



## Judicial Council of California

455 Golden Gate Avenue · San Francisco, California 94102-3688

[www.courts.ca.gov](http://www.courts.ca.gov)

---

# REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 14–15, 2017

---

### Title

Rules and Forms: Technical Changes to Title  
of Supreme and Appellate Court Clerks

### Agenda Item Type

Action Required

### Effective Date

January 1, 2018

### Date of Report

July 19, 2017

### Contact

Bruce Greenlee, 415-865-7698

[bruce.greenlee@jud.ca.gov](mailto:bruce.greenlee@jud.ca.gov)

### Rules, Forms, Standards, or Statutes Affected

Amend Cal. Rules of Court, rules 8.36, 8.100,  
8.212, 8.248, 8.256, 8.264, 8.272, 8.278, 8.336,  
8.500, 8.508, 8.512, 8.528, 8.532, 8.540, 8.857,  
8.600, 8.619, 8.630, 8.634, 8.887, 8.1005,  
8.1007, 8.1018, 10.40, 10.62, 10.67, 10.102,  
10.104, 10.452, 10.471, 10.472, 10.481,  
10.1004, 10.1008, 10.1020, and 10.1028

### Recommended by

Judicial Council staff

Bruce Greenlee, Attorney

Legal Services

---

## Executive Summary

Recent legislation changes the title of the clerk or clerk/administrator of the Supreme Court and courts of appeal to “clerk/executive officer.” Judicial Council staff recommends making conforming revisions to the clerk’s title everywhere it appears in the rules of court.

## Recommendation

Judicial Council staff recommends that the council, effective January 1, 2018, amend Cal. Rules of Court, rules 8.36, 8.100, 8.212, 8.248, 8.256, 8.264, 8.272, 8.278, 8.336, 8.500, 8.508, 8.512, 8.528, 8.532, 8.540, 8.857, 8.600, 8.619, 8.630, 8.634, 8.887, 8.1005, 8.1007, 8.1018, 10.40, 10.62, 10.67, 10.102, 10.104, 10.452, 10.471, 10.472, 10.481, 10.1004, 10.1008, 10.1020, and 10.1028, to change the title “Court of Appeals clerk” or “Court of Appeals clerk/administrator” to “clerk/executive officer of the Court of Appeal,” and to change the title “Supreme Court

clerk” or “Supreme Court clerk/administrator” to .”clerk/executive officer of the Supreme Court” everywhere they appear in these rules

### **Previous Council Action**

Although the Judicial Council has acted on these rules and forms previously, this proposal recommends only minor revisions unrelated to any prior action.

### **Rationale for Recommendation**

On June 28, 2017, the Governor signed into law Assembly Bill 452.<sup>1</sup> This legislation amended the Government Code and several other statutes, effective January 1, 2018, to change the name of the clerk/administrator of the Supreme Court and the courts of appeal to “clerk/executive officer.” The changes to these rules simply conform the rules of court to the new title enacted in AB 452. Conforming changes were also made to the appellate advisory committee comments to the appellate rules.

### **Comments, Alternatives Considered, and Policy Implications**

This proposal did not circulate for public comment because it is noncontroversial, involves technical revisions, and is therefore within the Judicial Council’s purview to adopt without circulation. (See Cal. Rules of Court, rule 10.22(d)(2).)

The proposal has no policy implications.

### **Implementation Requirements, Costs, and Operational Impacts**

Any operational impacts will be minor. Because the proposed change is only to revise the clerk’s position title, case management systems are unlikely to need updating to implement it.

### **Attachments and Links**

1. Cal. Rules of Court, rules 8.36, 8.100, 8.212, 8.248, 8.256, 8.264, 8.272, 8.278, 8.336, 8.500, 8.508, 8.512, 8.528, 8.532, 8.540, 8.857, 8.600, 8.619, 8.630, 8.634, 8.887, 8.1005, 8.1007, 8.1018, 10.40, 10.62, 10.67, 10.102, 10.104, 10.452, 10.471, 10.472, 10.481, 10.1004, 10.1008, 10.1020, and 10.1028, at pages 3–26
2. Link A: Assembly Bill 452,  
[http://leginfo.legislature.ca.gov/faces/billCompareClient.xhtml?bill\\_id=201720180AB452](http://leginfo.legislature.ca.gov/faces/billCompareClient.xhtml?bill_id=201720180AB452)

---

<sup>1</sup> Stats 2017, ch. 36.

Rules 8.36, 8.100, 8.212, 8.248, 8.256, 8.264, 8.272, 8.278, 8.336, 8.500, 8.508, 8.512, 8.528, 8.532, 8.540, 8.857, 8.600, 8.619, 8.630, 8.634, 8.887, 8.1005, 8.1007, 8.1018, 10.40, 10.62, 10.67, 10.102, 10.104, 10.452, 10.471, 10.472, 10.481, 10.1004, 10.1008, 10.1020, and 10.1028 of the California Rules of Court are amended, effective January 1, 2018, to read:

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

**(a)-(b)** \* \* \*

**(c) Withdrawing attorney**

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

**Rule 8.100. Filing the appeal**

**(a)** \* \* \*

**(b) Fee and deposit**

- (1) Unless otherwise provided by law, the notice of appeal must be accompanied by the \$775 filing fee under Government Code sections 68926 and 68926.1(b), an application for a waiver of court fees and costs on appeal under rule 8.26, or an order granting such an application. The fee may be paid by check or money order payable to "Clerk/Executive Officer, Court of Appeal"; if the fee is paid in cash, the clerk must give a receipt. The fee may also be paid by any method permitted by the court pursuant to rules 2.258 and 8.78.

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

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

(c)–(g) \* \* \*

### Advisory Committee Comment

**Subdivision (a).** \* \* \*

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

**Subdivision (c)(2).** \* \* \*

**Subdivision (e).** \* \* \*

### Rule 8.212. Service and filing of briefs

(a) \* \* \*

(b) \* \* \*

(c) **Service**

(1) \* \* \*

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

(A)–(B) \* \* \*

(C) If it would cause undue hardship for the party filing the brief to submit an electronic copy of the brief to the Court of Appeal, the party may instead serve four paper copies of the brief on the Supreme Court. If the

brief discloses material contained in a sealed or conditionally sealed record, the party serving the brief must comply with rule 8.46(f) and attach a cover sheet that contains the information required by rule 8.204(b)(10). The clerk/executive officer of the Court of Appeal ~~clerk~~ must promptly notify the Supreme Court of any court order unsealing the brief. In the absence of such notice, the clerk/executive officer of the Supreme Court ~~clerk~~ must keep all copies of the unredacted brief under seal.

(3) \* \* \*

## **Rule 8.248. Prehearing conference**

(a)–(d) \* \* \*

### **Advisory Committee Comment**

**Subdivision (a).** \* \* \*

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

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

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

## **Rule 8.256. Oral argument and submission of the cause**

(a) \* \* \*

(b) **Notice of argument**

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

(c)–(e) \* \* \*

#### **Rule 8.264. Filing, finality, and modification of decision**

##### **(a) Filing the decision**

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

(2) \* \* \*

(b) \* \* \*

##### **(c) Modification of decision**

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

(2) \* \* \*

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

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

#### **Rule 8.272. Remittitur**

(a) \* \* \*

**(b) Clerk's duties**

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

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

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

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

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

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

**(c) \* \* \***

**(d) Notice**

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

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

**Rule 8.278. Costs on appeal**

**(a) \* \* \***

**(b) Judgment for costs**

- (1) The clerk/executive officer of the Court of Appeal ~~clerk~~ must enter on the record, and insert in the remittitur, a judgment awarding costs to the prevailing party under (a)(2) or as directed by the court under (a)(3), (a)(4), or (a)(5).
- (2) If the clerk/executive officer fails to enter judgment for costs, the court may recall the remittitur for correction on its own motion, or on a party's motion made not later than 30 days after the remittitur issues.

**(c)–(d) \* \* \***

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

**(a)–(g) \* \* \***

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

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

**Rule 8.500. Petition for review**

**(a)–(d) \* \* \***

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

- (1) A petition for review must be served and filed within 10 days after the Court of Appeal decision is final in that court. For purposes of this rule, the date of finality is not extended if it falls on a day on which the ~~clerk's office~~ of the clerk/executive officer is closed.
- (2) \* \* \*
- (3) If a petition for review is presented for filing before the Court of Appeal decision is final in that court, the clerk/executive officer of the Supreme Court ~~clerk~~ must accept it and file it on the day after finality.
- (4)–(5) \* \* \*



**(f) Additional requirements**

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

(2) \* \* \*

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

**(g) \* \* \***

**Advisory Committee Comment**

**Subdivision (a).** \* \* \*

**Subdivision (e).** \* \* \*

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

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

**(a)–(b)** \* \* \*

**(c) Service**

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

**Rule 8.512. Ordering review**

**(a) Transmittal of record**

On receiving a copy of a petition for review or on request of the Supreme Court, whichever is earlier, the clerk/executive officer of the Court of Appeal~~clerk~~ must promptly send the record to the Supreme Court. If the petition is denied, the

1 clerk/executive officer of the Supreme Court ~~clerk~~ must promptly return the record  
2 to the Court of Appeal if the record was transmitted in paper form.

3  
4 (b) \* \* \*

5  
6 (c) **Review on the court's own motion**

7  
8 (1) If no petition for review is filed, the Supreme Court may, on its own motion,  
9 order review of a Court of Appeal decision within 30 days after the decision  
10 is final in that court. Before the 30-day period or any extension expires, the  
11 Supreme Court may order one or more extensions to a date not later than 90  
12 days after the decision is final in the Court of Appeal. If any such period ends  
13 on a day on which the ~~clerk's~~ office of the clerk/executive officer is closed,  
14 the court may order review on its own motion on the next day the ~~clerk's~~  
15 office is open.

16  
17 (2) \* \* \*

18  
19 (d) \* \* \*

20  
21 **Rule 8.528. Disposition**

22  
23 (a) \* \* \*

24  
25 (b) **Dismissal of review**

26  
27 (1) The Supreme Court may dismiss review. The clerk/executive officer of the  
28 Supreme Court ~~clerk~~ must promptly send an order dismissing review to all  
29 parties and the Court of Appeal.

30  
31 (2) When the Court of Appeal receives an order dismissing review, the decision  
32 of that court is final and its clerk/executive officer must promptly issue a  
33 remittitur or take other appropriate action.

34  
35 (3) \* \* \*

36  
37 (c)–(f) \* \* \*

38  
39 **Advisory Committee Comment**

40  
41 **Subdivision (a).** \* \* \*

**Subdivision (b).** An earlier version of this rule purported to limit Supreme Court *dismissals of review* to cases in which the court had “improvidently” granted review. In practice, however, the court may dismiss review for a variety of other reasons. For example, after the court decides a “lead” case, its current practice is to dismiss review in any pending companion case (i.e., a “grant and hold” matter under rule 8.512(c)) that appears correctly decided in light of the lead case and presents no additional issue requiring resolution by the Supreme Court or the Court of Appeal. The Supreme Court may also dismiss review when a supervening event renders the case moot for any reason, e.g., when the parties reach a settlement, when a party seeking personal relief dies, or when the court orders review to construe a statute that is then repealed before the court can act. Reflecting this practice, the Supreme Court now dismisses review—even in the rare case in which the grant of review was arguably “improvident”—by an order that says simply that “review is dismissed.”

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

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

**Subdivision (d).** \* \* \*

**Subdivision (e).** \* \* \*

## **Rule 8.532. Filing, finality, and modification of decision**

### **(a) Filing the decision**

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

**(b)–(c)** \* \* \*

## **Rule 8.540. Remittitur**

**(a)** \* \* \*

**(b) Clerk's duties**

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

**(c)–(f) \* \* \***

**Rule 8.600. In general**

**(a)–(c) \* \* \***

**(d) Supervising preparation of record**

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

**(e) \* \* \***

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

**(a)–(g) \* \* \***

**(h) Notice of delivery**

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

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

**(a)–(b) \* \* \***

**(c) Time to file**

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

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

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

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

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

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

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

**(d)–(h) \* \* \***

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

**(a) \* \* \***

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

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

(c) \* \* \*

**Rule 8.887. Decisions**

(a)–(b) \* \* \*

(c) **Opinions certified for publication**

(1) \* \* \*

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

(A) \* \* \*

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

**Rule 8.1005. Certification for transfer by the appellate division**

(a)–(d) \* \* \*

(e) **Superior court clerk’s duties**

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

(2) \* \* \*

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

**(a) Clerks' duties**

(1) \* \* \*

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

**(b) \* \* \***

**Rule 8.1018. Finality and remittitur**

**(a)–(b) \* \* \***

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

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

**(d) Documents to be returned**

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

**Rule 10.40. Appellate Advisory Committee**

**(a)–(b) \* \* \***

**(c) Membership**

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

(1)–(3) \* \* \*

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

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

(6)–(11) \* \* \*

#### **Rule 10.62. Court Facilities Advisory Committee**

(a) \* \* \*

##### **(b) Membership**

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

(1) \* \* \*

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

(3)–(7) \* \* \*

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

#### **Rule 10.67. Judicial Branch Workers' Compensation Program Advisory Committee**

(a)–(b) \* \* \*

##### **(c) Membership**

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

#### **Rule 10.102. Acceptance of gifts**

(a) \* \* \*

##### **(b) Delegation of authority**



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

(1) \* \* \*

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

(3) The clerk executive officer of the Supreme Court, for gifts to the Supreme Court; and

(4) \* \* \*

**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) \* \* \*

(d) \* \* \*

**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          (e) \* \* \*

43

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

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

(1)–(4) \* \* \*

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

(g) \* \* \*

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

(a) **Applicability**

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

(b) **Hours-based requirement**

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

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

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

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

(A) \* \* \*

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

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

**(c) Extension of time**

(1) \* \* \*

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

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

**(d) Record of participation; statement of completion**

Each clerk/executive officer administrator is responsible for:

(1)–(3) \* \* \*

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

1 (a) \* \* \*

2  
3 (b) **Content-based requirements**

4  
5 (1)–(2) \* \* \*

6  
7 (3) The clerk/executive officer ~~administrator~~, the managing attorney, or the  
8 employee's supervisor may determine the appropriate content, delivery  
9 mechanism, and length of orientation based on the needs and role of each  
10 individual employee.

11  
12 (c) **Hours-based requirements**

13  
14 (1) \* \* \*

15  
16 (2) Each court employee who is not a managing attorney, supervisor, or appellate  
17 judicial attorney must complete 8 hours of continuing education every two  
18 years, with the exception of employees who do not provide court  
19 administrative or operational services. Those employees are not subject to the  
20 continuing education hours-based requirement but must complete any  
21 education or training required by law and any other education required by the  
22 clerk/executive officer ~~administrator~~.

23  
24 (3) \* \* \*

25  
26 (4) Any education offered by an approved provider (see rule 10.481(a)) and any  
27 other education, including education taken to satisfy a statutory, rules-based,  
28 or other education requirement, that is approved by the clerk/executive  
29 officer ~~administrator~~, the managing attorney, or the employee's supervisor as  
30 meeting the criteria listed in rule 10.481(b) applies toward the orientation  
31 education required under (b) and the continuing education required under  
32 (c)(1) and (2).

33  
34 (5)–(6) \* \* \*

35  
36 (7) The clerk/executive officer ~~administrator~~, the managing attorney, or the  
37 employee's supervisor may require supervisors and other court personnel to  
38 participate in specific courses or to participate in education in a specific  
39 subject matter area as part of their continuing education.

40  
41 (d) **Extension of time**

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

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

(3) \* \* \*

(e) \* \* \*

#### **Rule 10.481. Approved providers; approved course criteria**

(a) \* \* \*

#### **(b) Approved education criteria**

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

(1)–(2) \* \* \*

#### **Rule 10.1004. Court of Appeal administrative presiding justice**

(a)–(b) \* \* \*

1 **(c) Duties**

2  
3 The administrative presiding justice must perform any duties delegated by a  
4 majority of the justices in the district with the Chief Justice's concurrence. In  
5 addition, the administrative presiding justice has responsibility for the following  
6 matters:

7  
8 **(1) Personnel**

9  
10 The administrative presiding justice has general direction and supervision of  
11 the clerk/executive officer ~~administrator~~ and all court employees except those  
12 assigned to a particular justice or division;

13  
14 **(2)–(7) \* \* \***

15  
16 **(d) \* \* \***

17  
18 **Rule 10.1008. Courts of Appeal with more than one division**

19  
20 Appeals and original proceedings filed in a Court of Appeal with more than one division,  
21 or transferred to such a court without designation of a division, may be assigned to  
22 divisions in a way that will equalize the distribution of business among them.  
23 The clerk/executive officer of the Court of Appeal ~~clerk~~ must keep records showing the  
24 divisions in which cases and proceedings are pending.

25  
26 **Rule 10.1020. Reviewing court clerk/executive officer ~~administrator~~**

27  
28 **(a) Selection**

29  
30 A reviewing court may employ a clerk/executive officer ~~administrator~~ selected in  
31 accordance with procedures adopted by the court.

32  
33 **(b) Responsibilities**

34  
35 Acting under the general direction and supervision of the administrative presiding  
36 justice, the clerk/executive officer ~~administrator~~ is responsible for planning,  
37 organizing, coordinating, and directing, with full authority and accountability, the  
38 management of the ~~clerk's~~ office of the clerk/executive officer and all nonjudicial  
39 support activities in a manner that promotes access to justice for all members of the  
40 public, provides a forum for the fair and expeditious resolution of disputes, and  
41 maximizes the use of judicial and other resources.  
42

1 (c) **Duties**

2  
3 Under the direction of the administrative presiding justice, the clerk/executive  
4 officer administrator has the following duties:

5  
6 (1) *Personnel*

7  
8 The clerk/executive officer administrator directs and supervises all court  
9 employees assigned to the clerk/executive officer administrator or by the  
10 administrative presiding justice and ensures that the court receives a full  
11 range of human resources support;

12  
13 (2) *Budget*

14  
15 The clerk/executive officer administrator develops, administers, and monitors  
16 the court budget and develops practices and procedures to ensure that annual  
17 expenditures are within the budget;

18  
19 (3) *Contracts*

20  
21 The clerk/executive officer administrator negotiates contracts on the court's  
22 behalf in accord with established contracting procedures and applicable laws;

23  
24 (4) *Calendar management*

25  
26 The clerk/executive officer administrator employs and supervises efficient  
27 calendar and caseload management, including analyzing and evaluating  
28 pending caseloads and recommending effective calendar management  
29 techniques;

30  
31 (5) *Technology*

32  
33 The clerk/executive officer administrator coordinates technological and  
34 automated systems activities to assist the court;

35  
36 (6) *Facilities*

37  
38 The clerk/executive officer administrator coordinates facilities, space  
39 planning, court security, and business services support, including the  
40 purchase and management of equipment and supplies;

41  
42 (7) *Records*



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

(8) *Recommendations*

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

(9) *Public relations*

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

(10) *Liaison*

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

(11) *Committees*

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

(12) *Administration*

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

(13) *Other*

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

**(d) Geographically separate divisions**

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

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

**(a)–(b) \* \* \***

**(c) Permanent records**

The clerk/executive officer of the Court of Appeal~~-clerk~~ must permanently keep the court's minutes and a register of appeals and original proceedings.

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

- (1) Except as provided in (2), the clerk/executive officer may destroy all other records in a case 10 years after the decision becomes final, as ordered by the administrative presiding justice or, in a court with only one division, by the presiding justice.
- (2) In a criminal case in which the court affirms a judgment of conviction, the clerk/executive officer must keep the original reporter's transcript for 20 years after the decision becomes final.