



Judicial Council of California

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 25-078

For business meeting on April 25, 2025

Title

Appellate Procedure: Certified Record in
Capital Cases

Report Type

Action Required

Effective Date

July 1, 2025

Rules, Forms, Standards, or Statutes Affected

Amend Cal. Rules of Court, rule 8.622

Date of Report

March 27, 2025

Recommended by

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Executive Summary

Penal Code section 1218 previously required courts to transmit a complete transcript to the Governor in cases resulting in a judgment of death. The Legislature recently amended section 1218 to remove this requirement; a court need only transmit a statement of the conviction and judgment. Accordingly, Judicial Council staff recommend amending the rule of court addressing the record in capital cases to reflect the statutory amendment.

Recommendation

Judicial Council staff recommend that the Judicial Council, effective July 1, 2025, amend California Rules of Court, rule 8.622 to remove the requirement that the clerk send to the Governor copies of the transcripts in cases resulting in a judgment of death.

The proposed revised rule is attached at page 3.

Relevant Previous Council Action

The Judicial Council previously adopted rules relating to the content and preparation of the record on appeal in death penalty cases effective July 1, 1943. Although the Judicial Council previously acted on this rule, this proposal recommends corrections unrelated to any prior action.

Analysis/Rationale

California Rules of Court, rule 8.622(e) requires: “When the record is certified as accurate, the clerk must promptly send: ... (3) To the Governor: the copies of the transcripts required by Penal Code section 1218, with copies of any corrected or augmented pages inserted.” Paragraph (3) of rule 8.622(e) was included to reflect the requirements of the previous version of Penal Code section 1218, which required: “The judge of the court at which a judgment of death is had, must, immediately after the judgment, transmit to the Governor, by mail or otherwise, a statement of the conviction and judgment, and a complete transcript of all the testimony given at the trial including any arguments made by respective counsel and a copy of the clerk’s transcript.”

Effective July 2, 2024, however, the Legislature amended section 1218 to remove this requirement to transmit the transcript of the testimony and the clerk’s transcript: “The judge of the court at which a judgment of death is had shall, immediately after the judgment, electronically transmit, in a mutually agreed upon format, a statement of the conviction and judgment to the Governor.” (Assem. Bill 168 (Stats. 2024, ch. 49).)

Because rule 8.622(e)(3) refers to “copies of the transcripts required by Penal Code section 1218,” and Penal Code section 1218 no longer requires copies of the transcripts, this part of the rule is no longer consistent with statute. As such, this subdivision of the rule should be removed.

Policy implications

The proposed rule amendment conforms the rule to a statutory amendment. Accordingly, the key policy implications for this proposal are ensuring that rules of court reflect the law correctly and are not misleading to the courts.

Comments

Public comments were not solicited for this proposal because the Rules Committee determined that the recommendation is within the Judicial Council’s purview to adopt without circulation. (See Cal. Rules of Court, rule 10.22(d)(2).)

Alternatives considered

None.

Fiscal and Operational Impacts

There should be no fiscal and operational impacts as a result of the proposed amendment because it reflects a requirement that has already been eliminated by the Legislature.

Attachments and Links

1. Cal. Rules of Court, rule 8.622, at page 3
2. Link A: Penal Code section 1218,
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PEN§ionNum=1218

Rule 8.622 of the California Rules of Court is amended, effective July 1, 2025, to read:

Rule 8.622. Certifying the trial record for accuracy

(a)–(d) * * *

(e) Sending the certified record

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

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