

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on September 14–15, 2017, effective January 1, 2018

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1 **Rule 2.893. Appointment of interpreters in court proceedings**

2
3 **(a) Application**

4
5 This rule applies to all trial court proceedings in which the court appoints an
6 interpreter for a Limited English Proficient (LEP) person. This rule applies to
7 spoken language interpreters in languages designated and not designated by the
8 Judicial Council.

9
10 **(b) Definitions**

11
12 As used in this rule:

- 13
14 (1) “Designated language” means a language selected by the Judicial Council for
15 the development of a certification program under Government Code section
16 68562;
- 17
18 (2) “Certified interpreter” means an interpreter who is certified by the Judicial
19 Council to interpret a language designated by the Judicial Council under
20 Government Code section 68560 et seq.;
- 21
22 (3) “Registered interpreter” means an interpreter in a language not designated by
23 the Judicial Council, who is qualified by the court under the qualification
24 procedures and guidelines adopted by the Judicial Council, and who has
25 passed a minimum of an English fluency examination offered by a testing
26 entity approved by the Judicial Council under Government Code section
27 68560 et seq.;
- 28
29 (4) “Noncertified interpreter” means an interpreter who is not certified by the
30 Judicial Council to interpret a language designated by the Judicial Council
31 under Government Code section 68560 et seq.;
- 32
33 (5) “Nonregistered interpreter” means an interpreter in a language not designated
34 by the Judicial Council who has not been qualified under the qualification
35 procedures and guidelines adopted by the Judicial Council under Government
36 Code section 68560 et seq.;
- 37
38 (6) “Provisionally qualified” means an interpreter who is neither certified nor
39 registered but has been qualified under the good cause and qualification
40 procedures and guidelines adopted by the Judicial Council under Government
41 Code section 68560 et seq.;
- 42

1 (7) “Temporary interpreter” means an interpreter who is not certified, registered,
2 or provisionally qualified, but is used one time, in a brief, routine matter.

3
4 **(c) Appointment of certified or registered interpreters**

5
6 If a court appoints a certified or registered court interpreter, the judge in the
7 proceeding must require the following to be stated on the record:

- 8
9 (1) The language to be interpreted;
10
11 (2) The name of the interpreter;
12
13 (3) The interpreter’s current certification or registration number;
14
15 (4) A statement that the interpreter’s identification has been verified as required
16 by statute;
17
18 (5) A statement that the interpreter is certified or registered to interpret in the
19 language to be interpreted; and
20
21 (6) A statement that the interpreter was administered the interpreter’s oath or that
22 he or she has an oath on file with the court.

23
24 **(d) Appointment or use of noncertified or nonregistered interpreters**

25
26 (1) *When permissible*
27 If after a diligent search a certified or registered interpreter is not available,
28 the judge in the proceeding may either appoint a noncertified or nonregistered
29 interpreter who has been provisionally qualified under (d)(3) or, in the
30 limited circumstances specified in (d)(4), may use a noncertified or
31 nonregistered interpreter who is not provisionally qualified.

32
33 (2) *Required record*

34 In all cases in which a noncertified or nonregistered interpreter is appointed
35 or used, the judge in the proceeding must require the following to be stated
36 on the record:

37
38 (A) The language to be interpreted;

39
40 (B) A finding that a certified or registered interpreter is not available and a
41 statement regarding whether a *Certification of Unavailability of*
42 *Certified or Registered Interpreter* (form INT-120) for the language to
43 be interpreted is on file for this date with the court administrator;

- 1
2 (C) A finding that good cause exists to appoint a noncertified or
3 nonregistered interpreter;
4
5 (D) The name of the interpreter;
6
7 (E) A statement that the interpreter is not certified or registered to interpret
8 in the language to be interpreted;
9
10 (F) A finding that the interpreter is qualified to interpret in the proceeding
11 as required in (d)(3) or (d)(4); and
12
13 (G) A statement that the interpreter was administered the interpreter's oath.
14

15 (3) Provisional qualification
16

- 17 (A) A noncertified or nonregistered interpreter is provisionally qualified if
18 the presiding judge of the court or other judicial officer designated by
19 the presiding judge:
20
21 (i) Finds the noncertified or nonregistered interpreter to be
22 provisionally qualified following the *Procedures to Appoint a*
23 *Noncertified or Nonregistered Spoken Language Interpreter as*
24 *Either Provisionally Qualified or Temporary* (form INT-100-
25 INFO); and
26
27 (ii) Signs an order allowing the interpreter to be considered for
28 appointment on *Qualifications of a Noncertified or Nonregistered*
29 *Spoken Language Interpreter* (form INT-110). The period
30 covered by this order may not exceed a maximum of six months.
31
32 (B) To appoint a provisionally qualified interpreter, in addition to the
33 matters that must be stated on the record under (d)(2), the judge in the
34 proceeding must state on the record:
35
36 (i) A finding that the interpreter is qualified to interpret the
37 proceeding, following procedures adopted by the Judicial Council
38 (see forms INT-100-INFO, INT-110, and INT-120);
39
40 (ii) A finding, if applicable, that good cause exists under (f)(1)(B)
41 for the court to appoint the interpreter beyond the time
42 ordinarily allowed in (f); and

1 (iii) If a party has objected to the appointment of the proposed
2 interpreter or has waived the appointment of a certified or
3 registered interpreter.

4
5 (4) Temporary use

6 At the request of an LEP person, a temporary interpreter may be used to
7 prevent burdensome delay or in other unusual circumstances if:

8
9 (A) The judge in the proceeding finds on the record that:

10
11 (i) The LEP person has been informed of their right to an
12 interpreter and has waived the appointment of a certified or
13 registered interpreter or an interpreter who could be
14 provisionally qualified by the presiding judge as provided in
15 (d)(3);

16
17 (ii) Good cause exists to appoint an interpreter who is not certified,
18 registered, or provisionally qualified; and

19
20 (iii) The interpreter is qualified to interpret that proceeding,
21 following procedures adopted by the Judicial Council (see
22 forms INT-100-INFO and INT-140).

23
24 (B) The use of an interpreter under this subdivision is limited to a single
25 brief, routine matter before the court. The use of the interpreter in this
26 circumstance may not be extended to subsequent proceedings without
27 again following the procedure set forth in this subdivision.

28
29 (e) **Appointment of intermediary interpreters working between two languages**
30 **that do not include English**

31
32 An interpreter who works as an intermediary between two languages that do not
33 include English (a relay interpreter) is not eligible to become certified or registered.
34 However, a relay interpreter can become provisionally qualified if the judge finds
35 that he or she is qualified to interpret the proceeding following procedures adopted
36 by the Judicial Council (see forms INT-100-INFO, INT-110, and INT-120). The
37 limitations in (f) below do not apply to relay interpreters.
38

1 **(f) Limit on appointment of provisionally qualified noncertified and**
2 **nonregistered interpreters**

- 3
- 4 (1) A noncertified or nonregistered interpreter who is provisionally qualified
5 under (d)(3) may not interpret in any trial court for more than any four
6 six-month periods, except in the following circumstances:
- 7
- 8 (A) A noncertified interpreter of Spanish may be allowed to interpret for no
9 more than any two six-month periods in counties with a population
10 greater than 80,000.
- 11
- 12 (B) A noncertified or nonregistered interpreter may be allowed to interpret
13 more than any four six-month periods, or any two six-month periods
14 for an interpreter of Spanish under (f)(1)(A), if the judge in the
15 proceeding makes a specific finding on the record in each case in which
16 the interpreter is sworn that good cause exists to appoint the interpreter,
17 notwithstanding the interpreter’s failure to achieve Judicial Council
18 certification.
- 19
- 20 (2) Except as provided in (f)(3), each six-month period under (f)(1) begins on the
21 date a presiding judge signs an order under (d)(3)(A)(ii) allowing the
22 noncertified or nonregistered interpreter to be considered for appointment.
- 23
- 24 (3) If an interpreter is provisionally qualified under (d)(3) in more than one court
25 at the same time, each six-month period runs concurrently for purposes of
26 determining the maximum periods allowed in this subdivision.
- 27
- 28 (4) Beginning with the second six-month period under (f)(1), a noncertified or
29 nonregistered interpreter may be appointed if he or she meets all of the
30 following conditions:
- 31
- 32 (A) The interpreter has taken the State of California Court Interpreter
33 Written Exam at least once during the 12 calendar months before the
34 appointment;
- 35
- 36 (B) The interpreter has taken the State of California’s court interpreter
37 ethics course for interpreters seeking appointment as a noncertified or
38 nonregistered interpreter, or is certified or registered in a different
39 language from the one in which he or she is being appointed; and
- 40
- 41 (C) The interpreter has taken the State of California’s online court
42 interpreter orientation course, or is certified or registered in a different
43 language from the one in which he or she is being appointed.

- 1
2 (5) Beginning with the third six-month period under (f)(1), a noncertified or
3 nonregistered interpreter may be appointed if he or she meets all of the
4 following conditions:
5
6 (A) The interpreter has taken and passed the State of California Court
7 Interpreter Written Exam with such timing that he or she is eligible to
8 take a Bilingual Interpreting Exam; and
9
10 (B) The interpreter has taken either the Bilingual Interpreting Exam or the
11 relevant Oral Proficiency Exam(s) for his or her language pairing at
12 least once during the 12 calendar months before the appointment.
13
14 (6) The restrictions in (f)(5)(B) do not apply to any interpreter who seeks
15 appointment in a language pairing for which no exam is available.
16
17 (7) The restrictions in (f)(4) and (5) may be waived by the presiding judge for
18 good cause whenever there are fewer than 25 certified or registered
19 interpreters enrolled on the Judicial Council’s statewide roster for the
20 language requiring interpretation.
21

22 **Advisory Committee Comment**

23
24 **Subdivisions (c) and (d)(2).** When a court reporter is transcribing the proceedings, or an
25 electronic recording is being made of the proceedings, a judge may satisfy the “on the record”
26 requirement by stating the required details of the interpreter appointment in open court. If there is
27 no court reporter and no electronic recording is being made, the “on the record” requirement may
28 be satisfied by stating the required details of the interpreter appointment and documenting them in
29 writing—such as in a minute order, the official clerk’s minutes, a formal order, or even a
30 handwritten document—that is entered in the case file.
31

32 **Subdivision (d)(4).** This provision is intended to allow for the one-time use of a noncertified or
33 nonregistered interpreter who is not provisionally qualified to interpret for an LEP person in a
34 courtroom event. This provision is not intended to be used to meet the extended or ongoing
35 interpretation needs of LEP court users.
36

37 **Subdivision (b)(7) and (d)(4).** When determining whether the matter before the court is a “brief,
38 routine matter” for which a noncertified or nonregistered interpreter who has not been
39 provisionally qualified may be used, the judicial officer should consider the complexity of the
40 matter at issue and likelihood of potential impacts on the LEP person’s substantive rights,
41 keeping in mind the consequences that could flow from inaccurate or incomplete interpretation of
42 the proceedings.
43

44 *Rule 2.893 adopted effective January 1, 2018.*

1 **Rule 4.102. Uniform bail and penalty schedules—traffic, boating, fish and game,**
2 **forestry, public utilities, parks and recreation, business licensing**

3
4 * * *

5
6 **Note:**

7 Courts may obtain copies of the Uniform Bail and Penalty Schedules by contacting:

8 Criminal Justice Services

9 Judicial Council of California

10 455 Golden Gate Avenue

11 San Francisco, CA 94102-3688

12 ~~(415) 865-7611~~

13 or

14 www.courts.ca.gov/7532.htm

15
16 *Rule 4.102 amended effective January 1, 2018; adopted as rule 850 effective January 1, 1965;*
17 *previously renumbered as rule 4.102 and amended effective January 1, 2001; previously*
18 *amended effective January 1, 1970, January 1, 1971, July 1, 1972, January 1, 1973, January 1,*
19 *1974, July 1, 1975, July 1, 1979, July 1, 1980, July 1, 1981, January 1, 1983, July 1, 1984, July 1,*
20 *1986, January 1, 1989, January 1, 1990, January 1, 1993, January 1, 1995, January 1, 1997,*
21 *July 1, 2004, January 1, 2007, July 1, 2013, and January 1, 2016.*
22
23

24 **Rule 4.130. Mental competency proceedings**

25
26 **(a) Application**

27
28 (1) This rule applies to proceedings in the superior court under Penal Code
29 section 1367 et seq. to determine the mental competency of a criminal
30 defendant.
31

32 (2) The requirements of subdivision (d)(2) apply only to a formal competency
33 evaluation ordered by the court under Penal Code section 1369(a).
34

35 (3) The requirements of subdivision (d)(2) do not apply to a brief preliminary
36 evaluation of the defendant's competency if:
37

38 (A) The parties stipulate to a brief preliminary evaluation; and
39

40 (B) The court orders the evaluation in accordance with a local rule of court
41 that specifies the content of the evaluation and the procedure for its
42 preparation and submission to the court.
43

1 (Subd (a) amended effective January 1, 2018.)

2
3 (b)–(c) * * *

4
5 (d) Examination of defendant after initiation of mental competency proceedings

6
7 (1) * * *

8
9 (2) Any court-appointed experts must examine the defendant and advise the
10 court on the defendant’s competency to stand trial. Experts’ reports are to be
11 submitted to the court, counsel for the defendant, and the prosecution. The
12 report must include the following:

13
14 (A) A brief statement of the examiner’s training and previous experience as
15 it relates to examining the competence of a criminal defendant to stand
16 trial and preparing a resulting report;

17
18 (B) A summary of the examination conducted by the examiner on the
19 defendant, including a current diagnosis under the most recent version
20 of the *Diagnostic and Statistical Manual of Mental Disorders*, if
21 possible, of the defendant’s mental disorder and a summary of the
22 defendant’s mental status;

23
24 (C) A detailed analysis of the competence of the defendant to stand trial
25 using California’s current legal standard, including the defendant’s
26 ability or inability to understand the nature of the criminal proceedings
27 or assist counsel in the conduct of a defense in a rational manner as a
28 result of a mental disorder;

29
30 (D) A summary of an assessment—conducted for malingering or feigning
31 symptoms, if clinically indicated—which may include, but need not be
32 limited to, psychological testing;

33
34 (E) Under Penal Code section 1369, a statement on whether treatment with
35 antipsychotic or other medication is medically appropriate for the
36 defendant, whether the treatment is likely to restore the defendant to
37 mental competence, a list of likely or potential side effects of the
38 medication, the expected efficacy of the medication, possible
39 alternative treatments, whether it is medically appropriate to administer
40 antipsychotic or other medication in the county jail, and whether the
41 defendant has capacity to make decisions regarding antipsychotic or
42 other medication. If an examining psychologist is of the opinion that a
43 referral to a psychiatrist is necessary to address these issues, the

1 psychologist must inform the court of this opinion and his or her
2 recommendation that a psychiatrist should examine the defendant;

3
4 (F) A list of all sources of information considered by the examiner,
5 including legal, medical, school, military, regional center, employment,
6 hospital, and psychiatric records; the evaluations of other experts; the
7 results of psychological testing; police reports; criminal history;
8 statement of the defendant; statements of any witnesses to the alleged
9 crime; booking information, mental health screenings, and mental
10 health records following the alleged crime; consultation with the
11 prosecutor and defendant’s attorney; and any other collateral sources
12 considered in reaching his or her conclusion; and

13
14 (G) A recommendation, if possible, for a placement or type of placement or
15 treatment program that is most appropriate for restoring the defendant
16 to competency.

17
18 (3) * * *

19
20 *(Subd (d) amended effective January 1, 2018.)*

21
22 (e)–(f) * * *

23
24 *Rule 4.130 amended effective January 1, 2018; adopted effective January 1, 2007.*

25
26
27 **Division 5. Sentencing–Determinate Felony Sentencing Law**

28
29 **Rule 4.403. Application**

30
31 These rules apply to criminal cases in which the defendant is convicted of one or more
32 offenses punishable as a felony by (1) a determinate sentence imposed under Penal Code
33 part 2, title 7, chapter 4.5 (commencing with section 1170) and (2) an indeterminate
34 sentence imposed under section 1168(b) only if it is imposed relative to other offenses
35 with determinate terms or enhancements.

36
37 *Rule 4.403 amended effective January 1, 2018; adopted as rule 403 effective July 1, 1977;*
38 *previously amended and renumbered effective January 1, 2001; previously amended effective*
39 *July 1, 2003, January 1, 2007, and January 1, 2017.*

40

1 **Advisory Committee Comment**

2
3 ~~The sentencing rules do not apply to offenses carrying a life term or other indeterminate sentences~~
4 ~~for which sentence is imposed under section 1168(b).~~

5
6 The operative portions of section 1170 deal exclusively with prison sentences; and the mandate to
7 the Judicial Council in section 1170.3 is limited to criteria affecting the length of prison sentences,
8 sentences in county jail under section 1170(h), and the grant or denial of probation.

9
10
11 **Rule 4.405. Definitions**

12
13 As used in this division, unless the context otherwise requires:

14
15 (1) * * *

16
17 (2) “Base term” is the determinate term in prison term or county jail under section
18 1170(h) selected from among the three possible terms prescribed by statute; ~~or the~~
19 determinate term in prison term or county jail under section 1170(h) prescribed by
20 law statute if a range of three possible terms is not prescribed; or the indeterminate
21 term in prison prescribed by statute.

22
23 (3) * * *

24
25 (4) “Aggravation,” ~~or~~ “circumstances in aggravation,” “mitigation,” or “circumstances
26 in mitigation” means factors that the court may consider in its broad sentencing
27 discretion in imposing one of the three authorized terms of imprisonment referred
28 to in section 1170(b) authorized by statute and under these rules.

29
30 ~~(5) “Mitigation” or “circumstances in mitigation” means factors that the court may~~
31 ~~consider in its broad discretion in imposing one of the three authorized terms of~~
32 ~~imprisonment referred to in section 1170(b) or factors that may justify the court in~~
33 ~~striking the additional punishment for an enhancement when the court has~~
34 ~~discretion to do so.~~

35
36 ~~(6)~~(5) “Sentence choice” means the selection of any disposition of the case that does not
37 amount to a dismissal, acquittal, or grant of a new trial.

38
39 ~~(7)~~(6) “Section” means a section of the Penal Code.

40
41 ~~(8)~~(7) “Imprisonment” means confinement in a state prison or county jail under section
42 1170(h).

43

1 ~~(9)~~(8) “Charged” means charged in the indictment or information.

2
3 ~~(10)~~(9) “Found” means admitted by the defendant or found to be true by the trier of fact
4 upon trial.

5
6 ~~(11)~~(10) “Mandatory supervision” means the period of supervision defined in section
7 1170(h)(5)(A), (B).

8
9 ~~(12)~~(11) “Postrelease community supervision” means the period of supervision governed
10 by section 3451 et seq.

11
12 (12) “Risk/needs assessment” means a standardized, validated evaluation tool designed
13 to measure an offender’s actuarial risk factors and specific needs that, if
14 successfully addressed, may reduce the likelihood of future criminal activity.

15
16 (13)–(16) * * *

17
18 *Rule 4.405 amended effective January 1, 2018; adopted as rule 405 effective July 1, 1977;*
19 *previously renumbered effective January 1, 2001; previously amended effective July 28, 1977,*
20 *January 1, 1991, July 1, 2003, January 1, 2007, May 23, 2007, and January 1, 2017.*

21 22 **Advisory Committee Comment**

23
24 ~~“Base term” is the term of imprisonment selected under section 1170(b) from the three possible~~
25 ~~terms. (See section 1170(a)(3); *People v. Scott* (1994) 9 Cal.4th 331, 349.) Following the United~~
26 ~~States Supreme Court decision in *Cunningham v. California* (2007) 549 U.S. 270, the Legislature~~
27 ~~amended the determinate sentencing law to remove the presumption that the court is to impose the~~
28 ~~middle term on a sentencing triad, absent aggravating or mitigating circumstances. (See Sen. Bill~~
29 ~~40; Stats. 2007, ch. 3.) It subsequently amended sections 186.22, 186.33, 1170.1, 12021.5,~~
30 ~~12022.2, and 12022.4 to eliminate the presumptive middle term for an enhancement. (See Sen.~~
31 ~~Bill 150; Stats. 2009, ch. 171.) Instead of finding facts in support of a sentencing choice, courts~~
32 ~~are now required to state reasons for the exercise of judicial discretion in sentencing. To comply~~
33 ~~with those changes, these rules were also amended. In light of those amendments, for clarity, the~~
34 ~~phrase “base term” in (4) and (5) was replaced with “one of the three authorized prison terms.”~~
35 ~~This language was subsequently changed to “three authorized terms of imprisonment” to~~
36 ~~incorporate county jail sentences under section 1170(h) in light of more recent legislative~~
37 ~~amendments to the determinate sentencing law. (See Assem. Bill 109; Stats. 2011, ch. 15.) It is an~~
38 ~~open question whether the definitions in (4) and (5) apply to enhancements for which the statute~~
39 ~~provides for three possible terms. The Legislature in SB 40 amended section 1170(b) but did not~~
40 ~~modify sections 1170.1(d), 12022.2(a), 12022.3(b), or any other section providing for an~~
41 ~~enhancement with three possible terms. The latter sections provide that “the court shall impose the~~
42 ~~middle term unless there are circumstances in aggravation or mitigation.” (See, e.g., section~~
43 ~~1170.1(d).) It is possible, although there are no cases addressing the point, that this enhancement~~

1 triad with the presumptive imposition of the middle term runs afoul of Cunningham. Because of
2 this open question, rule 4.428(b) was deleted.

3
4 “Enhancement.” The facts giving rise to an enhancement, the requirements for pleading and
5 proving those facts, and the court’s authority to strike the additional term are prescribed by
6 statutes. See, for example, sections 667.5 (prior prison terms), 12022 (being armed with a firearm
7 or using a deadly weapon), 12022.5 (using a firearm), 12022.6 (excessive taking or damage),
8 12022.7 (great bodily injury), 1170.1(e) (pleading and proof), and 1385(c) (authority to strike the
9 additional punishment). Note: A consecutive sentence is not an enhancement. (See section
10 1170.1(a); *People v. Tassell* (1984) 36 Cal.3d 77, 90 [overruled on other grounds in *People v.*
11 *Ewoldt* (1994) 7 Cal.4th 380, 401].)

12
13 “Sentence choice.” Section 1170(c) requires the judge to state reasons for the sentence choice.
14 This general requirement is discussed in rule 4.406.

15
16 “Imprisonment” in state prison or county jail under section 1170(h) is distinguished from
17 confinement in other types of facilities.

18
19 “Charged” and “found.” Statutes require that the facts giving rise to all enhancements be charged
20 and found. See section 1170.1(e).

21
22 Item (13), see sections 17.5(a)(9) and 3450(b)(9).

23
24 Item (15), see section 1229(e).

25 26 27 **Rule 4.406. Reasons**

28 29 **(a) How given**

30
31 If the sentencing judge is required to give reasons for a sentence choice, the judge
32 must state in simple language the primary factor or factors that support the exercise
33 of discretion ~~or, if applicable, state that the judge has no discretion~~. The statement
34 need not be in the language of the statute or these rules. It must be delivered orally
35 on the record. The court may give a single statement explaining the reason or
36 reasons for imposing a particular sentence or the exercise of judicial discretion, if
37 the statement identifies the sentencing choices where discretion is exercised and
38 there is no impermissible dual use of facts.

39
40 *(Subd (a) amended effective January 1, 2018; previously amended effective January 1,*
41 *2007.)*
42

1 (b) When reasons required

2
3 Sentence choices that generally require a statement of a reason include, but are not
4 limited to:

- 5
6 (1) Granting probation when the defendant is presumptively ineligible for
7 probation;
8
9 (2) ~~Imposing a prison sentence or sentence in county jail under section 1170(h)~~
10 ~~and thereby denying probation~~ Denying probation when the defendant is
11 presumptively eligible for probation;
12
13 (3) Declining to commit an eligible juvenile found amenable to treatment to the
14 Department of Corrections and Rehabilitation, Division of Juvenile Justice ~~an~~
15 ~~eligible juvenile found amenable to treatment;~~
16
17 (4) Selecting one of the three authorized ~~prison~~ terms in prison or county jail
18 under section 1170(h) referred to in section 1170(b) for either ~~an offense a~~
19 base term or an enhancement;
20
21 (5)-(6) * * *
22
23 (7) ~~Striking the punishment for an enhancement;~~
24
25 (8)(7) Waiving a restitution fine;
26
27 (9) ~~Not committing an eligible defendant to the California Rehabilitation Center;~~
28
29 (10)(8) ~~Striking an enhancement or prior conviction allegation~~ Granting relief
30 under section 1385(a); and
31
32 (11)(9) Denying mandatory supervision in the interests of justice under section
33 1170(h)(5)(A).

34
35 *(Subd (b) amended and renumbered effective January 1, 2018; previously amended*
36 *effective January 1, 2001, July 1, 2003, January 1, 2006, January 1, 2007, May 23, 2007,*
37 *and January 1, 2017.)*

38
39 *Rule 4.406 amended effective January 1, 2018; adopted as rule 406 effective January 1, 1991;*
40 *previously amended and renumbered effective January 1, 2001; previously amended effective*
41 *July 1, 2003, January 1, 2006, January 1, 2007, May 23, 2007, and January 1, 2017.*

1
2
3 **Advisory Committee Comment**

4 This rule is not intended to expand the statutory requirements for giving reasons, and is not an
5 independent interpretation of the statutory requirements.

6 The court is not required to separately state the reasons for making each sentencing choice so
7 long as the record reflects the court understood it had discretion on a particular issue and its
8 reasons for making the particular choice. For example, if the court decides to deny probation and
9 impose the upper term of punishment, the court may simply state: “I am denying probation and
10 imposing the upper term because of the extensive losses to the victim and because the defendant’s
11 record is increasing in seriousness.” It is not necessary to state a reason after exercising each
12 decision.

13
14 The court must be mindful of impermissible dual use of facts in stating reasons for sentencing
15 choices. For example, the court is not permitted to use a reason to impose a greater term if that
16 reason also is either (1) the same as an enhancement that will be imposed, or (2) an element of the
17 crime. The court should not use the same reason to impose a consecutive sentence and to impose
18 an upper term of imprisonment. (*People v. Avalos* (1984) 37 Cal.3d 216, 233.) It is not improper
19 to use the same reason to deny probation and to impose the upper term. (*People v. Bowen* (1992)
20 11 Cal.App.4th 102, 106.)

21
22 Whenever relief is granted under section 1385, the court’s reasons for exercising that discretion
23 must be stated orally on the record and entered in the minutes if requested by a party or if the
24 proceedings are not recorded electronically or reported by a court reporter. (Pen. Code,
25 § 1385(a).) Although no legal authority requires the court to state reasons for denying relief, such
26 a statement may be helpful in the appellate review of the exercise of the court’s discretion.

27
28
29 **Rule 4.408. Criteria Listing of factors not exclusive; sequence not significant**

30
31 (a) ~~The enumeration in these rules of some criteria for the making of discretionary~~
32 ~~sentencing decisions does not prohibit the application of additional criteria~~
33 ~~reasonably related to the decision being made. The listing of factors in these rules~~
34 for making discretionary sentencing decisions is not exhaustive and does not
35 prohibit a trial judge from using additional criteria reasonably related to the
36 decision being made. Any such additional criteria must be stated on the record by
37 the sentencing judge.

38
39 *(Subd (a) amended effective January 1, 2018; previously amended effective January 1,*
40 *2007.)*

41
42 (b) * * *

43

1 *Rule 4.408 amended effective January 1, 2018; adopted as rule 408 effective July 1, 1977;*
2 *previously renumbered effective January 1, 2001; previously amended effective January 1, 2007.*

3
4 **Advisory Committee Comment**

5
6 ~~Enumerations of criteria in these rules are not exclusive.~~ The variety of circumstances presented
7 in felony cases is so great that no listing of criteria could claim to be all-inclusive. (Cf., Evid.
8 Code, § 351.)

9
10
11 **Rule 4.409. Consideration of ~~criteria~~-relevant factors**

12
13 Relevant ~~criteria~~-factors enumerated in these rules must be considered by the sentencing
14 judge, and will be deemed to have been considered unless the record affirmatively
15 reflects otherwise.

16
17 *Rule 4.409 amended effective January 1, 2018; adopted as rule 409 effective July 1, 1977;*
18 *previously renumbered effective January 1, 2001; previously amended effective January 1, 2007.*

19
20 **Advisory Committee Comment**

21
22 Relevant ~~criteria~~-factors are those applicable to the facts in the record of the case; not all ~~criteria~~
23 factors will be relevant to each case. The judge's duty is similar to the duty to consider the
24 probation officer's report. Section 1203.

25
26 In deeming the sentencing judge to have considered relevant ~~criteria~~-factors, the rule applies the
27 presumption of Evidence Code section 664 that official duty has been regularly performed. (See
28 *People v. Moran* (1970) 1 Cal.3d 755, 762 [trial court presumed to have considered referring
29 eligible defendant to California Youth Authority in absence of any showing to the contrary, citing
30 Evidence Code section 664].)

31
32
33 **Rule 4.410. General objectives in sentencing**

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

36
37 **(b)** Because in some instances these objectives may suggest inconsistent dispositions,
38 the sentencing judge must consider which objectives are of primary importance in
39 the particular case. The sentencing judge should be guided by statutory statements
40 of policy, the criteria in these rules, and ~~the~~ any other facts and circumstances ~~of~~
41 relevant to the case.

1 (Subd (b) amended effective January 1, 2018; previously lettered effective July 1, 2003;
2 adopted as part of unlettered subd effective July 1, 1977; former subd (b) amended and
3 relettered as part of subd (a) effective July 1, 2003.)
4

5 Rule 4.410 amended effective January 1, 2018; adopted as rule 410 effective July 1, 1977;
6 previously renumbered effective January 1, 2001; previously amended effective July 1, 2003,
7 January 1, 2007, and January 1, 2017.
8

9 Advisory Committee Comment

10
11 Statutory expressions of policy include:

12
13 ~~Welfare and Institutions Code section 1820 et seq., which provides partnership funding for county~~
14 ~~juvenile ranches, camps, or forestry camps.~~

15
16 ~~Section 1203(b)(3), which requires that eligible defendants be considered for probation and~~
17 ~~authorizes probation if circumstances in mitigation are found or justice would be served.~~

18
19 ~~Section 1170(a)(1), which expresses the policies of uniformity, proportionality of terms of~~
20 ~~imprisonment to the seriousness of the offense, and the use of imprisonment as punishment. It~~
21 ~~also states that “the purpose of sentencing is public safety achieved through punishment,~~
22 ~~rehabilitation, and restorative justice.”~~

23
24 ~~Sections 17.5, 1228, and 3450, which express the policies promoting reinvestment of criminal~~
25 ~~justice resources to support community-based corrections programs and evidence-based practices~~
26 ~~to improve public safety through a reduction in recidivism.~~

27
28 ~~Other statutory provisions that prohibit the grant of probation in particular cases.~~
29

30 31 **Rule 4.411. Presentence investigations and reports**

32 33 **(a) Eligible defendant When required**

34
35 ~~If the defendant is eligible for probation or a term of imprisonment in county jail~~
36 ~~under section 1170(h), the court must refer the matter to the probation officer for a~~
37 ~~presentence investigation and report. Waivers of the presentence report should not~~
38 ~~be accepted except in unusual circumstances. Except As provided in subdivision~~
39 ~~(b), the court must refer the case to the probation officer for:~~

40
41 ~~(1) A presentence investigation and report if the defendant:~~
42

1 (A) Is statutorily eligible for probation or a term of imprisonment in county
2 jail under section 1170(h); or

3
4 (B) Is not eligible for probation but a report is needed to assist the court
5 with other sentencing issues, including the determination of the proper
6 amount of restitution fine;

7
8 (2) A supplemental report if a significant period of time has passed since the
9 original report was prepared.

10
11 *(Subd (a) amended effective January 1, 2018; previously amended effective January 1,*
12 *2007, and January 15, 2015.)*

13
14 **(b) ~~Ineligible defendant~~ Waiver of the investigation and report**

15
16 ~~Even if the defendant is not eligible for probation or a term of imprisonment in~~
17 ~~county jail under section 1170(h), the court should refer the matter to the probation~~
18 ~~officer for a presentence investigation and report. The parties may stipulate to the~~
19 ~~waiver of the probation officer's investigation and report in writing or in open court~~
20 ~~and entered in the minutes, and with the consent of the court. In deciding whether~~
21 ~~to consent to the waiver, the court should consider whether the information in the~~
22 ~~report would assist in the resolution of any current or future sentencing issues, or~~
23 ~~would assist in the effective supervision of the person. A waiver under this section~~
24 ~~does not affect the requirement under section 1203c that a probation report be~~
25 ~~created when the court commits a person to state prison.~~

26
27 *(Subd (b) amended effective January 1, 2018; previously amended effective January 1,*
28 *2015.)*

29
30 **(e) ~~Supplemental reports~~**

31
32 ~~The court must order a supplemental probation officer's report in preparation for~~
33 ~~sentencing proceedings that occur a significant period of time after the original~~
34 ~~report was prepared.~~

35
36 **(d) ~~Purpose of presentence investigation report~~**

37
38 ~~Probation officers' reports are used by judges in determining the appropriate term~~
39 ~~of imprisonment in prison or county jail under section 1170(h) and by the~~
40 ~~Department of Corrections and Rehabilitation, Division of Adult Operations in~~
41 ~~deciding on the type of facility and program in which to place a defendant. The~~
42 ~~reports are also used by courts in deciding whether probation is appropriate,~~
43 ~~whether a period of mandatory supervision should be denied in the interests of~~

1 justice under section 1170(h)(5)(A), and the appropriate length and conditions of
2 probation and mandatory supervision. Section 1203c requires a probation officer's
3 report on every person sentenced to prison; ordering the report before sentencing in
4 probation-ineligible cases will help ensure a well-prepared report.

5
6 *Rule 4.411 amended effective January 1, 2018; adopted as rule 418 effective July 1, 1977;*
7 *previously amended and renumbered as rule 411 effective January 1, 1991; previously*
8 *renumbered effective January 1, 2001; previously amended effective January 1, 2006, January 1,*
9 *2007, and January 1, 2015.*

11 **Advisory Committee Comment**

12
13 Section 1203 requires a presentence report in every felony case in which the defendant is eligible
14 for probation. Subdivision (a) requires a presentence report in every felony case in which the
15 defendant is eligible for a term of imprisonment in county jail under section 1170(h). ~~Because~~
16 ~~such a probation investigation and report are valuable to the judge and to the jail and prison~~
17 ~~authorities, waivers of the report and requests for immediate sentencing are discouraged, even~~
18 ~~when the defendant and counsel have agreed to a prison sentence or a term of imprisonment in~~
19 ~~county jail under section 1170(h).~~

20
21 When considering whether to waive a presentence investigation and report, courts should consider
22 that probation officers' reports are used by (1) courts in determining the appropriate term of
23 imprisonment in prison or county jail under section 1170(h); (2) courts in deciding whether
24 probation is appropriate, whether a period of mandatory supervision should be denied in the
25 interests of justice under section 1170(h)(5)(A), and the appropriate length and conditions of
26 probation and mandatory supervision; (3) the probation department in supervising the defendant;
27 and (4) the Department of Corrections and Rehabilitation, Division of Adult Operations, in
28 deciding on the type of facility and program in which to place a defendant.

29
30 ~~Notwithstanding a defendant's statutory ineligibility for probation or term of imprisonment in~~
31 ~~county jail under section 1170(h), a presentence investigation and report should be ordered to~~
32 ~~assist the court in deciding the appropriate sentence and to facilitate compliance with section~~
33 ~~1203c.~~

34
35 ~~This rule does not prohibit pre-conviction, pre-plea reports as authorized by section 1203.7.~~

36
37 Subdivision ~~(e)~~ (a)(2) is based on case law that generally requires a supplemental report if the
38 defendant is to be resentenced a significant time after the original sentencing, as, for example,
39 after a remand by an appellate court, or after the apprehension of a defendant who failed to appear
40 at sentencing. The rule is not intended to expand on the requirements of those cases.

41
42 The rule does not require a new investigation and report if a recent report is available and can be
43 incorporated by reference and there is no indication of changed circumstances. This is particularly

1 true if a report is needed only for the Department of Corrections and Rehabilitation because the
2 defendant has waived a report and agreed to a prison sentence. If a full report was prepared in
3 another case in the same or another jurisdiction within the preceding six months, during which
4 time the defendant was in custody, and that report is available to the Department of Corrections
5 and Rehabilitation, it is unlikely that a new investigation is needed.

6
7 This rule does not prohibit pre-conviction, pre-plea reports as authorized by section 1203.7.
8
9

10 **Rule 4.411.5. Probation officer's presentence investigation report**

11 **(a) Contents**

12
13
14 A probation officer's presentence report in a felony case must include at least the
15 following:

16
17 (1)–(4) * * *

18
19 (5) Information concerning the victim of the crime, including:

20
21 (A) * * *

22
23 (B) Any physical or psychological injuries suffered by the victim;

24
25 ~~(B)~~(C) The amount of the victim's monetary loss, and whether or not it is
26 covered by insurance; and

27
28 ~~(C)~~(D) Any information required by law.

29
30 (6)–(7) * * *

31
32 (8) ~~Any available, reliable risk/needs assessment information. The defendant's~~
33 relevant risk factors and needs as identified by a risk/needs assessment, if
34 such an assessment is performed, and such other information from the
35 assessment as may be requested by the court.

36
37 (9)–(12) * * *

38
39 (13) Information pursuant to Penal Code section 29810(c):

40
41 (A) Whether the defendant has properly complied with Penal Code section
42 29810 by relinquishing firearms identified by the probation officer's

1 investigation or declared by the defendant on the Prohibited Persons
2 Relinquishment Form, and

3
4 (B) Whether the defendant has timely submitted a completed Prohibited
5 Persons Relinquishment Form.

6
7 *(Subd (a) amended effective January 1, 2018; previously amended effective January 1,*
8 *1991, July 1, 2003, January 1, 2007, January 1, 2015, and January 1, 2017.)*

9
10 **(b)–(c) * * ***

11
12 *Rule 4.411.5 amended effective January 1, 2018; adopted as rule 419 effective July 1, 1981;*
13 *previously amended and renumbered as rule 411.5 effective January 1, 1991; previously*
14 *renumbered effective January 1, 2001; previously amended effective July 1, 2003, January 1,*
15 *2007, January 1, 2015, and January 1, 2017.*

16
17
18 **Rule 4.412. Reasons—agreement to punishment as an adequate reason and as**
19 **abandonment of certain claims**

20
21 **(a) Defendant’s agreement as reason**

22
23 It is an adequate reason for a sentence or other disposition that the defendant,
24 personally and by counsel, has expressed agreement that it be imposed and the
25 prosecuting attorney has not expressed an objection to it. The agreement and lack of
26 objection must be recited on the record. This section does not authorize a sentence
27 that is not otherwise authorized by law.

28
29 **(b) Agreement to sentence abandons section 654 claim**

30
31 By agreeing to a specified term in prison or county jail under section 1170(h)
32 personally and by counsel, a defendant who is sentenced to that term or a shorter
33 one abandons any claim that a component of the sentence violates section 654’s
34 prohibition of double punishment, unless that claim is asserted at the time the
35 agreement is recited on the record.

36
37 **Advisory Committee Comment**

38
39 **Subdivision (a).** This subdivision is intended to relieve the court of an obligation to give reasons
40 if the sentence or other disposition is one that the defendant has accepted and to which the
41 prosecutor expresses no objection. The judge may choose to give reasons for the sentence even
42 though not obligated to do so.

43

1 Judges should also be aware that there may be statutory limitations on “plea bargaining” or on the
2 entry of a guilty plea on the condition that no more than a particular sentence will be imposed. ~~At~~
3 ~~the time this comment was drafted,~~ Such limitations appeared, for example, in sections 1192.5
4 and 1192.7.

5
6 **Subdivision (b).** This subdivision is based on the fact that a defendant who, with the advice of
7 counsel, expresses agreement to a specified ~~prison~~ term of imprisonment normally is
8 acknowledging that the term is appropriate for his or her total course of conduct. This subdivision
9 applies to both determinate and indeterminate terms.

10
11
12 **Rule 4.413. ~~Probation eligibility when probation is limited~~ Grant of probation when
13 defendant is presumptively ineligible for probation**

14
15 **(a) Consideration of eligibility**

16
17 The court must determine whether the defendant is eligible for probation. In most
18 cases, the defendant is presumptively eligible for probation; in some cases, the
19 defendant is presumptively ineligible; and in some cases, probation is not allowed.

20
21 *(Subd (a) amended effective January 1, 2018; previously amended effective January 1,*
22 *2007.)*

23
24 **(b) Probation in ~~unusual~~ cases when defendant is presumptively ineligible**

25
26 If the defendant comes under a statutory provision prohibiting probation “except in
27 unusual cases where the interests of justice would best be served,” or a substantially
28 equivalent provision, the court should apply the criteria in (c) to evaluate whether
29 the statutory limitation on probation is overcome; and if it is, the court should then
30 apply the criteria in rule 4.414 to decide whether to grant probation.

31
32 *(Subd (b) amended effective January 1, 2018; previously amended effective July 1, 2003,*
33 *and January 1, 2007.)*

34
35 **(c) ~~Facts showing unusual case~~ Factors overcoming the presumption of
36 ineligibility**

37
38 The following ~~facts~~ factors may indicate the existence of an unusual case in which
39 probation may be granted if otherwise appropriate:

40
41 ~~(1)~~ *Faets Factors relating to basis for limitation on probation*
42

1 A ~~fact~~ factor or circumstance indicating that the basis for the statutory
2 limitation on probation, although technically present, is not fully applicable to
3 the case, including:

4
5 (A) The ~~fact~~ factor or circumstance giving rise to the limitation on
6 probation is, in this case, substantially less serious than the
7 circumstances typically present in other cases involving the same
8 probation limitation, and the defendant has no recent record of
9 committing similar crimes or crimes of violence; and

10
11 (B) * * *

12
13 (2) ~~Facts~~ Factors limiting defendant's culpability

14
15 A ~~fact~~ factor or circumstance not amounting to a defense, but reducing the
16 defendant's culpability for the offense, including:

17
18 (A)–(C) * * *

19
20 (3) Results of risk/needs assessment

21
22 Along with all other relevant information in the case, the court may consider
23 the results of a risk/needs assessment of the defendant, if one was performed.
24 The weight of a risk/needs assessment is for the court to consider in its
25 sentencing discretion.

26
27 (*Subd (c) amended effective January 1, 2018; previously amended effective January 1,*
28 *2007.*)

29
30 *Rule 4.413 amended effective January 1, 2018; adopted as rule 413 effective January 1, 1991;*
31 *previously renumbered effective January 1, 2001; previously amended effective July 1, 2003, and*
32 *January 1, 2007.*

33
34 **Advisory Committee Comment**

35
36 **Subdivision (c)(3).** Standard 4.35 of the California Standards of Judicial Administration provides
37 courts with additional guidance on using the results of a risk/needs assessment at sentencing.

38
39
40 **Rule 4.415. Criteria affecting the imposition of mandatory supervision**

41
42 (a)–(b) * * *

43

1 **(c) Criteria affecting conditions and length of mandatory supervision**

2
3 In exercising discretion to select the appropriate period and conditions of
4 mandatory supervision, factors the court may consider include:

5
6 (1)–(7) * * *

7
8 (8) The defendant’s specific needs and risk factors identified by a risk/needs
9 assessment, if available; and

10
11 (9) * * *

12
13 *(Subd (c) amended effective January 1, 2018.)*

14
15 **(d) * * ***

16
17 *Rule 4.415 amended effective January 1, 2018; adopted effective January 1, 2015; previously*
18 *amended effective January 1, 2017.*

19
20 **Advisory Committee Comment**

21
22 * * *

23
24 Subdivision (c)(8). Standard 4.35 of the California Standards of Judicial Administration provides
25 courts with additional guidance on using the results of a risk/needs assessment at sentencing.

26
27
28 **Rule 4.420. Selection of term of imprisonment**

29
30 **(a)–(b) * * ***

31
32 **(c)** To comply with section 1170(b), a fact charged and found as an enhancement may
33 be used as a reason for imposing ~~the upper~~ a particular term only if the court has
34 discretion to strike the punishment for the enhancement and does so. The use of a
35 fact of an enhancement to impose the upper term of imprisonment is an adequate
36 reason for striking the additional term of imprisonment, regardless of the effect on
37 the total term.

38
39 *(Subd (c) amended effective January 1, 2018; adopted effective January 1, 1991.)*

40
41 **(d)** A fact that is an element of the crime upon which punishment is being imposed
42 may not be used to impose a ~~greater~~ particular term.

43

1 *(Subd (d) amended effective January 1, 2018; adopted effective January 1, 1991;*
2 *previously amended effective January 1, 2007, May 23, 2007, and January 1, 2008.)*

3
4 **(e) * * ***

5
6 *Rule 4.420 amended effective January 1, 2018; adopted as rule 439 effective July 1, 1977;*
7 *previously amended and renumbered as rule 420 effective January 1, 1991; previously*
8 *renumbered effective January 1, 2001; previously amended effective July 28, 1977, January 1,*
9 *2007, May 23, 2007, January 1, 2008, and January 1, 2017.*

10
11
12 **Rule 4.421. Circumstances in aggravation**

13
14 Circumstances in aggravation include factors relating to the crime and factors relating to
15 the defendant.

16
17 **(a)–(b) * * ***

18
19 **(c) Other factors**

20
21 Any other factors statutorily declared to be circumstances in aggravation or that
22 reasonably relate to the defendant or the circumstances under which the crime was
23 committed.

24
25 *(Subd (c) amended effective January 1, 2018; adopted effective January 1, 1991;*
26 *previously amended effective January 1, 2007, and May 23, 2007.)*

27
28 *Rule 4.421 amended effective January 1, 2018; adopted as rule 421 effective July 1, 1977;*
29 *previously renumbered effective January 1, 2001; previously amended effective January 1, 1991,*
30 *January 1, 2007, May 23, 2007, and January 1, 2017.*

31
32 **Advisory Committee Comment**

33
34 Circumstances in aggravation may justify imposition of the middle or upper of three possible
35 terms of imprisonment. (Section 1170(b).)

36
37 The list of circumstances in aggravation includes some facts that, if charged and found, may be
38 used to enhance the sentence. ~~The~~ This rule does not deal with the dual use of the facts; the
39 statutory prohibition against dual use is included, in part, in the comment to rule 4.420.

40
41 Conversely, such facts as infliction of bodily harm, being armed with or using a weapon, and a
42 taking or loss of great value may be circumstances in aggravation even if not meeting the
43 statutory definitions for enhancements or charged as an enhancement.

1
2 Facts concerning the defendant’s prior record and personal history may be considered. By
3 providing that the defendant’s prior record and simultaneous convictions of other offenses may
4 not be used both for enhancement and in aggravation, section 1170(b) indicates that these and
5 other facts extrinsic to the commission of the crime may be considered in aggravation in
6 appropriate cases. ~~This resolves whatever ambiguity may arise from the phrase “circumstances in~~
7 ~~aggravation . . . of the crime.” The phrase “circumstances in aggravation or mitigation of the~~
8 ~~crime” necessarily alludes to extrinsic facts.~~

9
10 Refusal to consider the personal characteristics of the defendant in imposing sentence ~~would also~~
11 may raise serious constitutional questions. The California Supreme Court has held that sentencing
12 decisions must take into account “the nature of the offense and/or the offender, with particular
13 regard to the degree of danger both present to society.” (*In re Rodriguez* (1975) 14 Cal.3d 639,
14 654, quoting *In re Lynch* (1972) 8 Cal.3d 410, 425.) In ~~*In re Rodriguez*~~ the court released
15 petitioner from further incarceration because “[H]it appears that neither the circumstances of his
16 offense *nor his personal characteristics* establish a danger to society sufficient to justify such a
17 prolonged period of imprisonment.” (*Id.* at p. 655, fn. omitted, italics added.) (~~Footnote omitted,~~
18 ~~emphasis added.~~) “For the determination of sentences, justice generally requires . . . that there be
19 taken into account the circumstances of the offense together with the character and propensities of
20 the offender.” (*Pennsylvania ex rel. Sullivan v. Ashe* (1937) 302 U.S. 51, 55, quoted with
21 approval in *Gregg v. Georgia* (1976) 428 U.S. 153, 189.)

22
23 ~~The scope of “circumstances in aggravation or mitigation” under section 1170(b) is, therefore,~~
24 ~~coextensive with the scope of inquiry under the similar phrase in section 1203.~~

25
26 ~~The 1990 amendments to this rule and the comment included the deletion of most section~~
27 ~~numbers. These changes recognize changing statutory section numbers and the fact that there are~~
28 ~~numerous additional code sections related to the rule, including numerous statutory enhancements~~
29 ~~enacted since the rule was originally adopted.~~

30
31 Former subdivision (a)(4), concerning multiple victims, was deleted to avoid confusion; ~~cases in~~
32 ~~which that possible circumstance in aggravation was relied on were frequently reversed.~~ Some of
33 the cases that had relied on that circumstance in aggravation were reversed on appeal because
34 there was only a single victim in a particular count.

35
36 Old age or youth of the victim may be circumstances in aggravation; see section 1170.85(b).
37 Other statutory circumstances in aggravation are listed, for example, in sections 422.76, 1170.7,
38 1170.71, 1170.8, and 1170.85.

39
40

1 **Rule 4.423. Circumstances in mitigation**

2
3 Circumstances in mitigation include factors relating to the crime and factors relating to
4 the defendant.

5
6 **(a)–(b) * * ***

7
8 **(c) Other factors**

9
10 Any other factors statutorily declared to be circumstances in mitigation or that
11 reasonably relate to the defendant or the circumstances under which the crime was
12 committed.

13
14 *(Subd (c) adopted effective January 1, 2018.)*

15
16 *Rule 4.423 amended effective January 1, 2018; adopted as rule 423 effective July 1, 1977;*
17 *previously renumbered effective January 1, 2001; previously amended effective January 1, 1991,*
18 *July 1, 1993, January 1, 2007, May 23, 2007, and January 1, 2017.*

19
20 **Advisory Committee Comment**

21
22 See comment to rule 4.421.

23
24 This rule applies both to mitigation for purposes of ~~motions under~~ section 1170(b) and to
25 circumstances in mitigation justifying the court in striking the additional punishment provided for
26 an enhancement.

27
28 Some listed circumstances can never apply to certain enhancements; for example, “the amounts
29 taken were deliberately small” can never apply to an excessive taking under section 12022.6, and
30 “no harm was done” can never apply to infliction of great bodily injury under section 12022.7. In
31 any case, only the facts present may be considered for their possible effect in mitigation.

32
33 See also rule 4.409; only relevant criteria need be considered.

34
35 Since only the fact of restitution is considered relevant to mitigation, no reference to the
36 defendant’s financial ability is needed. The omission of a comparable factor from rule 4.421 as a
37 circumstance in aggravation is deliberate.

38
39
40 **Rule 4.425. Criteria Factors affecting concurrent or consecutive sentences**

41
42 Criteria Factors affecting the decision to impose consecutive rather than concurrent
43 sentences include:

1
2 **(a) Criteria Facts relating to crimes**

3
4 Facts relating to the crimes, including whether or not:

- 5
6 (1) The crimes and their objectives were predominantly independent of each
7 other;
8
9 (2) The crimes involved separate acts of violence or threats of violence; or
10
11 (3) The crimes were committed at different times or separate places, rather than
12 being committed so closely in time and place as to indicate a single period of
13 aberrant behavior.
14

15 *(Subd (a) amended effective January 1, 2018; previously amended effective January 1,*
16 *1991, and January 1, 2007.)*
17

18 **(b) Other criteria facts and limitations**

19
20 Any circumstances in aggravation or mitigation may be considered in deciding
21 whether to impose consecutive rather than concurrent sentences, except:

- 22
23 (1) A fact used to impose the upper term;
24
25 (2) A fact used to otherwise enhance the defendant's sentence in prison or
26 county jail under section 1170(h); and
27
28 (3) A fact that is an element of the crime may not be used to impose consecutive
29 sentences.
30

31 *Subd (b) amended effective January 1, 2018; previously amended effective January 1,*
32 *1991, January 1, 2007, and January 1, 2017.)*
33

34 *Rule 4.425 amended effective January 1, 2018; adopted as rule 425 effective July 1, 1977;*
35 *previously renumbered effective January 1, 2001; previously amended effective January 1, 1991,*
36 *January 1, 2007, and January 1, 2017.*
37
38

39 **Rule 4.428. Criteria Factors affecting imposition of enhancements**

40
41 **(a) Enhancements punishable by one of three terms**
42

1 If an enhancement is punishable by one of three terms, the court must, in its
2 discretion, impose the term that best serves the interest of justice and state the
3 reasons for its sentence choice on the record at the time of sentencing. In exercising
4 its discretion in selecting the appropriate term, the court may consider factors in
5 mitigation and aggravation as described in these rules or any other factor authorized
6 by rule 4.408.

7
8 ~~If the judge has statutory discretion to strike the additional term for an enhancement~~
9 ~~in the furtherance of justice under section 1385(c) or based on circumstances in~~
10 ~~mitigation, the court may consider and apply any of the circumstances in mitigation~~
11 ~~enumerated in these rules or, under rule 4.408, any other reasonable circumstances~~
12 ~~in mitigation or in the furtherance of justice.~~

13
14 ~~The judge should not strike the allegation of the enhancement.~~

15
16 *(Subd (a) was adopted effective January 1, 2018.)*

17
18 **(b) Striking enhancements under section 1385**

19
20 If the court has discretion under section 1385(a) to strike an enhancement in the
21 interests of justice, the court also has the authority to strike the punishment for the
22 enhancement under section 1385(c). In determining whether to strike the entire
23 enhancement or only the punishment for the enhancement, the court may consider
24 the effect that striking the enhancement would have on the status of the crime as a
25 strike, the accurate reflection of the defendant's criminal conduct on his or her
26 record, the effect it may have on the award of custody credits, and any other
27 relevant consideration.

28
29 *(Subd (b) was adopted effective January 1, 2018.)*

30
31 *Rule 4.428 amended effective January 1, 2018; adopted as rule 428 effective January 1, 1991;*
32 *previously renumbered effective January 1, 2001; previously amended effective January 1, 1998,*
33 *July 1, 2003, January 1, 2007, May 23, 2007, January 1, 2008, and January 1, 2011.*

34
35
36 **Rule 4.433. Matters to be considered at time set for sentencing**

37
38 **(a) * * ***

39
40 **(b)** If the imposition of a sentence is to be suspended during a period of probation after
41 a conviction by trial, the trial judge must identify and state circumstances that
42 would justify imposition of one of the three authorized terms of imprisonment
43 referred to in section 1170(b), or any enhancement, if probation is later revoked.

1 The circumstances identified and stated by the judge must be based on evidence
2 admitted at the trial or other circumstances properly considered under rule 4.420(b).

3
4 *(Subd (b) amended effective January 1, 2018; previously amended effective July 28, 1977,*
5 *January 1, 2007, May 23, 2007, January 1, 2008, and January 1, 2017.)*

6
7 **(c)** If a sentence of imprisonment is to be imposed, or if the execution of a sentence of
8 imprisonment is to be suspended during a period of probation, the sentencing judge
9 must:

10
11 (1) Determine, under section 1170(b), whether to impose one of the three
12 authorized terms of imprisonment referred to in section 1170(b), or any
13 enhancement, and state on the record the reasons for imposing that term;

14
15 *(Subd (c) amended effective January 1, 2018; previously amended effective July 28, 1977,*
16 *July 1, 2003, January 1, 2007, May 23, 2007, and January 1, 2017.)*

17
18 (2)–(5) * * *

19
20 **(d)** * * *

21
22 **(e)** When a sentence of imprisonment is imposed under (c) or under rule 4.435, the
23 sentencing judge must inform the defendant:

24
25 (1)–(2) * * *

26
27 (3) Of any period of mandatory supervision imposed under section
28 1170(h)(5)(A); and (B), in addition to any period imprisonment for a
29 violation of mandatory supervision.

30
31 *(Subd (e) amended effective January 1, 2018; previously amended effective July 28, 1977,*
32 *January 1, 1979, July 1, 2003, January 1, 2007, and January 1, 2017.)*

33
34 *Rule 4.433 amended effective January 1, 2018; adopted as rule 433 effective July 1, 1977;*
35 *previously renumbered effective January 1, 2001; previously amended effective July 28, 1977,*
36 *January 1, 1979, July 1, 2003, January 1, 2007, May 23, 2007, January 1, 2008, and January 1,*
37 *2017.*

38
39

1 **Rule 4.435. Sentencing on revocation of probation, mandatory supervision, and**
2 **postrelease community supervision**

3
4 **(a)** When the defendant violates the terms of probation, mandatory supervision, or
5 postrelease community supervision or is otherwise subject to revocation of
6 ~~probation supervision~~, the sentencing judge may make any disposition of the case
7 authorized by statute. In deciding whether to permanently revoke supervision, the
8 judge may consider the nature of the violation and the defendant’s past
9 performance on supervision.

10
11 *(Subd (a) amended effective January 1, 2018; previously amended effective January 1,*
12 *1991.)*

13
14 **(b)** On revocation and termination of ~~probation supervision~~ under section 1203.2, when
15 the sentencing judge determines that the defendant will be committed to prison or
16 county jail under section 1170(h):

17
18 (1) If the imposition of sentence was previously suspended, the judge must
19 impose judgment and sentence after considering any findings previously
20 made and hearing and determining the matters enumerated in rule 4.433(c).
21 The length of the sentence must be based on circumstances existing at the
22 time ~~probation supervision~~ was granted, and subsequent events may not be
23 considered in selecting the base term or in deciding whether to strike the
24 additional punishment for enhancements charged and found.

25
26 (2) * * *

27
28 *(Subd (b) amended effective January 1, 2018; previously amended effective July 1, 2003,*
29 *January 1, 2006, January 1, 2007, and January 1, 2017.)*

30
31 *Rule 4.435 amended effective January 1, 2018; adopted as rule 435 effective July 1, 1977;*
32 *previously renumbered effective January 1, 2001; previously amended effective January 1, 1991,*
33 *July 1, 2003, January 1, 2006, January 1, 2007, and January 1, 2017.*

34
35 **Advisory Committee Comment**

36
37 Subdivision (a) makes it clear that there is no change in the court’s power, on finding cause to
38 revoke and terminate ~~probation supervision~~ under section 1203.2(a), to continue the defendant on
39 ~~probation supervision~~.

40
41 The restriction of subdivision (b)(1) is based on *In re Rodriguez* (1975) 14 Cal.3d 639, 652:
42 “[T]he primary term must reflect the circumstances existing at the time of the offense.”
43

1 A judge imposing imprisonment on revocation of probation will have the power granted by
2 section 1170(d) to recall the commitment on his or her own motion within 120 days after the date
3 of commitment, and the power under section 1203.2(e) to set aside the revocation of probation,
4 for good cause, within 30 days after the court has notice that execution of the sentence has
5 commenced.

6
7 Consideration of conduct occurring after the granting of probation should be distinguished from
8 consideration of preprobation conduct that is discovered after the granting of an order of
9 probation and before sentencing following a revocation and termination of probation. If the
10 preprobation conduct affects or nullifies a determination made at the time probation was granted,
11 the preprobation conduct may properly be considered at sentencing following revocation and
12 termination of probation. (See *People v. Griffith* (1984) 153 Cal.App.3d 796, 801.) While *People*
13 *v. Griffith* refers only to probation, this rule likely will apply to any form of supervision.
14
15

16 **Rule 4.437. Statements in aggravation and mitigation**

17
18 **(a)–(e) * * ***

19 20 **Advisory Committee Comment**

21
22 Section 1170(b) states in part:

23
24 “At least four days prior to the time set for imposition of judgment, either party or the victim, or
25 the family of the victim if the victim is deceased, may submit a statement in aggravation or
26 mitigation to dispute facts in the record or the probation officer’s report, or to present additional
27 facts.”

28
29 This provision means that the statement is a document giving notice of intention to dispute
30 evidence in the record or the probation officer’s report, or to present additional facts.

31
32 The statement itself cannot be the medium for presenting new evidence, or for rebutting
33 competent evidence already presented, because the statement is a unilateral presentation by one
34 party or counsel that will not necessarily have any indicia of reliability. To allow its factual
35 assertions to be considered in the absence of corroborating evidence would, therefore, constitute a
36 denial of due process of law in violation of the United States (14th Amend.) and California (art. I,
37 § 7) Constitutions.

38
39 ~~“[I]t is now clear that the sentencing process, as well as the trial itself, must satisfy the~~
40 ~~requirements of the Due Process Clause. Even though the defendant has no substantive right to a~~
41 ~~particular sentence within the range authorized by statute, the sentencing is a critical stage of the~~
42 ~~criminal proceeding at which he is entitled to the effective assistance of counsel The~~

1 defendant has a legitimate interest in the character of the procedure which leads to the imposition
2 of sentence” Gardner v. Florida (1977) 430 U.S. 349, 358.

3
4 The use of probation officers’ reports is permissible because the officers are trained objective
5 investigators. Williams v. New York (1949) 337 U.S. 241. Compare sections 1203 and 1204.
6 People v. Peterson (1973) 9 Cal.3d 717, 727, expressly approved the holding of United States v.
7 Weston (9th Cir. 1971) 448 F.2d 626 that due process is offended by sentencing on the basis of
8 unsubstantiated allegations that were denied by the defendant. Cf., In re Hancock (1977) 67
9 Cal.App.3d 943, 949.

10
11 The requirement that the statement include notice of intention to rely on new evidence will
12 enhance fairness to both sides by avoiding surprise and helping to ensure that the time limit on
13 pronouncing sentence is met.

14
15
16 **Rule 4.447. Limitations on enhancements Sentencing of enhancements**

17
18 ~~No finding of an enhancement may be stricken or dismissed because imposition of the~~
19 ~~term either is prohibited by law or exceeds limitations on the imposition of multiple~~
20 ~~enhancements. The sentencing judge must impose sentence for the aggregate term of~~
21 ~~imprisonment computed without reference to those prohibitions and limitations, and must~~
22 ~~thereupon stay execution of so much of the term as is prohibited or exceeds the applicable~~
23 ~~limit. The stay will become permanent on the defendant’s service of the portion of the~~
24 ~~sentence not stayed.~~

25
26 **(a) Enhancements resulting in unlawful sentences**

27
28 A court may not strike or dismiss an enhancement solely because imposition of the
29 term is prohibited by law or exceeds limitations on the imposition of multiple
30 enhancements. Instead, the court must:

- 31
32 (1) Impose a sentence for the aggregate term of imprisonment computed without
33 reference to those prohibitions or limitations; and
34
35 (2) Stay execution of the part of the term that is prohibited or exceeds the
36 applicable limitation. The stay will become permanent once the defendant
37 finishes serving the part of the sentence that has not been stayed.

38
39 *(Subd (a) adopted effective January 1, 2018.)*

40
41 **(b) Multiple enhancements**

42

1 If a defendant is convicted of multiple enhancements of the same type, the court
2 must either sentence each enhancement or, if authorized, strike the enhancement or
3 its punishment. While the court may strike an enhancement, the court may not stay
4 an enhancement except as provided in (a) or as authorized by section 654.

5
6 (Subd (b) adopted effective January 1, 2018.)

7
8 Rule 4.447 amended effective January 1, 2018; adopted as rule 447 effective July 1, 1977;
9 previously amended and renumbered effective January 1, 2001; previously amended effective
10 July 28, 1977, January 1, 1991, July 1, 2003, and January 1, 2007.

11 12 **Advisory Committee Comment**

13
14 **Subdivision (a).** Statutory restrictions may prohibit or limit the imposition of an enhancement in
15 certain situations. (See, for example, sections 186.22(b)(1), 667(a)(2), 667.61(f), 1170.1(f) and
16 (g), 12022.53(e)(2) and (f), and Vehicle Code section 23558.)

17
18 Present practice of staying execution is followed to avoid violating a statutory prohibition or
19 exceeding a statutory limitation, while preserving the possibility of imposition of the stayed
20 portion should a reversal on appeal reduce the unstayed portion of the sentence. (See *People v.*
21 *Gonzalez* (2008) 43 Cal.4th 1118, 1129–1130; *People v. Niles* (1964) 227 Cal.App.2d 749, 756.)

22
23 Only the portion of a sentence or component thereof that exceeds a limitation is prohibited, and
24 this rule provides a procedure for that situation. This rule applies to both determinate and
25 indeterminate terms.

26
27 **Subdivision (b).** A court may stay an enhancement if section 654 applies. (See *People v. Bradley*
28 (1998) 64 Cal.App.4th 386; *People v. Haykel* (2002) 96 Cal.App.4th 146, 152.)

29 30 31 **Rule 4.451. Sentence consecutive to or concurrent with indeterminate term or ~~to~~** 32 **term in other jurisdiction**

33
34 **(a)** When a defendant is sentenced under section 1170 and the sentence is to run
35 consecutively to or concurrently with a sentence imposed under section 1168(b) in
36 the same or another proceeding, the judgment must specify the determinate term
37 imposed under section 1170 computed without reference to the indeterminate
38 sentence, must order that the determinate term be served consecutively to or
39 concurrently with the sentence under section 1168(b), and must identify the
40 proceedings in which the indeterminate sentence was imposed. The term under
41 section 1168(b), and the date of its completion or ~~parole~~ date of parole or
42 postrelease community supervision, and the sequence in which the sentences are

1 deemed or served, will be determined by correctional authorities as provided by
2 law.

3
4 *Subd (a) amended effective January 1, 2018; previously amended effective January 1,*
5 *1979, July 1, 2003, and January 1, 2007.)*
6

7 **(b)** When a defendant is sentenced under sections 1168 or 1170 and the sentence is to
8 run consecutively to or concurrently with a sentence imposed by a court of the
9 United States or of another state or territory, the judgment must specify the
10 ~~determinate~~ term imposed under sections 1168(b) or 1170 computed without
11 reference to the sentence imposed by the other jurisdiction, ~~must order that the~~
12 ~~determinate term be served commencing on the completion of the sentence imposed~~
13 ~~by the other jurisdiction,~~ and must identify the other jurisdiction and the
14 proceedings in which the other sentence was imposed, and must indicate whether
15 the sentences are imposed concurrently or consecutively. If the term imposed is to
16 be served consecutively to the term imposed by the other jurisdiction, the court
17 must order that the California term be served commencing on the completion of the
18 sentence imposed by the other jurisdiction.
19

20 *(Subd (b) amended effective January 1, 2018; previously amended January 1, 2007.)*
21

22 *Rule 4.451 amended effective January 1, 2018; adopted as rule 451 effective July 1, 1977;*
23 *previously renumbered effective January 1, 2001; previously amended effective January 1, 1979,*
24 *July 1, 2003, and January 1, 2007.*
25

26 **Advisory Committee Comment**

27
28 **Subdivision (a).** The provisions of section 1170.1(a), which use a one-third formula to calculate
29 subordinate consecutive terms, can logically be applied only when all the sentences are imposed
30 under section 1170. Indeterminate sentences are imposed under section 1168(b). Since the
31 duration of the indeterminate term cannot be known to the court, subdivision (a) states the only
32 feasible mode of sentencing. (See *People v. Felix* (2000) 22 Cal.4th 651, 654–657; *People v.*
33 *McGahuey* (1981) 121 Cal.App.3d 524, 530–532.)
34

35 **Subdivision (b).** On the authority to sentence consecutively to the sentence of another
36 jurisdiction and the effect of such a sentence, see *In re Helpman* (1968) 267 Cal.App.2d 307 and
37 cases cited at ~~note 3, id. at~~ page 310, footnote 3. The mode of sentencing required by subdivision
38 (b) is necessary to avoid the illogical conclusion that the total of the consecutive sentences will
39 depend on whether the other jurisdiction or California is the first to pronounce judgment.
40
41

1 **Rule 4.452. Determinate sentence consecutive to prior determinate sentence**

2
3 If a determinate sentence is imposed under section 1170.1(a) consecutive to one or more
4 determinate sentences imposed previously in the same court or in other courts, the court
5 in the current case must pronounce a single aggregate term, as defined in section
6 1170.1(a), stating the result of combining the previous and current sentences. In those
7 situations:

8
9 (1) * * *

10
11 (2) The judge in the current case must make a new determination of which count, in the
12 combined cases, represents the principal term, as defined in section 1170.1(a). The
13 principal term is the term with the greatest punishment imposed including conduct
14 enhancements. If two terms of imprisonment have the same punishment, either
15 term may be selected as the principal term.

16
17 (3) Discretionary decisions of the judges in the previous cases may not be changed by
18 the judge in the current case. Such decisions include the decision to impose one of
19 the three authorized terms of imprisonment referred to in section 1170(b), making
20 counts in prior cases concurrent with or consecutive to each other, or the decision
21 that circumstances in mitigation or in the furtherance of justice justified striking the
22 punishment for an enhancement. However, if a previously designated principal term
23 becomes a subordinate term after the resentencing, the subordinate term will be
24 limited to one-third the middle base term as provided in section 1170.1(a).

25
26 *Rule 4.452 amended effective January 1, 2018; adopted as rule 452 effective January 1, 1991;*
27 *previously renumbered effective January 1, 2001; previously amended effective July 1, 2003,*
28 *January 1, 2007, May 23, 2007, and January 1, 2017.*

29
30 **Rule 8.25. Service, filing, and filing fees**

31
32 (a)–(b) * * *

33
34 (c) **Filing fees**

35
36 (1)–(3) * * *

37
38 (4) If the party fails to take the action specified in a notice given under ~~(2)~~(3), the
39 reviewing court may strike the document, but may vacate the striking of the
40 document for good cause.

41
42 *(Subd (c) amended effective January 1, 2018; adopted effective October 28, 2011.)*

43

1 *Rule 8.25 amended effective January 1, 2018; adopted as rule 40.1 effective January 1, 2005;*
2 *previously amended and renumbered effective January 1, 2007; previously amended effective*
3 *January 1, 2009, July 1, 2010, January 1, 2011, October 28, 2011, and July 1, 2012.*

4
5 **Rule 8.36. Substituting parties; substituting or withdrawing attorneys**

6
7 **(a)–(b)** * * *

8
9 **(c) Withdrawing attorney**

- 10
11 (1) An attorney may request withdrawal by filing a motion to withdraw. Unless
12 the court orders otherwise, the motion need be served only on the party
13 represented and the attorneys directly affected.
14
15 (2) The proof of service need not include the address of the party represented.
16 But if the court grants the motion, the withdrawing attorney must promptly
17 provide the court and the opposing party with the party’s current or last
18 known address and telephone number.
19
20 (3) In all appeals and in original proceedings related to a superior court
21 proceeding, the reviewing court clerk must notify the superior court of any
22 ruling on the motion.
23
24 (4) If the motion is filed in any proceeding pending in the Supreme Court after
25 grant of review, the clerk/executive officer of the Supreme Court ~~clerk~~ must
26 also notify the Court of Appeal of any ruling on the motion.

27
28 *(Subd (c) amended effective January 1, 2018.)*

29
30 *Rule 8.36 amended effective January 1, 2018; repealed and adopted as rule 48 effective January*
31 *1, 2005; renumbered effective January 1, 2007.*

32
33 **Rule 8.100. Filing the appeal**

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

36
37 **(b) Fee and deposit**

- 38
39 (1) Unless otherwise provided by law, the notice of appeal must be accompanied
40 by the \$775 filing fee under Government Code sections 68926 and
41 68926.1(b), an application for a waiver of court fees and costs on appeal
42 under rule 8.26, or an order granting such an application. The fee may be paid
43 by check or money order payable to “Clerk/Executive Officer, Court of

1 Appeal”; if the fee is paid in cash, the clerk must give a receipt. The fee may
2 also be paid by any method permitted by the court pursuant to rules 2.258 and
3 8.78.

4
5 (2) The appellant must also deposit \$100 with the superior court clerk as required
6 under Government Code section 68926.1, unless otherwise provided by law
7 or the superior court waives the deposit.

8
9 (3) The clerk must file the notice of appeal even if the appellant does not present
10 the filing fee, the deposit, or an application for, or order granting, a waiver of
11 fees and costs.

12
13 *(Subd (b) amended effective January 1, 2018; previously amended effective August 17,*
14 *2003, January 1, 2007, July 1, 2009, July 27, 2012, and January 1, 2016.)*

15
16 **(c)–(g) * * ***

17
18 *Rule 8.100 amended effective January 1, 2018; repealed and adopted as rule 1 effective January*
19 *1, 2002; previously amended and renumbered as rule 8.100 effective January 1, 2007; previously*
20 *amended effective January 1, 2003, August 17, 2003, January 1, 2008, July 1, 2009, July 27,*
21 *2012, January 1, 2014, and January 1, 2016.*

22
23 **Advisory Committee Comment**

24
25 **Subdivision (a). * * ***

26
27 **Subdivision (b).** ~~In the interest of consistency, subdivision (b)(1) recommends a preferred~~
28 ~~wording—“Clerk, Court of Appeal”—for the name of the payee of checks or money orders for~~
29 ~~the filing fee. The provision is not mandatory.~~

30
31 **Subdivision (c)(2). * * ***

32
33 **Subdivision (e). * * ***

34
35 **Rule 8.137. Settled statement**

36
37 **(a) Description**

38
39 A settled statement is a summary of the superior court proceedings approved by the
40 superior court. An appellant may either elect under (b)(1) or move under (b)(2) to
41 use a settled statement as the record of the oral proceedings in the superior court,
42 instead of a reporter’s transcript.

43

1 (Subd (a) adopted effective January 1, 2018.)
2

3 **(a)(b) Motion to use When a settled statement may be used**
4

5 (1) An appellant may elect in his or her notice designating the record on appeal
6 under rule 8.121 to use a settled statement as the record of the oral
7 proceedings in the superior court without filing a motion under (2) if:
8

9 (A) The designated oral proceedings in the superior court were not reported
10 by a court reporter; or
11

12 (B) The appellant has an order waiving his or her court fees and costs.
13

14 ~~(1)~~(2) An appellant intending to proceed under this rule for reasons other than those
15 listed in (1) must serve and file in superior court with its notice designating
16 the record on appeal under rule 8.121 a motion to use a settled statement
17 instead of a reporter's transcript or both a reporter's and clerk's transcripts.
18

19 ~~(2)~~(A) The motion must be supported by a showing that:
20

21 ~~(A)~~(i) A substantial cost saving will result and the statement can be
22 settled without significantly burdening opposing parties or the
23 court;
24

25 ~~(B)~~(ii) The designated oral proceedings were not reported or cannot be
26 transcribed; or
27

28 ~~(C)~~(iii) Although the appellant does not have a fee waiver, he or she is
29 unable to pay for a reporter's transcript and funds are not
30 available from the Transcript Reimbursement Fund (see rule
31 8.130(c)). A party proceeding in forma pauperis is deemed
32 unable to pay for a transcript.
33

34 ~~(3)~~(B) If the court denies the motion, the appellant must file a new notice
35 designating the record on appeal under rule 8.121 within 10 days after
36 the superior court clerk sends, or a party serves, the order of denial.
37

38 (3) An appellant's notice under (1) or motion under (2) must:
39

40 (A) Specify the date of each oral proceeding to be included in the settled
41 statement;
42

1 (B) Identify whether each proceeding designated under (A) was reported by
2 a court reporter and, if so, for each such proceeding:

3
4 (i) Provide the name of the court reporter, if known; and

5
6 (ii) Identify whether a certified transcript has previously been
7 prepared by checking the appropriate box on *Appellant's Notice*
8 *Designating Record on Appeal (Unlimited Civil Case)* (form
9 APP-003) or, if that form is not used, placing an asterisk before
10 that proceeding in the notice.

11
12 (4) If the designated oral proceedings in the superior court were reported by a
13 court reporter:

14
15 (A) Within 10 days after the appellant serves either a notice under (1) or a
16 motion under (2), the respondent may serve and file a notice indicating
17 that he or she is electing to provide a reporter's transcript in lieu of
18 proceeding with a settled statement. The respondent must also either:

19
20 (i) Deposit a certified transcript of all of the proceedings designated
21 by the appellant under (3) and any additional proceedings
22 designated by the respondent under rule 8.130(b)(3)(C); or

23
24 (ii) Serve and file a notice that the respondent is requesting
25 preparation, at the respondent's expense, of a reporter's transcript
26 of all proceedings designated by the appellant under (3) and any
27 additional proceedings designated by the respondent. This notice
28 must be accompanied by either the required deposit for the
29 reporter's transcript under rule 8.130(b)(1) or the reporter's
30 written waiver of the deposit in lieu of all or a portion of the
31 deposit under rule 8.130(b)(3)(A).

32
33 (B) If the respondent timely deposits the certified transcript as required
34 under (i), the appellant's motion to use a settled statement will be
35 dismissed. If the respondent timely files the notice and makes the
36 deposit or files the waiver as provided under (ii), the appellant's
37 motion to use a settled statement will be dismissed and the clerk must
38 promptly send the reporter notice of the designation and of the deposit,
39 waiver, or both—and notice to prepare the transcript—as provided
40 under rule 8.130(d).

41
42 (Subd (b) relettered, renumbered and amended effective January 1, 2018; adopted as subd
43 (a); previously amended effective January 1, 2007, January 1, 2008 and January 1, 2016.)

1
2 **(b)(c) Time to file; contents of proposed statement**

- 3
4 (1) ~~Within 30 days after the superior court clerk sends, or a party serves, an order~~
5 ~~granting a motion to use~~ If the respondent does not file a notice under
6 (b)(4)(A) electing to provide a reporter's transcript in lieu of proceeding with
7 a settled statement, the appellant must serve and file a proposed statement in
8 superior court within 30 days after filing its notice under (b)(1) or within 30
9 days after the superior court clerk sends, or a party serves, an order granting a
10 motion under (b)(2) a condensed narrative of the oral proceedings that the
11 appellant believes necessary for the appeal. Subject to the court's approval in
12 settling the statement, the appellant may present some or all of the evidence
13 by question and answer.
14
15 (2) Appellants who are not represented by an attorney are encouraged to file their
16 proposed statement on *Proposed Statement on Appeal (Unlimited Civil Case)*
17 (form APP-014). The court may order an appellant to use form APP-014. If
18 the condensed narrative describes less than all the testimony, the appellant
19 must state the points to be raised on appeal; the appeal is then limited to those
20 points unless, on motion, the reviewing court permits otherwise.
21
22 (3) ~~An appellant intending to use a settled statement instead of both reporter's~~
23 ~~and clerk's transcripts must accompany the condensed narrative with copies~~
24 ~~of all items required by rule 8.122(b)(1), showing the dates required by rule~~
25 ~~8.122(b)(2).~~
26
27 (4) ~~Within 20 days after the appellant serves the condensed narrative, the~~
28 ~~respondent may serve and file proposed amendments.~~
29
30 (5) ~~The proposed statement and proposed amendments may be accompanied by~~
31 ~~copies of any document includable in the clerk's transcript under rule~~
32 ~~8.122(b)(3) and (4).~~

33
34 *(Subd (c) relettered and amended effective January 1, 2018; adopted as subd (b);*
35 *previously amended effective January 1, 2007, January 1, 2008, and January 1, 2016.)*
36

37 **(d) Contents of proposed statement**

38
39 The proposed statement must:

- 40
41 (1) Contain a statement of the points the appellant is raising on appeal. If the
42 condensed narrative under (2) covers only a portion of the oral proceedings,
43 the appeal is then limited to the points identified in the statement unless the

1 reviewing court determines that the record permits the full consideration of
2 another point or, on motion, the reviewing court permits otherwise.

3
4 (2) Contain a condensed narrative of the oral proceedings that the appellant
5 specified under (b)(3).

6
7 (A) The condensed narrative must include a concise factual summary of the
8 evidence and the testimony of each witness relevant to the points that
9 the appellant states under (1) are being raised on appeal. Subject to the
10 court's approval in settling the statement, the appellant may present
11 some or all of the evidence by question and answer. Any evidence or
12 portion of a proceeding not included will be presumed to support the
13 judgment or order appealed from.

14
15 (B) If one of the points that the appellant states will be raised on appeal is a
16 challenge to the giving, refusal, or modification of a jury instruction,
17 the condensed narrative must include any instructions submitted orally
18 and not in writing and must identify the party that requested the
19 instruction and any modification.

20
21 (3) Have attached to it a copy of the judgment or order being appealed.

22
23 *(Subd (d) adopted effective January 1, 2018.)*

24
25 **(e) Respondent's response to proposed statement**

26
27 Within 20 days after the appellant serves the proposed statement, the respondent
28 may serve and file either:

29
30 (1) Proposed amendments to the proposed statement; or

31
32 (2) A notice indicating that he or she is electing to provide a reporter's
33 transcript in lieu of proceeding with a settled statement. The respondent
34 must also either:

35
36 (A) Deposit a certified transcript of all the proceedings specified by the
37 appellant under (b)(3) of this rule and any additional proceedings
38 designated by the respondent under rule 8.130(b)(3)(C); or

39
40 (B) Serve and file a notice that the respondent is requesting preparation, at
41 the respondent's expense, of a reporter's transcript of all proceedings
42 specified by the appellant under (b)(3) of this rule and any additional
43 proceedings designated by the respondent. This notice must be

1 accompanied by either the required deposit for the reporter's
2 transcript under rule 8.130(b)(1) or the reporter's written waiver of
3 the deposit in lieu of all or a portion of the deposit under rule
4 8.130(b)(3)(A).
5

6 *(Subd (e) adopted effective January 1, 2018.)*
7

8 **(e)(f) Settlement, preparation, and certification Review of appellant's proposed**
9 **statement**
10

11 (1) The clerk must set a date for a settlement hearing by the trial judge that is No
12 later than 10 days after the respondent files proposed amendments or the time
13 to do so expires, whichever is earlier, and must give the parties at least five
14 days' notice of the hearing date a party may request a hearing to review and
15 correct the proposed statement. No hearing will be held unless ordered by the
16 trial court judge, and the judge will not ordinarily order a hearing unless there
17 is a factual dispute about a material aspect of the trial court proceedings.
18

19 (2) The trial court judge may order that a transcript be prepared as the record of
20 the oral proceedings instead of correcting a proposed statement on appeal if
21 the trial court proceedings were reported by a court reporter, the trial court
22 judge determines that doing so would save court time and resources, and the
23 court has a local rule permitting such an order. The court will pay for any
24 transcript ordered under this subdivision. At the hearing, the judge must settle
25 the statement and fix the times within which the appellant must prepare,
26 serve, and file it.
27

28 (3) Except as provided in (2), if no hearing is ordered, no later than 10 days after
29 the time for requesting a hearing expires, the trial court judge must review the
30 proposed statement and any proposed amendments filed by the respondent
31 and take one of the following actions: If the respondent does not object to the
32 prepared statement within five days after it is filed, it will be deemed
33 properly prepared and the clerk must present it to the judge for certification.
34

35 (A) If the proposed statement does not contain material required under (d),
36 the trial court judge may order the appellant to prepare a new proposed
37 statement. The order must identify the additional material that must be
38 included in the statement to comply with (d) and the date by which the
39 new proposed statement must be served and filed. If the appellant does
40 not serve and file a new proposed statement as directed, the appellant
41 will be deemed to be in default, and rule 8.140 will apply.
42

1 (B) If the trial court judge does not issue an order under (A), the judge must
2 either:

3
4 (i) Make any corrections or modifications to the statement necessary
5 to ensure that it is an accurate summary of the evidence and the
6 testimony of each witness relevant to the points that the appellant
7 states under (d)(1) are being raised on appeal; or

8
9 (ii) Identify the necessary corrections and modifications, and order
10 the appellant to prepare a statement incorporating these
11 corrections and modifications.

12
13 (4) If a hearing is ordered, the court must promptly set the hearing date and
14 provide the parties with at least 5 days' written notice of the hearing date. No
15 later than 10 days after the hearing, the trial court judge must either: The
16 parties' stipulation that the statement as originally served or as prepared is
17 correct is equivalent to the judge's certification.

18
19 (A) Make any corrections or modifications to the statement necessary to
20 ensure that it is an accurate summary of the evidence and the testimony
21 of each witness relevant to the points that the appellant states under
22 (d)(1) are being raised on appeal; or

23
24 (B) Identify the necessary corrections and modifications and order the
25 appellant to prepare a statement incorporating these corrections and
26 modifications.

27
28 (5) The trial court judge must not eliminate the appellant's specification of
29 grounds of appeal from the proposed statement.

30
31 *(Subd (f) relettered, renumbered, and amended effective January 1, 2018; adopted as subd*
32 *(c).)*

33
34 **(g) Review of the corrected statement**

35
36 (1) If the trial court judge makes any corrections or modifications to the
37 proposed statement under (f), the clerk must serve copies of the corrected or
38 modified statement on the parties. If under (f) the trial court judge orders the
39 appellant to prepare a statement incorporating corrections and modifications,
40 the appellant must serve and file the corrected or modified statement within
41 the time ordered by the court. If the appellant does not serve and file a
42 corrected or modified statement as directed, the appellant will be deemed to
43 be in default and rule 8.140 will apply.

- 1
2 (2) Within 10 days after the corrected or modified statement is served on the
3 parties, any party may serve and file proposed modifications or objections to
4 the statement.
5
6 (3) Within 10 days after the time for filing proposed modifications or objections
7 under (2) has expired, the trial court judge must review the corrected or
8 modified statement and any proposed modifications or objections to the
9 statement filed by the parties. The procedures in (2) or in (f)(3) apply if the
10 trial court judge determines that further corrections or modifications are
11 necessary to ensure that the statement is an accurate summary of the evidence
12 and the testimony of each witness relevant to the points that the appellant
13 states under (d)(1) are being raised on appeal.

14
15 *(Subd (g) adopted effective January 1, 2018.)*
16

17 **(h) Certification of the statement on appeal**
18

- 19 (1) If the trial court judge does not order the preparation of a transcript under
20 (f)(2) in lieu of correcting the proposed statement or order any corrections or
21 modifications to the proposed statement under (f)(3), (f)(4), or (g)(3), the
22 judge must promptly certify the statement.
23
24 (2) The parties may serve and file a stipulation that the statement as originally
25 served under (c) or as corrected or modified under (f)(3), (f)(4), or (g)(3) is
26 correct. Such a stipulation is equivalent to the judge's certification of the
27 statement.
28
29 (3) Upon certification of the statement under (1) or receipt of a stipulation under
30 (2), the certified statement must immediately be transmitted to the clerk for
31 filing of the record under rule 8.150.
32

33 *(Subd (h) adopted effective January 1, 2018.)*
34

35 Rule 8.137 amended effective January 1, 2018; repealed and adopted as rule 7 effective
36 January 1, 2002; previously amended and renumbered as rule 8.137 effective January 1,
37 2007; previously amended effective January 1, 2008, and January 1, 2016.
38

39 **Rule 8.212. Service and filing of briefs**
40

41 **(a) * * ***
42

1 (b) * * *

2
3 (c) Service

4
5 (1) * * *

6
7 (2) If a brief is not filed electronically under rules 8.70–8.79, one electronic copy
8 of each brief must be submitted to the Court of Appeal. For purposes of this
9 requirement, the term “brief” does not include a petition for rehearing or an
10 answer thereto.

11
12 (A)–(B) * * *

13
14 (C) If it would cause undue hardship for the party filing the brief to submit
15 an electronic copy of the brief to the Court of Appeal, the party may
16 instead serve four paper copies of the brief on the Supreme Court. If the
17 brief discloses material contained in a sealed or conditionally sealed
18 record, the party serving the brief must comply with rule 8.46(f) and
19 attach a cover sheet that contains the information required by rule
20 8.204(b)(10). The clerk/executive officer of the Court of Appeal ~~clerk~~
21 must promptly notify the Supreme Court of any court order unsealing
22 the brief. In the absence of such notice, the clerk/executive officer of
23 the Supreme Court ~~clerk~~ must keep all copies of the unredacted brief
24 under seal.

25
26 (3) * * *

27
28 *(Subd (c) amended effective January 1, 2018; previously amended effective January 1,*
29 *2004, January 1, 2005, January 1, 2007, January 1, 2008, January 1, 2013, January 1,*
30 *2014, and January 1, 2015.)*

31
32 *Rule 8.212 amended effective January 1, 2018; repealed and adopted as rule 15 effective January*
33 *1, 2002; previously amended and renumbered effective January 1, 2007; previously amended*
34 *effective January 1, 2003, January 1, 2004, January 1, 2005, July 1, 2005, January 1, 2008,*
35 *January 1, 2010, January 1, 2011, January 1, 2013, January 1, 2014, and January 1, 2015.*

36
37 **Rule 8.248. Prehearing conference**

38
39 (a)–(d) * * *

40
41 *Rule 8.248 amended effective January 1, 2016; repealed and adopted as rule 21 effective January*
42 *1, 2003; previously amended and renumbered as rule 8.248 effective January 1, 2007.*

43

1 **Advisory Committee Comment**

2
3 **Subdivision (a).** * * *

4
5 **Subdivision (d).** If a prehearing conference is ordered before the due date of the appellant’s
6 opening brief, the time to file the brief is not *extended* but *tolled*, in order to avoid unwarranted
7 lengthening of the briefing process. For example, if the conference is ordered 15 days after the
8 start of the normal 30-day briefing period, the rule simply *suspends* the running of that period;
9 when the period resumes, the party will not receive an automatic extension of a full 30 days but
10 rather the remaining 15 days of the original briefing period, unless the period is otherwise
11 extended.

12
13 Under subdivision (d) the tolling period continues “until the date [the Court of Appeal] sends
14 notice that the conference is *concluded*” (italics added). This provision is intended to
15 accommodate the possibility that the conference may not conclude on the date it begins.

16
17 Whether or not the conference concludes on the date it begins, subdivision (d) requires the
18 clerk/executive officer of the Court of Appeal-~~clerk~~ to send the parties a notice that the
19 conference is concluded. This provision is intended to facilitate the calculation of the new
20 briefing due dates.

21
22 **Rule 8.256. Oral argument and submission of the cause**

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

25
26 **(b) Notice of argument**

27
28 The clerk/executive officer of the Court of Appeal-~~clerk~~ must send a notice of the
29 time and place of oral argument to all parties at least 20 days before the argument
30 date. The presiding justice may shorten the notice period for good cause; in that
31 event, the clerk/executive officer must immediately notify the parties by telephone
32 or other expeditious method.

33
34 *(Subd (b) amended effective January 1, 2018.)*

35
36 **(c)–(e)** * * *

37
38 *Rule 8.256 amended effective January 1, 2018; repealed and adopted as rule 23 effective January*
39 *1, 2003; previously amended and renumbered effective January 1, 2007.*

40
41 **Rule 8.264. Filing, finality, and modification of decision**

42

1 **(a) Filing the decision**

2
3 (1) The clerk/executive officer of the Court of Appeal ~~clerk~~ must promptly file
4 all opinions and orders of the court and promptly send copies showing the
5 filing date to the parties and, when relevant, to the lower court or tribunal.

6
7 (2) * * *

8
9 *(Subd (a) amended effective January 1, 2018.)*

10
11 **(b) * * ***

12
13 **(c) Modification of decision**

14
15 (1) A reviewing court may modify a decision until the decision is final in that
16 court. If the ~~clerk's~~ office of the clerk/executive officer is closed on the date
17 of finality, the court may modify the decision on the next day the ~~clerk's~~
18 office is open.

19
20 (2) * * *

21
22 *(Subd (c) amended effective January 1, 2018.)*

23
24 **(d) Consent to increase or decrease in amount of judgment**

25
26 If a Court of Appeal decision conditions the affirmance of a money judgment on a
27 party's consent to an increase or decrease in the amount, the judgment is reversed
28 unless, before the decision is final under (b), the party serves and files a copy of a
29 consent in the Court of Appeal. If a consent is filed, the finality period runs from
30 the filing date of the consent. The clerk/executive officer must send one filed-
31 endorsed copy of the consent to the superior court with the remittitur.

32
33 *(Subd (d) amended effective January 1, 2018; previously amended effective January 1,*
34 *2016.)*

35
36 *Rule 8.264 amended effective January 1, 2018; repealed and adopted as rule 24 effective January*
37 *1, 2003; previously amended and renumbered as rule 8.264 effective January 1, 2007; previously*
38 *amended effective January 1, 2009, and January 1, 2016.*

39
40 **Rule 8.272. Remittitur**

41
42 **(a) * * ***

43

1 **(b) Clerk's duties**

2
3 (1) If a Court of Appeal decision is not reviewed by the Supreme Court:

4
5 (A) The clerk/executive officer of the Court of Appeal ~~clerk~~ must issue a
6 remittitur immediately after the Supreme Court denies review, or the
7 period for granting review expires, or the court dismisses review under
8 rule 8.528(b); and

9
10 (B) The clerk/executive officer must send the lower court or tribunal the
11 Court of Appeal remittitur and a filed-endorsed copy of the opinion or
12 order.

13
14 (2) After Supreme Court review of a Court of Appeal decision:

15
16 (A) On receiving the Supreme Court remittitur, the clerk/executive officer
17 of the Court of Appeal ~~clerk~~ must issue a remittitur immediately if
18 there will be no further proceedings in the Court of Appeal; and

19
20 (B) The clerk must send the lower court or tribunal the Court of Appeal
21 remittitur, a copy of the Supreme Court remittitur, and a filed-endorsed
22 copy of the Supreme Court opinion or order.

23
24 *(Subd (b) amended effective January 1, 2018; previously amended effective January 1,*
25 *2007, and January 1, 2016.)*

26
27 **(c) * * ***

28
29 **(d) Notice**

30
31 (1) The remittitur is deemed issued when the clerk/executive officer enters it in
32 the record. The clerk/executive officer must immediately send the parties
33 notice of issuance of the remittitur, showing the date of entry.

34
35 (2) If, without requiring further proceedings in the trial court, the decision
36 changes the length of a state prison sentence, applicable credits, or the
37 maximum permissible confinement to the Department of Corrections and
38 Rehabilitation, Division of Juvenile Justice, the clerk/executive officer must
39 send a copy of the remittitur and opinion or order to either the Department of
40 Corrections and Rehabilitation or the Division of Juvenile Justice.

41
42 *(Subd (d) amended effective January 1, 2018; previously amended effective January 1,*
43 *2007.)*

1
2 *Rule 8.272 amended effective January 1, 2018; repealed and adopted as rule 26 effective January*
3 *1, 2003; previously amended effective January 1, 2007, January 1, 2008, and January 1, 2016.*
4

5 **Rule 8.278. Costs on appeal**

6
7 **(a) * * ***
8

9 **(b) Judgment for costs**

10
11 (1) The clerk/executive officer of the Court of Appeal ~~clerk~~ must enter on the
12 record, and insert in the remittitur, a judgment awarding costs to the
13 prevailing party under (a)(2) or as directed by the court under (a)(3), (a)(4),
14 or (a)(5).
15

16 (2) If the clerk/executive officer fails to enter judgment for costs, the court may
17 recall the remittitur for correction on its own motion, or on a party's motion
18 made not later than 30 days after the remittitur issues.
19

20 *(Subd (b) amended effective January 1, 2018.)*
21

22 **(c)–(d) * * ***
23

24 *Rule 8.278 amended effective January 1, 2018; adopted effective January 1, 2008; previously*
25 *amended effective January 1, 2013, and January 1, 2016.*
26

27 **Rule 8.336. Preparing, certifying, and sending the record**

28
29 **(a)–(g) * * ***
30

31 **(h) Supervision of preparation of record**

32
33 Each clerk/executive officer of the Court of Appeal ~~clerk~~, under the supervision of
34 the administrative presiding justice or the presiding justice, must take all
35 appropriate steps to ensure that superior court clerks and reporters promptly
36 perform their duties under this rule. This provision does not affect the superior
37 courts' responsibility for the prompt preparation of appellate records.
38

39 *(Subd (h) amended effective January 1, 2018.)*
40

41 *Rule 8.336 amended effective January 1, 2018; repealed and adopted as rule 32 effective January*
42 *1, 2004; previously amended and renumbered as rule 8.336 effective January 1, 2007; previously*
43 *amended effective January 1, 2010, January 1, 2014, January 1, 2016, and January 1, 2017.*

1
2 **Rule 8.380. Petition for writ of habeas corpus filed by petitioner not represented by**
3 **an attorney**

4
5 **(a) Required Judicial Council form**

6
7 A person who is not represented by an attorney and who petitions a reviewing court
8 for writ of habeas corpus seeking release from, or modification of the conditions of,
9 custody of a person confined in a state or local penal institution, hospital, narcotics
10 treatment facility, or other institution must file the petition on *Petition for Writ of*
11 *Habeas Corpus* (form MC-275). For good cause the court may permit the filing of
12 a petition that is not on that form, but the petition must be verified.

13
14 *(Subd (a) amended effective January 1, 2018; previously amended effective January 1,*
15 *2006, January 1, 2007, and January 1, 2009.)*

16
17 **(b)–(c) * * ***

18
19 *Rule 8.380 amended effective January 1, 2018; repealed and adopted as rule 60 effective January*
20 *1, 2005; previously amended and renumbered as rule 8.380 effective January 1, 2007; previously*
21 *amended effective January 1, 2006, January 1, 2009, January 1, 2014, and January 1, 2016.*

22
23
24 **Rule 8.384. Petition for writ of habeas corpus filed by an attorney for a party**

25
26 **(a) Form and content of petition and memorandum**

27
28 (1) A petition for habeas corpus filed by an attorney need not be filed on *Petition*
29 *for Writ of Habeas Corpus* (form MC-275) but must contain the information
30 requested in that form and must be verified. All petitions filed by attorneys,
31 whether or not on form MC-275, must be either typewritten or produced on a
32 computer, and must comply with this rule and rules 8.40(b)–(c) relating to
33 document covers and rule 8.204(a)(1)(A) relating to tables of contents and
34 authorities. A petition that is not on form MC-275 must also comply with the
35 remainder of rules ~~8.204(a) and 8.204~~–(b).

36
37 *(Subd (a) amended effective January 1, 2018; adopted as part of subd (b) effective January*
38 *1, 2006; previously amended and lettered as subd (a) effective January 1, 2009; previously*
39 *amended effective January 1, 2016.)*

40
41 **(2)–(3) * * ***
42

1 **(b)–(d) * * ***

2
3 *Rule 8.384 amended effective January 1, 2018; adopted as rule 60.5 effective January 1, 2006;*
4 *previously amended and renumbered as rule 8.384 effective January 1, 2007; previously*
5 *amended effective January 1, 2009, January 1, 2014, January 1, 2016.*

6
7
8 **Rule 8.452. Writ petition to review order setting hearing under Welfare and**
9 **Institutions Code section 366.26**

10
11 **(a) Petition**

12
13 (1) * * *

14
15 (2) The petition must be verified.

16
17 ~~(2)~~(3) The petition must be accompanied by a memorandum.

18
19 *(Subd (a) amended effective January 1, 2018; previously amended effective January 1,*
20 *2007, and July 1, 2010.)*

21
22 **(b)–(i) * * ***

23
24 *Rule 8.452 amended effective January 1, 2018; adopted as rule 38.1 effective January 1, 2005;*
25 *previously amended and renumbered effective January 1, 2007; previously amended effective*
26 *January 1, 2006, July 1, 2010, and January 1, 2017.*

27
28
29 **Rule 8.456. Writ petition under Welfare and Institutions Code section 366.28 to**
30 **review order designating or denying specific placement of a dependent child**
31 **after termination of parental rights**

32
33 **(a) Petition**

34
35 (1) * * *

36
37 (2) The petition must be verified.

38
39 ~~(2)~~(3) The petition must be accompanied by a memorandum.

40
41 *(Subd (a) amended effective January 1, 2018; previously amended effective January 1,*
42 *2007, and July 1, 2010.)*

43

1 **(b)–(i) * * ***

2
3 *Rule 8.456 amended effective January 1, 2018; adopted as rule 38.3 effective January 1, 2005;*
4 *previously amended and renumbered effective January 1, 2007; previously amended effective*
5 *January 1, 2006, February 24, 2006, July 1, 2010, and January 1, 2017.*

6
7 **Rule 8.495. Review of Workers’ Compensation Appeals Board cases**

8
9 **(a) Petition**

10
11 (1)–(2) * * *

12
13 (3) The petition must be verified.

14
15 ~~(3)~~(4) The petition must be accompanied by proof of service of a copy of the
16 petition on the Secretary of the Workers’ Compensation Appeals Board in
17 San Francisco, or two copies if the petition is served in paper form, and one
18 copy on each party who appeared in the action and whose interest is adverse
19 to the petitioner. Service on the board’s local district office is not required.

20
21 *(Subd (a) amended effective January 1, 2018; previously amended effective January 1,*
22 *2007, and January 1, 2016.)*

23
24 **(b)–(c) * * ***

25
26 *Rule 8.495 amended effective January 1, 2018; repealed and adopted as rule 57 effective January*
27 *1, 2005; previously amended effective July 1, 2006, and January 1, 2016; previously amended*
28 *and renumbered as rule 8.494 effective January 1, 2007; previously renumbered as rule 8.495*
29 *effective January 1, 2009.*

30
31 **Rule 8.500. Petition for review**

32
33 **(a)–(d) * * ***

34
35 **(e) Time to serve and file**

36
37 (1) A petition for review must be served and filed within 10 days after the Court
38 of Appeal decision is final in that court. For purposes of this rule, the date of
39 finality is not extended if it falls on a day on which the ~~clerk’s~~ office of the
40 clerk/executive officer is closed.

41
42 (2) * * *

43

1 (3) If a petition for review is presented for filing before the Court of Appeal
2 decision is final in that court, the clerk/executive officer of the Supreme
3 Court clerk must accept it and file it on the day after finality.

4
5 (4)–(5) * * *

6
7 *(Subd (e) amended effective January 1, 2018; previously amended effective January 1,*
8 *2007, and January 1, 2009.)*

9
10 **(f) Additional requirements**

11
12 (1) The petition must also be served on the superior court clerk and the
13 clerk/executive officer of the Court of Appeal clerk.

14
15 (2) * * *

16
17 (3) The clerk/executive officer of the Supreme Court clerk must file the petition
18 even if its proof of service is defective, but if the petitioner fails to file a
19 corrected proof of service within 5 days after the clerk gives notice of the
20 defect the court may strike the petition or impose a lesser sanction.

21
22 *(Subd (f) amended effective January 1, 2018; previously amended effective January 1,*
23 *2004, and January 1, 2007.)*

24
25 **(g) * * ***

26
27 *Rule 8.500 amended effective January 1, 2018; repealed and adopted as rule 28 effective January*
28 *1, 2003; previously amended effective January 1, 2004, July 1, 2004, and January 1, 2009;*
29 *previously amended and renumbered effective January 1, 2007.*

30
31 **Advisory Committee Comment**

32
33 **Subdivision (a).** * * *

34
35 **Subdivision (e).** * * *

36
37 **Subdivision (f).** The general requirements relating to service of documents in the appellate courts
38 are established by rule 8.25. Subdivision (f)(1) requires that the petition (but not an answer or
39 reply) be served on the clerk/executive officer of the Court of Appeal clerk. To assist litigants,
40 (f)(1) also states explicitly what is impliedly required by rule 8.212(c), i.e., that the petition must
41 also be served on the superior court clerk (for delivery to the trial judge).
42

1 **Rule 8.508. Petition for review to exhaust state remedies**

2
3 **(a)–(b) * * ***

4
5 **(c) Service**

6
7 The petition must be served on the clerk/executive officer of the Court of Appeal
8 ~~clerk~~ but need not be served on the superior court clerk.

9
10 *(Subd (c) amended effective January 1, 2018.)*

11
12 *Rule 8.508 amended effective January 1, 2018; adopted as rule 33.3 effective January 1, 2004;*
13 *previously amended and renumbered effective January 1, 2007.*

14
15 **Rule 8.512. Ordering review**

16
17 **(a) Transmittal of record**

18
19 On receiving a copy of a petition for review or on request of the Supreme Court,
20 whichever is earlier, the clerk/executive officer of the Court of Appeal ~~clerk~~ must
21 promptly send the record to the Supreme Court. If the petition is denied, the
22 clerk/executive officer of the Supreme Court ~~clerk~~ must promptly return the record
23 to the Court of Appeal if the record was transmitted in paper form.

24
25 *(Subd (a) amended effective January 1, 2018; previously amended effective January 1,*
26 *2016.)*

27
28 **(b) * * ***

29
30 **(c) Review on the court's own motion**

31
32 (1) If no petition for review is filed, the Supreme Court may, on its own motion,
33 order review of a Court of Appeal decision within 30 days after the decision
34 is final in that court. Before the 30-day period or any extension expires, the
35 Supreme Court may order one or more extensions to a date not later than 90
36 days after the decision is final in the Court of Appeal. If any such period ends
37 on a day on which the ~~clerk's~~ office of the clerk/executive officer is closed,
38 the court may order review on its own motion on the next day the ~~clerk's~~
39 office is open.

40
41 (2) * * *

1
2 (Subd (c) amended effective January 1, 2018; adopted as subd (d); previously amended
3 and relettered effective January 1, 2004.)
4

5 **(d) * * ***

6
7 *Rule 8.512 amended effective January 1, 2018; adopted as rule 28.2 effective January 1, 2003;*
8 *previously renumbered as rule 8.512 effective January 1, 2007; previously amended effective*
9 *January 1, 2004, and January 1, 2016.)*
10

11 **Rule 8.528. Disposition**

12
13 **(a) * * ***

14
15 **(b) Dismissal of review**

16
17 (1) The Supreme Court may dismiss review. The clerk/executive officer of the
18 Supreme Court ~~clerk~~ must promptly send an order dismissing review to all
19 parties and the Court of Appeal.
20

21 (2) When the Court of Appeal receives an order dismissing review, the decision
22 of that court is final and its clerk/executive officer must promptly issue a
23 remittitur or take other appropriate action.
24

25 (3) * * *

26
27 *(Subd (b) amended effective January 1, 2018; previously amended effective January 1,*
28 *2017.)*
29

30 **(c)–(f) * * ***

31
32 *Rule 8.528 amended effective January 1, 2018; repealed and adopted as rule 29.3 effective*
33 *January 1, 2003; previously amended and renumbered as rule 8.528 effective January 1, 2007;*
34 *previously amended effective January 1, 2017.*
35

36 **Advisory Committee Comment**

37
38 **Subdivision (a).** * * *

39
40 **Subdivision (b).** An earlier version of this rule purported to limit Supreme Court *dismissals of*
41 *review* to cases in which the court had “improvidently” granted review. In practice, however, the
42 court may dismiss review for a variety of other reasons. For example, after the court decides a
43 “lead” case, its current practice is to dismiss review in any pending companion case (i.e., a “grant

1 and hold” matter under rule 8.512(c) that appears correctly decided in light of the lead case and
2 presents no additional issue requiring resolution by the Supreme Court or the Court of Appeal.
3 The Supreme Court may also dismiss review when a supervening event renders the case moot for
4 any reason, e.g., when the parties reach a settlement, when a party seeking personal relief dies, or
5 when the court orders review to construe a statute that is then repealed before the court can act.
6 Reflecting this practice, the Supreme Court now dismisses review—even in the rare case in which
7 the grant of review was arguably “improvident”—by an order that says simply that “review is
8 dismissed.”

9
10 An order of review ipso facto transfers jurisdiction of the cause to the Supreme Court. By the
11 same token, an order dismissing review ipso facto retransfers jurisdiction to the Court of Appeal.
12 The Court of Appeal has no discretion to exercise after the Supreme Court dismisses review: the
13 clerk/executive officer of the Supreme Court ~~clerk~~ must promptly send the dismissal order to the
14 Court of Appeal; when the clerk/executive officer of the Court of Appeal ~~clerk~~ files that order,
15 the Court of Appeal decision immediately becomes final.

16
17 If the decision of the Court of Appeal made final by (b)(2) requires issuance of a remittitur under
18 rule 8.272(a), the clerk/executive officer must issue the remittitur; if the decision does not require
19 issuance of a remittitur—e.g., if the decision is an interlocutory order (see rule 8.500(a)(1))—the
20 clerk/executive officer must take whatever action is appropriate in the circumstances.

21
22 **Subdivision (d).** * * *

23
24 **Subdivision (e).** * * *

25
26 **Rule 8.532. Filing, finality, and modification of decision**

27
28 **(a) Filing the decision**

29
30 The clerk/executive officer of the Supreme Court ~~clerk~~ must promptly file all
31 opinions and orders issued by the court and promptly send copies showing the
32 filing date to the parties and, when relevant, to the lower court or tribunal.

33
34 *(Subd (a) amended effective January 1, 2018.)*

35
36 **(b)–(c)** * * *

37
38 *Rule 8.532 amended effective January 1, 2018; repealed and adopted as rule 29.4 effective*
39 *January 1, 2003; previously amended and renumbered effective January 1, 2007.*

40
41 **Rule 8.540. Remittitur**

42

1 (a) * * *

2
3 (b) **Clerk's duties**

- 4
5 (1) The clerk must issue a remittitur when a decision of the court is final. The
6 remittitur is deemed issued when the clerk enters it in the record.
7
8 (2) After review of a Court of Appeal decision, the clerk/executive officer of the
9 Supreme Court clerk must address the remittitur to the Court of Appeal and
10 send that court a copy of the remittitur and a filed-endorsed copy of the
11 Supreme Court opinion or order. The clerk must send two copies of any
12 document sent in paper form.
13
14 (3) After a decision in an appeal from a judgment of death or in a cause
15 transferred to the court under rule 8.552, the clerk must send the remittitur
16 and a filed-endorsed copy of the Supreme Court opinion or order to the lower
17 court or tribunal.
18
19 (4) The clerk must comply with the requirements of rule 8.272(d).

20
21 *(Subd (b) amended effective January 1, 2018; previously amended effective January 1,*
22 *2007, and January 1, 2016.)*

23
24 (c) * * *

25
26 *Rule 8.540 amended effective January 1, 2018; repealed and adopted as rule 29.6 effective*
27 *January 1, 2003; previously amended and renumbered as rule 8.540 effective January 1, 2007;*
28 *previously amended effective January 1, 2016.*

29
30 **Rule 8.600. In general**

31
32 (a)–(c) * * *

33
34 (d) **Supervising preparation of record**

35
36 The clerk/executive officer of the Supreme Court ~~clerk~~, under the supervision of
37 the Chief Justice, must take all appropriate steps to ensure that superior court clerks
38 and reporters promptly perform their duties under the rules in this part. This
39 provision does not affect the superior courts' responsibility for the prompt
40 preparation of appellate records in capital cases.

41
42 *(Subd (d) amended effective January 1, 2018.)*
43

1 (e) * * *

2
3 *Rule 8.600 amended effective January 1, 2018; repealed and adopted as rule 34 effective January*
4 *1, 2004; previously amended and renumbered effective January 1, 2007.*

5
6 **Rule 8.619. Certifying the trial record for completeness**

7
8 (a)–(g) * * *

9
10 (h) **Notice of delivery**

11
12 When the clerk sends the record to the defendant’s appellate counsel, the clerk must
13 serve a notice of delivery on the clerk/executive officer of the Supreme Court ~~clerk~~.

14
15 *(Subd (h) amended effective January 1, 2018.)*

16
17 *Rule 8.619 amended effective January 1, 2018; adopted as rule 35.1 effective January 1, 2004;*
18 *previously amended and renumbered as rule 8.619 effective January 1, 2007; previously*
19 *amended effective January 1, 2017.*

20
21 **Rule 8.630. Briefs by parties and amicus curiae**

22
23 (a)–(b) * * *

24
25 (c) **Time to file**

26
27 (1) Except as provided in (2), the times to file briefs in an appeal from a
28 judgment of death are as follows:

29
30 (A) The appellant’s opening brief must be served and filed within 210 days
31 after the record is certified as complete or the superior court clerk
32 delivers the completed record to the defendant’s appellate counsel,
33 whichever is later. The clerk/executive officer of the Supreme Court
34 ~~clerk~~ must promptly notify the defendant’s appellate counsel and the
35 Attorney General of the due date for the appellant’s opening brief.

36
37 (B) The respondent’s brief must be served and filed within 120 days after
38 the appellant’s opening brief is filed. The clerk/executive officer of the
39 Supreme Court ~~clerk~~ must promptly notify the defendant’s appellate
40 counsel and the Attorney General of the due date for the respondent’s
41 brief.
42

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

5 (D) The appellant must serve and file a reply brief, if any, within 60 days
6 after the respondent files its brief.
7

8 (2) In any appeal from a judgment of death imposed after a trial that began
9 before January 1, 1997, the time to file briefs is governed by rule 8.360(c).
10

11 (3) The Chief Justice may extend the time to serve and file a brief for good
12 cause.
13

14 *(Subd (c) amended effective January 1, 2018; previously amended effective January 1,*
15 *2007.)*
16

17 **(d)–(h) * * ***
18

19 *Rule 8.630 amended effective January 1, 2018; repealed and adopted as rule 36 effective January*
20 *1, 2004; previously amended and renumbered as rule 8.630 effective January 1, 2007; previously*
21 *amended effective January 1, 2008, January 1, 2011, and January 1, 2016.*
22

23 **Rule 8.634. Transmitting exhibits; augmenting the record in the Supreme Court**
24

25 **(a) * * ***
26

27 **(b) Time to file notice of designation**
28

29 No party may file a notice designating exhibits under rule 8.224(a) until the
30 clerk/executive officer of the Supreme Court ~~clerk~~ notifies the parties of the time
31 and place of oral argument.
32

33 *(Subd (b) amended effective January 1, 2018; previously amended effective January 1,*
34 *2007.)*
35

36 **(c) * * ***
37

38 *Rule 8.634 amended effective January 1, 2018; adopted as rule 36.1 effective January 1, 2003;*
39 *previously amended effective January 1, 2004; previously amended and renumbered effective*
40 *January 1, 2007.*
41

42 **Rule 8.882. Briefs by parties and amici curiae**
43

1 (a)–(d) * * *

2
3 (e) **Service and filing**

- 4
5 (1) Copies of each brief must be served as required by rule ~~8.25~~ 8.817.
- 6
7 (2) Unless the court provides otherwise by local rule or order in the specific
8 case, only the original brief, with proof of service, must be filed in the
9 appellate division.
- 10
11 (3) A copy of each brief must be served on the trial court clerk for delivery to
12 the judge who tried the case.
- 13
14 (4) A copy of each brief must be served on a public officer or agency when
15 required by rule ~~8.29~~ 8.817.
- 16
17 (5) In misdemeanor appeals:
- 18
19 (A) Defendant’s appellate counsel must serve each brief for the defendant
20 on the People and must send a copy of each brief to the defendant
21 personally unless the defendant requests otherwise;
- 22
23 (B) The proof of service under (A) must state that a copy of the
24 defendant’s brief was sent to the defendant, or counsel must file a
25 signed statement that the defendant requested in writing that no copy
26 be sent; and
- 27
28 (C) The People must serve two copies of their briefs on the appellate
29 counsel for each defendant who is a party to the appeal.

30
31 *(Subd (e) amended effective January 1, 2018; adopted as subd (d); previously amended*
32 *and relettered effective January 1, 2009.)*

33
34 *Rule 8.882 amended effective January 1, 2018; adopted effective January 1, 2009; previously*
35 *amended effective January 1, 2009, January 1, 2010, January 1, 2013, March 1, 2014, and*
36 *January 1, 2016.*

37
38 **Rule 8.887. Decisions**

39
40 (a)–(b) * * *

41
42 (c) **Opinions certified for publication**

43

1 (1) * * *

2
3 (2) When the opinion is certified for publication, the clerk must immediately
4 send:

5
6 (A) * * *

7
8 (B) One copy to the Court of Appeal for the district. The copy must bear
9 the notation “This opinion has been certified for publication in the
10 Official Reports. It is being sent to assist the Court of Appeal in
11 deciding whether to order the case transferred to the court on the
12 court’s own motion under rules 8.1000–8.1018.” The clerk/executive
13 officer of the Court of Appeal~~clerk~~ must promptly file that copy or
14 make a docket entry showing its receipt.

15
16 *(Subd (c) amended effective January 1, 2018; previously amended effective January 1,*
17 *2011, and March 1, 2014.)*

18
19 *Rule 8.887 amended effective January 1, 2018; adopted effective January 1, 2009; previously*
20 *amended effective January 1, 2011, and March 1, 2014.*

21
22 **Rule 8.931. Petitions filed by persons not represented by an attorney**

23
24 **(a) Petitions**

25
26 A person who is not represented by an attorney and who petitions the appellate
27 division for a writ under this chapter must file the petition on *Petition for Writ*
28 *(Misdemeanor, Infraction, or Limited Civil Case)* (form APP-151). For good cause
29 the court may permit an unrepresented party to file a petition that is not on form
30 APP-151, but the petition must be verified.

31
32 *(Subd (a) amended effective January 1, 2018.)*

33
34 **(b)–(d) * * ***

35
36 *Rule 8.931 amended effective January 1, 2018; adopted effective January 1, 2009; previously*
37 *amended effective January 1, 2009, January 1, 2011, January 1, 2014, and January 1, 2016.*

38 **Rule 8.972. Petitions filed by persons not represented by an attorney**

39
40 **(a) Petitions**

41
42 (1) A person who is not represented by an attorney and who requests a writ under
43 this chapter must file the petition on a *Petition for Writ (Small Claims)* (form

1 SC-300). For good cause the court may permit an unrepresented party to file
2 a petition that is not on that form, but the petition must be verified.

3
4 *(Subd (a) amended effective January 1, 2018.)*

5
6 (2)–(3) * * *

7
8 **(b)–(d) * * ***

9
10 *Rule 8.972 amended effective January 1, 2018; adopted effective January 1, 2016.*

11
12
13 **Rule 8.1005. Certification for transfer by the appellate division**

14
15 **(a)–(d) * * ***

16
17 **(e) Superior court clerk’s duties**

18
19 (1) If the appellate division orders a case certified for transfer, the clerk must
20 promptly send a copy of the certification order to the clerk/executive officer
21 of the Court of Appeal~~clerk~~, the parties, and, in a criminal case, the Attorney
22 General.

23
24 (2) * * *

25
26 *(Subd (e) amended effective January 1, 2018; adopted as subd (f); previously amended and*
27 *relettered effective January 1, 2011.)*

28
29 *Rule 8.1005 amended effective January 1, 2018; repealed and adopted as rule 63 effective*
30 *January 1, 2003; previously amended and renumbered effective January 1, 2007; previously*
31 *amended effective January 1, 2010, and January 1, 2011.*

32
33 **Rule 8.1007. Transmitting record to Court of Appeal**

34
35 **(a) Clerks’ duties**

36
37 (1) * * *

38
39 (2) The clerk/executive officer of the Court of Appeal~~clerk~~ must promptly notify
40 the parties when the clerk files the record.

41

1 (Subd (a) amended effective January 1, 2018; adopted as subd (b); previously amended
2 effective January 1, 2007, and July 1, 2009; previously amended and relettered effective
3 January 1, 2011.)

4
5 **(b) * * ***

6
7 Rule 8.1007 amended effective January 1, 2018; repealed and adopted as rule 65 effective
8 January 1, 2003; previously amended and renumbered as rule 8.1010 effective January 1, 2007;
9 previously amended effective July 1, 2009; previously amended and renumbered effective
10 January 1, 2011.

11
12 **Rule 8.1018. Finality and remittitur**

13
14 **(a)–(b) * * ***

15
16 **(c) When the Court of Appeal issues a decision**

17
18 If the Court of Appeal issues a decision on a case it has ordered transferred from
19 the appellate division of the superior court, filing, finality, and modification of that
20 decision are governed by rule 8.264 and remittitur is governed by rule 8.272,
21 except that the clerk/executive officer must address the remittitur to the appellate
22 division and send that court a copy of the remittitur and a filed-endorsed copy of
23 the Court of Appeal opinion or order. If the remittitur and opinion are sent in paper
24 format, two copies must be sent. On receipt of the Court of Appeal remittitur, the
25 appellate division clerk must promptly issue a remittitur if there will be no further
26 proceedings in that court.

27
28 (Subd (c) amended effective January 1, 2018; adopted as subd (a); previously relettered as
29 subd (b) effective January 1, 2009; previously amended and relettered as subd (c) effective
30 January 1, 2011; previously amended effective January 1, 2016.)

31
32 **(d) Documents to be returned**

33
34 When the Court of Appeal denies or vacates transfer or issues a remittitur under (c),
35 the ~~Court of Appeal~~ clerk/executive officer must return to the appellate division any
36 part of the record sent nonelectronically to the Court of Appeal under rule 8.1007
37 and any exhibits that were sent nonelectronically.

38
39 (Subd (d) amended effective January 1, 2018; adopted as subd (c); previously relettered as
40 subd (d) effective January 1, 2009; previously amended effective January 1, 2011, and
41 January 1, 2016.)
42

1 *Rule 8.1018 amended effective January 1, 2018; repealed and adopted as rule 69 effective*
2 *January 1, 2003; previously renumbered as rule 8.1018 effective January 1, 2007; previously*
3 *amended effective January 1, 2009, January 1, 2011, and January 1, 2016.*

4
5 **Rule 10.40. Appellate Advisory Committee**

6
7 **(a)–(b)** * * *

8
9 **(c) Membership**

10
11 The committee must include at least one member from each of the following
12 categories:

13
14 **(1)–(3)** * * *

15
16 **(4)** Supreme Court clerk/executive officer ~~administrator~~;

17
18 **(5)** Appellate court clerk/executive officer ~~administrator~~;

19
20 **(6)–(11)** * * *

21
22 *(Subd (c) amended effective January 1, 2018; previously amended effective January 1,*
23 *2002, January 1, 2007, and July 1, 2014.)*

24
25 *Rule 10.40 amended effective January 1, 2018; adopted as rule 6.40 effective January 1, 1999;*
26 *previously amended and renumbered effective January 1, 2007; previously amended effective*
27 *January 1, 2002, and July 1, 2014.*

28
29 **Rule 10.62. Court Facilities Advisory Committee**

30
31 **(a)** * * *

32
33 **(b) Membership**

34
35 The committee must include at least one member from each of the following
36 categories:

37
38 **(1)** * * *

39
40 **(2)** Appellate court clerk/executive officer ~~administrator~~;

41
42 **(3)–(7)** * * *

43

1 The committee also includes the chair and vice-chair of the Trial Court Facility
2 Modification Advisory Committee, as non-voting members.

3
4 *(Subd (b) amended effective January 1, 2018.)*

5
6 *Rule 10.62 amended effective January 1, 2018; adopted effective February 20, 2014.*

7
8 **Rule 10.67. Judicial Branch Workers' Compensation Program Advisory**
9 **Committee**

10
11 **(a)–(b) * * ***

12
13 **(c) Membership**

14
15 The advisory committee consists of persons from trial courts and state judicial
16 branch entities knowledgeable about workers' compensation matters, including
17 court executive officers, appellate court clerks/executive officers, and human
18 resources professionals.

19
20 *(Subd (c) amended effective January 1, 2018.)*

21
22 *Rule 10.67 amended effective January 1, 2018; adopted effective January 1, 2015; previously*
23 *amended effective July 1, 2016.*

24
25 **Rule 10.102. Acceptance of gifts**

26
27 **(a) * * ***

28
29 **(b) Delegation of authority**

30
31 The Administrative Director may delegate the authority to accept gifts to the
32 following, under any guidelines established by the Administrative Director:

33
34 **(1) * * ***

35
36 **(2) The clerk/executive officer ~~administrator~~ of a Court of Appeal, for gifts to**
37 **that a Court of Appeal;**

38
39 **(3) The clerk/executive officer of the Supreme Court, for gifts to the Supreme**
40 **Court; and**

41
42
43 **(4) * * ***

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43

(Subd (b) amended effective January 1, 2018; adopted effective January 1, 2004; previously amended effective January 1, 2007, and January 1, 2016.)

Rule 10.102 amended effective January 1, 2018; adopted as rule 989.7 effective September 13, 1991; previously amended and renumbered as rule 6.102 effective January 1, 2004, and as rule 10.102 effective January 1, 2007; previously amended effective January 1, 2016.

Rule 10.104. Limitation on contracting with former employees

(a)–(b) * * *

(c) Policymaking position

“Policymaking position” includes:

(1) * * *

(2) In an appellate court, the clerk/executive officer ~~administrator~~ and any other position designated by the court as a policymaking position; and

(3) * * *

(Subd (c) amended effective January 1, 2018; previously amended effective January 1, 2016.)

(d) * * *

Rule 10.104 amended effective January 1, 2018; adopted as rule 6.104 effective January 1, 2004; previously amended and renumbered as rule 10.104 effective January 1, 2007; previously amended effective January 1, 2016.

Rule 10.452. Minimum education requirements, expectations, and recommendations

(a)–(c) * * *

(d) Responsibilities of Chief Justice and administrative presiding justices

The Chief Justice and each administrative presiding justice:

(1) Must grant sufficient leave to Supreme Court and Court of Appeal justices, the clerk/executive officer ~~administrator~~, and the managing attorney to enable

1 them to complete the minimum education requirements stated in rules
2 10.461, 10.471, and 10.472, respectively;

- 3
- 4 (2) To the extent compatible with the efficient administration of justice, must
5 grant to all justices, the clerk/executive officer ~~administrator~~, and the
6 managing attorney sufficient leave to participate in education programs
7 consistent with the education recommendations stated in rules 10.469 and
8 10.479. After a justice has completed any new justice education required
9 under rule 10.461 or after a justice has completed the first year on the bench,
10 the Chief Justice or the administrative presiding justice should grant each
11 justice at least eight court days per calendar year to participate in continuing
12 education relating to the justice's responsibilities;
- 13
- 14 (3) In addition to the educational leave required under (d)(1)–(2), should grant
15 leave to a justice, clerk/executive officer ~~administrator~~, or managing attorney
16 to serve on education committees and as a faculty member at education
17 programs when the individual's services have been requested for these
18 purposes by Judicial Council staff, the California Judges Association, or the
19 court. If a court's calendar would not be adversely affected, the court should
20 grant additional leave for a justice, the clerk/executive officer ~~administrator~~,
21 or the managing attorney to serve on an educational committee or as a faculty
22 member for judicial branch education;
- 23
- 24 (4) Should establish an education plan for his or her court to facilitate the
25 involvement of justices, the clerk/executive officer ~~administrator~~, and the
26 managing attorney as both participants and faculty in education activities;
- 27
- 28 (5) Must ensure that justices, the clerk/executive officer ~~administrator~~, and the
29 managing attorney are reimbursed by their court in accordance with the travel
30 policies issued by the Judicial Council for travel expenses incurred in
31 attending in-state education programs as a participant, except to the extent
32 that: (i) certain expenses are covered by the Judicial Council; or (ii) the
33 education provider or sponsor of the program pays the expenses. Provisions
34 for these expenses must be part of every court's budget. The Chief Justice or
35 the administrative presiding justice may approve reimbursement of travel
36 expenses incurred by justices, the clerk/executive officer ~~administrator~~, and
37 the managing attorney in attending out-of-state education programs as a
38 participant; and
- 39
- 40 (6) * * *

41

42 *(Subd (d) amended effective January 1, 2018; previously amended effective January 1,*
43 *2008, and January 1, 2016.)*

1
2 (e) * * *

3
4 (f) **Responsibilities of Supreme Court and Court of Appeal justices,**
5 **clerks/executive officers ~~administrator~~, managing attorneys, and supervisors**

6
7 Each court's justices, clerk/executive officer ~~administrator~~, managing attorney, and
8 supervisors:

9
10 (1)–(4) * * *

11
12 (5) Must ensure that supervisors and other court personnel are reimbursed by
13 their court in accordance with the travel policies issued by the Judicial
14 Council for travel expenses incurred in attending in-state education programs
15 as a participant, except to the extent that: (i) certain expenses are covered by
16 the Judicial Council; or (ii) the education provider or sponsor of the program
17 pays the expenses. Provisions for these expenses must be part of every
18 court's budget. The clerk/executive officer ~~administrator~~ or the managing
19 attorney may approve reimbursement of travel expenses incurred by
20 supervisors and other court personnel in attending out-of-state education
21 programs as a participant.

22
23 *(Subd (f) amended effective January 1, 2018; adopted effective January 1, 2008;*
24 *previously amended effective January 1, 2016.)*

25
26 (g) * * *

27
28 *Rule 10.452 amended effective January 1, 2018; adopted effective January 1, 2007; previously*
29 *amended effective January 1, 2008, January 1, 2012, and January 1, 2016.*

30
31 **Rule 10.471. Minimum education requirements for Supreme Court and Court of**
32 **Appeal clerks/executive officers ~~administrators~~**

33
34 (a) **Applicability**

35
36 All clerks/executive officers of the California Supreme Court and Courts of Appeal
37 ~~clerk/administrators~~ must complete these minimum education requirements. All
38 clerks/executive officers ~~administrator~~ should participate in more education than is
39 required, related to each individual's responsibilities and in accordance with the
40 education recommendations set forth in rule 10.479.

41
42 *(Subd (a) amended effective January 1, 2018.)*
43

1 **(b) Hours-based requirement**

2
3 (1) Each clerk/~~executive officer administrator~~ must complete 30 hours of
4 continuing education every three years beginning on the following date:

5
6 (A) For a new clerk/~~executive officer administrator~~, the first three-year
7 period begins on January 1 of the year following his or her hire.

8
9 (B) For all other clerks/~~executive officers administrators~~, the first three-
10 year period begins on January 1, 2008.

11
12 (2) The following education applies toward the required 30 hours of continuing
13 education:

14
15 (A) * * *

16
17 (B) Each hour of participation in traditional (live, face-to-face) education;
18 distance education such as broadcasts, videoconferences, and online
19 coursework; faculty service; and self-directed study counts toward the
20 requirement on an hour-for-hour basis. Each clerk/~~executive officer~~
21 ~~administrator~~ must complete at least half of his or her continuing
22 education hours requirement as a participant in traditional (live, face-
23 to-face) education. The clerk/~~executive officer administrator~~ may
24 complete the balance of his or her education hours requirement through
25 any other means with no limitation on any particular type of education.

26
27 (C) A clerk/~~executive officer administrator~~ who serves as faculty by
28 teaching legal or judicial education to a legal or judicial audience may
29 apply education hours as faculty service. Credit for faculty service
30 counts toward the continuing education requirement in the same
31 manner as all other types of education—on an hour-for-hour basis.

32
33 *(Subd (b) amended effective January 1, 2018; previously amended effective January 1,*
34 *2012, and January 1, 2014.)*

35
36 **(c) Extension of time**

37
38 (1) * * *

39
40 (2) If the Chief Justice or the administrative presiding justice grants a request for
41 an extension of time, the clerk/~~executive officer administrator~~, in consultation
42 with the Chief Justice or the administrative presiding justice, must also
43 pursue interim means of obtaining relevant educational content.

1
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(3) An extension of time to complete the hours-based requirement does not affect the timing of the clerk/executive officer ~~administrator~~'s next three-year period.

(Subd (c) amended effective January 1, 2018.)

(d) Record of participation; statement of completion

Each clerk/executive officer ~~administrator~~ is responsible for:

(1)–(3) * * *

(Subd (d) amended effective January 1, 2018.)

Rule 10.471 amended effective January 1, 2018; adopted effective January 1, 2008; previously amended effective January 1, 2012, and January 1, 2014.

Rule 10.472. Minimum education requirements for Supreme Court and Court of Appeal managing attorneys, supervisors, and other personnel

(a) * * *

(b) Content-based requirements

(1)–(2) * * *

(3) The clerk/executive officer ~~administrator~~, the managing attorney, or the employee's supervisor may determine the appropriate content, delivery mechanism, and length of orientation based on the needs and role of each individual employee.

(Subd (b) amended effective January 1, 2018.)

(c) Hours-based requirements

(1) * * *

(2) Each court employee who is not a managing attorney, supervisor, or appellate judicial attorney must complete 8 hours of continuing education every two years, with the exception of employees who do not provide court administrative or operational services. Those employees are not subject to the continuing education hours-based requirement but must complete any

1 education or training required by law and any other education required by the
2 clerk/executive officer ~~administrator~~.

3
4 (3) * * *

5
6 (4) Any education offered by an approved provider (see rule 10.481(a)) and any
7 other education, including education taken to satisfy a statutory, rules-based,
8 or other education requirement, that is approved by the clerk/executive
9 officer ~~administrator~~, the managing attorney, or the employee's supervisor as
10 meeting the criteria listed in rule 10.481(b) applies toward the orientation
11 education required under (b) and the continuing education required under
12 (c)(1) and (2).

13
14 (5)–(6) * * *

15
16 (7) The clerk/executive officer ~~administrator~~, the managing attorney, or the
17 employee's supervisor may require supervisors and other court personnel to
18 participate in specific courses or to participate in education in a specific
19 subject matter area as part of their continuing education.

20
21 *(Subd (c) amended effective January 1, 2018; previously amended effective January 1,*
22 *2012.)*

23
24 **(d) Extension of time**

25
26 (1) For good cause, a justice (for that justice's chambers staff), the managing
27 attorney, the clerk/executive officer ~~administrator~~, or a supervisor, if
28 delegated by the clerk/executive officer ~~administrator~~, or the employee's
29 supervisor may grant a six-month extension of time to complete the education
30 requirements in this rule.

31
32 (2) If the justice, managing attorney, clerk/executive officer ~~administrator~~, or
33 supervisor grants a request for an extension of time, the managing attorney,
34 supervisor, or employee who made the request, in consultation with the
35 justice, managing attorney, clerk/executive officer ~~administrator~~, or
36 supervisor, must also pursue interim means of obtaining relevant educational
37 content.

38
39 (3) * * *

40
41 *(Subd (d) amended effective January 1, 2018.)*
42

1 (e) * * *

2
3 *Rule 10.472 amended effective January 1, 2018; adopted effective January 1, 2008; previously*
4 *amended effective January 1, 2012.*

5
6 **Rule 10.481. Approved providers; approved course criteria**

7
8 (a) * * *

9
10 (b) **Approved education criteria**

11
12 Education is not limited to the approved providers referred to in (a). Any education
13 from another provider that is approved by the Chief Justice, the administrative
14 presiding justice, or the presiding judge as meeting the criteria listed below may be
15 applied toward the continuing education expectations and requirements for justices,
16 judges, and subordinate judicial officers or requirements for clerks/executive
17 officers ~~administrators~~ or court executive officers. Similarly, any education from
18 another provider that is approved by the clerk/executive officer ~~administrator~~, the
19 court executive officer, or the employee's supervisor as meeting the criteria listed
20 below may be applied toward the orientation or continuing education requirements
21 for managers, supervisors, and other employees or the content-based or continuing
22 education requirements for probate court investigators, probate attorneys, and
23 probate examiners in rule 10.478.

24
25 (1)–(2) * * *

26
27 *(Subd (b) amended effective January 1, 2018; previously amended effective January 1,*
28 *2008; and January 1, 2012.)*

29
30 *Rule 10.481 amended effective January 1, 2018; adopted as rule 10.471 effective January 1,*
31 *2007; previously amended and renumbered as rule 10.481 effective January 1, 2008; previously*
32 *amended effective January 1, 2012, and January 1, 2016.*

33
34 **Rule 10.1004. Court of Appeal administrative presiding justice**

35
36 (a)–(b) * * *

37
38 (c) **Duties**

39
40 The administrative presiding justice must perform any duties delegated by a
41 majority of the justices in the district with the Chief Justice's concurrence. In
42 addition, the administrative presiding justice has responsibility for the following
43 matters:

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(1) *Personnel*

The administrative presiding justice has general direction and supervision of the clerk/executive officer ~~administrator~~ and all court employees except those assigned to a particular justice or division;

(2)–(7) * * *

(Subd (c) amended effective January 1, 2018; previously amended effective January 1, 2007.)

(d) * * *

Rule 10.1004 amended effective January 1, 2018; repealed and adopted as rule 75 effective January 1, 2005; previously amended and renumbered effective January 1, 2007.

Rule 10.1008. Courts of Appeal with more than one division

Appeals and original proceedings filed in a Court of Appeal with more than one division, or transferred to such a court without designation of a division, may be assigned to divisions in a way that will equalize the distribution of business among them. The clerk/executive officer of the Court of Appeal ~~clerk~~ must keep records showing the divisions in which cases and proceedings are pending.

Rule 10.1008 amended effective January 1, 2018; repealed and adopted as rule 47 effective January 1, 2005; previously amended and renumbered effective January 1, 2007.

Rule 10.1020. Reviewing court clerk/executive officer ~~administrator~~

(a) Selection

A reviewing court may employ a clerk/executive officer ~~administrator~~ selected in accordance with procedures adopted by the court.

(Subd (a) amended effective January 1, 2018.)

(b) Responsibilities

Acting under the general direction and supervision of the administrative presiding justice, the clerk/executive officer ~~administrator~~ is responsible for planning, organizing, coordinating, and directing, with full authority and accountability, the management of the ~~clerk's~~ office of the clerk/executive officer and all nonjudicial

1 support activities in a manner that promotes access to justice for all members of the
2 public, provides a forum for the fair and expeditious resolution of disputes, and
3 maximizes the use of judicial and other resources.

4
5 *(Subd (b) amended effective January 1, 2018.)*

6
7 **(c) Duties**

8
9 Under the direction of the administrative presiding justice, the clerk/executive
10 officer ~~administrator~~ has the following duties:

11
12 (1) *Personnel*

13
14 The clerk/executive officer ~~administrator~~ directs and supervises all court
15 employees assigned to the clerk/executive officer ~~administrator~~ or by the
16 administrative presiding justice and ensures that the court receives a full
17 range of human resources support;

18
19 (2) *Budget*

20
21 The clerk/executive officer ~~administrator~~ develops, administers, and monitors
22 the court budget and develops practices and procedures to ensure that annual
23 expenditures are within the budget;

24
25 (3) *Contracts*

26
27 The clerk/executive officer ~~administrator~~ negotiates contracts on the court's
28 behalf in accord with established contracting procedures and applicable laws;

29
30 (4) *Calendar management*

31
32 The clerk/executive officer ~~administrator~~ employs and supervises efficient
33 calendar and caseload management, including analyzing and evaluating
34 pending caseloads and recommending effective calendar management
35 techniques;

36
37 (5) *Technology*

38
39 The clerk/executive officer ~~administrator~~ coordinates technological and
40 automated systems activities to assist the court;

41
42 (6) *Facilities*

43

1 The clerk/executive officer ~~administrator~~ coordinates facilities, space
2 planning, court security, and business services support, including the
3 purchase and management of equipment and supplies;

4
5 (7) *Records*

6
7 The clerk/executive officer ~~administrator~~ creates and manages uniform
8 record-keeping systems, collecting data on pending and completed judicial
9 business and the court's internal operation as the court and Judicial Council
10 require;

11
12 (8) *Recommendations*

13
14 The clerk/executive officer ~~administrator~~ identifies problems and
15 recommends policy, procedural, and administrative changes to the court;

16
17 (9) *Public relations*

18
19 The clerk/executive officer ~~administrator~~ represents the court to internal and
20 external customers—including the other branches of government—on issues
21 pertaining to the court;

22
23 (10) *Liaison*

24
25 The clerk/executive officer ~~administrator~~ acts as liaison with other
26 governmental agencies;

27
28 (11) *Committees*

29
30 The clerk/executive officer ~~administrator~~ provides staff for judicial
31 committees;

32
33 (12) *Administration*

34
35 The clerk/executive officer ~~administrator~~ develops and implements
36 administrative and operational programs and policies for the court and the
37 ~~clerk's office~~ of the clerk/executive officer; and

38
39 (13) *Other*

40
41 The clerk/executive officer ~~administrator~~ performs other duties as the
42 administrative presiding justice directs.

43

1 (Subd (c) amended effective January 1, 2018; previously amended effective January 1,
2 2007.)

3
4 **(d) Geographically separate divisions**

5
6 Under the general oversight of the clerk/executive officer ~~administrator~~, an
7 assistant clerk/executive officer ~~administrator~~ of a geographically separate division
8 has responsibility for the nonjudicial support activities of that division.

9
10 (Subd (d) amended effective January 1, 2018.)

11
12 *Rule 10.1020 amended effective January 1, 2018; repealed and adopted as rule 76.1 effective*
13 *January 1, 2005; amended and renumbered effective January 1, 2007.*

14
15 **Rule 10.1028. Preservation and destruction of Court of Appeal records**

16
17 **(a)–(b) * * ***

18
19 **(c) Permanent records**

20
21 The clerk/executive officer of the Court of Appeal ~~clerk~~ must permanently keep the
22 court’s minutes and a register of appeals and original proceedings.

23
24 (Subd (c) amended effective January 1, 2018; adopted as subd (b); previously relettered
25 effective January 1, 2013.)

26
27 **(d) Time to keep other records**

28
29 (1) Except as provided in (2), the clerk/executive officer may destroy all other
30 records in a case 10 years after the decision becomes final, as ordered by the
31 administrative presiding justice or, in a court with only one division, by the
32 presiding justice.

33
34 (2) In a criminal case in which the court affirms a judgment of conviction, the
35 clerk/executive officer must keep the original reporter’s transcript for 20
36 years after the decision becomes final.

37
38 (Subd (d) amended effective January 1, 2018; adopted as subd (c); previously relettered as
39 subd (d) effective January 1, 2013; previously amended effective January 1, 2017.)

40
41 *Rule 10.1028 amended effective January 1, 2018; adopted as rule 70 effective January 1, 2005;*
42 *previously renumbered effective January 1, 2007; previously amended effective January 1, 2013,*
43 *and January 1, 2017.*

1
2 **Standard 4.35. Court use of risk/needs assessments at sentencing**

3
4 **(a) Application and purpose**

5
6 (1) This standard applies only to the use of the results of risk/needs assessments
7 at sentencing.

8
9 (2) The use of the results of risk/needs assessments at sentencing is intended to:

10
11 (A) Prevent biases in sentencing;

12
13 (B) Reduce the risk of recidivism by focusing services and resources on
14 medium- and high-risk offenders, who are most likely to reoffend;

15
16 (C) Reduce a defendant’s risk of future recidivism by targeting that
17 defendant’s needs with appropriate intervention services through
18 community supervision programs demonstrated to reduce recidivism;
19 and

20
21 (D) Advance the legislative directive to improve public safety outcomes by
22 routing offenders into community-based supervision informed by
23 evidence-based practices.

24
25 **(b) Definitions**

26
27 (1) “Risk” refers to the likelihood that a person will reoffend without regard,
28 unless otherwise specified, to the nature of the original offense or the nature
29 of the reoffense.

30
31 (2) “Risk factors” refers to the “static” and “dynamic” factors that contribute to
32 the risk score.

33
34 (3) “Static risk factors” refers to those risk factors that cannot be changed
35 through treatment or intervention, such as age or prior criminal history.

36
37 (4) “Dynamic risk factors,” also known as “needs,” are factors that can be
38 changed through treatment or intervention.

39
40 (5) “Results of a risk/needs assessment” refers to both a risk score and an
41 assessment of a person’s needs.

42

- 1 (6) A “risk score” refers to a descriptive evaluation of a person’s risk level as a
2 result of conducting an actuarial assessment with a validated risk/needs
3 assessment instrument and may include such terms as “high,” “medium,” or
4 “low” risk.
5
6 (7) “Amenability” or “suitability” refers to the likelihood that the person can be
7 safely and effectively supervised in the community and benefit from
8 supervision services that are informed by evidence-based practices that have
9 been demonstrated to reduce recidivism.
10
11 (8) A “validated risk/needs assessment instrument” refers to a risk/needs
12 assessment instrument demonstrated by scientific research to be accurate and
13 reliable in assessing the risks and needs of the specific population on which it
14 was validated.
15
16 (9) “Supervision” includes all forms of supervision referenced in Penal Code
17 section 1203.2(a).
18

19 **(c) Validation**

20 The risk/needs assessment instrument should be validated.
21

22
23 **(d) Proper uses of the results of a risk/needs assessment at sentencing**

- 24
25 (1) The results of a risk/needs assessment should be considered only in context
26 with all other information considered by the court at the time of sentencing,
27 including the probation report, statements in mitigation and aggravation,
28 evidence presented at a sentencing proceeding conducted under section 1204,
29 and comments by counsel and any victim.
30
31 (2) The results of a risk/needs assessment should be one of many factors that
32 may be considered and weighed at a sentencing hearing. Information
33 generated by the risk/needs assessment should be used along with all other
34 information presented in connection with the sentencing hearing to inform
35 and facilitate the decision of the court. Risk/needs assessment information
36 should not be used as a substitute for the sound independent judgment of the
37 court.
38
39 (3) Although they may not be determinative, the results of a risk/needs
40 assessment may be considered by the court as a relevant factor in assessing:
41
42 (A) Whether a defendant who is presumptively ineligible for probation has
43 overcome the statutory limitation on probation;

1
2 (B) Whether an offender can be supervised safely and effectively in the
3 community; and

4
5 (C) The appropriate terms and conditions of supervision and responses to
6 violations of supervision.

7
8 (4) If a court uses the results of a risk/needs assessment, it should consider any
9 limitations of the instrument that have been raised in the probation report or
10 by counsel, including:

11
12 (A) That the instrument’s risk scores are based on group data, such that the
13 instrument is able to identify only groups of high-risk offenders, for
14 example, not a particular high-risk individual;

15
16 (B) Whether the instrument’s proprietary nature has been invoked to
17 prevent the disclosure of information relating to how it weighs static
18 and dynamic risk factors and how it determines risk scores;

19
20 (C) Whether any scientific research has raised questions that the instrument
21 unfairly classifies offenders by gender, race, or ethnicity; and

22
23 (D) Whether the instrument has been validated on a relevant population.

24
25 **(e) Improper uses of the results of a risk/needs assessment at sentencing**

26
27 (1) The results of a risk/needs assessment should not be used to determine:

28
29 (A) Whether to incarcerate a defendant; or

30
31 (B) The severity of the sentence.

32
33 (2) The results of a risk/needs assessment should not be considered by the court
34 for defendants statutorily ineligible for supervision.

35
36 **(f) Amenability to or suitability for supervision**

37
38 (1) A court should not interpret a “high” or “medium” risk score as necessarily
39 indicating that a defendant is not amenable to or suitable for community-
40 based supervision. Community-based supervision may be most effective for
41 defendants with “high” and “medium” risk scores. A “low” risk score often,
42 but not necessarily, indicates that a defendant is amenable to or suitable for

1 community-based supervision. Risk scores must be interpreted in the context
2 of all relevant sentencing information received by the court.

3
4 (2) Ordinarily a defendant’s level of supervision should correspond to his or her
5 level of risk of recidivism. In most cases, a court should order that a low-risk
6 defendant receive less supervision and a high-risk defendant more.

7
8 (3) A court should order services that address the defendant’s needs.

9
10 (g) Education regarding the nature, purpose, and limits of risk/needs assessment
11 information is critical to the proper use of such information. Education should
12 include all justice system partners.

13
14 *Standard 4.35 adopted effective January 1, 2018.*

15
16 **Advisory Committee Comment**

17
18 **Subdivision (d)(1)–(2).** Although the results of risk/needs assessments provide important
19 information for use by the court at sentencing, they are not designed as a substitute for the
20 exercise of judicial discretion and judgment. The information should not be used as the sole basis
21 of the court’s decision, but should be considered in the context of all of the information received
22 in a sentencing proceeding. If justified by the circumstances of the case, it is appropriate for the
23 court to impose a disposition not supported by the results of a risk/needs assessment. (See *State v.*
24 *Loomis* (2016) 371 Wis.2d 235, 266 [“Just as corrections staff should disregard risk scores that
25 are inconsistent with other factors, we expect that . . . courts will exercise discretion when
26 assessing a . . . risk score with respect to each individual defendant”].)

27
28 **Subdivision (d)(4).** Court and justice partners should understand any limitations of the particular
29 instrument used to generate the results of a risk/needs assessment. (See *State v. Loomis, supra,*
30 371 Wis.2d at p. 264 [requiring presentence investigation reports to state the limitations of the
31 instrument used, including the proprietary nature of that instrument, any absence of a cross-
32 validation study for relevant populations, and any questions raised in studies about whether the
33 instrument disproportionately classifies minority offenders as having a higher risk of recidivism].)
34 The Wisconsin court also required that all presentence investigation reports caution that
35 risk/needs assessment tools must be constantly monitored and reformed for accuracy because of
36 changing populations and subpopulations. (*Ibid.*) California courts should similarly consider any
37 such limitations in the accuracy of the particular instrument employed in the case under review.
38 (See *ibid.* [“Providing information to sentencing courts on the limitations and cautions attendant
39 with the use of . . . risk assessments will enable courts to better assess the accuracy of the
40 assessment and the appropriate weight to be given to the risk score”].)

41
42 **Subdivision (d)(4)(D).** Validating a risk/needs assessment instrument will increase its accuracy
43 and reliability. Validation on a relevant population or subpopulation is recommended to account

1 for differences in local policies, implementation practices, and offender populations. Ongoing
2 monitoring and renorming of the instrument may be necessary to reflect changes in a population
3 or subpopulation. Revalidation of the instrument is also necessary if any of its dynamic or static
4 risk factors are modified.

5
6 **Subdivision (e).** When the court is considering whether to place a person on supervision at an
7 original sentencing proceeding or after a violation of supervision, the results of a risk/needs
8 assessment may assist the court in assessing the person’s amenability to supervision and services
9 in the community. But when the person is ineligible for supervision, or the court has otherwise
10 decided not to grant or reinstate probation, the results of a risk/needs assessment should not be
11 used in determining the period of incarceration to be imposed. (See *State v. Loomis, supra*, 371
12 Wis.2d at p. 256 [holding that risk/needs assessments should not be used to determine the severity
13 of a sentence or whether a defendant is incarcerated]; *Malenchik v. State* (Ind. 2010) 928 N.E.2d
14 564, 573 [“It is clear that [risk/needs assessment instruments are neither intended] nor
15 recommended to substitute for the judicial function of determining the length of sentence
16 appropriate for each offender”].)

17
18 **Subdivision (f).** Risk/needs assessment instruments generally produce a numerical or descriptive
19 “risk score” such as “high,” “moderate,” or “low” risk. It is critical that courts and justice partners
20 understand the meaning and limitations of such designations. First, because risk assessments are
21 based on group data, they are able to identify groups of high-risk offenders, not a particular high-
22 risk individual. Second, in some assessment instruments, “risk” refers only to a generalized risk
23 of committing a new offense, not to the seriousness of the subsequent offense (e.g., violent, sex,
24 drug, or theft). Nor does “high risk” necessarily mean “highly dangerous.” A high-risk drug
25 offender, for example, may present a high risk that he or she will use drugs again, but does not
26 necessarily present a high risk to commit a violent felony. Third, scientific research indicates that
27 medium- and high-risk offenders may most benefit from evidence-based supervision and
28 programs that address critical risk factors. Courts and probation departments should also consider
29 how presentence investigation reports present risk assessment information. A report that merely
30 refers to the defendant as “high risk” may incorrectly imply that the defendant presents a great
31 danger to public safety and must therefore be incarcerated. Conversely, “low risk” does not
32 necessarily mean “no risk.”

33
34 **Subdivision (g).** An instrument’s accuracy and reliability depend on its proper administration.
35 Training and continuing education should be required for anyone who administers the instrument.
36 Judges with sentencing assignments should receive appropriate training on the purpose, use, and
37 limits of risk/needs assessments. (See Guiding Principle 4, Stakeholder Training, in Pamela M.
38 Casey et al., *Using Offender Risk and Needs Assessment Information at Sentencing: Guidance for*
39 *Courts from a National Working Group* (National Center for State Courts, 2011) pp. 21–22.)

40