~Notice of Emergency~~
25 ~~Removal, Objection to Removal, and Order After Hearing (form JV-~~
26 ~~324)~~ or by telephone. Notice by personal service must include a copy of
27 Notice of Emergency Removal (form JV-324). ~~The telephone~~
28 Telephone notice must include the reasons for and against the removal,
29 as indicated on ~~the form~~. forms JV-324 and JV-325.
30

31 (2)–(3) * * *

32
33 (4) Proof of notice on ~~Notice of Emergency Removal, Objection to~~
34 ~~Removal, and Order After Hearing (form JV-324)~~ Proof of Notice
35 (form JV-326) must be filed with the court before the hearing on the
36 emergency removal.
37

38 (Subd (e) amended effective January 1, 2008; previously amended effective January 1,
39 2007.)
40

41 **(f)–(g) * * ***
42

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 *Rule 5.728 amended effective January 1, 2008; adopted as rule 1463.5 effective July 1, 2006;*
2 *previously amended and renumbered effective January 1, 2007.*

3
4
5 **Chapter 1413. Cases Petitioned Under Sections 601 and 602**

6
7 *Chapter 13 renumbered effective January 1, 2008; adopted as Chapter 11 effective July 1, 2002;*
8 *previously amended and renumbered as Chapter 14, effective January 1, 2007.*

9
10 **Rule 5.790. Orders of the court**

11
12 **(a)–(e) * * ***

13
14 **(f) Wardship orders (§§ 726, 727, 727.1, 730, 731)**

15
16 The court may make any reasonable order for the care, supervision, custody,
17 conduct, maintenance, support, and medical treatment of a child declared a
18 ward.

19
20 **(1)–(4) * * ***

21
22 **(5)** The court must consider whether it is necessary to limit the right of the
23 parent or guardian to make educational decisions for the child. If the
24 court limits this right, it must ~~appoint a responsible adult as the~~
25 ~~educational representative. The court must~~ follow the procedures stated
26 in rule 5.650.

27
28 *(Subd (f) amended effective January 1, 2008; adopted as subd (d) effective January 1,*
29 *1991; previously amended and relettered as subd (e) effective July 1, 2002, and as subd (f)*
30 *effective January 1, 2007; previously amended effective January 1, 2004.*

31
32 **(g)–(h) * * ***

33
34 *Rule 5.790 amended effective January 1, 2008; adopted as rule 1493 effective January 1, 1991;*
35 *previously amended effective January 1, 1998, July 1, 2002, January 1, 2004, and January 1,*
36 *2006; previously amended and renumbered effective January 1, 2007.*

37
38
39 **Rule 7.10. Ex parte communications in proceedings under the probate code**
40 **and certain other proceedings**

41
42 **(a) Definitions**

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 As used in this rule, the following terms have the meanings stated below:
2

3 (1) “Fiduciary” has the meaning specified in Probate Code section 39, and
4 includes LPS conservators.

5
6 (2) “Person” has the meaning specified in Probate Code section 56.

7
8 (3) “Pleading” has the meaning specified in rule 7.3, but also includes
9 petitions and objections or other opposition filed in LPS
10 conservatorships. The term does not include creditors’ claims and
11 requests for special notice.

12
13 (4) A “party” is a fiduciary appointed in a proceeding under the Probate
14 Code or an LPS conservatorship proceeding, and any other person who
15 has filed a pleading in the proceeding concerning a matter then pending
16 in the court.

17
18 (5) A “ward” is a minor subject to a guardianship under Division 4 of the
19 Probate Code, including a proposed ward concerning whom a petition
20 for appointment of a guardian has been filed.

21
22 (6) “Ex parte communication” is a communication between any party,
23 attorney, or person in a proceeding under the Probate Code or an LPS
24 conservatorship proceeding and the court outside the presence of all
25 parties and attorneys, including written communications sent to the
26 court without copies having been provided to other interested persons.

27
28 (7) “LPS Act” is the Lanterman-Petris-Short Act, part 1 of division 5 of the
29 Welfare and Institutions Code, commencing with section 5000.

30
31 (8) “LPS Conservatorship” is a conservatorship proceeding under chapter 3
32 of the LPS Act, commencing with section 5350 of the Welfare and
33 Institutions Code, for persons gravely disabled as the result of a mental
34 disorder or impairment by chronic alcoholism.

35
36 (9) A “conservatee” is a person subject to a conservatorship under division
37 4 of the Probate Code or chapter 3 of the LPS Act, including a
38 proposed conservatee concerning whom a petition for appointment of a
39 conservator has been filed.

40

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 (10) A “matter then pending in the court” in proceedings under the Probate
2 Code or in an LPS conservatorship proceeding refers to a request for
3 relief or opposition in pleadings filed in the proceeding that has not yet
4 been resolved by a decision of the court or an agreement of the parties.

5
6 (11) Concerning a proceeding under the Probate Code or an LPS
7 conservatorship proceeding, the term “open proceeding” refers to a
8 proceeding that has been commenced and has not been concluded by
9 the final discharge of all fiduciaries or otherwise terminated as
10 provided by law, whether or not there is a matter then pending in the
11 court in the proceeding at any point in time.

12
13 **(b) Ex parte communications by parties and attorneys prohibited**

14
15 (1) Except under a stipulation of all parties to the contrary, no ex parte
16 communications may be made by a party or an attorney for a party and
17 the court concerning a matter then pending in the court in proceedings
18 under the Probate Code or in an LPS conservatorship proceeding.

19
20 (2) Except as provided in (c)(1), the court must treat an ex parte
21 communication to the court described in (1) in the same way that an ex
22 parte communication from a party or attorney for a party must be
23 treated in other civil actions or proceedings or in criminal actions.

24
25 **(c) Ex parte communications received and considered**

26
27 (1) Notwithstanding (b)(2), a judicial officer or court staff may receive an
28 ex parte communication concerning an open proceeding under the
29 Probate Code or an open LPS conservatorship proceeding for the
30 limited purpose of ascertaining whether it is a communication
31 described in (b) or a communication described in (c)(2).

32
33 (2) Subject to the requirements of (c)(3), a judicial officer may consider an
34 ex parte communication from a person about a fiduciary’s performance
35 of his or her duties and responsibilities or regarding a conservatee or
36 ward in an open proceeding under the Probate Code or an open LPS
37 conservatorship proceeding. The court may decline to take further
38 action on the communication, with or without replying to the person or
39 returning any written communication received from the person. The
40 court may also take appropriate action, consistent with due process and
41 California law, including one or any combination of the following:

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

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- (A) Review the court file and take any action that is supported by the record, including ordering a status report or accounting if it appears that a status report or accounting should have been filed by a fiduciary but is delinquent.
 - (B) Refer the communication to a court investigator for further action, and receive, consider, and respond to any report from the investigator concerning it;
 - (C) If the communication discloses possible criminal activity, refer the matter to the appropriate law enforcement agency or prosecutor's office;
 - (D) If the communication discloses conduct that might subject a person or organization to disciplinary action on a license, refer the matter to the appropriate licensing agency;
 - (E) If the communication discloses possible elder or dependent adult abuse, or child abuse, refer the matter to appropriate state or local governmental agencies, including adult protective or child protective service departments; and
 - (F) Set a hearing regarding the communication, compel the fiduciary's attendance, and require a response from the fiduciary concerning the issues raised by the communication.
- (3) The court must fully disclose communications described in (c)(2) and any response made by the court to the fiduciary and all other parties to any matter then pending in the court, and their attorneys, unless the court finds good cause to dispense with the disclosure if necessary to protect a conservatee or ward from harm. If the court dispenses with disclosure to any party or attorney, it must make written findings in support of its determination of good cause, and preserve the communication received and any response made by the court. The court may place its findings and the preserved communication under seal or otherwise secure their confidentiality.

Rule 7.10 adopted effective January 1, 2008.

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 **Rule 7.207. Bonds of conservators and guardians**
2

3 **(a) Bond for appointments after December 31, 2007**
4

5 Except as otherwise provided by statute, every conservator or guardian of the
6 estate appointed after December 31, 2007, must furnish a bond that includes
7 an amount determined under (c) as a reasonable amount for the cost of
8 recovery to collect on the bond under Probate Code section 2320(c)(4).
9

10 **(b) Additional bond for appointments before January 1, 2008**
11

12 Except as otherwise provided by statute, every conservator or guardian of the
13 estate appointed before January 1, 2008, and the conservator's or guardian's
14 attorney, must after that date apply to increase the bond in the manner
15 described in rule 7.204 to include an additional amount determined under (c),
16 and must, no later than June 30, 2008, furnish the increased amount of bond
17 ordered by the court.
18

19 **(c) Amount of bond for the cost of recovery on the bond**
20

21 The reasonable amount of bond for the cost of recovery to collect on the
22 bond, including attorney's fees and costs, under Probate Code section
23 2320(c)(4) is:
24

25 (1) Ten percent (10%) of the value up to and including \$500,000 of the
26 following:
27

28 (A) The appraised value of personal property of the estate;
29

30 (B) The appraised value, less encumbrances, of real property of the
31 estate that the guardian or conservator has the independent power
32 to sell without approval or confirmation of the court under
33 Probate Code sections 2590 and 2591(d);
34

35 (C) The probable annual income from all assets of the estate; and
36

37 (D) The probable annual gross payments described in Probate Code
38 section 2320(c)(3); and
39

40 (2) Twelve percent (12%) of the value above \$500,000 up to and including
41 \$1,000,000 of the property, income, and payments described in (1); and

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

- 1
2 (3) Two percent (2%) of the value above \$1,000,000 of the property,
3 income, and payments described in (1).

4
5 *Rule 7.207 adopted effective January 1, 2008.*

6
7
8 **Chapter 12. Accounts and Reports of Executors, ~~and~~ Administrators,**
9 **Conservators, and Guardians**

10
11 *Chapter 12 amended effective January 1, 2008.*

12
13
14 **Rule 7.575. Accounts of conservators and guardians**

15
16 This rule defines standard and simplified accountings filed by conservators and
17 guardians under Probate Code section 2620(a), provides when each type of
18 accounting must or may be filed, and prescribes the use of Judicial Council
19 accounting forms in both types of accountings.

20
21 **(a) Standard and simplified accountings**

22
23 A standard accounting lists receipts and disbursements in subject-matter
24 categories, with each receipt and disbursement category subtotaled. A
25 simplified accounting lists receipts and disbursements chronologically, by
26 receipt or payment date, without subject-matter categories.

27
28 **(b) Standard accounting authorized or required**

29
30 A conservator or guardian may file any accounting required or authorized by
31 Probate Code section 2620 as a standard accounting under this rule and must
32 file a standard accounting if:

- 33
34 (1) The estate contains income real property;
35
36 (2) The estate contains a whole or partial interest in a trade or business;
37
38 (3) The appraised value of the estate is \$500,000 or more, exclusive of the
39 conservatee's or ward's personal residence;
40

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

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

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

7 **(c) Simplified accounting authorized**
8

9 A conservator or guardian may file a simplified accounting in all cases not
10 listed in (b). If required by this rule to file a standard accounting only
11 because a receipts or disbursements schedule is longer than five pages under
12 (b)(4), a conservator or guardian may file a simplified accounting, except for
13 that schedule, which must be prepared in a standard accounting format.
14

15 **(d) Standard and simplified accounting forms**
16

17 Judicial Council forms designated as GC-400 are standard accounting forms.
18 Forms designated as GC-405 are simplified accounting forms. Forms
19 designated as GC-400/GC-405 are forms for both standard and simplified
20 accountings. Each form is also designated by a suffix following its
21 accounting designator that identifies the form's intended use, based either on
22 the form's schedule letter as shown in the *Summary of Account* (form GC-
23 400(SUM)/GC-405(SUM)) or the form's subject matter.
24

25 **(e) Mandatory and optional forms**
26

27 (1) Judicial Council accounting forms adopted as mandatory forms must be
28 used by standard and simplified accounting filers. Judicial Council
29 accounting forms approved as optional forms may be used by all
30 accounting filers. Judicial Council accounting forms designated as GC-
31 400/GC-405 that are approved as optional forms may be used by
32 standard accounting filers but must be used by simplified accounting
33 filers.
34

35 (2) Standard accounting filers electing not to use optional Judicial Council
36 accounting forms must:
37

38 (A) State receipts and disbursements in the subject-matter categories
39 specified in the optional Judicial Council forms for receipts and
40 disbursements schedules;
41

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 (B) Provide the same information about any asset, property,
2 transaction, receipt, disbursement, or other matter that is required
3 by the applicable Judicial Council accounting form; and
4

5 (C) Provide the information in the same general layout as the
6 applicable Judicial Council accounting form, but instructional
7 material contained in the form and material contained or
8 requested in the form's header and footer need not be provided.
9

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

11
12 Notwithstanding any other provision of this rule and the Judicial Council
13 accounting forms, all standard and simplified accounting filers must provide
14 all information in their accounting schedules or their *Summary of Account*
15 that is required by Probate Code sections 1060–1063 and must provide all
16 information required by Probate Code section 1064 in the petition for
17 approval of their account or the report accompanying their account.
18

19 *Rule 7.575 adopted effective January 1, 2008.*
20
21

22 **Former rule 7.756. Renumbered effective January 1, 2008**

23 *Rule 7.756 renumbered as rule 7.776 effective January 1, 2008.*
24
25

26 **Rule 7.756. Compensation of conservators and guardians**

27
28 **(a) Standards for determining just and reasonable compensation**

29
30 The court may consider the following nonexclusive factors in determining
31 just and reasonable compensation for a conservator from the estate of the
32 conservatee or a guardian from the estate of the ward:
33

34 (1) The size and nature of the conservatee's or ward's estate;
35

36 (2) The benefit to the conservatee or ward, or his or her estate, of the
37 conservator's or guardian's services;
38

39 (3) The necessity for the services performed;
40

41 (4) The conservatee's or ward's anticipated future needs and income;
42

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

- 1 (5) The time spent by the conservator or guardian in the performance of
2 services;
3
4 (6) Whether the services performed were routine or required more than
5 ordinary skill or judgment;
6
7 (7) Any unusual skill, expertise, or experience brought to the performance
8 of services;
9
10 (8) The conservator's or guardian's estimate of the value of the services
11 performed; and
12
13 (9) The compensation customarily allowed by the court in the community
14 where the court is located for the management of conservatorships or
15 guardianships of similar size and complexity.
16

17 **(b) No single factor determinative**

18
19 No single factor listed in (a) should be the exclusive basis for the court's
20 determination of just and reasonable compensation.
21

22 **(c) No inflexible maximum or minimum compensation or maximum**
23 **approved hourly rate**

24
25 This rule is not authority for a court to set an inflexible maximum or
26 minimum compensation or a maximum approved hourly rate for
27 compensation.
28

29 *Rule 7.756 adopted effective January 1, 2008.*
30

31
32 **Rule 7.756. 7.776. Compensation of trustees**

33
34 * * *

35
36 *Rule 7.776 renumbered effective January 1, 2008; adopted as rule 7.756 effective January 1,*
37 *2003; previously amended effective January 1, 2007.*
38

39
40 **Rule 7.1009. Standards of conduct for the guardian of the estate**
41

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 Except as otherwise required by statute, in the exercise of ordinary care and
2 diligence in managing and controlling the estates of the ward, the guardian of the
3 estate is to be guided by the following principles:

4
5 **(a) Avoidance of actual and apparent conflicts of interest with the ward**

6
7 The guardian must avoid actual conflicts of interest and, consistent with his
8 or her fiduciary duty to the ward, the appearance of conflicts of interest. The
9 guardian must avoid any personal, business, or professional interest or
10 relationship that is or reasonably could be perceived as being self-serving or
11 adverse to the best interest of the ward. In particular:

12
13 (1) Except as appropriate for guardians who are not professional fiduciaries
14 with full disclosure to the court, the guardian should not personally
15 provide medical or legal services to the ward;

16
17 (2) The guardian must be independent from all service providers, except
18 when (a) no other guardian or service providers are reasonably
19 available, (b) the exception is in the best interest of the ward, (c) the
20 circumstances are fully disclosed to the court, and (d) prior court
21 approval has been obtained;

22
23 (3) The guardian must neither solicit nor accept incentives from service
24 providers; and

25
26 (4) The guardian must not engage his or her family members to provide
27 services to the ward for a profit or fee when other alternatives are
28 reasonably available. Where family members do provide such services,
29 their relationship to the guardian must be fully disclosed to the court,
30 the terms of engagement must be in the best interest of the ward
31 compared to the terms available from independent service providers,
32 the services must be competently performed, and the guardian must be
33 able to exercise appropriate control and supervision.

34
35 A guardian's employees, including family members, are not service
36 providers and are not providing services to the ward for a profit or fee within
37 the meaning of this rule if their compensation is paid by the guardian and
38 their services are either included in the guardian's petition for allowance of
39 the guardian's compensation or are not paid from the ward's estate.

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 **(b) Guardianship estate management**

2
3 In addition to complying with applicable standards of estate management
4 specified in rule 7.1059(b), the guardian of the estate must:

5
6 (1) Manage the estate primarily for the ward's long-term benefit if the
7 ward has a parent available who can provide sufficient support;

8
9 (2) If it would be in the best interest of the ward and the estate, consider
10 requesting court authority to support the ward from the estate if the
11 ward does not have a parent available who can provide sufficient
12 support.

13
14 **Advisory Committee Comment**

15
16 The Probate and Mental Health Advisory Committee consulted with several organizations in the
17 development of rule 7.1009, including the National Guardianship Association, a nationwide
18 voluntary association of professional and family fiduciaries, guardians, and allied professionals.
19 In developing this rule, the Probate and Mental Health Advisory Committee considered the
20 National Guardianship Association's Standards of Practice. Some of these standards have been
21 incorporated into the rule.

22
23
24 **Rule 7.1012. The good cause exception to notice of the hearing on a petition**
25 **for appointment of a temporary guardian**

26
27 **(a) Purpose**

28
29 The purpose of this rule is to establish uniform standards for the good cause
30 exception to the notice of the hearing required on a petition for appointment
31 of a temporary guardian under Probate Code section 2250(c).

32
33 **(b) Good cause for exceptions to notice limited**

34
35 Good cause for an exception to the notice required by section 2250(c) must
36 be based on a showing that the exception is necessary to protect the proposed
37 ward or his or her estate from immediate and substantial harm.

38
39 **(c) Court may waive or change the time or manner of giving notice**

40
41 An exception to the notice requirement of section 2250(c) may include one
42 or any combination of the following:

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

- 1
2 (1) Waiving notice to one, more than one, or all persons entitled to notice;
3
4 (2) Requiring a different period of notice; and
5
6 (3) Changing the required manner of giving notice, including requiring
7 notice by telephone, fax, e-mail, or a combination of these methods,
8 instead of notice by personal delivery to the proposed ward's parents or
9 to a person with a visitation order.

10
11 **(d) Good cause exceptions to notice**

12
13 Good cause for an exception to the notice requirement of section 2250(c)
14 may include a showing of:

- 15
16 (1) Harm caused by the passage of time. The showing must demonstrate
17 the immediate and substantial harm to the ward or the ward's estate that
18 could occur during the notice period.
19
20 (2) Harm that one or more persons entitled to notice might do to the
21 proposed ward, including abduction; or harm to the proposed ward's
22 estate if notice to those persons is given. Such a showing would not
23 support an exception to the requirement to give notice to any other
24 person entitled to notice unless it also demonstrates that notice cannot
25 reasonably be given to the other person without also giving notice to
26 the persons who might cause harm.
27
28 (3) The death or incapacity of the proposed ward's custodial parent and the
29 petitioner's status as the custodial parent's nominee.
30
31 (4) Medical emergency. The emergency must be immediate and substantial
32 and treatment (1) must be reasonably unavailable unless a temporary
33 guardian is appointed and (2) cannot be deferred for the notice period
34 because of the proposed ward's pain or extreme discomfort or a
35 significant risk of harm.
36
37 (5) Financial emergency. The emergency must be immediate and
38 substantial and other means shown likely to be ineffective to prevent
39 loss or further loss to the proposed ward's estate or loss of support for
40 the proposed ward during the notice period.
41

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 **(e) Contents of request for good cause exception to notice**

2
3 A request for a good cause exception to the notice requirement of section
4 2250(c) must be in writing, separate from the petition for appointment of a
5 temporary guardian, and must include:

- 6
7 (1) An application containing the case caption and stating the relief
8 requested;
9
10 (2) An affirmative factual showing in support of the application in a
11 declaration under penalty of perjury containing competent testimony
12 based on personal knowledge;
13
14 (3) A declaration under penalty of perjury based on personal knowledge
15 containing the information required for an ex parte application under
16 rule 3.1204(b);
17
18 (4) A memorandum; and
19
20 (5) A proposed order.

21
22 *Rule 7.1012 adopted effective January 1, 2008.*

23
24
25 **Rule 7.1013. Change of ward's residence**

26
27 **(a) Pre-move notice of change of personal residence required**

28
29 Unless an emergency requires a shorter period of notice, the guardian of the
30 person must mail copies of a notice of an intended change of the ward's
31 personal residence to the persons listed below at least 15 days before the date
32 of the proposed change, and file the original notice with proof of mailing
33 with the court. Copies of the notice must be mailed to:

- 34
35 (1) The ward if he or she is 12 years of age or older;
36
37 (2) The attorney of record for the ward;
38
39 (3) The ward's parents;
40

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 (4) Any person who had legal custody of the ward when the first petition
2 for appointment of a guardian was filed in the proceeding;

3
4 (5) A guardian of the ward's estate; and

5
6 (6) Any person who was nominated as guardian of the ward under Probate
7 Code sections 1500 or 1501 but was not appointed guardian in the
8 proceeding.

9
10 **(b) Ward's personal residence**

11
12 The "ward's personal residence" under (a) is the ward's residence when the
13 first petition for appointment of a guardian was filed in the proceeding.

14
15 **(c) Post-move notice of a change of residence required**

16
17 The guardian of the person of a minor must file a notice of a change of the
18 ward's residence with the court within 30 days of the date of any change.
19 Unless waived by the court for good cause to prevent harm to the ward, the
20 guardian, the guardian's attorney, or an employee of the guardian's attorney
21 must also mail a copy of the notice to the persons listed below and file a
22 proof of mailing with the original notice. Unless waived, copies of the notice
23 must be mailed to:

24
25 (1) The ward's attorney of record;

26
27 (2) The ward's parents;

28
29 (3) Any person who had legal custody of the ward when the first petition
30 for appointment of a guardian was filed in the proceeding;

31
32 (4) A guardian of the ward's estate; and

33
34 (5) Any person who was nominated as guardian of the ward under Probate
35 Code sections 1500 or 1501 but was not appointed guardian in the
36 proceeding.

37
38 **(d) Ward's residence**

39
40 The "ward's residence" under (c) is the ward's residence at any time after
41 appointment of a guardian.

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1
2 **(e) Use of Judicial Council forms GC-079 and GC-080**

3
4 (1) The Pre-Move Notice of Proposed Change of Personal Residence of
5 Conservatee or Ward (form GC-079) must be used for the pre-move
6 notice required under (a) and Probate Code section 2352(e)(3). The
7 guardian, the guardian’s attorney, or an employee of the attorney may
8 complete the mailing and sign the proof of mailing on page 2 of the
9 form. If the notice is mailed less than 15 days before the date of the
10 move because an emergency requires a shorter period of notice, the
11 basis for the emergency must be stated in the notice.

12
13 (2) The Post-Move Notice of Change of Residence of Conservatee or Ward
14 (form GC-080) must be used for the post-move notice required under
15 (c) and Probate Code section 2352(e)(1) and (2). The guardian, the
16 guardian’s attorney, or an employee of the attorney may complete the
17 mailing and sign the proof of mailing on page 2 of the form.

18
19 **(f) Prior court approval required to establish ward’s residence outside**
20 **California**

21
22 Notwithstanding any other provision of this rule, prior court approval is
23 required before a ward’s residence may be established outside the state of
24 California.

25
26 *Rule 7.1013 adopted effective January 1, 2008.*

27
28
29 **Rule 7.1015. Indian Child Welfare Act in guardianship and certain**
30 **conservatorship proceedings (Prob. Code, §§ 1459.5, 1460.2)**

31
32 **(a) Definitions**

33
34 As used in this rule, unless the context or subject matter otherwise requires:

35
36 (1) “Act” means the Indian Child Welfare Act (25 United States Code
37 sections 1901–1963).

38
39 (2) “Petitioner” means and refers to a petitioner for the appointment of a
40 guardian of the person of a child or a petitioner for the appointment of a
41 conservator of the person of a formerly married minor child.

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1
2 **(b) Applicability of this rule and rules 5.480 through 5.487**

3
4 (1) This rule applies to the following proceedings under division 4 of the
5 Probate Code when the proposed ward or conservatee is an Indian
6 child, within the meaning of the act:

7
8 (A) A guardianship of the person or the person and estate in which the
9 proposed guardian of the person is not the proposed ward's
10 natural parent or Indian custodian within the meaning of the act;

11
12 (B) A conservatorship of the person or the person and estate of a
13 formerly married minor in which the proposed conservator is not
14 a natural parent or Indian custodian of the minor and is seeking
15 physical custody of the proposed conservatee.

16
17 (2) Unless the context otherwise requires, rules 5.480 through 5.487 apply
18 to the proceedings listed in (1).

19
20 (3) When applied to the proceedings listed in (1), references in rules 5.480
21 through 5.487 to social workers, probation officers, county probation
22 departments, or county social welfare departments are references to the
23 petitioner or petitioners for the appointment of a guardian or
24 conservator of the person of an Indian child and to an Indian child's
25 appointed temporary or general guardian or conservator of the person.

26
27 (4) If the court appoints a temporary or general guardian or conservator of
28 the person of the child involved in a proceeding listed in (1), the duties
29 and responsibilities of a petitioner under this rule are transferred to and
30 become the duties and responsibilities of the appointed guardian or
31 conservator. The petitioner must cooperate with and provide any
32 information the petitioner has concerning the child to the appointed
33 guardian or conservator.

34
35 **(c) Notice**

36
37 If, at any time after the filing of a petition for appointment of a guardian or
38 conservator for a minor child, the court or petitioner knows or has reason to
39 know, within the meaning of Probate Code sections 1449 and 1459.5 and
40 Welfare and Institutions Code section 224.3(b), that an Indian child is
41 involved, the petitioner and the court must notify the child's parents or legal

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,

effective on January 1, 2008.

1 guardian and Indian custodian, and the Indian child's tribe, of the pending
2 proceeding and the right of the tribe to intervene, as follows:

3
4 (1) Notice to the Indian child's parents, Indian custodian, and Indian tribe
5 of the commencement of a guardianship or conservatorship must be
6 given by serving copies of the completed *Notice of Child Custody*
7 *Proceeding for Indian Child* (form ICWA-030), the petition for
8 appointment of a guardian or conservator, and all attachments, by
9 certified or registered mail, fully prepaid with return receipt requested.

10
11 (2) The petitioner and his or her attorney, if any, must complete the *Notice*
12 and the petitioner must date and sign the declaration. If there is more
13 than one petitioner, the statements about the child's ancestors and
14 background provided in the *Notice of Child Custody Proceeding for*
15 *Indian Child* (form ICWA-030) must be based on all information
16 known to each petitioner, and all petitioners must sign the declaration.

17
18 (3) When the petitioner is represented by an attorney in the proceeding, the
19 attorney must serve copies of the *Notice of Child Custody Proceeding*
20 *for Indian Child* (form ICWA-030) in the manner described in (1) and
21 sign the declaration of mailing on the *Notice*.

22
23 (4) When the guardianship or conservatorship petitioner or petitioners are
24 not represented by an attorney in the proceeding, the clerk of the court
25 must serve the *Notice* in the manner described in (1) and sign the
26 certificate of mailing on the *Notice*.

27
28 (5) The original of all *Notices of Child Custody Proceeding for Indian*
29 *Child* (form ICWA-030) served under the act, and all return receipts
30 and responses received, must be filed with the court before the hearing.

31
32 (6) Notice to an Indian child's tribe must be sent to the tribal chairperson
33 unless the tribe has designated another agent for service.

34
35 (7) Notice must be served on all tribes of which the child may be a member
36 or eligible for membership. If there are more tribes or bands to be
37 served than can be listed on the last page of the *Notice*, the additional
38 tribes or bands may be listed on an *Attachment to Notice of Child*
39 *Custody Proceeding for Indian Child* (form ICWA-030(A)).

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 (8) Notice under the act must be served whenever there is any reason to
2 know that the child is or may be an Indian child and for every hearing
3 after the first hearing unless and until it is determined that the act does
4 not apply to the proceeding.

5
6 (9) If, after a reasonable time following the service of notice under the
7 act—but in no event less than 60 days—no determinative response to
8 the *Notice of Child Custody Proceeding for Indian Child* (form ICWA-
9 030) is received, the court may determine that the act does not apply to
10 the proceeding unless further evidence of its applicability is later
11 received.

12
13 (10) If an Indian child’s tribe intervenes in the proceeding, service of the
14 *Notice of Child Custody Proceeding for Indian Child* (form ICWA-
15 030) is no longer required and subsequent notices to the tribe may be
16 sent to all parties in the form and in the manner required under the
17 Probate Code and these rules. All other provisions of the act, this rule,
18 and rules 5.480 through 5.487 continue to apply.

19
20 (11) Notice under the act must be served in addition to all notices otherwise
21 required for the particular proceeding under the provisions of the
22 Probate Code.

23
24 **(d) Duty of inquiry**

25
26 (1) The court, a court investigator or county officer appointed to conduct
27 an investigation under Probate Code section 1513 or 1826, a petitioner,
28 and an appointed temporary or general guardian or conservator of the
29 person of a minor child each have an affirmative and continuing duty to
30 inquire whether the child involved in the matters identified in (b)(1) is
31 or may be an Indian child.

32
33 (2) Before filing his or her petition, the petitioner must ask the child
34 involved in the proceeding, if the child is old enough, and the parents or
35 any other legal guardian, whether the child is or may be an Indian child,
36 and must complete the *Indian Child Inquiry Attachment* (form ICWA-
37 010(A)) and attach it to his or her petition.

38
39 (3) At the first personal appearance by a parent or previously appointed
40 legal guardian at a hearing in a guardianship or conservatorship, the
41 court must if requested by petitioner, or may on its own motion, order

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 the parent or legal guardian to complete a *Parental Notification of*
2 *Indian Status* (form ICWA-020) and deliver the completed form to the
3 petitioner.

4
5 (4) If the parent, Indian custodian, or guardian does not personally appear
6 at a hearing in a proceeding identified in (b)(1), the court may order the
7 petitioner to use reasonable diligence to find and ask the parent, Indian
8 custodian, or legal guardian to complete and deliver to petitioner a
9 *Parental Notification of Indian Status* (form ICWA-020).

10
11 (5) If the court or county investigator, petitioner, appointed guardian or
12 conservator, or the attorney for a petitioner or appointed guardian or
13 conservator, knows or has reason to know that an Indian child is
14 involved in the proceeding, he or she must make further inquiry as soon
15 as practicable by:

16
17 (A) Interviewing the parents, Indian custodian, and “extended family
18 members” as defined in 25 United States Code section 1903(2), to
19 gather the information listed in Probate Code section 1460.2(b)(5)
20 that is required to complete the *Notice of Child Custody*
21 *Proceeding for Indian Child* (form ICWA-030);

22
23 (B) Contacting the U.S. Department of the Interior, Bureau of Indian
24 Affairs and the California Department of Social Services for
25 assistance in identifying the names and contact information of the
26 tribes of which the child may be a member or eligible for
27 membership; and

28
29 (C) Contacting the tribes and any other person who reasonably can be
30 expected to have information regarding the child’s tribal
31 membership status or eligibility for membership.

32
33 (6) If the court knows or has reason to know that an Indian child is
34 involved in the proceeding, the court may direct any of the persons
35 named in (5) to conduct the inquiry described in that paragraph.

36
37 (7) The circumstances that may provide reason to know the child is an
38 Indian child include the following:

39
40 (A) The child or person having an interest in the child, including an
41 Indian tribe, an Indian organization, an officer of the court, a

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 public or private agency, or a member of the child's extended
2 family, informs or otherwise provides information suggesting that
3 the child is an Indian child to the court or to any person listed in
4 (5);

5
6 (B) The residence or domicile of the child, the child's parents, or an
7 Indian custodian is in a predominantly Indian community; or

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

14
15 *Rule 7.1015 adopted effective January 1, 2008.*

16
17
18 **Rule 7.1059. Standards of conduct for the conservator of the estate**

19
20 Except as otherwise required by statute, in the exercise of ordinary care and
21 diligence in managing and controlling the estate of the conservatee, the
22 conservator of the estate is to be guided by the following principles:

23
24 **(a) Avoidance of actual and apparent conflicts of interest with the**
25 **conservatee**

26
27 The conservator must avoid actual conflicts of interest and, consistent with
28 his or her fiduciary duty to the conservatee, the appearance of conflicts of
29 interest. The conservator must avoid any personal, business, or professional
30 interest or relationship that is or reasonably could be perceived as being self-
31 servicing or adverse to the best interest of the conservatee. In particular:

32
33 (1) Except as appropriate for conservators who are not professional
34 fiduciaries with full disclosure to the court, the conservator should not
35 personally provide housing, medical, or legal services to the
36 conservatee;

37
38 (2) The conservator must be independent from all service providers, except
39 when (a) no other conservator or service providers are reasonably
40 available, (b) the exception is in the best interest of the conservatee, (c)

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 the circumstances are fully disclosed to the court, and (d) prior court
2 approval has been obtained;

3
4 (3) The conservator must neither solicit nor accept incentives from service
5 providers; and

6
7 (4) The conservator must not engage his or her family members to provide
8 services to the conservatee for a profit or fee when other alternatives
9 are reasonably available. Where family members do provide such
10 services, their relationship to the conservator must be fully disclosed to
11 the court, the terms of engagement must be in the best interest of the
12 conservatee compared to the terms available from independent service
13 providers, the services must be competently performed, and the
14 conservator must be able to exercise appropriate control and
15 supervision.

16
17 A conservator's employees, including family members, are not service
18 providers and are not providing services to the conservatee for a profit or fee
19 within the meaning of this rule if their compensation is paid by the
20 conservator and their services are either included in the conservator's
21 petition for allowance of the conservator's compensation or are not paid
22 from the conservatee's estate.

23
24 **(b) Conservatorship estate management**

25
26 The conservator of the estate must:

27
28 (1) Provide competent management of the conservatee's property, with the
29 care of a prudent person dealing with someone else's property;

30
31 (2) Refrain from unreasonably risky investments;

32
33 (3) Refrain from making loans or gifts of estate property, except as
34 authorized by the court after full disclosure;

35
36 (4) Manage the estate for the benefit of the conservatee;

37
38 (5) Subject to the duty of full disclosure to the court and persons entitled
39 under law to receive it, closely guard against unnecessary or
40 inappropriate disclosure of the conservatee's financial information;
41

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

- 1 (6) Keep the money and property of the estate separate from the
2 conservator's or any other person's money or property, except as may
3 be permitted under statutes authorizing public guardians or public
4 conservators and certain regulated private fiduciaries to maintain
5 common trust funds or similar common investments;
6
7 (7) Hold title reflecting the conservatorship in individual securities, mutual
8 funds, securities broker accounts, and accounts with financial
9 institutions;
10
11 (8) Keep accurate records of all transactions. Professional fiduciaries must
12 maintain prudent accounting systems and procedures designed to
13 protect against embezzlement and other cash-asset mismanagement;
14
15 (9) Undertake as soon as possible after appointment and qualification to
16 locate and safeguard the conservatee's estate planning documents,
17 including wills, living trusts, powers of attorney for health care and
18 finances, life insurance policies, and pension records;
19
20 (10) Undertake as soon as possible after appointment and qualification to
21 secure the real and personal property of the estate, insuring it at
22 appropriate levels, and protecting it against damage, destruction, or
23 loss;
24
25 (11) Make reasonable efforts to preserve property identified in the
26 conservatee's estate planning documents;
27
28 (12) Communicate as necessary and appropriate with the conservator of the
29 person of the conservatee, if any, and with the trustee of any trust of
30 which the conservatee is a beneficiary;
31
32 (13) Pursue claims against others on behalf of the estate when it would be in
33 the best interest of the conservatee or the estate to do so. Consider
34 requesting prior court authority to pursue or compromise large or
35 complex claims, particularly those that might require litigation and the
36 assistance of counsel and those that might result in an award of
37 attorneys' fees for the other party against the estate if unsuccessful, and
38 request such approval before entering into a contingent fee agreement
39 with counsel;
40

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

- 1 (14) Defend against actions or claims against the estate when it would be in
2 the best interest of the conservatee or the estate to do so. Consider
3 requesting court approval or instructions concerning the defense or
4 compromise of litigation against the estate;
5
6 (15) Collect all public and insurance benefits for which the conservatee is
7 eligible;
8
9 (16) Evaluate the conservatee’s ability to manage cash or other assets and
10 take appropriate action, including obtaining prior court approval when
11 necessary or appropriate, to enable the conservatee to do so to the level
12 of his or her ability;
13
14 (17) When disposing of the conservatee’s tangible personal property, inform
15 the conservatee’s family members in advance and give them an
16 opportunity to acquire the property, with approval or confirmation of
17 the court; and
18
19 (18) In deciding whether it is in the best interest of the conservatee to
20 dispose of property of the estate, consider the following factors, among
21 others, as appropriate in the circumstances:
22
23 (A) The likely benefit or improvement of the conservatee’s life that
24 disposing of the property would bring;
25
26 (B) The likelihood that the conservatee would need or benefit from
27 the property in the future;
28
29 (C) Subject to the factors specified in Probate Code section 2113, the
30 previously expressed or current desires of the conservatee
31 concerning the property;
32
33 (D) The provisions of the conservatee’s estate plan concerning the
34 property;
35
36 (E) The tax consequences of the disposition transaction;
37
38 (F) The impact of the disposition transaction on the conservatee’s
39 entitlement to public benefits;
40
41 (G) The condition of the entire estate;

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1
2 (H) Alternatives to disposition of the property;

3
4 (I) The likelihood that the property will deteriorate or be subject to
5 waste if retained in the estate; and

6
7 (J) The benefit versus the cost or liability of maintaining the property
8 in the estate.

9
10 *Rule 7.1059 adopted effective January 1, 2008.*

11
12 **Advisory Committee Comment**

13
14 The Probate and Mental Health Advisory Committee consulted with several organizations in the
15 development of rule 7.1059, including the National Guardianship Association, a nationwide
16 voluntary association of professional and family fiduciaries, guardians, and allied professionals.
17 In developing this rule, the Probate and Mental Health Advisory Committee considered the
18 National Guardianship Association's Standards of Practice. Some of these standards have been
19 incorporated into the rules.

20
21
22 **Rule 7.1062. The good cause exception to notice of the hearing on a petition**
23 **for appointment of a temporary conservator**

24
25 (a) **Purpose**

26
27 The purpose of this rule is to establish uniform standards for the good cause
28 exception to the notice of the hearing required on a petition for appointment
29 of a temporary conservator under Probate Code section 2250(c).

30
31 (b) **Good cause for exceptions to notice limited**

32
33 Good cause for an exception to the notice required by section 2250(c) must
34 be based on a showing that the exception is necessary to protect the proposed
35 conservatee or his or her estate from immediate and substantial harm.

36
37 (c) **Court may change the time or manner of giving notice**

38
39 An exception to the notice requirement of section 2250(c) may include one
40 or any combination of the following:

41
42 (1) Waiving notice to one, more than one, or all persons entitled to notice;

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

- 1
2 (2) Requiring a different period of notice; and
3
4 (3) Changing the required manner of giving notice, including requiring
5 notice by telephone, fax, e-mail, or personal delivery, or a combination
6 of these methods, instead of or in addition to notice by mail to the
7 proposed conservatee's spouse or registered domestic partner and
8 relatives.
9

10 **(d) Good cause exceptions to notice**

11
12 Good cause for an exception to the notice requirement of section 2250(c)
13 may include a showing of:
14

- 15 (1) Harm caused by the passage of time. The showing must demonstrate
16 the immediate and substantial harm to the conservatee or the
17 conservatee's estate that could occur during the notice period.
18
19 (2) Harm that one or more persons entitled to notice might do to the
20 proposed conservatee or the proposed conservatee's estate if notice is
21 given. Such a showing would not support an exception to the
22 requirement to give notice to any other person entitled to notice unless
23 it also demonstrates that notice cannot reasonably be given to the other
24 person without also giving notice to the persons who might cause harm.
25
26 (3) Medical emergency. The emergency must be immediate and substantial
27 and treatment (1) must be reasonably unavailable unless a temporary
28 conservator is appointed and (2) cannot be deferred for the notice
29 period because of the proposed conservatee's pain or extreme
30 discomfort or a significant risk of harm.
31
32 (4) Financial emergency. The emergency must be immediate and
33 substantial and other means shown likely to be ineffective to prevent
34 loss or further loss to the proposed conservatee's estate during the
35 notice period.
36

37 **(e) Contents of request for good cause exception to notice**

38
39 A request for a good cause exception to the notice requirement of section
40 2250(c) must be in writing, separate from the petition for appointment of a
41 temporary conservator, and must include:

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

- 1
- 2 (1) An application containing the case caption and stating the relief
- 3 requested;
- 4
- 5 (2) An affirmative factual showing in support of the application in a
- 6 declaration under penalty of perjury containing competent testimony
- 7 based on personal knowledge;
- 8
- 9 (3) A declaration under penalty of perjury based on personal knowledge
- 10 containing the information required for an ex parte application under
- 11 rule 3.1204(b);
- 12
- 13 (4) A memorandum; and
- 14
- 15 (5) A proposed order.
- 16

17 *Rule 7.1062 adopted effective January 1, 2008.*

18

19

20 **Rule 7.1063. Change of conservatee's residence**

21

22 **(a) Pre-move notice of change of personal residence required**

23

24 Unless an emergency requires a shorter period of notice, the conservator of

25 the person must mail copies of a notice of an intended change of the

26 conservatee's personal residence to the persons listed below at least 15 days

27 before the date of the proposed change, and file the original notice with proof

28 of mailing with the court. Copies of the notice must be mailed to:

- 29
- 30 (1) The conservatee;
- 31
- 32 (2) The conservatee's attorney of record;
- 33
- 34 (3) The conservatee's spouse or registered domestic partner; and
- 35
- 36 (4) The conservatee's relatives named in the *Petition for Appointment of*
- 37 *Probate Conservator* (form GC-310), including the conservatee's
- 38 "deemed relatives" under Probate Code section 1821(b)(1)–(4) if the
- 39 conservatee has no spouse or registered domestic partner and no
- 40 second-degree relatives.
- 41

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 **(b) Conservatee’s personal residence**
2

3 (1) The “conservatee’s personal residence” under (a) is the residence the
4 conservatee understands or believes, or reasonably appears to
5 understand or believe, to be his or her permanent residence on the date
6 the first petition for appointment of a conservator was filed in the
7 proceeding, whether or not the conservatee is living in that residence on
8 that date. A residential care facility, including a board and care,
9 intermediate care, skilled nursing, or secured perimeter facility, may be
10 the conservatee’s personal residence under this rule.

11
12 (2) If the conservatee cannot form or communicate an understanding or
13 belief concerning his or her permanent residence on the date the first
14 petition for appointment of a conservator was filed in the proceeding,
15 his or her personal residence under this rule is the residence he or she
16 last previously understood or believed, or appeared to understand or
17 believe, to be his or her permanent residence.

18
19 (3) For purposes of this rule, the following changes of residence are or are
20 not changes of the conservatee’s personal residence, as indicated:

21
22 (A) A move from the conservatee’s personal residence under this rule
23 to a residential care facility or other residence is a change of the
24 conservatee’s personal residence under (a).

25
26 (B) A move from a residential care facility or other residence to
27 another residence that is not the conservatee’s personal residence
28 under this rule is a change of the conservatee’s personal residence
29 under (a).

30
31 (C) A move from a residential care facility or other residence to the
32 conservatee’s personal residence under this rule is not a change of
33 the conservatee’s personal residence under (a).

34
35 **(c) Post-move notice of a change of residence required**
36

37 The conservator of the person must file a notice of a change of the
38 conservatee’s residence with the court within 30 days of the date of the
39 change. Unless waived by the court for good cause to prevent harm to the
40 conservatee, the conservator must mail a copy of the notice to the persons

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 named below and file a proof of mailing with the original notice filed with
2 the court. Unless waived, the notice must be mailed to:

- 3
4 (1) The conservatee’s attorney of record;
5
6 (2) The conservatee’s spouse or registered domestic partner; and
7
8 (3) The conservatee’s relatives named in the *Petition for Appointment of*
9 *Probate Conservator* (form GC-310), including the conservatee’s
10 “deemed relatives” under Probate Code section 1821(b)(1)–(4) if the
11 conservatee has no spouse or registered domestic partner and no
12 second-degree relatives.

13
14 **(d) Conservatee’s residence**

15
16 The “conservatee’s residence” under (c) is the conservatee’s residence at any
17 time after appointment of a conservator.

18
19 **(e) Use of Judicial Council forms GC-079 and GC-080**

- 20
21 (1) The *Pre-Move Notice of Proposed Change of Personal Residence of*
22 *Conservatee or Ward* (form GC-079) must be used for the pre-move
23 notice required under (a) and Probate Code section 2352(e)(3). The
24 conservator, the conservator’s attorney, or an employee of the attorney
25 may complete the mailing and sign the Proof of Mailing on page 2 of
26 the form. If the notice is mailed less than 15 days before the date of the
27 move because an emergency requires a shorter period of notice, the
28 basis for the emergency must be stated in the notice.
29
30 (2) The *Post-Move Notice of Change of Residence of Conservatee or Ward*
31 (form GC-080) must be used for the post-move notice required under
32 (c) and Probate Code section 2352(e)(1) and (2). The conservator, the
33 conservator’s attorney, or an employee of the attorney may complete
34 the mailing and sign the Proof of Mailing on page 2 of the form.

35
36 **(f) Prior court approval required to establish conservatee’s residence**
37 **outside California**

38
39 Notwithstanding any other provision of this rule, prior court approval is
40 required before a conservatee’s residence may be established outside the
41 state of California.

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1
2 *Rule 7.1063 adopted effective January 1, 2008.*
3
4

5 **Rule 8.32. Address and telephone number of record; notice of change**

6
7 **(a)–(c) * * ***
8

9 **(d) Multiple offices**

10
11 If an attorney has more than one office, only one office address for that
12 attorney may be used in a given case.
13

14 *(Subd (d) amended effective January 1, 2008; adopted as subd (c) effective January 1,*
15 *2005; previously amended and relettered effective January 1, 2007.)*
16

17 *Rule 8.32 amended effective January 1, 2008; repealed and adopted as rule 40.5 effective*
18 *January 1, 2005; previously amended and renumbered effective January 1, 2007.*
19

20 **Rule 8.100. Filing the appeal**

21
22 **(a)–(b) * * ***
23

24 **(c) Failure to pay filing fee or deposit**

25
26 (1) The reviewing court clerk must promptly notify the appellant in writing
27 if:
28

29 (A) The reviewing court receives a notice of appeal without the filing
30 fee required by (b)(1), a certificate of cash payment under
31 ~~(d)~~(e)(5), or an application for, or order granting, a fee waiver
32 under rules 3.50–3.63;
33

34 (B)–(C) * * *

35
36 (2) A clerk’s notice under (1) must state that the court may dismiss the
37 appeal ~~will be dismissed~~ unless, within 15 days after the notice is sent,
38 the appellant either:
39

40 (A)–(B) * * *
41

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,

effective on January 1, 2008.

1 ~~(3) If the appellant fails to comply with (b)(2), the superior court clerk~~
2 ~~must promptly notify the appellant in writing that the appeal will be~~
3 ~~dismissed unless, within 15 days after the notice is sent, the appellant~~
4 ~~either:~~

5
6 ~~(A) Makes the deposit; or~~

7
8 ~~(B) Files an application in the superior court for a waiver under rules~~
9 ~~3.50–3.63 if the appellant has not previously filed such an~~
10 ~~application.~~

11
12 ~~(4) If the appellant fails to comply with a notice given under (3), the~~
13 ~~superior court clerk must notify the reviewing court of the default.~~

14
15 ~~(5)(3) If the appellant fails to comply with~~ take the action specified in a
16 ~~notice given under (2), or the superior court clerk notifies the reviewing~~
17 ~~court under (4) of a default,~~ the reviewing court may dismiss the
18 ~~appeal, but may vacate the dismissal for good cause.~~

19
20 *(Subd (c) amended effective January 1, 2008; previously amended effective January 1,*
21 *2007.)*

22
23 **(d) Failure to pay deposit**

24
25 (1) If the appellant fails to pay the deposit to the superior court required
26 under (b)(2), the superior court clerk must promptly notify the appellant
27 in writing that the reviewing court may dismiss the appeal unless,
28 within 15 days after the notice is sent, the appellant either:

29
30 (A) Makes the deposit; or

31
32 (B) Files an application in the superior court for a waiver under rules
33 3.50–3.63 if the appellant has not previously filed such an
34 application.

35
36 (2) If the appellant fails to take the action specified in a notice given under
37 (1), the superior court clerk must notify the reviewing court of the
38 default.

39
40 (3) If the superior court clerk notifies the reviewing court of a default
41 under (2), the reviewing court may dismiss the appeal, but may vacate
42 the dismissal for good cause.

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1
2 *(Subd (d) adopted effective January 1, 2008.)*

3
4 ~~(d)~~(e) * * *

5
6 *(Subd (e) relettered effective January 1, 2008; adopted as subd (d) effective January 1,*
7 *2002; previously amended effective January 1, 2007.)*

8
9 ~~(e)~~(f) * * *

10
11 *(Subd (f) relettered effective January 1, 2008; adopted as subd (e) effective January 1,*
12 *2002.)*

13
14 ~~(f)~~(g) **Civil case information statement**

15
16 (1) On receiving notice of the filing of a notice of appeal under ~~(d)~~(e)(1),
17 the reviewing court clerk must promptly mail the appellant a copy of
18 the *Civil Case Information Statement* (form APP-004) and a notice that
19 the statement must be filed within 10 days.

20
21 (2) * * *

22
23 (3) If the appellant fails to timely file a case information statement under
24 (2), the reviewing court clerk must notify the appellant by mail that the
25 appellant must file the statement within 15 days after the clerk's notice
26 is mailed and that ~~failure if the appellant fails to comply, will result in~~
27 the court may either the imposition of impose monetary sanctions or
28 dismissal of dismiss the appeal. If the appellant fails to ~~comply with file~~
29 the statement as specified in the notice, the court may impose the
30 sanctions specified in the notice.

31
32 *(Subd (g) amended and relettered effective January 1, 2008; adopted as subd (f) effective*
33 *January 1, 2003; previously amended effective January 1, 2007.)*

34
35 *Rule 8.100 amended effective January 1, 2008; repealed and adopted as rule 1 effective January*
36 *1, 2002; previously amended effective January 1, 2003, and August 17, 2003; previously*
37 *amended and renumbered effective January 1, 2007.*

38
39 **Advisory Committee Comment**

40
41 **Subdivision (a).** * * *

42
43 **Subdivision (b).** * * *

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,

effective on January 1, 2008.

1 **Subdivision ~~(d)~~(e).** Under subdivision ~~(d)~~(e)(2), a notification of the filing of a notice of appeal
2 must show the date that the clerk mailed the document. This provision is intended to establish the
3 date when the 20-day extension of the time to file a cross-appeal under rule 8.108(e) begins to
4 run.

5
6 Subdivision ~~(d)~~(e)(1) requires the clerk to mail a notification of the filing of the notice of appeal
7 to the appellant's attorney or to the appellant if unrepresented. Knowledge of the date of that
8 notification allows the appellant's attorney or the appellant to track the running of the 20-day
9 extension of time to file a cross-appeal under rule 8.108(e).

10
11
12 **Rule 8.108. Extending the time to appeal**

13
14 **(a) Extension of time**

15
16 This rule operates only to extend the time to appeal otherwise prescribed in
17 rule 8.104(a); it does not shorten the time to appeal. If the normal time to
18 appeal stated in rule 8.104(a) is longer than the time provided in this rule, the
19 time to appeal stated in rule 8.104(a) governs.

20
21 *(Subd (a) adopted effective January 1, 2008.)*

22
23 **(a)(b) Motion for new trial**

24
25 If any party serves and files a valid notice of intention to move for a new trial
26 ~~and~~, the time to appeal from the judgment is extended for all parties as
27 follows:

28
29 (1) If the motion is denied, the time to appeal from the judgment is
30 extended for all parties until the earliest of:

31
32 ~~(1)~~(A) 30 days after the superior court clerk mails, or a party serves, an
33 order denying the motion or a notice of entry of that order;

34
35 ~~(2)~~(B) 30 days after denial of the motion by operation of law; or

36
37 ~~(3)~~(C) 180 days after entry of judgment.

38
39 (2) If any party serves an acceptance of a conditionally ordered additur or
40 remittitur of damages pursuant to a trial court finding of excessive or
41 inadequate damages, until 30 days after the date the party serves the
42 acceptance.

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,

effective on January 1, 2008.

1 *(Subd (b) amended and relettered effective January 1, 2008; adopted as subd (a) effective*
2 *January 1, 2002.)*

3
4 **(b)(c)** * * *

5
6 *(Subd (c) relettered effective January 1, 2008; adopted as subd (b) effective January 1,*
7 *2002; previously amended effective January 1, 2007.)*

8
9 **(e)(d)** * * *

10
11 *(Subd (d) relettered effective January 1, 2008; adopted as subd (c) effective January 1,*
12 *2002; previously amended effective January 1, 2007.)*

13
14 **(d)(e)** * * *

15
16 *(Subd (e) relettered effective January 1, 2008; adopted as subd (d) effective January 1,*
17 *2002.)*

18
19 **(e)(f)** * * *

20
21 *(Subd (f) relettered effective January 1, 2008; adopted as subd (e) effective January 1,*
22 *2002.)*

23
24 **(f)(g)** * * *

25
26 *(Subd (g) relettered effective January 1, 2008; adopted as subd (f) effective January 1,*
27 *2002.)*

28
29 *Rule 8.108 amended effective January 1, 2008; repealed and adopted as rule 3 effective January*
30 *1, 2002; previously amended and renumbered effective January 1, 2007.*

31
32 **Advisory Committee Comment**

33
34 ~~Rule 8.108 provides various circumstances in which the time to appeal is “extended.” The use of~~
35 ~~the word “extended” limits the scope of the rule: i.e., the rule operates only to increase any time~~
36 ~~to appeal otherwise prescribed; it cannot shorten the time. Thus if the time provided by rule 8.108~~
37 ~~would be less than the normal time to appeal stated in rule 8.104(a) — e.g., when a new trial~~
38 ~~motion is denied before notice of entry of judgment is given — the rule 8.104(a) time governs.~~

39
40 Subdivisions ~~(a)–(d)~~ (b)–(e) operate only when a party serves and files a “valid” motion or notice
41 of intent to move for the relief in question. As used in these provisions, the word “valid” means
42 only that the motion or notice complies with all procedural requirements; it does not mean that
43 the motion or notice must also be substantively meritorious. For example, under the rule a timely
44 new trial motion on the ground of excessive damages (Code Civ. Proc., § 657) extends the time to
45 appeal from the judgment even if the trial court ultimately determines the damages were not

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 excessive. Similarly, a timely motion to reconsider (*id.*, § 1008) extends the time to appeal from
2 an appealable order for which reconsideration was sought even if the trial court ultimately
3 determines the motion was not “based upon new or different facts, circumstances, or law,” as
4 subdivision (a) of section 1008 requires.

5
6 **Subdivision ~~(a)~~(b).** Subdivision ~~(a)~~(b)(1) provides that the denial of a motion for new trial
7 triggers a 30-day extension of the time to appeal from the judgment beginning on the date that the
8 superior court clerk mails, or a party serves, either the order of denial or a notice of entry of that
9 order. This provision is intended to eliminate a trap for litigants and to make the rule consistent
10 with the primary rule on the time to appeal from the judgment (rule 8.104(a)).

11
12 **Subdivision ~~(b)~~(c).** The Code of Civil Procedure provides two distinct statutory motions to
13 vacate a judgment: (1) a motion to vacate a judgment and enter “another and different judgment”
14 because of judicial error (*id.*, § 663), which requires a notice of intention to move to vacate (*id.*,
15 § 663a); and (2) a motion to vacate a judgment because of mistake, inadvertence, surprise, or
16 neglect, which requires a motion to vacate but not a notice of intention to so move (*id.*, § 473,
17 subd. (b)). The courts also recognize certain nonstatutory motions to vacate a judgment, e.g.,
18 when the judgment is void on the face of the record or was obtained by extrinsic fraud. (See 8
19 Witkin, Cal. Procedure (4th ed. 1997) Attack on Judgment in Trial Court, §§ 222–236, pp. 726–
20 750.) Subdivision ~~(b)~~(c) is intended to apply to all such motions.

21
22 In subdivision ~~(b)~~(c) the phrase “within the time prescribed by rule 8.104 to appeal from the
23 judgment” is intended to incorporate in full the provisions of rule 8.104(a).

24
25 Under subdivision ~~(b)~~(c)(1), the 30-day extension of the time to appeal from the judgment begins
26 when the superior court clerk mails, or a party serves, the order denying the motion or notice of
27 entry of that order. This provision is discussed further under subdivision ~~(a)~~(b) of this comment.

28
29 **Subdivision ~~(e)~~(d).** Subdivision ~~(e)~~(d)(1) provides an extension of time after an order denying a
30 motion for judgment notwithstanding the verdict regardless of whether the moving party also
31 moved unsuccessfully for a new trial.

32
33 Subdivision ~~(e)~~(d) further specifies the times to appeal when, as often occurs, a motion for
34 judgment notwithstanding the verdict is joined with a motion for new trial and both motions are
35 denied. Under subdivision ~~(a)~~(b), the appellant has 30 days after notice of the denial of the new
36 trial motion to appeal from the judgment. Subdivision ~~(e)~~(d) allows the appellant the longer time
37 provided by rule 8.104 to appeal from the order denying the motion for judgment notwithstanding
38 the verdict, subject to that time being further extended in the circumstances covered by
39 subdivision ~~(e)~~(f)(2).

40
41 Under subdivision ~~(e)~~(d)(1)(A), the 30-day extension of the time to appeal from the judgment
42 begins when the superior court clerk mails, or a party serves, the order denying the motion or
43 notice of entry of that order. This provision is discussed further under subdivision ~~(a)~~(b) of this
44 comment.

45
46 **Subdivision ~~(d)~~(e).** The scope of subdivision ~~(d)~~(e) is specific. It applies to any “appealable
47 order,” whether made before or after judgment (see Code Civ. Proc., § 904.1, subd. (a)(2)–(12)),

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,

effective on January 1, 2008.

1 but it extends only the time to appeal “from that order.” The subdivision thus takes no position on
2 whether a judgment is subject to a motion to reconsider (see, e.g., *Ramon v. Aerospace Corp.*
3 (1996) 50 Cal.App.4th 1233, 1236–1238 [postjudgment motion to reconsider order granting
4 summary judgment did not extend time to appeal from judgment because trial court had no power
5 to rule on such motion after entry of judgment]), or whether an order denying a motion to
6 reconsider is itself appealable (compare *Santee v. Santa Clara County Office of Education* (1990)
7 220 Cal.App.3d 702, 710–711 [order appealable if motion based on new facts] with *Rojas v.*
8 *Riverside General Hospital* (1988) 203 Cal.App.3d 1151, 1160–1161 [order not appealable under
9 any circumstances]). Both these issues are legislative matters.

10
11 Subdivision ~~(d)~~(e) applies only when a “party” makes a valid motion to “reconsider” an
12 appealable order under subdivision (a) of Code of Civil Procedure section 1008; it therefore does
13 not apply when a court reconsiders an order on its own motion (*id.*, subd. ~~(e)~~(d)) or when a party
14 makes “a subsequent application for the same order” (*id.*, subd. ~~(b)~~(c)). The statute provides no
15 time limits within which either of the latter events must occur.

16
17 Under subdivision ~~(d)~~(e)(1), the 30-day extension of the time to appeal from the order begins
18 when the superior court clerk mails, or a party serves, the order denying the motion or notice of
19 entry of that order. The purpose of this provision is discussed further under subdivision ~~(a)~~(b) of
20 this comment.

21
22 Among its alternative periods of extension of the time to appeal, subdivision ~~(d)~~(e) provides in
23 paragraph (2) for a 90-day period beginning on the filing of the motion to reconsider or, if there is
24 more than one such motion, the filing of the first such motion. The provision is consistent with
25 subdivision ~~(b)~~(c)(2), governing motions to vacate judgment; as in the case of those motions,
26 there is no time limit for a ruling on a motion to reconsider.

27
28 **Subdivision ~~(e)~~(f).** Consistent with case law, subdivision ~~(e)~~(f)(1) extends the time to appeal after
29 another party appeals only if the later appeal is taken “from the same order or judgment as the
30 first appeal.” (*Commercial & Farmers Nat. Bank v. Edwards* (1979) 91 Cal.App.3d 699, 704.)

31
32 The former rule (former rule 3(c), second sentence) provided an extension of time for filing a
33 protective cross-appeal from the judgment when the trial court granted a motion for new trial or a
34 motion to vacate the judgment, but did not provide the same extension when the trial court
35 granted a motion for judgment notwithstanding the verdict. One case declined to infer that the
36 omission was unintentional, but suggested that the Judicial Council might consider amending the
37 rule to fill the gap. (*Lippert v. AVCO Community Developers, Inc.* (1976) 60 Cal.App.3d 775, 778
38 & fn. 3.) Rule 8.108(e)(2) fills the gap thus identified.

39
40 **Subdivision ~~(f)~~(g).** Under subdivision ~~(f)~~(g), an order or notice mailed by the clerk under this rule
41 must show the date on which the clerk mailed the document, analogously to the clerk’s
42 “certificate of mailing” currently in use in many superior courts. This provision is intended to
43 establish the date when an extension of the time to appeal begins to run after the clerk mails such
44 an order or notice.

45
46 Subdivision ~~(f)~~(g) also requires that an order or notice served by a party under this rule be
47 accompanied by proof of service. The proof of service establishes the date when an extension of
48 the time to appeal begins to run after the party serves such an order or notice.

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1
2
3 **Rule 8.112. Petition for writ of supersedeas**
4

5 **(a) Petition**
6

7 (1)–(3) * * *

8
9 (4) If the record has not been filed in the reviewing court,:

10
11 (A) The petition must include: a statement of the case sufficient to
12 show that the petitioner will raise substantial issues on appeal,
13 including a fair summary of the material facts, the issues that are
14 likely to be raised on appeal, and any oral statement by the court
15 supporting its rulings related to these issues.
16

17 (B) The petitioner must file the following documents with the
18 petition:

19
20 ~~(A)~~(i) The judgment or order, showing its date of entry;

21
22 ~~(B)~~(ii) The notice of appeal, showing its date of filing; and

23
24 (iii) Any application for a stay filed in the trial court and any
25 opposition to that application; and

26
27 (iv) Any other document from the trial court proceeding that is
28 necessary for proper consideration of the petition.
29

30 (C) ~~A statement of the case, including a summary of the material~~
31 ~~facts.~~The documents listed in (B) must comply with the
32 following requirements:
33

34 (i) They must be bound together at the end of the petition or in
35 a separate volumes not exceeding 300 pages each. The
36 pages must be consecutively numbered;
37

38 (ii) They must be index-tabbed by number or letter, and
39

40 (iii) They must begin with a table of contents listing each
41 document by its title and its index-tab number or letter.

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

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41

(5) * * *

(Subd (a) amended effective January 1, 2008; previously amended effective January 1, 2007.)

(b)–(c) * * *

(d) Issuing the writ

(1)–(2) * * *

(3) The court must notify the superior court, under rule 8.490(~~j~~)(k), of any writ or temporary stay that it issues.

(Subd (d) amended effective January 1, 2008; previously amended effective January 1, 2007.)

Rule 8.112 amended effective January 1, 2008; repealed and adopted as rule 49 effective January 1, 2005; previously amended and renumbered effective January 1, 2007.

Former rule 8.120. Renumbered effective January 1, 2008

Rule 8.120 renumbered as rule 8.122.

Rule 8.120. Record on appeal

Except as otherwise provided in this chapter, the record on an appeal in a civil case must contain the records specified in (a) and (b), which constitute the normal record on appeal.

(a) Record of written documents

(1) A record of the written documents from the superior court proceedings in the form of one of the following:

(A) A clerk's transcript under rule 8.122;

(B) An appendix under rule 8.124;

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 (C) The original superior court file under rule 8.128, if a local rule of
2 the reviewing court permits this form of the record;

3
4 (D) An agreed statement under rule 8.134(a)(2); or

5
6 (E) A settled statement under rule 8.137.

7
8 (2) If an appellant intends to raise any issue that requires consideration of
9 the record of an administrative proceeding that was admitted in
10 evidence, refused, or lodged in the superior court, the record on appeal
11 must include that administrative record, transmitted under rule 8.123.

12
13 **(b) Record of the oral proceedings**

14
15 If an appellant intends to raise any issue that requires consideration of the
16 oral proceedings in the superior court, the record on appeal must include a
17 record of these oral proceedings in the form of one of the following:

18
19 (1) A reporter's transcript under rule 8.130;

20
21 (2) An agreed statement under rule 8.134; or

22
23 (3) A settled statement under rule 8.137.

24
25 *Rule 8.120 adopted effective January 1, 2008.*

26
27
28 **Rule 8.121. Notice designating the record on appeal**

29
30 **(a) Time to file**

31
32 Within 10 days after filing the notice of appeal, an appellant must serve and
33 file a notice in the superior court designating the record on appeal. The
34 appellant may combine its notice designating the record with its notice of
35 appeal.

36
37 **(b) Contents**

38
39 (1) The notice must:

40
41 (A) Specify the date the notice of appeal was filed.

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1
2 (B) Specify which form of the record of the written documents from
3 the superior court proceedings listed in rule 8.120(a)(1) the
4 appellant elects to use. If the appellant elects to use a clerk’s
5 transcript, the notice must also designate the documents to be
6 included in the clerk’s transcript as required under rule
7 8.122(b)(1).

8
9 (C) Specify whether the appellant elects to proceed with or without a
10 record of the oral proceedings in the trial court. If the appellant
11 elects to proceed with a record of the oral proceedings in the trial
12 court, the notice must specify which form of the record listed in
13 rule 8.120(b) the appellant elects to use. If the appellant elects to
14 use a reporter’s transcript, the notice must designate the
15 proceedings to be included in the transcript as required under rule
16 8.130.

17
18 (2) If an appellant intends to raise any issue that requires consideration of
19 the record of an administrative proceeding that was admitted in
20 evidence, refused, or lodged in the superior court, the notice must also
21 request that this administrative record be transmitted to the reviewing
22 court under rule 8.123.

23
24 (c) **Copy to the reviewing court**

25
26 The clerk must promptly send the reviewing court a copy of any notice filed
27 under this rule.

28
29 *Rule 8.121 adopted effective January 1, 2008.*

30
31 **Advisory Committee Comment**

32
33 The Judicial Council has adopted an optional form—*Appellant’s Notice Designating Record on*
34 *Appeal* (form APP-003)—that can be used to provide the notice required by this rule.

35
36 This rule makes the filing of a notice designating the record an “act required to procure the
37 record” within the meaning of rule 8.140(a). Under that rule, a failure to file such a notice triggers
38 the clerk’s duty to issue a 15-day notice of default and thereby allows the appellant to cure the
39 default in superior court.

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 **Rule ~~8.120.~~ 8.122. Clerk's transcript**

2
3 **(a) Notice of dDesignation**

4
5 ~~(1) Within 10 days after filing the notice of appeal, an appellant must serve~~
6 ~~and file a notice in superior court designating the documents to be~~
7 ~~included in the clerk's transcript, unless the appeal proceeds by~~
8 ~~appendix under rule 8.124, by stipulation under rule 8.128, or by agreed~~
9 ~~or settled statement under rule 8.134 or 8.137 instead of a clerk's~~
10 ~~transcript.~~

11
12 ~~(2) The appellant may combine its notice designating a clerk's transcript~~
13 ~~with any notice designating a reporter's transcript under rule~~
14 ~~8.130(a)(1), and may combine both with the notice of appeal.~~

15
16 ~~(4)~~(1) A notice designating documents to be included in a clerk's transcript
17 must state ~~the date the notice of appeal was filed and~~ identify each
18 designated document by its title and filing date or, if the filing date is
19 not available, the date it was signed. The notice may specify portions of
20 designated documents that are not to be included in the transcript. For
21 minute orders or instructions, it is sufficient to collectively designate all
22 minute orders or all minute orders entered between specified dates, or
23 all written jury instructions given, refused, or withdrawn.

24
25 ~~(3)~~(2) Within 10 days after the appellant serves its notice designating a
26 clerk's transcript, the respondent may serve and file a notice in superior
27 court designating any additional documents the respondent wants
28 included in the transcript.

29
30 ~~(5)~~(3) Except as provided in (b)(4), all exhibits admitted in evidence, refused,
31 or lodged are deemed part of the record, but a party wanting a copy of
32 an exhibit included in the transcript must specify that exhibit by
33 number or letter in its notice of designation. If the superior court has
34 returned a designated exhibit to a party, the party in possession of the
35 exhibit must promptly deliver it to the superior court clerk on receipt of
36 the designation.

37
38 *(Subd (a) amended effective January 1, 2008; previously amended effective January 1,*
39 *2005, and January 1, 2007.)*

40
41 **(b) Contents of transcript**

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 (1) The transcript must contain:
2

3 (A)–(C) * * *
4

5 (D) Any notice of intention to move for a new trial, or motion to
6 vacate the judgment, for judgment notwithstanding the verdict, or
7 for reconsideration of an appealed order, with supporting and
8 opposing memoranda and attachments, and any order on such
9 motion and any notice of its entry;
10

11 (E)–(F) * * *
12

13 (2) Each document listed in (1)(A), (B), (C), and (D) must show the date
14 necessary to determine the timeliness of the appeal under rule 8.104 or
15 8.108.
16

17 (3) Except as provided in (4), if designated by any party, the transcript
18 must also contain:
19

20 (A) Any other document filed or lodged in the case in superior court;
21

22 (B) Any exhibit admitted in evidence, refused, or lodged; and
23

24 (C) Any jury instruction that a any party submitted in writing and the
25 cover page required by rule 2.1055(b)(2) indicating the party
26 requesting it, and any written jury instructions given by the court.
27

28 (4) Unless the reviewing court orders or the parties stipulate otherwise;:
29

30 (A) The clerk must not copy or transmit to the reviewing court the
31 original of a deposition.
32

33 (B) The clerk must not include in the transcript the record of an
34 administrative proceeding that was admitted in evidence, refused,
35 or lodged in the trial court. Any such administrative record must
36 be transmitted to the reviewing court as specified in rule 8.123.
37

38 *(Subd (b) amended effective January 1, 2008; previously amended effective January 1,*
39 *2007.)*
40

41 (c) **Deposit for cost of transcript**
42

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 (1) Within 30 days after the respondent files a designation under (a)(32) or
2 the time for filing it expires, whichever first occurs, the superior court
3 clerk must send:

4
5 (A) To the appellant, notice of the estimated cost to prepare an
6 original and one copy of the clerk's transcript; and

7
8 (B) To each party other than the appellant, notice of the estimated
9 cost to prepare a copy of the clerk's transcript for that party's use.

10
11 (2)–(3) * * *

12
13 *(Subd (c) amended effective January 1, 2008; previously amended effective January 1,*
14 *2007.)*

15
16 (d) * * *

17
18 *Rule 8.122 amended and renumbered effective January 1, 2008; repealed and adopted as rule 5*
19 *effective January 1, 2002; previously amended effective January 1, 2003, and January 1, 2005;*
20 *previously amended and renumbered as rule 8.120 effective January 1, 2007.*

21
22 **Advisory Committee Comment**

23
24 **Subdivision (a).** Subdivision (a)(4)(1) allows a party designating documents for inclusion in the
25 clerk's transcript to specify *portions* of such documents that are not to be included, e.g., because
26 they are duplicates of other designated documents or are not necessary for proper consideration of
27 the issues raised in the appeal. The notice of designation should identify any portion to be omitted
28 by means of a descriptive reference, e.g., by specific page or exhibit numbers. This provision is
29 intended to simplify and therefore expedite the preparation of the clerk's transcript, to reduce its
30 cost to the parties, and to relieve the courts of the burden of reviewing a record containing
31 redundant, irrelevant, or immaterial documents.

32
33 **Subdivision (b)–(c).** * * *

34
35
36 **Rule 8.123. Record of administrative proceedings**

37
38 **(a) Application**

39
40 This rule applies if the record of an administrative proceeding was admitted
41 in evidence, refused, or lodged in the superior court.

42
43 **(b) Designation**

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 (1) An appellant's notice designating the record on appeal under rule 8.121
2 that requests a record of an administrative proceeding be transmitted to
3 the reviewing court must identify the administrative record by the title
4 and date or dates of the administrative proceedings.

5
6 (2) If an appellant does not request that an administrative record admitted
7 in evidence, refused, or lodged in the superior court be transmitted to
8 the reviewing court, the respondent, within 10 days after the appellant
9 serves its notice designating the record on appeal, may serve and file in
10 the superior court a notice requesting that this administrative record be
11 transmitted to the reviewing court.

12
13 **(c) Administrative records returned to parties**

14
15 If the superior court has returned a designated administrative record to a
16 party, the party in possession of the administrative record must deliver it to
17 the superior court clerk within 15 days after the notice designating the record
18 on appeal is served.

19
20 **(d) Transmittal to the reviewing court**

21
22 If any administrative record is designated by a party, the superior court clerk
23 must transmit the original administrative record with any clerk's or reporter's
24 transcript sent to the reviewing court under rule 8.150. If the appellant has
25 elected under rule 8.121 to use neither a clerk's transcript nor a reporter's
26 transcript, the superior court clerk must transmit any administrative record
27 designated by a party to the reviewing court no later than 45 days after the
28 respondent files a designation under (b)(2) or the time for filing it expires,
29 whichever first occurs.

30
31 **(e) Return by reviewing court**

32
33 On request, the reviewing court may return an administrative record to the
34 superior court. When the remittitur issues, the reviewing court must return
35 any administrative record to the superior court.

36
37 *Rule 8.123 adopted effective January 1, 2008.*

38
39
40 **Rule 8.124. Appendixes ~~instead of clerk's transcript~~**

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 (a) **Notice of election**

2
3 (1) ~~Within 10 days after the notice of appeal is filed, any party electing to~~
4 ~~proceed by~~ If in the notice designating the record on appeal under rule
5 8.121, the appellant elects to use an appendix under this rule, instead of
6 ~~by clerk's transcript under rule 8.120 must serve and file a notice of~~
7 ~~election in superior court. The notice must state the date the notice of~~
8 ~~appeal was filed. or if, within 10 days after the notice of appeal is filed,~~
9 ~~the respondent serves and files a notice in the superior court electing to~~
10 use an appendix under this rule, This rule then governs unless the
11 superior court orders otherwise on a motion served and filed within 10
12 days after the notice of election is served.

13
14 ~~(2) A party may combine a notice of election with any notice designating a~~
15 ~~reporter's transcript under rule 8.130(a)(1), and may combine both with~~
16 ~~the notice of appeal.~~

17
18 ~~(3)~~(2) When a party files a notice of election electing to use an appendix
19 under this rule, the superior court clerk must promptly:

20
21 ~~(A) Send a copy of the notice to the reviewing court; and~~

22
23 ~~(B) send a copy of the register of actions, if any, to the attorney of~~
24 ~~record for each party and to any unrepresented party.~~

25
26 ~~(4)~~(3) The parties may prepare separate appendixes, but are encouraged to
27 stipulate to a joint appendix.

28
29 *(Subd (a) amended effective January 1, 2008; previously amended effective January 1,*
30 *2005, and January 1, 2007.)*

31
32 (b) **Contents of appendix**

33
34 (1) A joint appendix or an appellant's appendix must contain:

35
36 (A) All items required by rule ~~8.120~~ 8.122(b)(1), showing the dates
37 required by rule ~~8.120~~ 8.122(b)(2);

38
39 (B) Any item listed in rule ~~8.120~~ 8.122(b)(3) that is necessary for
40 proper consideration of the issues, including, for an appellant's
41 appendix, any item that the appellant should reasonably assume
42 the respondent will rely on;

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

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(C) The notice of election; and

(D) For a joint appendix, the stipulation designating its contents.

(2) An appendix must not:

(A) Contain documents or portions of documents filed in superior court that are unnecessary for proper consideration of the issues.

~~(3)~~(B) ~~An appendix must not~~ Contain transcripts of oral proceedings that may be designated under rule 8.130.

(C) Contain the record of an administrative proceeding that was admitted in evidence, refused, or lodged in the trial court. Any such administrative record must be transmitted to the reviewing court as specified in rule 8.123.

~~(4)~~(D) ~~An appendix must not~~ Incorporate any document by reference except the record on appeal in another case pending in the reviewing court or the record in a prior appeal in the same case.

~~(5)~~(3) All exhibits admitted in evidence, refused, or lodged are deemed part of the record, whether or not the appendix contains copies of them.

~~(6)~~(4) A respondent's appendix may contain any document that could have been included in the appellant's appendix or a joint appendix.

~~(7)~~(5) An appellant's reply appendix may contain any document that could have been included in the respondent's appendix.

(Subd (b) amended effective January 1, 2008; previously amended January 1, 2007.)

(c)–(g) * * *

Rule 8.124 amended effective January 1, 2008; repealed and adopted as rule 5.1 effective January 1, 2002; previously amended effective January 1, 2005; previously amended and renumbered effective January 1, 2007.

Advisory Committee Comment

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,

effective on January 1, 2008.

1 **Subdivision (a).** Under this provision either party may elect to have the appeal proceed by way of
2 an appendix. A respondent's timely election to use an appendix will govern unless the superior
3 court orders otherwise. This election procedure differs from all other appellate rules governing
4 designation of a record on appeal. In those rules, the appellant's designation, or the stipulation of
5 the parties, determines the type of record on appeal.

6
7 Subdivision (a)~~(3)(B)~~(2) is intended to assist appellate counsel in preparing an appendix by
8 providing them with the list of pleadings and other filings found in the register of actions or
9 "docket sheet" in those counties that maintain such registers. (See Gov. Code, § 69845.) The
10 provision is derived from rule 10-1 of the United States Circuit Rules (9th Cir.).

11
12 **Subdivision (b).** Under subdivision (b)(1)(A), a joint appendix or an appellant's appendix must
13 contain any register of actions that the clerk sent to the parties under subdivision (a)~~(3)(B)~~(2).
14 This provision is intended to assist the reviewing court in determining the accuracy of the
15 appendix. The provision is derived from rule 30-1.3(a)(ii) of the United States Circuit Rules (9th
16 Cir.).

17
18 In support of or opposition to pleadings or motions, the parties may have filed a number of
19 lengthy documents in the proceedings in superior court, including, for example, declarations,
20 memorandums, trial briefs, documentary exhibits (e.g., insurance policies, contracts, deeds), and
21 photocopies of judicial opinions or other publications. Subdivision (b)(2)~~(A)~~ prohibits the
22 inclusion of such documents in an appendix when they are not necessary for proper consideration
23 of the issues raised in the appeal. Even if a document is otherwise includable in an appendix, the
24 rule prohibits the inclusion of any substantial *portion* of the document that is not necessary for
25 proper consideration of the issues raised in the appeal. The prohibition is intended to simplify and
26 therefore expedite the preparation of the appendix, to reduce its cost to the parties, and to relieve
27 the courts of the burden of reviewing a record containing redundant, irrelevant, or immaterial
28 documents. The provision is adapted from rule 30-1.4 of the United States Circuit Rules (9th
29 Cir.).

30
31 Subdivision (b)~~(3)(2)(B)~~ prohibits the inclusion in an appendix of transcripts of oral proceedings
32 that may be made part of a reporter's transcript. (Compare rule 8.130(e)(3) [the reporter must not
33 copy into the reporter's transcript any document includable in the clerk's transcript under rule
34 ~~8.1208.122~~].) The prohibition is intended to prevent a party filing an appendix from evading the
35 requirements and safeguards imposed by rule 8.130 on the process of designating and preparing a
36 reporter's transcript, or the requirements imposed by rule 8.144(d) on the use of daily or other
37 transcripts instead of a reporter's transcript (i.e., renumbered pages, required indexes). In
38 addition, if an appellant were to include in its appendix a transcript of less than all the
39 proceedings, the respondent would not learn of any need to designate additional proceedings
40 (under rule 8.130(a)~~(2)(3)~~) until the appellant had served its appendix with its brief, when it
41 would be too late to designate them. Note also that a party may file a certified transcript of
42 designated proceedings instead of a deposit for the reporter's fee (rule 8.130(b)(3)).

43
44 **Subdivision (d).** * * *

45
46 **Subdivision (e).** Subdivision (e)(2) requires a joint appendix to be filed with the appellant's
47 opening brief. The provision is intended to improve the briefing process by enabling the
48 appellant's opening brief to include citations to the record. To provide for the case in which a

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 respondent concludes in light of the appellant’s opening brief that the joint appendix should have
2 included additional documents, subdivision (b)(6)(4) permits such a respondent to present in an
3 appendix filed with its respondent’s brief (see subd.-(e)(3)) any document that could have been
4 included in the joint appendix.

5
6 Under subdivision (e)(2)–(4) an appendix is required to be filed “with” the associated brief. This
7 provision is intended to clarify that an extension of a briefing period ipso facto extends the filing
8 period of an appendix associated with the brief.

9
10 **Subdivision (g).** * * *

11
12
13 **Rule 8.128. Superior court file instead of clerk’s transcript**

14
15 **(a) Stipulation; time to file**

16
17 (1) If a local rule of the reviewing court permits, the parties may stipulate
18 to use the original superior court file instead of a clerk’s transcript
19 under rule ~~8.120~~ 8.122. This rule and any supplemental provisions of
20 the local rule then govern unless the superior court orders otherwise
21 after notice to the parties.

22
23 (2) Parties ~~wanting~~ intending to proceed under this rule must file their
24 stipulation in superior court ~~within 10 days after the filing of a notice of~~
25 ~~appeal with the appellant’s notice designating the record on appeal~~
26 under rule 8.121. The parties must serve the reviewing court with a
27 copy of the stipulation ~~and of any notice designating a reporter’s~~
28 ~~transcript~~.

29
30 *(Subd (a) amended effective January 1, 2008; previously amended effective January 1,*
31 *2007.)*

32
33 **(b)** * * *

34
35 *Rule 8.128 amended effective January 1, 2008; repealed and adopted as rule 5.2 effective*
36 *January 1, 2002; previously amended and renumbered effective January 1, 2007.*

37
38
39 **Rule 8.130. Reporter’s transcript**

40
41 **(a) Notice**

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 ~~(1) Within 10 days after filing the notice of appeal, an appellant must serve~~
2 ~~and file in superior court either a notice designating a reporter's~~
3 ~~transcript or a notice of intent to proceed without a reporter's transcript,~~
4 ~~unless the appellant proceeds by agreed or settled statement under rule~~
5 ~~8.134 or 8.137.~~

6
7 ~~(1)(4)——A notice designating a reporter's transcript must state the date the~~
8 ~~notice of appeal was filed and If in the notice designating the record on~~
9 ~~appeal under rule 8.121, the appellant elects to use a reporter's~~
10 ~~transcript, in that notice the appellant must specify the date of each~~
11 ~~proceeding to be included in the transcript, and may specify portions of~~
12 ~~designated proceedings that are not to be included.~~

13
14 ~~(2)(5) If the appellant designates less than all the testimony, the notice must~~
15 ~~state the points to be raised on appeal; the appeal is then limited to~~
16 ~~those points unless, on motion, the reviewing court permits otherwise.~~

17
18 ~~(3)(2) If the appellant serves and files a notice designating a reporter's~~
19 ~~transcript, the respondent may, within 10 days after such service, serve~~
20 ~~and file a notice in superior court designating any additional~~
21 ~~proceedings the respondent wants included in the transcript.~~

22
23 ~~(4)(3) If the appellant elects to proceed without a reporter's transcript, the~~
24 ~~respondent cannot require that a reporter's transcript be prepared. But~~
25 ~~the reviewing court, on its own or the respondent's motion, may order~~
26 ~~the record augmented under rule 8.155 to prevent a miscarriage of~~
27 ~~justice. Unless the court orders otherwise, the appellant is responsible~~
28 ~~for the cost of any reporter's transcript the court may order under this~~
29 ~~subdivision.~~

30
31 ~~(5)(6) Any notice of designation must be served on each known reporter of~~
32 ~~the designated proceedings.~~

33
34 ~~(Subd (a) amended effective January 1, 2008; previously amended effective January 1,~~
35 ~~2005, and January 1, 2007.)~~

36
37 ~~(b)–(c) * * *~~

38
39 ~~(d) Superior court clerk's duties~~

40
41 ~~(1)——The clerk must promptly send the reviewing court a copy of any notice~~
42 ~~filed under (a)(1).~~

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

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~~(2)~~(1) * * *

~~(3)~~(2) * * *

~~(4)~~(3) * * *

(Subd (d) amended effective January 1, 2008; previously amended effective January 1, 2007.)

(e) Contents of transcript

~~(1)–(2)~~ * * *

(3) The reporter must not copy any document includable in the clerk’s transcript under rule ~~8.120~~ 8.122.

(Subd (e) amended effective January 1, 2008; previously amended effective January 1, 2007.)

(f)–(g) * * *

Rule 8.130 amended effective January 1, 2008; repealed and adopted as rule 4 effective January 1, 2002; previously amended effective January 1, 2005; previously amended and renumbered effective January 1, 2007.

Advisory Committee Comment

Under rule ~~8.130~~ 8.121 an appellant may serves and files a notice *designating* a reporter’s transcript ~~((a)(1))~~ and the notice ~~identifies~~ must identify the proceedings to be *included* ~~((a)(4))~~. The wording recognizes that under rule 8.130(b)(3) the appellant, instead of depositing the reporter’s cost to transcribe the proceedings, may substitute certified transcripts of proceedings that have already been transcribed (e.g., daily transcripts) and hence need only be designated for inclusion in the transcript.

Subdivision (a). ~~Subdivision (a)(1) makes the filing of one of two notices—either to prepare a reporter’s transcript or to proceed without one—an “act required to procure the record” within the meaning of rule 8.140(a). Under that rule, a failure to file such a notice triggers the clerk’s duty to issue a 15-day notice of default and thereby allows the appellant to cure the default in superior court.~~

Subdivision ~~(a)(4)~~(1) requires that every notice designating a reporter’s transcript identify which proceedings are to be included, and that it do so by specifying the date or dates on which those proceedings took place; if the appellant does not want a portion of the proceedings on a given

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 date to be included, the notice should identify that portion by means of a descriptive reference
2 (e.g., “August 3, 2004, but not the proceedings on defendant’s motion to tax costs”).

3
4 As used in subdivision (a)(4)(1), the phrase “oral proceedings” includes all instructions that the
5 court gives, whether or not submitted in writing, and any instructions that counsel orally propose
6 but the court refuses; all such instructions are included in the reporter’s transcript if designated
7 under this rule. All instructions that counsel submit in writing, whether or not given to the jury,
8 are lodged with the superior court clerk and are included in the clerk’s transcript if designated
9 under rule ~~8.120~~ 8.122.

10
11 Under subdivision (a), portions of depositions read in open court but not reported, or not read but
12 lodged with the superior court clerk, are included in the clerk’s transcript if designated under rule
13 ~~8.120~~ 8.122.

14 **Subdivision (b).** * * *

15 **Subdivision (c).** * * *

16
17 **Subdivision (d).** Under subdivision (d)(2)(1), the clerk’s notice to the reporter must show the
18 date on which the clerk mailed the notice. This provision is intended to establish the date when
19 the period for preparing the reporter’s transcript under subdivision (f)(1) begins to run.

20
21 **Subdivision (e).** * * *

22
23 **Subdivision (f).** * * *

24
25
26
27
28 **Rule 8.134. Agreed statement**

29
30 **(a) Contents of statement**

31
32 (1) * * *

33
34 (2) If the agreed statement replaces a clerk’s transcript, the statement must
35 be accompanied by copies of all items required by rule ~~8.120~~
36 8.122(b)(1), showing the dates required by rule ~~8.120~~ 8.122(b)(2).

37
38 (3) The statement may be accompanied by copies of any document
39 includable in the clerk’s transcript under rule ~~8.120~~ 8.122(b)(3) and (4).

40
41 *(Subd (a) amended effective January 1, 2008; previously amended effective January 1,*
42 *2007.)*

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 **(b) Time to file; extension of time**

2
3 (1) ~~Within 10 days after filing the notice of appeal,~~ An appellant wanting
4 intending to proceed under this rule must file ~~in superior court~~ either an
5 agreed statement or a stipulation that the parties are attempting to agree
6 on a statement in superior court with its notice designating the record
7 on appeal under rule 8.121.

8
9 (2) * * *

10
11 (3) If the appellant files the stipulation and the parties cannot agree on the
12 statement, the appellant must file ~~the notices provided for in rule 8.120~~
13 ~~8.124, or 8.130, or the stipulation provided for in rule 8.128, or a~~
14 ~~motion under rule 8.137,~~ a new notice designating the record on appeal
15 under rule 8.121 within 50 days after filing the notice of appeal.

16
17 *(Subd (b) amended effective January 1, 2008; previously amended effective January 1,*
18 *2007.)*

19
20 *Rule 8.134 amended effective January 1, 2008; repealed and adopted as rule 6 effective January*
21 *1, 2002; previously amended and renumbered effective January 1, 2007.*

22
23 **Advisory Committee Comment**

24
25 **Subdivision (b).** Subdivision (b)(1) requires the appellant to file, ~~within 10 days after the notice~~
26 ~~of appeal is filed~~ with the appellant's notice designating the record under rule 8.121, either an
27 agreed statement or a stipulation that the parties are attempting to agree on a statement. The
28 provision is intended to prevent issuance of a notice of default while the parties are preparing an
29 agreed statement.

30
31
32 **Rule 8.137. Settled statement**

33
34 **(a) Motion to use settled statement**

35
36 (1) ~~Within 10 days after filing the notice of appeal,~~ An appellant wanting
37 intending to proceed under this rule must serve and file in superior
38 court with its notice designating the record on appeal under rule 8.121 a
39 motion to use a settled statement instead of a reporter's transcript or
40 both reporter's and clerk's transcripts.

41
42 (2) * * *

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

- 1 (3) If the court denies the motion, the appellant must file ~~the notices~~
2 ~~provided for in rule 8.120, 8.124, or 8.130, or the stipulation provided~~
3 ~~for in rule 8.128, a new notice designating the record on appeal under~~
4 rule 8.121 within 10 days after the superior court clerk mails, or a party
5 serves, the order of denial.

6
7 *(Subd (a) amended effective January 1, 2008; previously amended effective January 1,*
8 *2007.)*

9

10 **(b) Time to file; contents of statement**

11

12 (1)–(2) * * *

13

- 14 (3) An appellant ~~wanting~~ intending to use a settled statement instead of
15 both reporter’s and clerk’s transcripts must accompany the condensed
16 narrative with copies of all items required by rule ~~8.120~~ 8.122(b)(1),
17 showing the dates required by rule ~~8.120~~ 8.122(b)(2).

18

19 (4) * * *

20

- 21 (5) The proposed statement and proposed amendments may be
22 accompanied by copies of any document includable in the clerk’s
23 transcript under rule ~~8.120~~ 8.122(b)(3) and (4).

24

25 *(Subd (b) amended effective January 1, 2008; previously amended effective January 1,*
26 *2007.)*

27

28 **(c) * * ***

29

30 *Rule 8.137 amended effective January 1, 2008; repealed and adopted as rule 7 effective January*
31 *1, 2002; previously amended and renumbered effective January 1, 2007.*

32

33

34 **Rule 8.140. Failure to procure the record**

35

36 **(a) Notice of default**

37

38 If a party fails to timely do an act required to procure the record, the superior
39 court clerk must promptly notify the party by mail that it must do the act
40 specified in the notice within 15 days after the notice is mailed, and that
41 failure if it fails to comply, will result in the reviewing court may impose one
42 of the following sanctions:

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

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- (1) If the defaulting party is the appellant, the court may dismiss the appeal
~~will be dismissed~~; or
- (2) If the defaulting party is the respondent, the court may proceed with the
~~appeal will proceed~~ on the record designated by the appellant.

(Subd (a) amended effective January 1, 2008; previously amended effective January 1, 2007.)

(b) Sanctions

If a party fails to ~~comply with~~ take the action specified in a notice given under (a), the superior court clerk must promptly notify the reviewing court of the default, and the reviewing court may impose one of the following sanctions:

(1)–(2) * * *

(Subd (b) amended effective January 1, 2008; previously amended effective January 1, 2007.)

(c) * * *

Rule 8.140 amended effective January 1, 2008; adopted as rule 8 effective January 1, 2002; previously amended and renumbered effective January 1, 2007.

Rule 8.144. Form of the record

(a) * * *

(b) Indexes

At the beginning of the first volume of each:

(1)–(2) * * *

- (3) The reporter’s transcript must contain an index listing the volume and page where any exhibit is marked for identification and where it is admitted or refused. The index must identify each exhibit by number or letter and a brief description of the exhibit.

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1
2 *(Subd (b) amended effective January 1, 2008; previously amended effective January 1,*
3 *2007.)*

4
5 **(c)–(f) * * ***

6
7 *Rule 8.144 amended effective January 1, 2008; repealed and adopted as rule 9 effective January*
8 *1, 2002; previously amended and renumbered effective January 1, 2007.*

9
10
11 **Rule 8.147. Record in multiple or later appeals in same case**

12
13 **(a) * * ***

14
15 **(b) Later appeal**

16
17 In an appeal under rule ~~8.120~~ 8.122 or 8.130:

18
19 **(1)–(2) * * ***

20
21 *(Subd (b) amended effective January 1, 2008; previously amended effective January 1,*
22 *2007.)*

23
24 *Rule 8.147 amended effective January 1, 2007; repealed and adopted as rule 10 effective January*
25 *1, 2002; previously amended and renumbered effective January 1, 2007.*

26
27
28 **Rule 8.155. Augmenting and correcting the record**

29
30 **(a) Augmentation**

31
32 **(1) * * ***

33
34 **(2)** A party must attach to its motion a copy, if available, of any document
35 or transcript that it wants added to the record. The pages of the
36 attachments must be consecutively numbered, beginning with the
37 number one. If the reviewing court grants the motion it may augment
38 the record with the copy.

39
40 **(3)** If the party cannot attach a copy of the matter to be added, the party
41 must identify it as required under rules ~~8.120~~ 8.122 and 8.130.
42

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 (Subd (a) amended effective January 1, 2008; previously amended effective January 1,
2 2007.)

3
4 **(b)–(d) * * ***

5
6 *Rule 8.155 amended effective January 1, 2008; repealed and adopted as rule 12 effective January*
7 *1, 2002; previously amended and renumbered effective January 1, 2007.*

8
9
10 **Rule 8.200. Briefs by parties and amici curiae**

11
12 **(a)–(b) * * ***

13
14 **(c) Amicus curiae briefs**

15
16 (1) Within 14 days after the last appellant’s reply brief is filed or could
17 have been filed under rule 8.212, whichever is earlier, any person or
18 entity may serve and file an application for permission of the presiding
19 justice to file an amicus curiae brief. For good cause, the presiding
20 justice may allow later filing.

21
22 (2)–(5) * * *

23
24 (6) The Attorney General may file an amicus curiae brief without the
25 presiding justice’s permission, unless the brief is submitted on behalf of
26 another state officer or agency. The Attorney General must serve and
27 file the brief within 14 days after the last ~~respondent’s~~ appellant’s reply
28 brief is filed or could have been filed under rule 8.212, whichever is
29 earlier, and must provide the information required by (2) and comply
30 with (4). Any party may serve and file an answer within 14 days after
31 the brief is filed.

32
33 (Subd (c) amended effective January 1, 2008; adopted as subd (b) effective January 1,
34 2002; relettered effective January 1, 2003; previously amended effective January 1, 2007.)

35
36 *Rule 8.200 amended effective January 1, 2008; repealed and adopted as rule 13 effective January*
37 *1, 2002; previously amended effective January 1, 2003; previously amended and renumbered*
38 *effective January 1, 2007.*

39
40 **Advisory Committee Comment**

41
42 **Subdivision (b). * * ***

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,

effective on January 1, 2008.

1 Subdivision (c). The time within which a reply brief “could have been filed under rule 8.212”
2 includes any authorized extension of the deadline specified in rule 8.212.

3
4
5 **Rule 8.204. Contents and form of briefs**

6
7 **(a)–(e) * * ***

8
9 *Rule 8.204 amended effective January 1, 2008; repealed and adopted as rule 14 effective January*
10 *1, 2002; previously amended effective January 1, 2004, July 1, 2004, and January 1, 2006;*
11 *previously amended and renumbered effective January 1, 2007.*

12
13 **Advisory Committee Comment**

14
15 **Subdivision (b).** The first sentence of subdivision (b)(1) confirms that any method of
16 reproduction is acceptable provided it results in a clear black image of letter quality. The
17 provision is derived from subdivision (a)(1) of rule 32 of the Federal Rules of Appellate
18 Procedure (28 U.S.C.) (FRAP 32).

19
20 Paragraphs (2), (3), and (4) of subdivision (b) state requirements of *typeface*, *type style*, and *type*
21 *size* (see also subd. (b)(11)(C)). The first two terms are defined in *The Chicago Manual of Style*
22 (15th ed., 2003) p. 839. Note that computer programs often refer to typeface as “font.”

23
24 Subdivision (b)(2) allows the use of any conventional typeface—e.g., Times New Roman,
25 Courier, Arial, Helvetica, etc.—and permits the typeface to be either proportionally spaced or
26 monospaced.

27
28 Subdivision (b)(3) requires the type style to be roman, but permits the use of italics, boldface, or
29 underscoring for emphasis; it also requires case names to be italicized or underscored. These
30 provisions are derived from FRAP 32(a)(6).

31
32 Subdivision (b)(5) allows headings to be single-spaced; it is derived from FRAP 32(a)(4). The
33 provision also permits quotations of any length to be block-indented and single-spaced at the
34 discretion of the brief writer.

35
36 See also rule 1.200 concerning the format of citations. Brief writers are encouraged to follow the
37 citation form of the *California Style Manual* (4th ed., 2000).

38
39 **Subdivision (c). * * ***

40
41 **Subdivision (d). * * ***

42
43 **Subdivision (e). * * ***

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1
2 **Rule 8.208. Certificate of Interested Entities or Persons**

3
4 (a) * * *

5
6 **(b) Application**

7
8 This rule applies in appeals in civil cases other than family, juvenile,
9 guardianship, and conservatorship cases.

10
11 *(Subd (b) adopted effective January 1, 2008.)*

12
13 ~~(b)~~(c) * * *

14
15 *(Subd (c) relettered effective January 1, 2008; adopted as subd (b) July 1, 2006.)*

16
17 **~~(e)~~(d) Serving and filing a certificate**

18
19 (1) Except as otherwise provided in this rule, if a party files a motion, an
20 application, or an opposition to such motion or application in the Court
21 of Appeal before filing its principal brief, the party must serve and file
22 its certificate at the time it files the first such motion, application, or
23 opposition and must include a copy of this certificate in the party's
24 principal brief. If no motion, application, or opposition to such motion
25 or application is filed before the parties file their principal briefs, each
26 party must serve and file a certificate at the time it files its first
27 document in the Court of Appeal. Each party must also include a copy
28 of the its certificate in its principal brief. The certificate must appear
29 after the cover and before the tables. If the identity of any party has not
30 been publicly disclosed in the proceedings, the party may serve and file
31 an application for permission to file its certificate under seal separately
32 from its principal brief, motion, application, or opposition.

33
34 (2) If a party fails to file a certificate as required under (1), the clerk must
35 notify the party by mail that the party must file the certificate within 15
36 days after the clerk's notice is mailed and that ~~failure~~ if the party fails
37 to comply, will the court may result in impose one of the following
38 sanctions:

39
40 (A) If the party is the appellant, the court ~~will~~ may strike the
41 document or dismiss the appeal; or
42

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 (B) If the party is the respondent, the court ~~will~~may strike the
2 document or decide the appeal on the record, the opening brief,
3 and any oral argument by the appellant.
4

5 (3) If the party fails to ~~comply with~~ file the certificate as specified in the
6 notice under (2), the court may impose the sanctions specified in the
7 notice.
8

9 *(Subd (d) amended and relettered effective January 1, 2008; adopted as subd (c) July 1,*
10 *2006.)*

11
12 ~~(d)~~(e) * * *

13
14 *(Subd (e) relettered effective January 1, 2008; adopted as subd (d) July 1, 2006; previously*
15 *amended effective January 1, 2007.)*

16
17 ~~(e)~~(f) **Supplemental information**

18
19 A party that learns of changed or additional information that must be
20 disclosed under ~~(d)~~(e) must promptly serve and file a supplemental
21 certificate in the reviewing court.
22

23 *(Subd (f) amended and relettered effective January 1, 2008; adopted as subd (e) July 1,*
24 *2006.)*

25
26 *Rule 8.208 amended January 1, 2008; adopted as rule 14.5 effective July 1, 2006; previously*
27 *amended and renumbered effective January 1, 2007.*

28
29 **Advisory Committee Comment**

30
31 The Judicial Council has adopted an optional form, *Certificate of Interested Entities or Persons*
32 (form APP-008), that can be used to file the certificate required by this rule.

33
34 **Subdivision ~~(d)~~(e).** This subdivision requires a party to list on its certificate entities or persons
35 that the party *knows* have specified interests. This subdivision does not impose a duty on a party
36 to gather information not already known by that party.
37

38
39 **Rule 8.212. Service and filing of briefs**

40
41 ~~(a)~~(b) * * *
42

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 (c) **Service**

2
3 (1) ~~A~~ One copy of each brief must be served on the superior court clerk for
4 delivery to the trial judge.

5
6 (2) One electronic copy or four paper copies of each brief must be served
7 on the Supreme Court as provided in either (A) or (B).

8
9 (A) One copy of each brief may be served on the Supreme Court
10 electronically by sending the copy to the Supreme Court's
11 electronic notification address.

12
13 (i) The copy must be a single computer file in text-searchable
14 Portable Document Format (PDF), and it must exactly
15 duplicate the appearance of the paper copy, including the
16 order and pagination of all of the brief's components. By
17 electronically serving the copy, the filer certifies that the
18 copy complies with these requirements and that all
19 reasonable steps have been taken to ensure that the copy
20 does not contain computer code, including viruses, that
21 might be harmful to the court's electronic filing system and
22 to other users of that system.

23
24 (ii) If the Court of Appeal has ordered the brief sealed, the party
25 -serving the brief must include as the first page in the PDF
26 document a cover sheet that contains the information
27 required by rule 8.204(b)(10) and labels the contents as
28 "CONDITIONALLY UNDER SEAL." The Court of Appeal
29 clerk must promptly notify the Supreme Court of any court
30 order unsealing the brief. In the absence of such notice, the
31 Supreme Court clerk must keep all copies of the brief under
32 seal.

33
34 (B) Instead of serving an electronic copy, four paper copies of each
35 brief ~~filed in a civil appeal must~~ may be served on the Supreme
36 Court. If the Court of Appeal has ordered the brief sealed, ~~(A) the~~
37 party serving the brief must place all four copies of the brief in a
38 sealed envelope and attach a cover sheet that contains the
39 information required by rule 8.204(b)(10) and labels the contents
40 as "CONDITIONALLY UNDER SEAL," ~~and (B) The Court of~~
41 Appeal clerk must promptly notify the Supreme Court of any

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 court order unsealing the brief. In the absence of such notice the
2 Supreme Court clerk must keep all copies of the brief under seal.

- 3
4 (3) A One copy of each brief must be served on a public officer or agency
5 when required by rule 8.29.

6
7 *(Subd (c) amended effective January 1, 2008; previously amended effective January 1,*
8 *2004, January 1, 2005, and January 1, 2007.)*

9
10 *Rule 8.212 amended effective January 1, 2008; repealed and adopted as rule 15 effective January*
11 *1, 2002; previously amended effective January 1, 2003, January 1, 2004, January 1, 2005, and*
12 *July 1, 2005; previously amended and renumbered effective January 1, 2007.*

13
14 **Advisory Committee Comment**

15
16 **Subdivision (b).** * * *

17
18 **Subdivision (c).** In subdivision (c)(2) the word “brief” means only (1) an appellant’s opening
19 brief, (2) a respondent’s brief, (3) an appellant’s reply brief, (4) a petition for rehearing, (5) an
20 answer thereto, or (6) an amicus curiae brief. It follows that no other documents or papers filed in
21 the Court of Appeal, whatever their nature, should be served on the Supreme Court. Further, only
22 briefs filed in the Court of Appeal “in a civil appeal” must be served on the Supreme Court. It
23 follows that no briefs filed in the Court of Appeal in criminal appeals or in original proceedings
24 should be served on the Supreme Court.

25
26 **Subdivision (c).** “Electronic notification address” is defined in rule 2.250. The Supreme Court’s
27 electronic filing address can be found on the California Courts Web site at
28 www.courtinfo.ca.gov/courts/supreme.

29
30
31 **Rule 8.220. Failure to file a brief**

32
33 **(a) Notice to file**

34
35 If a party fails to timely file an appellant’s opening brief or a respondent’s
36 brief, the reviewing court clerk must promptly notify the party by mail that
37 the brief must be filed within 15 days after the notice is mailed and that if the
38 party fails failure to comply will result in, the court may impose one of the
39 following sanctions:

- 40
41 (1) If the brief is an appellant’s opening brief, the court ~~will~~ may dismiss
42 the appeal;

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 (2) If the brief is a respondent’s brief, the court ~~will~~ may decide the appeal
2 on the record, the opening brief, and any oral argument by the
3 appellant.
4

5 *(Subd (a) amended effective January 1, 2008; previously amended effective January 1,*
6 *2007.)*
7

8 **(b) * * ***
9

10 **(c) Sanction**
11

12 If a party fails to ~~comply with~~ to file the brief as specified in a notice under
13 (a), the court may impose the sanction specified in the notice.
14

15 *(Subd (c) amended effective January 1, 2008.)*
16

17 **(d) * * ***
18

19 *Rule 8.220 amended effective January 1, 2008; repealed and adopted as rule 17 effective January*
20 *1, 2002; previously amended and renumbered effective January 1, 2007.*
21

22 **Rule 8.224. Transmitting exhibits**
23

24 **(a) Notice of designation**
25

26 (1) Within 10 days after the last respondent’s brief is filed or could be filed
27 under rule 8.220, a party wanting the reviewing court to consider any
28 original exhibits that were admitted in evidence, refused, or lodged but
29 that were not copied in the clerk’s transcript under rule ~~8.120~~ 8.122 or
30 the appendix under rule 8.124 must serve and file a notice in superior
31 court designating such exhibits.
32

33 (2)–(3) * * *
34

35 *(Subd (a) amended effective January 1, 2008; previously amended effective January 1,*
36 *2007.)*
37

38 **(b)–(d) * * ***
39

40 *Rule 8.224 amended effective January 1, 2008; repealed and adopted as rule 18 effective January*
41 *1, 2002; previously amended and renumbered effective January 1, 2007.*
42

43 **Advisory Committee Comment**

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1
2 **Subdivision (b).** Subdivision (b)(2) provides a procedure by which parties send designated
3 exhibits directly to the reviewing court in cases in which the superior court has returned the
4 exhibits to the parties under Code of Civil Procedure section 1952 or other provision. (See also
5 rule 8.1202(a)(5)(3).)

6
7 **Subdivision (c) * * ***
8
9

10 **Rule 8.272. Remittitur**

11
12 **(a) ~~Proceedings requiring~~ Issuance of remittitur**

13
14 A Court of Appeal must issue a remittitur after a decision in:

15
16 (1) ~~an appeal;~~ or

17
18 (2) ~~An original proceeding, except when the court denies a writ petition~~
19 ~~without issuing an alternative writ or order to show cause.~~

20
21 *(Subd (a) amended effective January 1, 2008; previously amended effective January 1,*
22 *2007.)*

23
24 **(b)-(d) * * ***
25

26 *Rule 8.272 amended effective January 1, 2008; repealed and adopted as rule 26 effective January*
27 *1, 2003; previously amended effective January 1, 2007.*

28
29 **Advisory Committee Comment**

30
31 See rule 8.386 for provisions addressing remittitur in habeas corpus proceedings and rule 8.499
32 for provisions addressing remittitur in other writ proceedings.
33
34

35 **Rule 8.276. ~~Costs and~~ Sanctions**

36
37 **(a) ~~Right to costs~~**

38
39 (1) ~~Except as provided in this rule, the party prevailing in the Court of~~
40 ~~Appeal in a civil case is entitled to costs on appeal.~~
41

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,

effective on January 1, 2008.

1 ~~(2) The prevailing party is the respondent if the Court of Appeal affirms the~~
2 ~~judgment without modification or dismisses the appeal. The prevailing~~
3 ~~party is the appellant if the court reverses the judgment in its entirety.~~
4

5 ~~(3) If the court reverses the judgment in part or modifies it, or if there is~~
6 ~~more than one notice of appeal, the opinion must specify the award or~~
7 ~~denial of costs.~~
8

9 ~~(4) If the interests of justice require it, the court may award or deny costs as~~
10 ~~it deems proper.~~
11

12 ~~(5) In probate cases, the prevailing party must be awarded costs unless the~~
13 ~~Court of Appeal orders otherwise, but the superior court must decide~~
14 ~~who will pay the award.~~
15

16 ~~**(b) Judgment for costs**~~
17

18 ~~(1) The Court of Appeal clerk must enter on the record, and insert in the~~
19 ~~remittitur, a judgment awarding costs to the prevailing party under~~
20 ~~(a)(2) or as directed by the court under (a)(3) or (a)(4).~~
21

22 ~~(2) If the clerk fails to enter judgment for costs, the court may recall the~~
23 ~~remittitur for correction on its own motion, or on a party's motion made~~
24 ~~not later than 30 days after the remittitur issues.~~
25

26 ~~**(c) Recoverable costs**~~
27

28 ~~(1) A party may recover only the following costs, if reasonable:~~
29

30 ~~(A) The amount the party paid for any portion of the record, whether~~
31 ~~an original or a copy or both. The cost to copy parts of a prior~~
32 ~~record under rule 8.147(b)(2) is not recoverable unless the Court of~~
33 ~~Appeal ordered the copying;~~
34

35 ~~(B) The cost to produce additional evidence on appeal;~~
36

37 ~~(C) The costs to notarize, serve, mail, and file the record, briefs, and~~
38 ~~other papers;~~
39

40 ~~(D) The cost to print and reproduce any brief, including any petition~~
41 ~~for rehearing or review, answer, or reply; and~~

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1
2 ~~(E)~~—The cost to procure a surety bond, including the premium and the
3 cost to obtain a letter of credit as collateral, unless the trial court
4 determines the bond was unnecessary.
5

6 ~~(2)~~—Unless the court orders otherwise, an award of costs neither includes
7 attorney’s fees on appeal nor precludes a party from seeking them under
8 rule 3.1702.
9

10 ~~(d)~~—**Procedure for claiming or opposing costs**

11
12 ~~(1)~~—Within 40 days after the clerk sends notice of issuance of the remittitur,
13 a party claiming costs awarded by a reviewing court must serve and file
14 in the superior court a verified memorandum of costs under rule 3.1700.
15

16 ~~(2)~~—A party may serve and file a motion in the superior court to strike or tax
17 costs claimed under (1) in the manner required by rule 3.1700.
18

19 ~~(3)~~—An award of costs is enforceable as a money judgment.
20

21 ~~(e)~~**(a) Grounds for sanctions**

22
23 ~~(1)~~—On motion of a party’s or its own motion, a Court of Appeal may impose
24 sanctions, including the award or denial of costs under rule 8.278, on a
25 party or an attorney for:
26

27 ~~(A)~~(1) Taking a frivolous appeal or appealing solely to cause delay;
28

29 ~~(B)~~(2) Including in the record any matter not reasonably material to the
30 appeal’s determination; ~~or~~
31

32 (3) Filing a frivolous motion; or
33

34 ~~(C)~~(4) Committing any other unreasonable violation of these rules.
35

36 *(Subd (a) amended and relettered effective January 1, 2008; adopted as subd (e) effective*
37 *January 1, 2003; previously amended effective January 1, 2007.)*
38

39 **(b) Motions for sanctions**

40
41 ~~(2)~~(1) A party’s motion under ~~(1)~~(a) must include a declaration supporting
42 the amount of any monetary sanction sought and must be served and

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 filed before any order dismissing the appeal but no later than 10 days
2 after the appellant's reply brief is due.

3
4 (2) If a party ~~moves~~ files a motion for sanctions with a motion to dismiss
5 the appeal, ~~with or without a sanctions motion~~, and the motion to
6 dismiss is not granted, the party may ~~move~~ file a new motion for
7 sanctions within 10 days after the appellant's reply brief is due.

8
9 *(Subd (b) amended and lettered effective January 1, 2008; adopted as part of subd (e)*
10 *effective January 1, 2003; previously amended effective January 1, 2007.)*

11
12 **(c) Notice**

13
14 ~~(3)~~ The court must give notice in writing if it is considering imposing
15 sanctions.

16
17 *(Subd (c) amended and lettered effective January 1, 2008; adopted as part of subd (e)*
18 *effective January 1, 2003; previously amended effective January 1, 2007.)*

19
20 **(d) Opposition**

21
22 Within 10 days after the court sends such notice, a party or attorney may
23 serve and file an opposition, but failure to do so will not be deemed consent.
24 An opposition may not be filed unless the court sends such notice.

25
26 *(Subd (d) amended and lettered effective January 1, 2008; adopted as part of subd (e)*
27 *effective January 1, 2003; previously amended effective January 1, 2007.)*

28
29 **(e) Oral argument**

30
31 ~~(4)~~ Unless otherwise ordered, oral argument on the issue of sanctions must
32 be combined with oral argument on the merits of the appeal.

33
34 *(Subd (e) amended and lettered effective January 1, 2008; adopted as part of subd (e)*
35 *effective January 1, 2003; previously amended effective January 1, 2007.)*

36
37 *Rule 8.276 amended effective January 1, 2008; repealed and adopted as rule 27 effective January*
38 *1, 2003; previously amended and renumbered effective January 1, 2007.*

39
40 **Advisory Committee Comment**

41
42 ~~Rule 8.276 applies only to costs in appeals in ordinary civil cases; it is not intended to expand the~~
43 ~~categories of appeals subject to the award of costs.~~

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,

effective on January 1, 2008.

1
2 **Subdivision (c).** ~~Subdivision (c)(1)(A) is intended to refer not only to a normal record prepared~~
3 ~~by the clerk and the reporter under rules 8.120 and 8.130, but also, for example, to an appendix~~
4 ~~prepared by a party under rule 8.124 and to a superior court file to which the parties stipulate~~
5 ~~under rule 8.128.~~

6
7 **Subdivision (d).** ~~Subdivision (d)(2) provides the procedure for a party to move in the trial court~~
8 ~~to strike or tax costs that another party has claimed under subdivision (d)(1). It is not intended~~
9 ~~that the trial court's authority to strike or tax unreasonable costs be limited by any failure of the~~
10 ~~moving party to move for sanctions in the Court of Appeal under subdivision (e); a party may~~
11 ~~seek to strike or tax costs on the ground that an opponent included unnecessary materials in the~~
12 ~~record even if the party did not move the Court of Appeal to sanction the opponent under~~
13 ~~subdivision (e)(1)(B).~~

14
15
16 **Rule 8.278. Costs on appeal**

17
18 **(a) Award of costs**

- 19
20 (1) Except as provided in this rule, the party prevailing in the Court of
21 Appeal in a civil case other than a juvenile case is entitled to costs on
22 appeal.
23
24 (2) The prevailing party is the respondent if the Court of Appeal affirms
25 the judgment without modification or dismisses the appeal. The
26 prevailing party is the appellant if the court reverses the judgment in its
27 entirety.
28
29 (3) If the Court of Appeal reverses the judgment in part or modifies it, or if
30 there is more than one notice of appeal, the opinion must specify the
31 award or denial of costs.
32
33 (4) In probate cases, the prevailing party must be awarded costs unless the
34 Court of Appeal orders otherwise, but the superior court must decide
35 who will pay the award.
36
37 (5) In the interests of justice, the Court of Appeal may also award or deny
38 costs as it deems proper.
39

40 **(b) Judgment for costs**

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 (1) The Court of Appeal clerk must enter on the record, and insert in the
2 remittitur, a judgment awarding costs to the prevailing party under
3 (a)(2) or as directed by the court under (a)(3), (a)(4), or (a)(5).
4

5 (2) If the clerk fails to enter judgment for costs, the court may recall the
6 remittitur for correction on its own motion, or on a party's motion made
7 not later than 30 days after the remittitur issues.
8

9 **(c) Procedure for claiming or opposing costs**

10
11 (1) Within 40 days after the clerk sends notice of issuance of the remittitur,
12 a party claiming costs awarded by a reviewing court must serve and file
13 in the superior court a verified memorandum of costs under rule
14 3.1700.
15

16 (2) A party may serve and file a motion in the superior court to strike or tax
17 costs claimed under (1) in the manner required by rule 3.1700.
18

19 (3) An award of costs is enforceable as a money judgment.
20

21 **(d) Recoverable costs**

22
23 (1) A party may recover only the following costs, if reasonable:
24

25 (A) Filing fees;
26

27 (B) The amount the party paid for any portion of the record, whether
28 an original or a copy or both. The cost to copy parts of a prior
29 record under rule 8.147(b)(2) is not recoverable unless the Court
30 of Appeal ordered the copying;
31

32 (C) The cost to produce additional evidence on appeal;
33

34 (D) The costs to notarize, serve, mail, and file the record, briefs, and
35 other papers;
36

37 (E) The cost to print and reproduce any brief, including any petition
38 for rehearing or review, answer, or reply; and
39

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 (F) The cost to procure a surety bond, including the premium and the
2 cost to obtain a letter of credit as collateral, unless the trial court
3 determines the bond was unnecessary.
4

5 (2) Unless the court orders otherwise, an award of costs neither includes
6 attorney’s fees on appeal nor precludes a party from seeking them
7 under rule 3.1702.
8

9 *Rule 8.278 adopted effective January 1, 2008.*

10 **Advisory Committee Comment**

11
12 This rule is not intended to expand the categories of appeals subject to the award of costs. See
13 rule 8.490(m) for provisions addressing costs in writ proceedings.

14
15
16 **Subdivision (c).** Subdivision (c)(2) provides the procedure for a party to move in the trial court to
17 strike or tax costs that another party has claimed under subdivision (c)(1). It is not intended that
18 the trial court’s authority to strike or tax unreasonable costs be limited by any failure of the
19 moving party to move for sanctions in the Court of Appeal under rule 8.276; a party may seek to
20 strike or tax costs on the ground that an opponent included unnecessary materials in the record
21 even if the party did not move the Court of Appeal to sanction the opponent under that rule.
22

23 **Subdivision (d).** Subdivision (d)(1)(B) is intended to refer not only to a normal record prepared
24 by the clerk and the reporter under rules 8.122 and 8.130 but also, for example, to an appendix
25 prepared by a party under rule 8.124 and to a superior court file to which the parties stipulate
26 under rule 8.128.
27

28
29 **Rule 8.308. Time to appeal**

30
31 (b) * * *

32
33 (b) **Cross-appeal**

34
35 If the defendant or the People timely appeals from a judgment or appealable
36 order, the time for any other party to appeal from the same judgment or order
37 is ~~extended until~~ either the time specified in (a) or 30 days after the superior
38 court clerk mails notification of the first appeal, whichever is later.

39
40 *(Subd (b) amended effective January 1, 2008; adopted effective January 1, 2007.)*

41
42 (c)–(e) * * *

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 *Rule 8.308 amended effective January 1, 2008; adopted as rule 30.1 effective January 1, 2004;*
2 *previously amended and renumbered effective January 1, 2007; previously amended effective*
3 *January 1, 2005, and July 1, 2007.*

4
5
6 **Rule 8.320. Normal record; exhibits**

7
8 (a) * * *

9
10 (b) **Clerk's transcript**

11
12 The clerk's transcript must contain:

13
14 (1)–(3) * * *

15
16 (4) All jury instructions that any party submitted in writing, each one and
17 the cover page required by rule 2.1055(b)(2) indicating the party
18 requesting it each instruction, and any written jury instructions given by
19 the court;

20
21 (5)–(13) * * *

22
23 *(Subd (b) amended effective January 1, 2008; previously amended effective January 1,*
24 *2005, and January 1, 2007.)*

25
26 (c)–(g) * * *

27
28 *Rule 8.320 amended effective January 1, 2008; repealed and adopted as rule 31 effective January*
29 *1, 2004; previously amended effective January 1, 2005; previously amended and renumbered*
30 *effective January 1, 2007.*

31
32
33 **Rule 8.366. Hearing and decision in the Court of Appeal**

34
35 Rules ~~8.248~~ 8.252 through ~~8.276~~ 8.272 govern the hearing and decision in the
36 Court of Appeal of an appeal in a criminal case. Except for (a)(1), rule 8.276 also
37 applies in criminal appeals.

38
39 *Rule 8.366 amended effective January 1, 2008; adopted as rule 33.1 effective January 1, 2004;*
40 *previously amended and renumbered effective January 1, 2007.*

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 **Rule 8.386. Remittitur in habeas corpus proceedings**

2
3 A Court of Appeal must issue a remittitur in a habeas corpus proceeding under this
4 chapter except when the court denies the petition without issuing an order to show
5 cause. Rule 8.272(b)–(d) governs issuance of a remittitur in habeas corpus
6 proceedings.

7
8 *Rule 8.386 adopted effective January 1, 2008.*
9

10
11 **Rule 8.400. Appeals in juvenile cases generally**

12
13 (a)–(c) * * *

14
15 **(d) Time to appeal**

- 16
17 (1) Except as provided in (2) and (3), a notice of appeal must be filed
18 within 60 days after the rendition of the judgment or the making of the
19 order being appealed. Except as provided in rule 8.66, no court may
20 extend the time to file a notice of appeal.
21
22 (2) In matters heard by a referee not acting as a temporary judge, a notice
23 of appeal must be filed within 60 days after the referee's order becomes
24 final under rule 5.540(c).
25
26 (3) When an application for rehearing of an order of a referee not acting as
27 a temporary judge is denied under rule 5.542, a notice of appeal from
28 the referee's order must be filed within 60 days after that order is
29 served under rule 5.538(b)(3) or 30 days after entry of the order
30 denying rehearing, whichever is later.

31
32 *(Subd (d) amended effective January 1, 2008; previously amended effective January 1,*
33 *2007.)*
34

35 **(4)(e) Cross-appeal**

36
37 If an appellant timely appeals from a judgment or appealable order, the time
38 for any other party to appeal from the same judgment or order is ~~extended~~
39 until either the time specified in (d) or 20 days after the superior court clerk
40 mails notification of the first appeal, whichever is later.
41

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 *(Subd (e) amended and relettered effective January 1, 2008; adopted as part of subd (d)*
2 *effective January 1, 2005; previously amended effective January 1, 2007.)*

3
4 **(e)(f) * * ***

5
6 *(Subd (f) relettered effective January 1, 2008; adopted as subd (e) effective January 1,*
7 *2006.)*

8
9 **(f)(g) * * ***

10
11 *(Subd (g) relettered effective January 1, 2008; adopted as subd (e) effective January 1,*
12 *2005; previously relettered as subd (f) effective January 1, 2006.)*

13
14 **(g)(h) * * ***

15
16 *(Subd (h) relettered effective January 1, 2008; adopted as subd (f) effective January 1,*
17 *2005; previously relettered effective January 1, 2006; previously amended effective*
18 *January 1, 2007.)*

19
20 *Rule 8.400 amended effective January 1, 2008; adopted as rule 37 effective January 1, 2005;*
21 *previously amended effective January 1, 2006; previously amended and renumbered effective*
22 *January 1, 2007.*

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

27
28 **(a)–(b) * * ***

29
30 **(c) Who may file**

31
32 The petitioner's trial counsel, or, ~~—or, if the petitioner was not represented by~~
33 ~~counsel at the hearing at which the section 366.26 hearing was set, the~~
34 ~~petitioner—~~ in the absence of trial counsel, the party, is responsible for filing
35 any notice of intent and writ petition under rules 8.450–8.452. Trial counsel
36 is encouraged to seek assistance from or consult with attorneys experienced
37 in writ procedure.

38
39 *(Subd (c) amended effective January 1, 2008; previously amended effective January 1,*
40 *2007.)*

41
42 **(d)–(f) * * ***

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 **(g) Preparing the record**

2
3 When the notice of intent is filed, the superior court clerk must:

4
5 (1) Immediately notify the reporter by telephone and in writing to prepare a
6 reporter's transcript of the oral proceedings at each session of the
7 hearing that resulted in the order under review and deliver the transcript
8 to the clerk within 12 calendar days after the notice of intent is filed;
9 and

10
11 (2) * * *

12
13 *(Subd (g) amended effective January 1, 2008; previously amended effective January 1,*
14 *2006, and January 1, 2007.)*

15
16 **(h)–(i) * * ***

17
18 *Rule 8.450 amended effective January 1, 2008; adopted as rule 38 effective January 1, 2005;*
19 *previously amended effective January 1, 2006, and July 1, 2006; previously amended and*
20 *renumbered effective January 1, 2007.*

21
22
23 **Rule 8.454. Notice of intent to file writ petition under Welfare and**
24 **Institutions Code section 366.28 to review order designating specific**
25 **placement of a dependent child after termination of parental rights**

26
27 **(a)–(b) * * ***

28
29 **(c) Who may file**

30 The petitioner's trial counsel, or, ~~or, if the petitioner was not represented by~~
31 ~~counsel at the hearing at which the posttermination placement order was~~
32 ~~issued, the petitioner~~ in the absence of trial counsel, the party, is
33 responsible for filing any notice of intent and writ petition under rules 8.454–
34 8.456. Trial counsel is encouraged to seek assistance from, or consult with,
35 attorneys experienced in writ procedure.

36
37 *(Subd (c) amended effective January 1, 2008; previously amended effective January 1,*
38 *2007.)*

39
40 **(d)–(g) * * ***

41

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 **(h) Preparing the record**

2
3 When the notice of intent is filed, the superior court clerk must:

4
5 (1) Immediately notify the reporter by telephone and in writing to prepare a
6 reporter's transcript of the oral proceedings at each session of the
7 hearing that resulted in the order under review and to deliver the
8 transcript to the clerk within 12 calendar days after the notice of intent
9 is filed; and

10
11 (2) * * *

12
13 *(Subd (h) amended effective January 1, 2008; adopted as subd (g) effective January 1,*
14 *2005; previously amended and relettered effective January 1, 2006; previously amended*
15 *effective July 1, 2006, and January 1, 2007.)*

16
17 **(i)-(j) * * ***

18
19 *Rule 8.454 amended effective January 1, 2008; adopted as rule 38.2 effective January 1, 2005;*
20 *previously amended effective January 1, 2006, and July 1, 2006; previously amended and*
21 *renumbered effective January 1, 2007.*

22
23
24 **Rule 8.490. Petitions for writ of mandate, certiorari, or prohibition**

25
26 **(a)-(h) * * ***

27
28 **(i) Certificate of Interested Entities or Persons**

29
30 (1) This subdivision applies in writ proceedings in civil cases other than
31 family, juvenile, guardianship, and conservatorship cases.

32
33 ~~(1)~~(2) Each party must comply with the requirements of rule 8.208
34 concerning serving and filing a Certificate of Interested Entities or
35 Persons.

36
37 ~~(2)~~(3) The petitioner's certificate must be included in the petition. The
38 certificates of the respondent and real party in interest must be included
39 in their preliminary opposition or, if no such opposition is filed, in their
40 return, if any. The certificate must appear after the cover and before the
41 tables. If the identity of any party has not been publicly disclosed in the
42 proceedings, the party may file an application for permission to file its

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 certificate under seal separately from the petition, preliminary
2 opposition, or return.

3
4 ~~(3)~~(4) If a party fails to file a certificate as required under ~~(1)~~(2) and ~~(2)~~(3),
5 the clerk must notify the party by mail that the party must file the
6 certificate within 10 days after the clerk's notice is mailed and that
7 ~~failure if the party fails to comply, will the court may result in impose~~
8 one of the following sanctions:

9
10 (A) If the party is the petitioner, the court ~~will~~ may strike the petition;
11 or

12
13 (B) If the party is the respondent or the real party in interest, the court
14 ~~will~~may strike the document.

15
16 ~~(4)~~(5) If the party fails to ~~comply with~~ file the certificate as specified in the
17 notice under ~~(3)~~(4), the court may impose the sanctions specified in the
18 notice.

19
20 *(Subd (i) amended effective January 1, 2008; adopted effective July 1, 2006; previously*
21 *amended effective January 1, 2007.)*

22
23 **(j)-(l) * * ***

24
25 **(m) Costs**

26
27 (1) Except in a criminal or juvenile or other proceeding in which a party is
28 entitled to court-appointed counsel;

29
30 (A) Unless otherwise ordered by the court under (B), the prevailing
31 party in an original proceeding is entitled to costs if the court
32 resolves the proceeding by written opinion after issuing an
33 alternative writ, an order to show cause, or a peremptory writ in
34 the first instance.

35
36 ~~(2)~~(B) In the interests of justice, the court may also award or deny costs as it
37 deems proper in the proceedings listed in (A) and in other
38 circumstances.

39
40 ~~(3)~~(2) The opinion or order resolving the proceeding must specify the award
41 or denial of costs.
42

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 (4)(3) Rule ~~8.276~~ 8.278(b)–(d) governs the procedure for recovering costs
2 under this rule.

3
4 *(Subd (m) amended effective January 1, 2008; adopted as subd (l) effective January 1,*
5 *2005; previously amended effective July 1, 2005, and January 1, 2007; relettered effective*
6 *July 1, 2006.)*

7
8 **(n) Sanctions**

9
10 (1) On motion of a party or its own motion, a Court of Appeal may impose
11 sanctions, including the award or denial of costs under (m), on a party
12 or an attorney for:

13
14 (A) Filing a frivolous petition or filing a petition solely to cause delay;
15 or

16
17 (B) Committing any other unreasonable violation of these rules.

18
19 (2) The court must give notice in writing if it is considering imposing
20 sanctions.

21
22 (3) Within 10 days after the court sends such notice, a party or attorney
23 may serve and file an opposition, but failure to do so will not be
24 deemed consent. An opposition may not be filed unless the court sends
25 such notice.

26
27 (4) Unless otherwise ordered, oral argument on the issue of sanctions must
28 be combined with any oral argument on the merits of the petition.

29
30 *(Subd (n) adopted effective January 1, 2008.)*

31
32 *Rule 8.490 amended effective January 1, 2008; repealed and adopted as rule 56 effective January*
33 *1, 2005; previously amended effective July 1, 2005, January 1, 2006, and July 1, 2006;*
34 *previously amended and renumbered effective January 1, 2007.*

35
36 **Advisory Committee Comment**

37 * * *

38
39 **Subdivision (i):** The Judicial Council has adopted an optional form, *Certificate of Interested*
40 *Entities or Persons* (form APP-008), that can be used to file the certificate required by this
41 provision.

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 **Rule 8.499. Remittitur**

2
3 A Court of Appeal must issue a remittitur in a writ proceeding under this chapter
4 except when the court denies the petition without issuing an alternative writ or
5 order to show cause. Rule 8.272(b)–(d) governs issuance of a remittitur in writ
6 proceedings under this chapter.

7
8 *Rule 8.499 adopted effective January 1, 2008.*
9

10
11 **Rule 8.520. Briefs by parties and amici curiae; judicial notice**

12
13 **(a)–(e) * * ***

14
15 **(f) Amicus curiae briefs**

16
17 (1) * * *

18
19 (2) The application must be filed no later than 30 days after all briefs that
20 the parties may file under this rule—other than supplemental briefs—
21 have been filed or were required to be filed. For good cause, the Chief
22 Justice may allow later filing if the applicant shows specific and
23 compelling reasons for the delay.

24
25 (3)–(7) * * *

26
27 *(Subd (f) amended effective January 1, 2008.)*
28

29 **(g)–(h) * * ***

30
31 *Rule 8.520 amended effective January 1, 2008; adopted as rule 29.1 effective January 1, 2003;*
32 *previously amended and renumbered effective January 1, 2007.*
33

34
35 **Rule 8.630. Briefs by parties and amici curiae**

36
37 **(a) * * ***

38
39 **(b) Length**

40
41 (1) A brief produced on a computer must not exceed the following limits,
42 including footnotes:

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

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41

(A) Appellant’s opening brief ~~and respondent’s brief: 95,200~~ 102,000 words.

(B) Respondent’s brief: 102,000 words. If the Chief Justice permits the appellant to file an opening brief that exceeds the limit set in (1)(A) or (3)(A), respondent’s brief may not exceed the length of appellant’s opening brief approved by the Chief Justice.

(C) Reply brief: 47,600 words.

~~(C)~~(D) Petition for rehearing and answer: 23,800 words each.

(2) A brief under (1) must include a certificate by appellate counsel stating the number of words in the brief; counsel may rely on the word count of the computer program used to prepare the brief.

(3) A typewritten brief must not exceed the following limits:

(A) Appellant’s opening brief ~~and respondent’s brief: 280~~ 300 pages.

(B) Respondent’s brief: 300 pages. If the Chief Justice permits the appellant to file an opening brief that exceeds the limit set in (1)(A) or (3)(A), respondent’s brief may not exceed the length of appellant’s opening brief approved by the Chief Justice.

(C) Reply brief: 140 pages.

~~(C)~~(D) Petition for rehearing and answer: 70 pages each.

(4) The tables, a certificate under (2), and any attachment permitted under rule 8.204(d) are excluded from the limits stated in (1) ~~or~~ and (3).

(5) On application, the Chief Justice may permit a longer brief for good cause. An application in any case in which the certified record is filed in the California Supreme Court on or after January 1, 2008, must comply with rule 8.631.

(Subd (b) amended effective January 1, 2008; previously amended effective January 1, 2007.)

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 (c)–(h) * * *

2
3 *Rule 8.630 amended effective January 1, 2008; repealed and adopted as rule 36 effective January*
4 *1, 2004; previously amended and renumbered effective January 1, 2007.*

5
6
7 **Rule 8.631. Applications to file overlength briefs in appeals from a judgment**
8 **of death**

9
10 **(a) Cases in which this rule applies**

11
12 This rule applies in appeals from a judgment of death in which the certified
13 record is filed in the California Supreme Court on or after January 1, 2008.

14
15 **(b) Policies**

16
17 (1) The brief limits set by rule 8.630 are substantially higher than for other
18 appellate briefs in recognition of the number, significance, and
19 complexity of the issues generally presented in appeals from judgments
20 of death and are designed to be sufficient to allow counsel to prepare
21 adequate briefs in the majority of such appeals.

22
23 (2) In a small proportion of such appeals, counsel may not be able to
24 prepare adequate briefs within the limits set by rule 8.630. In those
25 cases, necessary additional briefing will be permitted.

26
27 (3) A party may not file a brief that exceeds the limit set by rule 8.630
28 unless the court finds that good cause has been shown in an application
29 filed within the time limits set in (d).

30
31 **(c) Factors considered**

32
33 The court will consider the following factors in determining whether good
34 cause exists to grant an application to file a brief that exceeds the limit set by
35 rule 8.630:

36
37 (1) The unusual length of the record. A party relying on this factor must
38 specify the length of each of the following components of the record:

39
40 (A) The reporter's transcript;

41
42 (B) The clerk's transcript; and

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

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(C) The portion of the clerk’s transcript that is made up of juror questionnaires.

(2) The number of codefendants in the case and whether they were tried separately from the appellant;

(3) The number of homicide victims in the case and whether the homicides occurred in more than one incident;

(4) The number of other crimes in the case and whether they occurred in more than one incident;

(5) The number of rulings by the trial court on unusual, factually intensive, or legally complex motions that the party may assert are erroneous and prejudicial. A party relying on this factor must briefly describe the nature of these motions;

(6) The number of rulings on objections by the trial court that the party may assert are erroneous and prejudicial;

(7) The number and nature of unusual, factually intensive, or legally complex hearings held in the trial court that the party may assert raise issues on appeal; and

(8) Any other factor that is likely to contribute to an unusually high number of issues or unusually complex issues on appeal. A party relying on this factor must briefly specify those issues.

(d) Time to file and contents of application

(1) An application to file a brief that exceeds the limits set by rule 8.630 must be served and filed as follows:

(A) For an appellant’s opening brief or respondent’s brief:

(i) If counsel has not filed an application requesting an extension of time to file the brief, no later than 45 days before the brief is due.

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

- 1 (ii) If counsel has filed an application requesting an extension of
2 time to file the brief, within the time specified by the court
3 in its order regarding the extension of time.
4
- 5 (B) For an appellant’s reply brief:
6
- 7 (i) If counsel has not filed an application requesting an
8 extension of time to file the brief, no later than 30 days
9 before the brief is due.
10
- 11 (ii) If counsel has filed an application requesting an extension of
12 time to file the brief, within the time specified by the court
13 in its order regarding the extension of time.
14
- 15 (2) After the time specified in (1), an application to file a brief that exceeds
16 the applicable limit may be filed only under the following
17 circumstances:
18
- 19 (A) New authority substantially affects the issues presented in the
20 case and cannot be adequately addressed without exceeding the
21 applicable limit. Such an application must be filed within 30 days
22 of finality of the new authority; or
23
- 24 (B) Replacement counsel has been appointed to represent the
25 appellant and has determined that it is necessary to file a brief that
26 exceeds the applicable limit. Such an application must be filed
27 within the time specified by the court in its order setting the
28 deadline for replacement counsel to file the appellant’s brief.
29
- 30 (3) The application must:
31
- 32 (A) State the number of additional words or typewritten pages
33 requested.
34
- 35 (B) State good cause for granting the additional words or pages
36 requested, consistent with the factors in (c). The number of
37 additional words or pages requested must be commensurate with
38 the good cause shown. The application must explain why the
39 factors identified demonstrate good cause in the particular case.
40 The application must not state mere conclusions or make legal
41 arguments regarding the merits of the issues on appeal.

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1
2 (C) Not exceed 5,100 words if produced on a computer or 15 pages if
3 typewritten.

4
5 *Rule 8.631 adopted effective January 1, 2008.*

6
7 **Advisory Committee Comment**

8
9 **Subdivision (a).** In all cases in which a judgment of death was imposed after a trial that began
10 after January 1, 1997, the record filed with the Supreme Court will be the record that has been
11 certified for accuracy under rule 8.622. In cases in which a judgment of death was imposed after a
12 trial that began before January 1, 1997, the record filed with the Supreme Court will be the
13 certified record under rule 8.625.

14
15 **Subdivision (c)(1)(A).** As in guideline 8 of the Supreme Court’s Guidelines for Fixed Fee
16 Appointments, juror questionnaires generally will not be taken into account in considering
17 whether the length of the record is unusual unless these questionnaires are relevant to an issue on
18 appeal. A record of 10,000 pages or less, excluding juror questionnaires, is not considered a
19 record of unusual length; 70 percent of the records in capital appeals filed between 2001 and 2004
20 were 10,000 pages or less, excluding juror questionnaires.

21
22 **Subdivision (c)(1)(E).** Examples of unusual, factually intensive, or legally complex motions
23 include motions to change venue, admit scientific evidence, or determine competency.

24
25 **Subdivisions (c)(1)(E)–(I).** Because an application must be filed before briefing is completed, the
26 issues identified in the application will be those that the party anticipates *may* be raised on appeal.
27 If the party does not ultimately raise all of these issues on appeal, the party is expected to have
28 reduced the length of the brief accordingly.

29
30 **Subdivision (c)(1)(I).** Examples of unusual, factually intensive, or legally complex hearings
31 include jury composition proceedings and hearings to determine the defendant’s competency or
32 sanity, whether the defendant is mentally retarded, and whether the defendant may represent
33 himself or herself.

34
35 **Subdivision (d)(1)(A)(ii).** To allow the deadline for an application to file an overlength brief to be
36 appropriately tied to the deadline for filing that brief, if counsel requests an extension of time to
37 file a brief, the court will specify in its order regarding the request to extend the time to file the
38 brief, when any application to file an overlength brief is due. Although the order will specify the
39 deadline by which an application must be filed, counsel are encouraged to file such applications
40 sooner, if possible.

41
42 **Subdivision (d)(3).** These requirements apply to applications filed under either (d)(1) or (d)(2).

43
44
45 **Rule 8.1008. Transfer**
46

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 (a) * * *

2
3 (b) **Petition to transfer**

4
5 (1) * * *

6
7 (2) The petition must be served and filed within ~~eight~~ 15 days after the
8 appellate division judgment is final in that court and must show
9 delivery of a copy to the appellate division.

10
11 (3) * * *

12
13 (4) ~~Within seven days after the petition is filed, any other party may serve~~
14 ~~and file an answer. A party must not file an answer to a petition for~~
15 ~~transfer unless the court requests an answer. The clerk must promptly~~
16 ~~send to the parties copies of any order requesting an answer and~~
17 ~~immediately notify the parties by telephone or another expeditious~~
18 ~~method. Any answer must be served and filed within 10 days after the~~
19 ~~order is filed unless the court orders otherwise. A petition for transfer~~
20 ~~normally will not be granted unless the court has requested an answer.~~

21
22 (5) * * *

23
24 *(Subd (b) amended effective January 1, 2008; previously amended effective July 1, 2003;*
25 *and January 1, 2007.)*

26
27 (c)–(f) * * *

28
29 *Rule 8.1008 amended effective January 1, 2008; repealed and adopted as rule 64 effective*
30 *January 1, 2003; previously amended effective July 1, 2003; previously amended and*
31 *renumbered effective January 1, 2007.*

32
33
34
35
36 **Rule 10.44. Probate and Mental Health Advisory Committee**

37
38 (a)–(b) * * *

39
40 (c) **Membership**

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 The committee must include at least one member from each of the following
2 categories:

3
4 (1)–(2) * * *

5
6 (3) ~~Lawyer, or examiner, or probate investigator~~ who works for the court
7 on probate or mental health matters;

8
9 (4) Investigator who works for the court to investigate probate
10 guardianships or conservatorships;

11
12 ~~(4)(5)~~ Person knowledgeable in mental health or developmental ~~disabilities~~
13 disability law; ~~or~~

14
15 (6) Person knowledgeable in private management of probate matters in a
16 fiduciary capacity; and

17
18 ~~(5)(7)~~ County counsel, public guardian, or other similar public officer
19 familiar with guardianship and conservatorship issues.

20
21 *(Subd (c) amended effective January 1, 2008; previously amended effective January 1,*
22 *2007.)*

23
24 *Rule 10.44 amended effective January 1, 2008; adopted as rule 6.44 effective July 1, 2000;*
25 *previously amended and renumbered effective January 1, 2007.*

26
27
28 **Rule 10.48. Court Executives Advisory Committee**

29
30 (a)–(e) * * *

31
32 (f) **Chair and vice-chair**

33
34 The Chief Justice may appoints the chair and vice-chair of the committee for
35 up to a two-year term from the current membership of the Court Executives
36 Advisory Committee.

37
38 *(Subd (f) amended effective January 1, 2008; previously amended effective January 1,*
39 *2004, and January 1, 2007.)*

40
41 *Rule 10.48 amended effective January 1, 2008; adopted as rule 6.48 effective January 1, 1999;*
42 *previously amended effective January 1, 2004; previously amended and renumbered effective*
43 *January 1, 2007.*

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1
2
3 **Rule 10.780. Administration of alternative dispute resolution (ADR)**
4 **programs**

5
6 The rules in this chapter concern alternative dispute resolution (ADR) programs
7 administered by the trial courts. General provisions concerning ADR are located in
8 title 23, division 8.

9
10 *Rule 10.780 amended effective January 1, 2008; adopted effective January 1, 2007.*

11
12
13 **Rule 10.951. Duties of supervising judge of the criminal division**

14
15 (a) * * *

16
17 (b) **Arraignments, pretrial motions, and readiness conferences**

18
19 The presiding judge, supervising judge, or other designated judge must
20 conduct arraignments, hear and determine any pretrial motions, preside over
21 readiness conferences, and, where not inconsistent with law, assist in the
22 ~~deposition~~ disposition of cases without trial.

23
24 *(Subd (b) amended effective January 1, 2008; previously amended effective January 1,*
25 *2007.)*

26
27 (c)–(d) * * *

28
29 *Rule 10.951 amended effective January 1, 2008; adopted as rule 227.2 effective January 1, 1985;*
30 *previously amended and renumbered effective January 1, 2007.*

31
32
33 **Rule 10.960. Court self-help centers**

34
35 (a) **Scope and application**

36
37 This rule applies to all court-based self-help centers whether the services
38 provided by the center are managed by the court or by an entity other than
39 the court.

40
41 (b) **Purpose and core court function**

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 Providing access to justice for self-represented litigants is a priority for
2 California courts. The services provided by court self-help centers facilitate
3 the timely and cost-effective processing of cases involving self-represented
4 litigants and improve the delivery of justice to the public. Court programs,
5 policies, and procedures designed to assist self-represented litigants and
6 effectively manage cases involving self-represented litigants at all stages
7 must be incorporated and budgeted as core court functions.
8

9 **(c) Staffing**

10
11 Court self-help centers provide assistance to self-represented litigants. A
12 court self-help center must include an attorney and other qualified staff who
13 provide information and education to self-represented litigants about the
14 justice process, and who work within the court to provide for the effective
15 management of cases involving self-represented litigants.
16

17 **(d) Neutrality and availability**

18
19 The information and education provided by court self-help centers must be
20 neutral and unbiased, and services must be available to all sides of a case.
21

22 **(e) Guidelines and procedures**

23
24 The Administrative Office of the Courts, in collaboration with judges, court
25 executives, attorneys, and other parties with demonstrated interest in services
26 to self-represented litigants, must develop and disseminate guidelines and
27 procedures for the operation of court self-help centers to the trial courts by
28 March 1, 2008. The guidelines and procedures must address the following
29 topics:
30

31 (1) Location and hours of operation;

32
33 (2) Scope of services;

34
35 (3) Attorney qualifications;

36
37 (4) Other staffing qualifications and supervision requirements;

38
39 (5) Language access;
40

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,

effective on January 1, 2008.

1 (6) Contracts with entities other than the court that provide self-help
2 services;

3
4 (7) Use of technology;

5
6 (8) Ethics;

7
8 (9) Efficiency of operation; and

9
10 (10) Security.

11
12 The Administrative Office of the Courts, in collaboration with judges, court
13 executives, attorneys, and other parties with demonstrated interest in services
14 to self-represented litigants, must review and update the guidelines and
15 procedures at least every three years.

16
17 **(f) Budget and funding**

18
19 A court must include in its annual budget funding necessary for operation of
20 its self-help center. In analyzing and making recommendations on the
21 allocation of funding for a court self-help center, the Administrative Office
22 of the Courts will consider the degree to which individual courts have been
23 successful in meeting the guidelines and procedures for the operation of the
24 self-help center.

25
26 *Rule 10.960 adopted effective January 1, 2008.*

27
28
29 **Standard 3.1. Appearance by telephone**

30
31 **(a)–(b) * * ***

32
33 **(e) ~~Types of matters desired to be heard by telephone~~**

34
35 ~~Each court should specify, by local court rule or uniform local written policy,~~
36 ~~the types of motions and hearings it considers particularly suitable for~~
37 ~~hearing by telephone appearance. The rule or policy should encourage~~
38 ~~appearance by telephone in nonevidentiary civil matters if appearance of~~
39 ~~counsel in person would not materially assist in a determination of the~~
40 ~~proceeding or in settlement of the case.~~

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on October 26, 2007,
effective on January 1, 2008.

1 ~~(d)~~(c) * * *

2
3 *(Subd (c) relettered effective January 1, 2008; adopted as subd (d) effective January 1,*
4 *1989; previously amended effective January 1, 2007.)*

5
6 ~~(e)~~(d) * * *

7
8 *(Subd (d) relettered effective January 1, 2008; adopted as subd (e) effective January 1,*
9 *1989; previously amended effective January 1, 2007.)*

10
11 *Standard 3.1 amended effective January 1, 2008; repealed and adopted as sec. 21 effective*
12 *January 1, 1989; previously amended effective July 1, 1992, and January 1, 2007.*

13
14
15 **Standard 5.10. Guidelines for determining payment for costs of appointed**
16 **counsel for children in family court**

17
18 ~~(a)~~ **General**

19
20 ~~Whenever in a proceeding under the Family Law Act counsel is appointed to~~
21 ~~represent children under Family Code sections 3150-3153, the court should~~
22 ~~determine the ability of the parties to pay all or a portion of the cost of the~~
23 ~~counsel.~~

24
25 ~~(b)~~ **Presumed inability to pay**

26
27 ~~If a party is currently eligible for a fee waiver under Government Code~~
28 ~~section 68511.3 (in forma pauperis), the party should be deemed unable to~~
29 ~~pay any part of the costs of the appointed counsel.~~

30
31 ~~(c)~~ **Individual determination required**

32
33 ~~In all other cases, the court should determine ability to pay based on the~~
34 ~~party's income and assets reasonably available. The court may require the~~
35 ~~party to complete and file an income and expense statement unless the party~~
36 ~~has filed one in the proceeding that represents the party's financial status at~~
37 ~~the time of the determination.~~

38
39 ~~(d)~~ **Time for determination**

40

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2007,
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1 ~~The court may make the determination of the ability to pay at the time of~~
2 ~~appointment of counsel or thereafter at the request of the appointed counsel,~~
3 ~~but not later than 30 days after the attorney is relieved as attorney of record.~~
4

5 ~~(e) — Payment of attorney~~

6
7 ~~If the court finds the parties are unable to pay all or a portion of the cost of~~
8 ~~appointed counsel, under Family Code section 3153(b) it must pay the~~
9 ~~portion the parties are unable to pay. The order may provide for progress or~~
10 ~~installment payments.~~

11
12 ~~Standard 5.10 repealed effective January 1, 2008; adopted as sec. 20.6 effective January 1, 1992;~~
13 ~~previously amended effective January 1, 2005, and July 1, 2005; previously amended and~~
14 ~~renumbered effective January 1, 2007.~~

15
16 ~~**Standard 5.11. Guidelines for appointment of counsel for minors when time**~~
17 ~~**with or responsibility for the minor is disputed**~~

18
19 ~~(a) — Request for appointment of counsel~~

20
21 ~~In any family law or other proceeding where two or more persons are~~
22 ~~disputing the division of time with (physical custody) or responsibility for~~
23 ~~(legal custody) a minor child, the court should consider the appointment of~~
24 ~~an attorney to represent the best interest of the child if requested to do so by~~
25 ~~either party, the attorney for either party, a mediator performing duties under~~
26 ~~Civil Code section 4607, a professional person making a custody~~
27 ~~recommendation under Civil Code section 4602, a court appointed guardian~~
28 ~~ad litem or special advocate, the child, or any relative of the child; and the~~
29 ~~court may also appoint counsel on its own motion.~~
30

31 ~~(b) — Guidelines~~

32
33 ~~In considering the appointment of counsel for the minor, the court should~~
34 ~~take into account the following factors:~~

35
36 ~~(1) — Whether the dispute is exceptionally intense or protracted;~~
37

38 ~~(2) — Whether the child is subjected to stress on account of the dispute,~~
39 ~~which might be alleviated by the intervention of counsel representing~~
40 ~~the child;~~
41

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

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1 ~~(3) — Whether an attorney representing the child would be likely to provide~~
2 ~~the court with significant information not otherwise readily available or~~
3 ~~likely to be presented;~~

4
5 ~~(4) — Whether the dispute involves allegations that a parent, a stepparent, or~~
6 ~~other person with the parent's knowledge has physically or sexually~~
7 ~~abused the child;~~

8
9 ~~(5) — Whether it appears that neither parent is capable of providing a stable~~
10 ~~and secure environment;~~

11
12 ~~(6) — Whether the child is capable of verbally expressing his or her views;~~

13
14 ~~(7) — Whether attorneys are available for appointment who are sensitive to~~
15 ~~the needs of children and the issues raised in representing them; and~~

16
17 ~~(8) — Whether the best interest of the child appears to require special~~
18 ~~representation.~~

19
20 ~~(c) — **Contents of order**~~

21
22 ~~If counsel is appointed to represent a child under (b), the order may specify~~
23 ~~the following:~~

24
25 ~~(1) — The issues regarding which the child's representation is ordered;~~

26
27 ~~(2) — Any tasks related to the case that would benefit from the services of the~~
28 ~~attorney;~~

29
30 ~~(3) — The duration of the appointment, which may be extended on a showing~~
31 ~~of good cause; and~~

32
33 ~~(4) — The source of funds and manner of reimbursement for costs and~~
34 ~~attorney fees.~~

35
36 ~~(d) — **Two or more children**~~

37
38 ~~If there are two or more children, the court should consider whether there~~
39 ~~may be such a conflict between the children that one attorney cannot~~
40 ~~adequately represent them all.~~

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- 1 *Standard 5.11 repealed effective January 1, 2008; adopted as sec. 20.5 effective January 1, 1990;*
- 2 *previously amended and renumbered effective January 1, 2007.*