JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 21, 2018:

Title
Criminal and Appellate Procedure: Record Preparation in Death Penalty Cases

Rules, Forms, Standards, or Statutes Affected
Adopt Cal. Rules of Court, rules 4.119, 4.230, 8.608, and 8.611; amend rules 8.600, 8.610, 8.613, 8.616, 8.619, and 8.622; repeal rule 8.625; adopt forms CR-600, CR-601, CR-602, CR-603, CR-604, and CR-605

Recommended by
Proposition 66 Rules Working Group
Hon. Dennis M. Perluss, Chair

Agenda Item Type
Action Required

Effective Date
April 25, 2019

Date of Report
September 7, 2018

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Executive Summary

To make the record preparation process in death penalty cases more efficient, the Proposition 66 Rules Working Group recommends adopting several new rules and amending several existing rules relating to the content and preparation of the record on appeal in these cases. The working group also recommends adopting six new mandatory forms designed to assist in the record preparation process. These recommended rules and forms are intended to partially fulfill the Judicial Council's rule-making obligations under Proposition 66.

Recommendation

The Proposition 66 Rules Working Group recommends that the Judicial Council, effective April 25, 2019:

1. Adopt Cal. Rules of Court, rules 4.119 and 4.230, to address the responsibilities of counsel in pretrial and trial proceedings, respectively, in cases in which the death penalty may be imposed to facilitate preparation of a complete and accurate record during these proceedings by:
   - Reviewing, signing, and submitting a checklist outlining their record preparation responsibilities;
   - Preparing and submitting lists of appearances and motions made and exhibits and, in trial proceedings, jury instructions offered on behalf of the party they represent; and
   - Complying with the requirements of rule 2.1040 relating to electronic recordings presented or offered into evidence; and
   - In trial proceedings:
     - Reviewing daily reporter's transcripts of the trial proceedings and bringing errors to the attention of the court, other than immaterial typographical errors that cannot conceivably cause confusion; and
     - Submitting copies to the court of any audio or visual aids used in jury selection or presentations to the jury;
2. Amend rule 8.600, to delete the provisions addressing topics relating to the record on appeal in capital cases;
3. Adopt rule 8.608, to contain the record-related provisions deleted from rule 8.600;
4. Amend rule 8.610, to:
   - Clarify some items currently on the list of items that must be included in the clerk's transcript in capital cases;
   - Add to this list the following items that are regularly needed, but sometimes left out of, the clerk's transcript: any court-ordered diagnostic or psychological report required under Penal Code section 1369, visual aids submitted to the court under proposed rule 4.230, the table correlating the jurors' names with their identifying numbers, and documents filed under Penal Code section 987.2 or 987.9; and
   - Make other minor clarifying and conforming changes;
5. Adopt rule 8.611, to address the handling of juror-identifying information in the record of capital cases;
6. Amend rule 8.613, relating to preparing and certifying the record of preliminary proceedings in capital cases and rule 8.616, relating to preparing the record of trial proceedings in capital cases, to:

- Require the trial court clerk to notify counsel when counsel must submit the lists of appearances, motions, exhibits, and jury instructions required under new rules 4.119 and 4.230 and to send copies of these lists to counsel with the reporter's transcript and, under rule 8.616, the clerk's transcript; and
- Encourage the clerk to deliver the clerk's transcript in electronic form if the court is able to do so;

7. Further amend rule 8.613 and amend rule 8.619 relating to review and certification of the record of trial proceedings for completeness to:
   - Require counsel to review the lists of appearances, exhibits, motions, and jury instructions required under new rules 4.119 and 4.230 as part of their review of the record of the proceedings;
   - Require that, within 21 days after the clerk delivers the transcripts and lists to counsel, trial counsel confer with each other regarding any errors or omissions they have identified in their review;
   - Clarify that counsel may file a joint request for corrections or statement that no corrections are needed; and
   - Make other minor clarifying and conforming changes;
8. Further amend rules 8.613 and 8.619 and amend rule 8.622 relating to review and certification of the record of trial proceedings for accuracy, to clarify that immaterial typographical errors that cannot conceivably cause confusion are not required to be brought to the court's attention;
9. Further amend rules 8.619 and 8.622 to:
   - Extend the deadlines for counsel to review the record and request corrections if the clerk's and reporter's transcripts combined exceed 10,000 pages; and
   - Provide that the time for the trial court to certify the record begins when the last request to include additional materials or make corrections is filed or, under rule 8.619, the last statement that counsel does not request any additions or corrections is filed;
10. Further amend rule 8.622, to:
    - Provide that a party may request that a copy of any documentary exhibit be included in the clerk's transcript and must state the reason that the exhibit needs to be included in the clerk's transcript;
    - Require appellate counsel, as part of their review of the record, to review all sealed records that they are entitled to access under rule 8.45 and file an application to unseal any sealed records that counsel determines no longer meet the criteria for sealing;
    - Unless otherwise ordered by the court, require defendant's appellate counsel and the trial counsel from the prosecutor's office to confer regarding any request for corrections to the record and any application to unseal records served on the prosecutor's office; and

- Make other minor clarifying and conforming changes;

11. Repeal rule 8.625, which is obsolete;
12. Adopt new *Capital Case Attorney Pretrial Checklist* (form CR-600), *Capital Case Attorney List of Appearances* (form CR-601), *Capital Case Attorney List of Exhibits* (form CR-602), *Capital Case Attorney List of Motions* (form CR-603), *Capital Case Attorney List of Jury Instructions* (form CR-604), and *Capital Case Attorney Trial Checklist* (form CR-605) for mandatory use by attorneys in complying with the requirements of new rules 4.119 and 4.230; and
13. Refer to the appropriate Judicial Council advisory body or bodies, for their consideration, commentators' suggestions for additional substantive changes to the rules relating to the record on appeal that the working group was not able to consider at this time.

The text of the new and amended rules and the new forms are attached at pages 21–57.

Relevant Previous Council Action

Because Proposition 66 only recently went into effect, the Judicial Council has not yet adopted any rules under the proposition. The council has, however, previously adopted rules relating to the content and preparation of the record on appeal in death penalty (capital) cases. The original Rules on Appeal adopted by the Judicial Council effective July 1, 1943 contained a provision, rule 33(c), addressing the content of the record on appeal in a capital case. Effective January 1, 1983, after the death penalty was reinstituted in California in 1977, this provision was moved to be a separate rule 39.5 specifically addressing the record in capital cases and rule 35, relating to preparation of the record in criminal appeals, was also amended to specifically address capital cases. Effective March 1, 1997, to implement amendments to Penal Code sections 190.8 and 190.9, which made substantial changes in the process for preparing the record on appeal in capital cases, the Judicial Council amended and renumbered rule 39.5 and adopted new rules 39.52 – 39.56. These rules have been amended and renumbered on several occasions since then and are now rules 8.610, 8.613, 8.616, 8.619, 8.622, and 8.625.

In January 2018, the Judicial Council formed the Proposition 66 Rules Working Group to assist the council in carrying out its rule-making responsibilities under the proposition. The council charged the working group with considering what new or amended court rules, judicial administration standards, and Judicial Council forms are needed to address the act's provisions.

Analysis/Rationale

Background

Proposition 66

On November 8, 2016, the California electorate approved Proposition 66, the Death Penalty Reform and Savings Act of 2016. This act made a variety of changes to the statutes relating to review of death penalty (capital) cases in the California courts, many of which were focused on reducing the time spent on this review. Among other things, the act calls for the Judicial Council

to adopt, within 18 months of the act's effective date, "initial rules and standards of administration designed to expedite the processing of capital appeals and state habeas corpus review." (Pen. Code, § 190.6(d).)

The act did not take effect immediately upon approval by the electorate because its constitutionality was challenged in a petition filed in the California Supreme Court, *Briggs v. Brown et al.* (S238309). On October 25, 2017, the Supreme Court's opinion in the *Briggs* case ((2017) 3 Cal.5th 808) became final and the act took effect. Shortly afterward, as noted above, the Judicial Council formed the Proposition 66 Rules Working Group to assist the council in carrying out its rule-making responsibilities under the act. The council charged the working group with considering what new or amended court rules, judicial administration standards, and Judicial Council forms are needed to address the act's provisions, including, specifically, those governing the procedures and time frames pertaining to record preparation.

Existing record preparation procedures in capital cases

The existing procedures for the preparation of the record on appeal in capital cases are established by a combination of state statutes—Penal Code sections 190.7–190.9, which were not modified by the act—California Rules of Court, and practice. The statutes specifically provide for the adoption of rules by the Judicial Council to address record preparation in capital cases:

- Penal Code section 190.7 provides that the Judicial Council may adopt rules "specifically pertaining to the content, preparation and certification of the record on appeal when a judgment of death has been pronounced."
- Penal Code section 190.8, which addresses preparation and certification of the record in capital cases, provides that it "shall be implemented pursuant to rules of court adopted by the Judicial Council."

These statutes, rules, and practices address the content of the record and establish a multistep process for preparing and certifying the record in capital cases:

- *Contents of the record.* Penal Code section 190.7 generally requires that all papers or other records filed or lodged with the court and a transcript of all oral proceedings during both the pretrial and trial phases of a capital case must be included in the record on appeal. Rule 8.610 identifies the specific items and oral proceedings that must be included in the clerk's and reporter's transcripts in capital cases and addresses the format of the record. To ensure that transcripts of all the oral proceedings are available, Penal Code section 190.9 requires that "[i]n any case in which a death sentence may be imposed, all proceedings conducted in the superior court, including all conferences and proceedings, whether in open court, in conference in the courtroom, or in chambers, shall be conducted on the record with a court reporter present." This section further requires the court to "assign a court reporter who uses computer-aided transcription equipment" to report these proceedings and requires that the

court reporter "prepare and certify a daily transcript of all proceedings commencing with the preliminary hearing."

- *Record of pretrial proceedings.* Penal Code section 190.9 requires that when the prosecution notifies the trial court that the death penalty is being sought, the court must order the preparation of the record of all the pretrial proceedings. Unless an extension of time is granted, the court is required to certify this record no later than 120 days following the prosecution's notification. Rule 8.613 implements this statutory procedure by, among other things, requiring counsel representing the parties during the pretrial proceedings to review this record to identify any errors or omissions and to request that the court make corrections or additions to the record. If any corrections or additions are requested, the court is required to hold a hearing, make the necessary changes, and certify this record of the preliminary proceedings as complete and accurate. This record is later incorporated in the full record when the record of the trial proceedings is completed.
- *Certification of the record for completeness*. If, following the trial, a death sentence is imposed, Penal Code section 190.8 requires that, within 30 days of the imposition of that sentence, the clerk of the superior court must provide trial counsel with copies of the clerk's and reporter's transcripts of the proceedings. Trial counsel are required to certify that they have "reviewed all docket sheets to ensure that the record contains transcripts for any proceedings, hearings, or discussions that are required to be reported and that have occurred in the course of the case in any court, as well as all documents required by this code and the rules adopted by the Judicial Council." The trial court is required to hold "one or more hearings for trial counsel to address the completeness of the record and any outstanding errors that have come to their attention." Rules 8.616 and 8.619 implement this statutory procedure by, among other things, requiring a procedure similar to that for the review of the record of the preliminary proceedings: trial counsel are required to review this record to identify any errors or omissions and to request that the court make corrections or additions to the record. Unless an extension of time is granted, the court is required to certify the record for completeness no later than 90 days after imposition of the death sentence.
- *Certification of the record for accuracy.* Penal Code section 190.8 provides that when appellate counsel for the defendant is retained or appointed, the trial court is required to send a copy of the record that was certified for completeness to that appellate counsel. The trial court may hold "one or more status conferences for purposes of timely certification of the record for accuracy, as set forth in the rules of court adopted by the Judicial Council." Rule 8.622 implements this statutory procedure by, among other things, providing that within 90 days after the clerk delivers the record to appellate counsel, any party may request that the court make corrections or additions to the record and that, if such a request is made, the procedures for the court's consideration are the same as for certifying the record for completeness. Unless an extension of time is granted, the court is required to certify the record for accuracy no later than 120 days after the record was delivered to appellate counsel.
- *Review of the record by Supreme Court staff.* Rule 8.622 provides that when the record is certified as accurate, the clerk must promptly send the original to the Supreme Court. Staff in

the Supreme Court clerk's office review the record to ensure that it is complete before it is accepted for filing.

Currently, the record on appeal in capital cases is not typically filed in the Supreme Court until approximately six years after the sentence of death is imposed. Close to two-thirds of this time elapses between the imposition of the death sentence and the appointment of appellate counsel for capital defendants. As noted above, by statute the certification of the record for accuracy occurs only after appellate counsel is appointed, so the record preparation process does not move forward until that appointment takes place. However, approximately one-third of this time, or, on average, approximately two years, elapses between the appointment of appellate counsel and the filing of the record. This is the period when the record is being reviewed and certified for accuracy and reviewed by the Supreme Court clerk's office before filing. In the experience of working group members, a substantial number of errors and omissions are identified and need to be corrected during these later two stages of the record preparation process. It is also the experience of working group members that it is often more difficult to identify errors or omissions and make necessary corrections and additions at these later stages because many years have typically elapsed since the proceedings in the trial court took place. Memories have faded and the judges, attorneys, court reporters, and court staff who participated in the proceedings may no longer be available.

Recommended rules and forms

Premises of recommended changes

The changes recommended in this report are based on two main premises:

- It is more efficient for necessary items to be identified and included in the record from the outset, rather than having to later identify that these items are missing and have counsel request their inclusion in the record and the court consider whether to grant this request; and
- Counsel participating in the capital pretrial and trial proceedings, the trial court judge, court reporters, and court staff are in the best position during and immediately after the proceedings to identify and include necessary items in the record, and to identify and correct errors in the record.

The rule changes and forms recommended in this report reflect these premises. They are designed to help trial counsel and the trial court identify items that need to be included in the record and to make necessary corrections as early as possible during the record preparation and certification process.

Facilitating preparation of a complete and accurate record during the pretrial and trial proceedings

The working group is proposing the adoption of two new rules of court—rules 4.119 and 4.230—and six forms designed to facilitate the preparation of a complete and accurate record while the pretrial and trial proceedings are taking place. The main provisions of these proposed rules and forms are modeled on Superior Court of Los Angeles County local rule 8.40 and

Appendix 8.A, which address record preparation in capital cases. This local rule requires counsel in capital cases to prepare lists of appearances, exhibits, motions, and jury instructions. The appendix to the Los Angeles local rule also includes a checklist, divided by phase of the capital proceedings, which restates the requirements that counsel prepare lists of appearances, exhibits, motions, and jury instructions, as well as other requirements relating to capital case record preparation from applicable statutes and rules of the California Rules of Court. Counsel are required to sign the checklist and submit it to the court. In addition, the appendix includes model logs and lists for use by counsel in complying with the local rule requirements. The working group concluded that these local procedures provided a good model for steps that can be taken statewide to better ensure the completeness and accuracy of the record early in the record preparation and certification process.

Checklists. To provide counsel with a reminder of their many record-related obligations in a capital case, new rules 4.119 and 4.230 of the California Rules of Court, like the Superior Court of Los Angeles County local rule, would require defense counsel and prosecutors, soon after they make their first appearance at the pretrial or trial stages in a case in which the death penalty might be imposed, to sign and submit to the court a checklist of these obligations. The proposed new rules would be placed in Title 4 of the California Rules of Court, the Criminal Rules, because they address counsel's responsibilities during the trial court proceedings.

Two new mandatory forms, *Capital Case Attorney Pretrial Checklist* (form CR-600) and *Capital Case Attorney Trial Checklist* (form CR-605), are being recommended for adoption to provide counsel with the required checklists. Separate forms are proposed for pretrial and trial proceedings because there are differences in the underlying procedures for preparation of the record in pretrial and trial proceedings that are reflected on the forms, and because the pretrial information would need to be submitted at a much earlier time in the record preparation process. Obligations noted on the proposed forms include reviewing and correcting daily transcripts, ensuring that all exhibits offered are properly marked, complying with rule 2.1040 relating to electronic audio or audio and visual recordings presented to the jury, and preparing and submitting lists of appearances, exhibits, motions, and jury instructions (discussed below).

Lists of appearances, exhibits, motions, and jury instructions. To provide a helpful cross-check to the court minutes and docket in identifying documents and oral proceedings that need to be included in the record on appeal in capital cases, proposed new rules 4.119 and 4.230, like the Superior Court of Los Angeles County local rule, would require counsel—during both the pretrial and trial stages in a case in which the death penalty might be imposed—to prepare lists of all the court appearances and motions that they make and all the exhibits they offer and, at the trial stage, jury instructions that they offer. By preparing these lists during the course of the proceedings, most of the documents and oral proceedings that are required to be included in the record on appeal will have been identified and can be included when the record is initially prepared and reviewed. Proposed new mandatory forms *Capital Case Attorney List of Appearances* (form CR-601), *Capital Case Attorney List of Exhibits* (form CR-602), *Capital*

Case Attorney List of Motions (form CR-603), and *Capital Case Attorney List of Jury Instructions* (form CR-604) would be used by counsel to comply with these requirements.

The pretrial lists of appearances, exhibits, and motions would be required to be submitted to the court and served on opposing counsel within 21 days after the clerk sends notice to begin preparing the record. For the trial lists of appearances, exhibits, motions, and jury instructions, the deadline for submission to the court would be 21 days after imposition of the death judgment. These deadlines are designed to allow the court and counsel to use the lists when they are preparing and reviewing the record shortly after the proceedings take place, allowing early corrections or additions to the record.

Review of daily transcripts. As noted above, by statute, daily reporter's transcripts are prepared during capital trials. Trial counsel are required to identify errors in these daily transcripts during the trial proceedings. Penal Code section 190.8(c) provides:

> During the course of a trial in which the death penalty is being sought, trial counsel shall alert the court's attention to any errors in the transcripts incidentally discovered by counsel while reviewing them in the ordinary course of trial preparation. The court shall periodically request that trial counsel provide a list of errors in the trial transcript during the course of trial and may hold hearings in connection therewith.
>
> Corrections to the record shall not be required to include immaterial typographical errors that cannot conceivably cause confusion.

Currently, rule 8.619(a), regarding certifying the trial record for completeness, includes the following language that is designed to implement this statutory requirement:

> During trial, counsel must call the court's attention to any errors or omissions they may find in the transcripts. The court must periodically ask counsel for lists of any such errors or omissions and may hold hearings to verify them.

Because this provision addresses a procedure that takes place during the trial of a capital case, the working group is recommending that this provision be moved from rule 8.619 and incorporated into proposed new rule 4.230. The working group is also recommending adding a new sentence calling attention to the provision in Penal Code section 190.8(c) regarding immaterial typographical errors by providing that such errors need not be brought to the attention of the court.

Electronic recordings and other audio or visual aids. Existing rule 2.1040 generally requires that before a party may present or offer into evidence any electronic sound or sound-and-video recording, the party must provide the court and opposing parties with a transcript of the electronic recording and, except when the recording is of a deposition or other prior testimony,

must also provide opposing parties with a duplicate of the electronic recording. Rule 8.610, relating to the contents of the record on appeal in capital cases, requires that the clerk's transcript include any transcript of a sound or sound-and-video recording furnished to the jury or tendered to the court under rule 2.1040. In the experience of members of the working group, however, counsel sometimes fail to provide the required transcripts of these recordings. To better ensure that the required transcripts are provided and included in the record on appeal, the working group is recommending that new rules 4.119 and 4.230 include provisions reminding counsel that they must comply with the requirements of rule 2.1040, including when any such recordings are made part of a digital or electronic presentation. This obligation is also noted on proposed new forms CR-600 and CR-605.

In addition, to better ensure that the court has a complete record of the material presented to the jury in capital cases, the working group is recommending that new rule 4.230 include a provision requiring primary counsel to provide the clerk with copies of any audio or visual aids not otherwise subject to the requirements of rule 2.1040 that are used during jury selection or in presentations to the jury. In the experience of working group members, this material is often needed for appellate review and, if not initially included in the record, must be added through an augmentation request. If a visual aid is oversized, counsel would be required to provide a photograph of that visual aid; and for digital or electronic presentations, counsel would be required to supply both a copy of the presentation in its native format and printouts showing the full text of each slide or image.

Contents of the clerk's transcript

As noted above, Penal Code section 190.7 generally requires that all papers or other records filed or lodged with the courts and a transcript of all oral proceedings during either the pretrial or trial phase of a capital case must be included in the record on appeal. Rule 8.610 identifies the specific items that must be included in the clerk's transcript in capital cases.

The working group is recommending two sets of rule amendments to better ensure that items needed for appellate review are included in the clerk's transcript.

List in rule 8.610(a)(1) of items in the clerk's transcript. The working group identified several items needed for appellate review that are frequently left out of the clerk's transcript, resulting in the need for either additions during the record correction process or augmentation motions during the Supreme Court proceedings. To address this, the working group recommends several additions and clarifications to the specific list of items that rule 8.610 requires be included in the clerk's transcript. Recommended additions to this list include:

- Court-ordered diagnostic or psychological reports required under Penal Code section 1369, which are specifically required to be included in the record under rule 8.320 in defendants' appeals in other felony cases;
- Visual aids provided to the clerk under proposed new rule 4.230;
- The table correlating juror's names and identifying numbers; and

- Documents filed or lodged under Penal Code sections 987.2 or 987.9.

Documentary exhibits. Currently, under rule 8.610(a)(3) in capital cases, as well as under rule 8.320(e) in non-capital felony cases, all exhibits are considered part of the record on appeal, but these exhibits are not included in the clerk's transcript and may only be transmitted to the court at the time oral argument is set. Because this transmission occurs after all briefing is completed, it is sometimes difficult for counsel to cite to these exhibits in their briefs, and it may be more difficult for the court to identify exhibits that are being cited.

To address these challenges, the working group is recommending that rule 8.622 be amended to provide that, at the time the record is reviewed for accuracy, counsel may request that copies of particular documentary exhibits be included in the clerk's transcript. The recommended amendment also requires counsel to provide a reason that the document should be included in the clerk's transcript. This proposed new requirement is intended to allow those documentary exhibits that are needed for appellate review to be included in the clerk's transcript before briefing.

The working group was split almost evenly about whether this was the approach that should be recommended with respect to documentary exhibits. Many members instead favored including all documentary exhibits in the clerk's transcript without counsel being required to request or provide a reason to do so. Three main reasons were given for this view:

1. Appellate counsel need to review all exhibits to determine which are relevant to the issues on appeal, so it is more efficient simply to include these exhibits in the clerk's transcript;
2. It will be difficult for counsel to determine which exhibits are relevant to the issues on appeal at the record review stage and thus allowing counsel to request additions to the clerk's transcript at this stage will not fully address the problem; and
3. Including all exhibits in the record on appeal will ultimately improve the efficiency of the record review process for state habeas corpus counsel.

Three main reasons were given by those who favored requiring counsel to submit a request and state reasons for including documentary exhibits in the clerk's transcript:

1. Not all documentary exhibits will be relevant to the issues raised on appeal and do not need to be in the clerk's transcript;
2. Including items not needed for the appeal will unnecessarily increase costs for trial courts associated with preparing and copying the clerk's transcript and the costs for the Supreme Court is storing these records; and
3. With the addition of all documentary exhibits, a clerk's transcript may become so long as to unnecessarily trigger automatic extensions of the time to review, correct, and certify the record and to prepare briefs.

In a vote taken after reviewing the public comments on the proposal, eight members of the working group ranked the approach of requiring counsel to submit a request and state reasons for including documentary exhibits in the clerk's transcript as their first choice among three options; eight members selected as their first choice the option of requiring that all documentary exhibits be included in the clerk's transcript without counsel being required to request or provide a reason for this; and five members selected a third, middle option as their first choice. The tie between the first and second approaches was resolved using a rank-order voting process that considered that four of the five members who had selected the third option as their first choice, ranked as their second choice the approach of requiring counsel to submit a request and state reasons for including documentary exhibits in the clerk's transcript.

Given the split among working group members on this issue, the staff anticipates that the group will further consider other ways to potentially address at least one of the concerns that resulted in this split: how best to facilitate state habeas corpus counsel's access to exhibits.

Record review and certification process

The working group is also proposing several change to the existing rules relating to the review and certification of the record of the preliminary and trial proceedings in capital cases.

Requirement that counsel confer during record correction process. Rule 8.613 regarding the certification of the record of the preliminary proceedings, rule 8.619 regarding certification of the record for completeness, and rule 8.622 regarding certification of the record for accuracy all currently contain provisions requiring counsel to consult with opposing counsel during these record correction processes. The working group is recommending that these provisions be amended to provide that counsel must confer about any errors in or omissions from the record that they identified during their review and to set specific timeframes within which counsel must confer. The recommended timeframes vary slightly, but all are designed to provide counsel with an opportunity to reach agreement regarding corrections or additions to the record before the court holds its hearing to certify the record. Under rules 8.613 and 8.619, counsel would be required to confer before a request for corrections or additions was filed. Under rule 8.622, counsel would be required to confer after a request for corrections or additions is filed.

Immaterial errors. The working group is recommending amending the provisions in rules 8.613, 8.619, and 8.622 that address counsel's review of the record to add a sentence similar to that in proposed new rule 4.230 that provides that immaterial typographical errors that cannot conceivably cause confusion do not need to be brought to the attention of the court.

Deadlines for review and certification. Currently, consistent with Penal Code section 190.8, rules 8.619 and 8.622 include provisions allowing for extension of the deadlines relating to review and certification of the record for completeness and accuracy. Both provisions permit extensions of time when the combined clerk's and reporter's transcripts exceed 10,000 pages and provide for a specified number of additional days for each specified number of additional pages of total record over 10,000 pages. The working group recommends that these extensions based on the record

size instead be built into the deadlines without the need for making a request. This would save time and resources for both counsel, who would otherwise need to prepare a request for an extension of time, and the courts, which would otherwise need to consider these requests.

The working group also recommends that the deadline for the trial judge to certify the record be measured from counsel's submission of a request for corrections or additions, rather than being measured from the imposition of the death sentence or the transmission of the record to appellate counsel. Under the current rule structure, the court's certification deadline does not take into account any extension of counsel's timeframes for reviewing or requesting corrections or additions to the record. Without this change, if timeframes for preparation of the record by the clerk or court reporters or the timeframes for counsel to review and request corrections of this record are extended for any reason, the trial judge's deadline for certifying the record may expire before the transcripts have been prepared or before counsel have completed their review of these transcripts. Such a pending expiration would require the trial judge to take time out of his or her substantive work to request an extension to certify the record and would require the court to rule on this request.

Review of sealed records. The working group recommends that rule 8.622 be amended to provide that, at the time appellate counsel review the record for accuracy, they also consider all the sealed records that they are entitled to access to determine if any of those records no longer need to be sealed. Ordinarily, under rule 8.46, requests to unseal such records would need to be filed in the reviewing court. This proposal would allow such requests in capital cases to be filed in and considered by the trial court. Identifying records that can be unsealed would simplify both preparation of the final record on appeal and the briefing involving such records.

Other proposed changes

Moving record-related provisions from rule 8.600 to new rule 8.608

Rule 8.600 contains general provisions relating to appeals in capital cases. Currently this rule contains several provisions that relate to preparation of the record on appeal. The working group recommends that these provisions be moved from rule 8.600 to new rule 8.608 so that they are within article 2, Record on Appeal, which contains the other rules regarding the record in capital appeals.

New rule regarding juror-identifying information

Rule 8.610(c) currently contemplates that courts will comply with the requirements of rule 8.332, which address the removal of juror-identifying information from the record on appeal in noncapital felony cases. However, rule 8.332 does not clearly apply in capital cases. To prevent any confusion, the working group recommends the adoption of new rule 8.611, which would specifically address the removal of juror-identifying information in the record on appeal in capital cases.

Repeal of rule 8.625

Rule 8.625 addresses the certification of the record in capital cases in which the judgment of death was imposed after a trial that began before January 1, 1997. The record on appeal in all cases that meet this criterion has already been prepared, so this rule is no longer needed. The working group therefore recommends that this rule be repealed.

Policy implications

As noted above, Proposition 66 calls for the Judicial Council to adopt "rules and standards of administration designed to expedite the processing of capital appeals and state habeas corpus review." (Pen. Code, § 190.6(d).) To help fulfill this statutory requirement, in the context of considering the preparation of the record on appeal in capital cases, the working group tried to identify areas where the record preparation process could be made more efficient and thus could potentially expedite the overall capital case review process. In this regard, as also noted above, the working group identified the following as its main premises:

1. Identifying and including necessary items in the record from the outset is more efficent than having to later identify that these items are missing and requiring counsel to request their inclusion in the record and the court to consider whether to grant this request; and
2. Counsel who are participating in the capital pretrial and trial proceedings, the trial court judge, court reporters, and court staff are in the best position during and immediately after the proceedings to identify and include necessary items in the record and to identify and correct errors in the record.

The elements of the recommended rules that are designed to facilitate the increased involvement of trial counsel in the preparation of the record during the preliminary and trial proceedings—including the checklists and lists of appearances, exhibits, motions, and jury instructions—and the requirement to confer with opposing counsel during the record review process will have policy implications in terms of imposing new responsibilities on many counsel and requiring cultural shifts in some counties. The elements of the recommended rules that clarify what materials must be included in the clerk's transcript or that potentially add items to this transcript have policy implications for courts in terms of potentially imposing new costs on trial courts that are not currently including these items in this transcript. In making its recommendations, the working group tried to weigh these policy implications against the potential efficiency and time gains that it concluded would likely result from these changes.

Comments

This proposal was circulated for public comment in a special cycle between July 3 and July 23, 2018. It was distributed to the standard list of presiding judges and justices, court executive officers, and bar associations. Working group members were also asked to distribute it to all those they thought might be interested in commenting.

Thirteen individuals or organizations submitted comments, including four superior courts, five organizations or individuals that represent criminal defendants, one attorney from a prosecutor's

office, and one victims' rights organization. Four commenters indicated that they agreed with the proposal, four indicated that they agreed with the proposal if modified, and the remainder did not specify an overall position on the proposal, but provided comments. Many commenters agreed with parts of the proposal and disagreed with or suggested modifications to other parts.

The full text of all the comments and the working group responses are in the comment chart attached at pages 58-121. The chart begins with a list of the 13 individuals and entities that submitted comments, followed by tables containing the substantive comments organized by rule and form number and/or topic. The main substantive comments and the working group responses to these comments are discussed below.

Attorney pretrial and trial checklists

Several commenters suggested that these checklists should be informational only and some of the comments seemed to express confusion about when the checklists are supposed be completed and filed and how they might be used by the court. The working group intended these checklists to be primarily informational tools to help remind counsel as early as possible in the case of their responsibilities related to record preparation and encourage them to fulfill these responsibilities. In response to the public comments, the working group made several changes to the rules and forms to clarify this purpose, including:

- Replacing the heading on the right-hand column which, as circulated, indicated that the column was "for court use," with a heading identifying the column as for optional use by the attorney;
- Adding a line above the signature indicating that the attorney is acknowledging having reviewed the form; and
- Revising the instructions at the top of the forms to reflect these changes.

Pretrial and trial lists of appearances, exhibits, motions, and jury instructions

As circulated for public comment, forms CR-601, CR-602, CR-603, and CR-604 were proposed as optional forms that attorneys could use to prepare the required pretrial and trial lists of appearances, exhibits, motions, and jury instructions. The invitation to comment specifically sought comment on whether these forms should instead be mandatory. Several commenters suggested that these forms be mandatory. In response to these comments, the working group is recommending that they be adopted as mandatory Judicial Council forms.

Several commenters also raised specific objections to the proposed list of attorney appearances, viewing it as redundant to the court minutes and docket entries. The working group considered these comments, but it concluded that the attorney lists of appearances will be a helpful cross-check for the court minutes and docket entries, and therefore is still recommending both the rule requirements to prepare this list and the adoption of form CR-601.

Some commenters made comments or suggestions about when these forms should be completed and submitted to the court. It is the working group's intent that these forms be completed as the proceedings take place—i.e., that appearances be added to the list as they are made, for example. To clarify this intent, the working group added comments to rules 4.119 and 4.230 addressing this matter.

Clerk notice to submit lists of appearances, exhibits, motions, and jury instructions

As noted above, under proposed amendments to rules 8.613 and 8.616, the trial court clerk would be required to notify pretrial and trial counsel of their obligation to submit the required lists of appearances, exhibits, motions, and jury instructions. The invitation to comment specifically asked for input on whether the clerk should be required to send this notice. The comments on this issue were split. The working group considered all these comments and decided to keep the requirement that the clerk provide this notice in the proposal. Under the existing procedures in rule 8.613 for preparation of the record of the preliminary proceedings, it is the clerk who triggers the preparation of the record after being notified that the prosecution is seeking the death penalty. The working group's view is that this is also the appropriate time for counsel to submit the pretrial lists of appearances, exhibits and motions and that it makes sense for the clerk to notify counsel of this obligation when the clerk notifies the court reporters. For simplicity and consistency between this phase of the record preparation process and the preparation of the record of the trial, the working group also concluded that it was appropriate for the clerk to notify counsel of their obligation to submit the trial lists of appearances, exhibits, motions, and jury instructions.

Contents of the record—copies of visual aids

Several commenters provided input on the proposal to amend rule 8.610 to include in the clerk's transcript visual aids used in presentations to the jury. Some of these commenters suggested that these visual aids should not be included in the clerk's transcript if they are not exhibits or marked for identification. The majority of commenters, however, supported the concept of including this material in the clerk's transcript, but suggested adding language to clarify what types of digital and electronic presentations to the jury were meant to be encompassed within this requirement and in what format they would be included in the clerk's transcript. In response to these comments, as well as to issues raised by members of the working group during the discussion of these comments, the working group made several changes to the proposed amendments to rule 8.610, as well as to proposed new rules 4.119 and 4.230, including:

- Modifying the provisions in rules 4.119 and 4.230 reminding counsel that they must comply with the requirements of rule 2.1040 to clarify that these requirements apply to electronic recordings that are included in electronic or digital presentations;
- Further modifying the provision in rule 4.230 requiring parties to provide the court with copies of visual aids used in presentations to the jury to clarify that:
    - This provision does not apply to items already covered by rule 2.1040;

- It applies to audio as well as visual aids;
- It applies to presentations made during the jury selection process; and
- Photographs or printouts provided to the court must be on 8-1/2 x 11-inch paper.

- Modifying the proposed amendment to rule 8.610 to cross-reference the provision in proposed new rule 4.230 requiring parties to provide the court with copies of visual aids.

One commenter noted that this provision in proposed new rule 4.230 requires that the parties provide the court with copies of electronic or digital presentations in their native format and copies of all slides and images, but the amendments to rule 8.610 only require that the copies of the slides and images be included in the clerk's transcript. This commenter suggested that the electronic or digital presentation in its native format be included in the clerk's transcript. The working group recognized this as an issue that should be considered, but concluded that it did not have time before presenting its recommendations to the Judicial Council to develop and circulate such a proposal for public comment. The working group therefore recommends that this suggestion be considered by the appropriate Judicial Council advisory body or bodies at a later time.

Contents of the record—inclusion of documentary exhibits in the clerk's transcript

This topic received quite a few comments; and the commenter's views, like those of the working group members discussed above, were split between those who supported automatically including all documentary exhibits in the clerk's transcript without requiring counsel to provide a reason for their inclusion and those who supported requiring counsel to provide a reason for their inclusion. The commenters supporting the former were primarily defense counsel, and those supporting the latter were primarily trial courts. The arguments made by these commenters were also consistent with the reasons given by working group members for their support of these two alternatives. Arguments made by commenters in support of automatically including documentary exhibits in the clerk's transcript included the following:

- It is more efficient to simply include the exhibits rather than requiring counsel to make a request and the court to rule on such a request;
- Counsel will need to review all the exhibits in preparing the appeal, so these items should be included in the clerk's transcript from the outset; and
- Including all the documentary exhibits in the clerk's transcript will make the preparation of state and federal habeas corpus petitions more efficient because counsel will not have to hunt for and gather these exhibits.

Most of the commenters who supported requiring a justification for including documentary exhibits in the clerk's transcript generally did not articulate the reasons for this view. The main reason given by the commenter who did discuss this topic is that enlarging the record increases costs for the trial court.

As related above, the working group was so split on which alternative to recommend that a tie-breaking system had to be used to decide that the working group would recommend the proposal as circulated for public comment.

Meet-and-confer requirements

As circulated for public comment, the proposal would have required counsel to meet and confer, in person or by telephone, during the record correction process. Several commenters objected to requiring opposing counsel to meet and confer for record correction, particularly immediately following the imposition of a death sentence. Some also suggested that the rules should permit any meet and confer to be done electronically.

Although these commenters raised legitimate issues about the ability of counsel to review the record and act in a cooperative manner immediately following sentencing, that timing is required under the record preparation statutes. The working group's view is that this statutorily required record correction process will be most effective if counsel discuss potential errors in the record and necessary corrections. Therefore, the working group did not completely eliminate this element from its proposal, but modified it to eliminate the requirement that counsel meet in person or by phone, requiring only that they confer. This flexibility will allow counsel to determine the best way to communicate with opposing counsel – in person, by phone, or by some other electronic means.

Joint statements and requests for corrections

As circulated for public comment, the proposal would have encouraged opposing counsel to file joint statements indicating that no corrections to the record are needed or joint requests for corrections. Specific input was sought on whether joint statements or requests for corrections should be mandatory. Commenters did not support making this mandatory and some objected to even urging the filing of joint statements or requests. Based on these comments, the working group modified the proposal language to more neutrally indicate that joint statements or requests may be filed.

Time for implementation

The proposal that was circulated for public comment indicated that the proposed effective date of the rule and form changes was January 1, 2019. Two commenters suggested that the 3 months between the September Judicial Council meeting and January 1 was not enough time for implementing these changes. Based on these comments, the working group recommends that the effective date of the recommended rules and forms be April 25, 2019. This will give courts and justice system partners approximately 7 months to implement these changes.

Alternatives considered

In addition to the alternatives considered in response to the public comments, the working group considered not proposing any changes to the rules relating to preparation of the record on appeal in capital cases, but concluded that proposing rule changes that might improve the efficiency of

this procedure would help fulfill the Judicial Council's rule-making obligations under Proposition 66.

The working group also considered whether guidelines, best practices, or additional education or training for judicial officers, court staff, or counsel might be a substitute for some or all of the proposed rule changes or forms. The working group concluded, however, that these other approaches would be helpful supplements to the proposed rule changes and forms, but would not be a substitute for them.

The working group considered several options for specific rule and form language when it was developing this proposal, including the following:

- *Making the use of a checklist optional or having an informational form, rather than making the submission of the form mandatory.* The working group concluded that a mandatory checklist would be most effective in ensuring that trial counsel are fully informed of their record preparation obligations.
- *Making the preparation and submission of lists of appearances, exhibits, motions, and jury instructions optional rather than mandatory.* The working group concluded that making these lists mandatory would be most effective in facilitating the preparation of a complete and accurate record.
- *Not including a requirement for a list of jury instructions.* The working group considered relying on the jury instruction cover sheet that rule 2.1055 requires, rather than requiring counsel to prepare and submit a list of written jury instructions to the court. The working group concluded that preparation of this list would be beneficial as a way to cross-check that all cover sheets have been submitted and are complete.
- *Not requiring counsel to confer at some or all of the record certification stages.* The working group concluded that such discussions would likely facilitate reaching agreement on needed corrections and additions to the record and so decided to include these requirements at all stages of the record certification process.

Fiscal and Operational Impacts

These recommended new and amended rules and new forms relating to the record on appeal in capital cases are likely to require some initial training for judicial officers and court staff. This need was noted by one of the superior courts that commented on the proposal. These changes will impose new requirements on trial counsel from counties other than Los Angeles County in terms of preparing and submitting the required checklists and lists of appearances, exhibits, motions, and jury instructions. The Los Angeles County Public Defender's Office commented that implementation of these rules will require significant training of the courts, court staff and lawyers. However, these rule changes and forms are anticipated to reduce court and counsel costs in the long term by making the record preparation process in capital cases more efficient.

Attachments and Links

1. Cal. Rules of Court, rules 4.119, 4.230, 8.600, 8.608, 8.610, 8.611, 8.613, 8.616, 8.619, 8.622, and 8.625, at pages 21–43
2. Forms CR-600, CR-601, CR-602, CR-603, CR-604 and CR-605, at pages 44–57
3. Chart of comments, at pages 58–121
4. Link A: *Ballot description and arguments for and against Proposition 66 and text of proposition from November 2016 Official Voter Information Guide* (pages 104–109 and 212–218, respectively)

Rules 4.119, 4.230, 8.608, and 8.611 of the California Rules of Court are adopted; rules 8.600, 8.610, 8.613, 8.616, 8.619, and 8.622 are amended; and rule 8.625 is repealed, effective April 25, 2019, to read:

Title 4. Criminal Rules

Division 2. Pretrial

Chapter 1. Pretrial Proceedings

Rule 4.119. Additional requirements in pretrial proceedings in capital cases

(a) Application

This rule applies only in pretrial proceedings in cases in which the death penalty may be imposed.

(b) Checklist

Within 10 days of counsel's first appearance in court, primary counsel for each defendant and the prosecution must each acknowledge that they have reviewed *Capital Case Attorney Pretrial Checklist* (form CR-600) by signing and submitting this form to the court. Counsel are encouraged to keep a copy of this checklist.

(c) Lists of appearances, exhibits, and motions

(1) Primary counsel for each defendant and the prosecution must each prepare the lists identified in (A)–(C):

(A) A list of all appearances made by that party during the pretrial proceedings. *Capital Case Attorney List of Appearances* (form CR-601) must be used for this purpose. The list must include all appearances, including ex parte appearances; the date of each appearance; the department in which it was made; the name of counsel making the appearance; and a brief description of the nature of the appearance. A separate list of Penal Code section 987.9 appearances must be maintained under seal for each defendant.

(B) A list of all exhibits offered by that party during the pretrial proceedings. *Capital Case Attorney List of Exhibits* (form CR-602) must be used for this purpose. The list must indicate whether the exhibit was admitted in evidence, refused, lodged, or withdrawn.

(C) A list of all motions made by that party during the pretrial proceedings, including ex parte motions. *Capital Case Attorney List of Motions* (form CR-603) must be used for this purpose. The list must indicate if a motion is awaiting resolution.

(2) In the event of any substitution of attorney during the pretrial proceedings, the relieved attorney must provide the lists of all appearances, exhibits, and motions to substituting counsel within five days of being relieved.

(3) No later than 21 days after the clerk notifies trial counsel that it must submit the lists to the court, counsel must submit the lists to the court and serve on all parties a copy of all the lists except the list of Penal Code section 987.9 appearances. Unless otherwise provided by local rule, the lists must be submitted to the court in electronic form.

(d) Electronic recordings presented or offered into evidence

Counsel must comply with the requirements of rule 2.1040 regarding electronic recordings presented or offered into evidence, including any such recordings that are part of a digital or electronic presentation.

Advisory Committee Comment

Subdivision (b). *Capital Case Attorney Pretrial Checklist* (form CR-600) is designed to be a tool to assist pretrial counsel in identifying and fulfilling all their record preparation responsibilities. Counsel are therefore encouraged to keep a copy of this form and to use it to monitor their own progress.

Subdivision (c)(1). To facilitate preparation of complete and accurate lists, counsel are encouraged to add items to the lists at the time appearances or motions are made or exhibits offered.

Subdivision (c)(3). Rule 8.613(d) requires the clerk to notify counsel to submit the lists of appearances, exhibits, and motions.

Division 3. Trials

Rule 4.230. Additional requirements in capital cases

(a) Application

This rule applies only in trials in cases in which the death penalty may be imposed.

(b) Checklist

Within 10 days of counsel's first appearance in court, primary counsel for each defendant and the prosecution must each acknowledge that they have reviewed *Capital Case Attorney Trial Checklist* (form CR-605) by signing and submitting this form to the court. Counsel is encouraged to keep a copy of this checklist.

(c) Review of daily transcripts by counsel during trial

During trial, counsel must call the court's attention to any errors or omissions they may find in the daily transcripts. The court must periodically ask counsel for lists of any such errors or omissions and may hold hearings to verify them. Immaterial typographical errors that cannot conceivably cause confusion are not required to be brought to the court's attention.

(d) Lists of appearances, exhibits, motions, and jury instructions

(1) Primary counsel for each defendant and the prosecution must each prepare the lists identified in (A)–(D).

(A) A list of all appearances made by that party. *Capital Case Attorney List of Appearances* (form CR-601) must be used for this purpose. The list must include all appearances, including ex parte appearances, the date of each appearance, the department in which it was made, the name of counsel making the appearance, and a brief description of the nature of the appearance. A separate list of Penal Code section 987.9 appearances must be maintained under seal for each defendant. In the event of any substitution of attorney at any stage of the case, the relieved attorney must provide the list of all appearances to substituting counsel within five days of being relieved.

(B) A list of all exhibits offered by that party. *Capital Case Attorney List of Exhibits* (form CR-602) must be used for this purpose. The list must indicate whether the exhibit was admitted in evidence, refused, lodged, or withdrawn.

(C) A list of all motions made by that party, including ex parte motions. *Capital Case Attorney List of Motions* (form CR-603) must be used for this purpose.

(D) A list of all jury instructions submitted in writing by that party. *Capital Case Attorney List of Jury Instructions* (form CR-604) must be used for

this purpose. The list must indicate whether the instruction was given, given as modified, refused, or withdrawn.

(2) No later than 21 days after the imposition of a sentence of death, counsel must submit the lists to the court and serve on all parties a copy of all the lists except the list of Penal Code section 987.9 appearances. Unless otherwise provided by local rule, the lists must be submitted to the court in electronic form.

(e) Electronic recordings presented or offered into evidence

Counsel must comply with the requirements of rule 2.1040 regarding electronic recordings presented or offered into evidence, including any such recordings that are part of a digital or electronic presentation.

(f) Copies of audio and visual aids

Primary counsel must provide the clerk with copies of any audio or visual aids not otherwise subject to the requirements of (e) that are used during jury selection or in presentations to the jury, including digital or electronic presentations. If a visual aid is oversized, a photograph of that visual aid must be provided in place of the original. For digital or electronic presentations, counsel must supply both a copy of the presentation in its native format and printouts showing the full text of each slide or image. Photographs and printouts provided under this subdivision must be on 8-1/2 by 11 inch paper.

Advisory Committee Comment

Subdivision (b). *Capital Case Attorney List of Appearances* (form CR-601), *Capital Case Attorney List of Exhibits* (form CR-602), *Capital Case Attorney List of Motions* (form CR-603), and *Capital Case Attorney List of Jury Instructions* (form CR-604) must be used to comply with the requirements in this subdivision.

Subdivision (d). To facilitate preparation of complete and accurate lists, counsel are encouraged to add items to the lists at the time appearances or motions are made, exhibits are offered, or jury instructions are submitted.

Title 8. Appellate Rules

Division 2. Rules Relating to Death Penalty Appeals and Habeas Corpus Proceedings

Chapter ~~10~~1. Automatic Appeals From Judgments of Death

Article 1. General Provisions

Rule 8.600. In general

(a) Automatic appeal to Supreme Court

If a judgment imposes a sentence of death, an appeal by the defendant is automatically taken to the Supreme Court.

(b) Copies of judgment

When a judgment of death is rendered, the superior court clerk must immediately send certified copies of the commitment to the Supreme Court, the Attorney General, the Governor, and the California Appellate Project in San Francisco.

~~**(c) Extensions of time**~~

~~When a rule in this part authorizes a trial court to grant an extension of a specified time period, the court must consider the relevant policies and factors stated in rule 8.63.~~

~~**(d) Supervising preparation of record**~~

~~The clerk/executive officer of the Supreme Court, 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) Definitions

For purposes of this part~~:~~

~~(1) The delivery date of a transcript sent by mail is the mailing date plus five days; and~~

~~(2)~~ "Trial counsel" means both the defendant's trial counsel and the prosecuting attorney.

Article 2. Record on Appeal

Rule 8.608. General provisions

(a) Supervising preparation of record

The clerk/executive officer of the Supreme Court, 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 article. This provision does not affect the superior courts' responsibility for the prompt preparation of appellate records in capital cases.

(b) Extensions of time

When a rule in this article authorizes a trial court to grant an extension of a specified time period, the court must consider the relevant policies and factors stated in rule 8.63.

(c) Delivery date

The delivery date of a transcript sent by mail is the mailing date plus five days.

Rule 8.610. Contents and form of the record

(a) Contents of the record

(1) The record must include a clerk's transcript containing:

(A) The accusatory pleading and any amendment~~.~~;

(B) Any demurrer or other plea~~.~~;

(C) All court minutes~~.~~;

(D) All instructions submitted in writing, ~~each one~~ the cover page required by rule 2.1055(b)(2) indicating the party requesting ~~it~~ each instruction, and any written jury instructions given by the court~~.~~;

(E) Any written communication, including printouts of any e-mail or text messages and their attachments, between the court and the parties, the jury, or any individual juror or prospective juror.;

(F) Any verdict.;

(G) Any written opinion of the court.;

(H) The judgment or order appealed from and any abstract of judgment or commitment.;

(I) Any motion for new trial, with supporting and opposing memoranda and attachments.;

(J) Any transcript of a sound or sound-and-video recording furnished to the jury or tendered to the court under rule 2.1040, including witness statements.;

(K) Any application for additional record and any order on the application.;

(L) Any written defense motion or any written motion by the People, with supporting and opposing memoranda and attachments.;

(M) If related to a motion under (L), any search warrant and return and the reporter's transcript of any preliminary examination or grand jury hearing.;

(N) Any document admitted in evidence to prove a prior juvenile adjudication, criminal conviction, or prison term.;

(O) The probation officer's report.; and

(P) Any court-ordered diagnostic or psychological report required under Penal Code section 1369;

(Q) Any copies of visual aids provided to the clerk under rule 4.230(f). If a visual aid is oversized, a photograph of that visual aid must be included in place of the original. For digital or electronic presentations, printouts showing the full text of each slide or image must be included;

(R) Each juror questionnaire, whether or not the juror was selected;

(S) The table correlating the jurors' names with their identifying numbers required by rule 8.611;

(T) The register of actions;

(U) All documents filed under Penal Code section 987.2 or 987.9; and

~~(P)~~(V) Any other document filed or lodged in the case~~, including each juror questionnaire, whether or not the juror was selected~~.

(2) The record must include a reporter's transcript containing:

(A) The oral proceedings on the entry of any plea other than a not guilty plea;

(B) The oral proceedings on any motion in limine;

(C) The voir dire examination of jurors;

(D) Any opening statement;

(E) The oral proceedings at trial;

(F) All instructions given orally;

(G) Any oral communication between the court and the jury or any individual juror;

(H) Any oral opinion of the court;

(I) The oral proceedings on any motion for new trial;

(J) The oral proceedings at sentencing, granting or denying of probation, or other dispositional hearing;

(K) The oral proceedings on any motion under Penal Code section 1538.5 denied in whole or in part;

(L) The closing arguments;

(M) Any comment on the evidence by the court to the jury;

(N) The oral proceedings on motions in addition to those listed above; and

(O) Any other oral proceedings in the case, including any proceedings that did not result in a verdict or sentence of death because the court ordered a mistrial or a new trial.

(3) All exhibits admitted in evidence, refused, or lodged are deemed part of the record, but, except as provided in rule 8.622, may be transmitted to the reviewing court only as provided in rule 8.634.

(4) The superior court or the Supreme Court may order that the record include additional material.

(b) Sealed and confidential records

Rules 8.45–8.47 govern sealed and confidential records in appeals under this chapter.

(c) Juror-identifying information

Any document in the record containing juror-identifying information must be edited in compliance with rule ~~8.332~~ 8.611. Unedited copies of all such documents and a copy of the table required by the rule, under seal and bound together if filed in paper form, must be included in the record sent to the Supreme Court.

(d) Form of record

The clerk's transcript and the reporter's transcript must comply with rules 8.45–8.47, relating to sealed and confidential records, and rule 8.144.

Advisory Committee Comment

Subdivision (a). Subdivision (a) ~~restates~~ implements Penal Code section 190.7(a).

Subdivision (b). The clerk's and reporter's transcripts may contain records that are sealed or confidential. Rules 8.45–8.47 address the handling of such records, including requirements for the format, labeling, and transmission of and access to such records. Examples of confidential records include Penal Code section 1203.03 diagnostic reports, records closed to inspection by court order under *People v. Marsden* (1970) 2 Cal.3d 118 or *Pitchess v. Superior Court* (1974) 11 Cal.3d 531, in-camera proceedings on a confidential informant, and defense investigation and expert funding requests (Pen. Code, §§ 987.2 and 987.9; *Puett v. Superior Court* (1979) 96 Cal.App.3d 936, 940, fn. 2; *Keenan v. Superior Court* (1982) 31 Cal.3d 424, 430).

Rule 8.611. Juror-identifying information

(a) Application

A clerk's transcript, a reporter's transcript, or any other document in the record that contains juror-identifying information must comply with this rule.

(b) Juror names, addresses, and telephone numbers

(1) The name of each trial juror or alternate sworn to hear the case must be replaced with an identifying number wherever it appears in any document. The superior court clerk must prepare and keep under seal in the case file a table correlating the jurors' names with their identifying numbers. The clerk and the reporter must use the table in preparing all transcripts or other documents.

(2) The addresses and telephone numbers of trial jurors and alternates sworn to hear the case must be deleted from all documents.

(c) Potential jurors

Information identifying potential jurors called but not sworn as trial jurors or alternates must not be sealed unless otherwise ordered under Code of Civil Procedure section 237(a)(1).

Advisory Committee Comment

Rule 8.611 implements Code of Civil Procedure section 237.

Rule 8.613. Preparing and certifying the record of preliminary proceedings

(a) – (c) * * *

(d) Notice to prepare transcript and lists

Within five days after receiving notice under (b)(1) or notifying the judge under (b)(2), the clerk must do the following:

(1) Notify each reporter who reported a preliminary proceeding to prepare a transcript of the proceeding. If there is more than one reporter, the designated judge may assign a reporter or another designee to perform the functions of the primary reporter.

(2) Notify trial counsel to submit the lists of appearances, exhibits, and motions required by rule 4.119.

(e) Reporter's duties

(1) The reporter must prepare an original and five copies of the reporter's transcript in electronic form and two additional copies in electronic form for each codefendant against whom the death penalty is sought. The transcript must include the preliminary examination or grand jury proceeding unless a transcript of that examination or proceeding has already been filed in superior court for inclusion in the clerk's transcript.

(2) The reporter must certify the original and all copies of the reporter's transcript as correct.

(3) Within 20 days after receiving the notice to prepare the reporter's transcript, the reporter must deliver the original and all copies of the transcript to the clerk.

(f) Review by counsel

(1) Within five days after the reporter delivers the transcript, the clerk must deliver the original transcript and the lists of appearances, exhibits, and motions required by rule 4.119 to the designated judge and one copy of the transcript and each list required by rule 4.119 that is not required to be sealed to each trial counsel. If a different attorney represented the defendant or the People in the preliminary proceedings, both attorneys must perform the tasks required by (2).

(2) Each trial counsel must promptly:

(A) Review the reporter's transcript and the lists of appearances, exhibits, and motions to identify any ~~for~~ errors or omissions in the transcript;

(B) Review the docket sheets and minute orders to determine whether all preliminary proceedings have been transcribed; and

~~(C) Consult with opposing counsel to determine whether any other proceedings or discussions should have been transcribed; and~~

~~(D)~~(C) Review the court file to determine whether it is complete.

(3) Within 21 days after the clerk delivers the transcript and lists under (1), trial counsel must confer regarding any errors or omissions in the reporter's transcript or court file identified by trial counsel during the review required under (2) and determine whether any other proceedings or discussions should have been transcribed.

(g) Declaration and request for corrections or additions

(1) Within 30 days after the clerk delivers the reporter's transcript and lists, each trial counsel must serve and file:

(A) A declaration stating that counsel or another person under counsel's supervision has performed the tasks required by (f), including conferring with opposing counsel; and

(B) ~~must serve and file~~ Either:

~~(A)~~(i) A request for corrections or additions to the reporter's transcript or court file. Immaterial typographical errors that cannot conceivably cause confusion are not required to be brought to the court's attention; or

~~(B)~~(ii) A statement that counsel does not request any corrections or additions.

(C) The requirements of (B) may be satisfied by a joint statement or request filed by counsel for all parties.

(2) – (4) * * *

(h) * * *

(i) Transcript delivered in electronic form

(1) – (2) * * *

(3) A copy of a sealed or confidential transcript delivered in electronic form must be ~~placed on a~~ separated ~~disk~~ from any other transcripts and ~~clearly~~ labeled as ~~confidential~~ required by rule 8.45.

(4) – (5) * * *

(j) Delivery to the superior court

Within five days after the reporter delivers the copies in electronic form, the clerk must deliver to the responsible judge, for inclusion in the record:

(1) The certified original reporter's transcript of the preliminary proceedings and the copies that have not been distributed to counsel~~, including the copies in electronic form~~; and

(2) The complete court file of the preliminary proceedings or a certified copy of that file.

(k) * * *

(*l*) Notice that the death penalty is no longer sought

After the ~~presiding judge has ordered preparation of~~ clerk has notified the court reporter to prepare the pretrial record, if the death penalty is no longer sought, the clerk must promptly notify the reporter that this rule does not apply.

Advisory Committee Comment

Rule 8.613 implements Penal Code section 190.9(a). Rules 8.613–8.622 govern the process of preparing and certifying the record in any appeal from a judgment of death ~~imposed after a trial that began on or after January 1, 1997~~; specifically, rule 8.613 provides for the record of the preliminary proceedings in such an appeal. ~~Rule 8.625 governs the process of certifying the record in any appeal from a judgment of death imposed after a trial that began before January 1, 1997.~~

Subdivision (f). * * *

Subdivision (i). * * *

Rule 8.616. Preparing the trial record

(a) Clerk's duties

(1) The clerk must promptly—and no later than five days after the judgment of death is rendered:—

(A) Notify the reporter to prepare the reporter's transcript~~.~~; and

(B) Notify trial counsel to submit the lists of appearances, exhibits, and motions required by rule 4.230.

(2) The clerk must prepare an original and eight copies of the clerk's transcript and two additional copies for each codefendant sentenced to death. The clerk is encouraged to send the clerk's transcript in electronic form if the court is able to do so.

(3) The clerk must certify the original and all copies of the clerk's transcript as correct.

(b) Reporter's duties

(1) The reporter must prepare an original and five copies of the reporter's transcript in electronic form and two additional copies in electronic form for each codefendant sentenced to death.

(2) Any portion of the transcript transcribed during trial must not be retyped unless necessary to correct errors, but must be repaginated and combined with any portion of the transcript not previously transcribed. Any additional copies needed must not be retyped but, if the transcript is in paper form, must be prepared by photocopying or an equivalent process.

(3) The reporter must certify the original and all copies of the reporter's transcript as correct and deliver them to the clerk.

(c) Sending the record to trial counsel

Within 30 days after the judgment of death is rendered, the clerk must deliver one copy of the clerk's and reporter's transcripts and one copy of each list of appearances, exhibits, and motions required by rule 4.230 that is not required to be sealed to each trial counsel~~,~~. The clerk must retain~~ing~~ the original transcripts and ~~the~~ any remaining copies. If counsel does not receive the transcripts within that period, counsel must promptly notify the superior court.

(d) Extension of time

(1) On request of the clerk or a reporter and for good cause, the superior court may extend the period prescribed in (c) for no more than 30 days. For any further extension the clerk or reporter must file a request in the Supreme Court, showing good cause.

(2) A request under (1) must be supported by a declaration explaining why the extension is necessary. The court may presume good cause if the clerk's and reporter's transcripts combined will likely exceed 10,000 pages.

(3) If the superior court orders an extension under (1), the order must specify the reason justifying the extension. The clerk must promptly send a copy of the order to the Supreme Court.

Advisory Committee Comment

Rule 8.616 implements Penal Code section 190.8(b).

Rule 8.619. Certifying the trial record for completeness

~~**(a) Review by counsel during trial**~~

~~During trial, counsel must call the court's attention to any errors or omissions they may find in the transcripts. The court must periodically ask counsel for lists of any such errors or omissions and may hold hearings to verify them.~~

~~(b)~~(a)Review by counsel after trial

(1) When the clerk delivers the clerk's and reporter's transcripts and the lists of appearances, exhibits, motions, and jury instructions required by rule 4.230 to trial counsel, each counsel must promptly:

~~(1)~~(A) Review the docket sheets, ~~and~~ minute orders, and the lists of appearances, exhibits, motions, and jury instructions to determine whether the reporter's transcript is complete; and

~~(2) Consult with opposing counsel to determine whether any other proceedings or discussions should have been transcribed; and~~

~~(3)~~(B) Review the court file to determine whether the clerk's transcript is complete.

(2) Within 21 days after the clerk delivers the transcripts and lists under (1), trial counsel must confer regarding any errors or omissions in the reporter's transcript or clerk's transcript identified by trial counsel during the review required under (1).

~~(c)~~(b) Declaration and request for additions or corrections

(1) Within 30 days after the clerk delivers the transcripts, each trial counsel must serve and file:

(A) A declaration stating that counsel or another person under counsel's supervision has performed the tasks required by ~~(b)~~(a), including conferring with opposing counsel; and ~~must serve and file~~

(B) Either:

~~(A)~~(i) A request to include additional materials in the record or to correct errors that have come to counsel's attention. Immaterial typographical errors that cannot conceivably cause confusion are not required to be brought to the court's attention; or

~~(B)~~(ii) A statement that counsel does not request any additions or corrections.

(2) The requirements of (1)(B) may be satisfied by a joint statement or request filed by counsel for all parties.

(3) If the clerk's and reporter's transcripts combined exceed 10,000 pages, the time limits stated in (a)(2) and (b)(1) are extended by 3 days for each 1,000 pages of combined transcript over 10,000 pages.

~~(2)~~(4) A request for additions to the reporter's transcript must state the nature and date of the proceedings and, if known, the identity of the reporter who reported them.

~~(3)~~(5) If any counsel fails to timely file a declaration under (1), the judge must not certify the record and must set the matter for hearing, require a showing of good cause why counsel has not complied, and fix a date for compliance.

~~(d)~~(c) Completion of the record

If any counsel files a request for additions or corrections:

(1) The clerk must promptly deliver the original transcripts to the judge who presided at the trial.

(2) Within 15 days after the last request is filed, the judge must hold a hearing and order any necessary additions or corrections. The order must require that any additions or corrections be made within 10 days of its date.

(3) The clerk must promptly—and in any event within five days—notify the reporter of an order under (2). If any portion of the proceedings cannot be transcribed, the judge may order preparation of a settled statement under rule 8.346.

(4) The original transcripts must be augmented or corrected to reflect all additions or corrections ordered. The clerk must promptly send copies of the additional or corrected pages to trial counsel.

(5) Within five days after the augmented or corrected transcripts are filed, the judge must set another hearing to determine whether the record has been completed or corrected as ordered. The judge may order further proceedings to complete or correct the record.

(6) When the judge is satisfied that all additions or corrections ordered have been made and copies of all additional or corrected pages have been sent to trial counsel, the judge must certify the record as complete and redeliver the original transcripts to the clerk.

(7) The judge must certify the record as complete within ~~90~~ 30 days after the ~~judgment of death is rendered~~ last request to include additional materials or make corrections is filed or, if no such request is filed, after the last statement that counsel does not request any additions or corrections is filed.

~~(e)~~(d) Transcript delivered in electronic form

(1) When the record is certified as complete, the clerk must promptly notify the reporter to prepare five copies of the transcript in electronic form and two additional copies in electronic form for each codefendant sentenced to death.

(2) Each copy delivered in electronic form must comply with the applicable requirements of rule 8.144 and any additional requirements prescribed by the Supreme Court, and must be further labeled to show the date it was made.

(3) A copy of a sealed or confidential transcript delivered in electronic form must be ~~placed on a~~ separated ~~disk~~ from any other transcripts and ~~clearly~~ labeled as ~~confidential~~ required by rule 8.45.

(4) The reporter is to be compensated for copies delivered in electronic form as provided in Government Code section 69954(b).

(5) Within 10 days after the clerk notifies the reporter under (1), the reporter must deliver the copies in electronic form to the clerk.

~~(f)~~(e) Extension of time

(1) The court may extend for good cause any of the periods specified in this rule.

(2) An application to extend the ~~30-day~~ period to review the record under ~~(c)~~(a) or the period to file a declaration under (b) must be served and filed within ~~that~~ the relevant period. ~~If the clerk's and reporter's transcripts combined exceed 10,000 pages, the court may grant an additional three days for each 1,000 pages over 10,000~~.

(3) If the court orders an extension of time, the order must specify the justification for the extension. The clerk must promptly send a copy of the order to the Supreme Court.

~~(g)~~(f) Sending the certified record

(1) When the record is certified as complete, the clerk must promptly send one copy of the clerk's transcript and one copy of the reporter's transcript:

(A) To each defendant's appellate counsel and each defendant's habeas corpus counsel~~: one paper copy of the entire record and one copy of the reporter's transcript in electronic form~~. If either counsel has not been retained or appointed, the clerk must keep that counsel's copies until counsel is retained or appointed.

(B) To the Attorney General, the Habeas Corpus Resource Center, and the California Appellate Project in San Francisco~~: one paper copy of the clerk's transcript and one copy of the reporter's transcript in electronic form~~.

(2) 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.

~~(h)~~(g) 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.

Advisory Committee Comment

Rule 8.619 implements Penal Code section 190.8(c)–(e).

Subdivision ~~(e)~~(d)(4) restates a provision of former rule 35(b), second paragraph, as it was in effect on December 31, 2003.

Rule 8.622. Certifying the trial record for accuracy

(a) Request for corrections or additions

(1) Within 90 days after the clerk delivers the record to defendant's appellate counsel~~,~~:

(A) Any party may serve and file a request for corrections or additions to the record. Immaterial typographical errors that cannot conceivably cause confusion are not required to be brought to the court's attention. Items that a party may request to be added to the clerk's transcript include a copy of any exhibit admitted in evidence, refused, or lodged that is a document in paper or electronic format. The requesting party must state the reason that the exhibit needs to be included in the clerk's transcript. Parties may file a joint request for corrections or additions.

(B) Appellate counsel must review all sealed records that they are entitled to access under rule 8.45 and file an application to unseal any such records that counsel determines no longer meet the criteria for sealing specified in rule 2.550(d). Notwithstanding rule 8.46(e), this application must be filed in the trial court and these records may be unsealed on order of the trial court.

(2) A request for additions to the reporter's transcript must state the nature and date of the proceedings and, if known, the identity of the reporter who reported them. A request for an exhibit to be included in the clerk's transcript must specify that exhibit by number or letter.

(3) Unless otherwise ordered by the court, within 10 days after a party serves and files a request for corrections or additions to the record, defendant's appellate counsel and the trial counsel from the prosecutor's office must confer regarding the request and any application to unseal records served on the prosecutor's office.

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

(b) Correction of the record

(1) If any counsel files a request for corrections or additions, the procedures and time limits of rule 8.619~~(d)~~(c)(1)–(5) must be followed.

(2) If any application to unseal a record is filed, the judge must grant or deny the application before certifying the record as accurate.

~~(2)~~(3) When the judge is satisfied that all corrections or additions ordered have been made, the judge must certify the record as accurate and redeliver the record to the clerk.

~~(3)~~(4) The judge must certify the record as accurate within ~~120~~ 30 days after ~~it is delivered to appellate counsel~~ the last request to include additional materials or make corrections is filed.

(c) ~~Computer-readable~~ Copies of the record

(1) When the record is certified as accurate, the clerk must promptly notify the reporter to prepare six copies of the reporter's transcript in electronic form and two additional copies in electronic form for each codefendant sentenced to death.

(2) In preparing the copies, the procedures and time limits of rule 8.619~~(e)~~(d)(2)–(5) must be followed.

(d) Extension of time

(1) The court may extend for good cause any of the periods specified in this rule.

(2) An application to extend the ~~90-day~~ period to request corrections or additions under (a) must be served and filed within that period. ~~If the clerk's and reporter's transcripts combined exceed 10,000 pages, the court may grant an additional 15 days for each 1,000 pages over 10,000.~~

(3) If the court orders an extension of time, the order must specify the justification for the extension. The clerk must promptly send a copy of the order to the Supreme Court.

(4) If the court orders an extension of time, the court may conduct a status conference or require the counsel who requested the extension to file a status report on counsel's progress in reviewing the record.

(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~~,~~. ~~and a copy of~~ 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.

Advisory Committee Comment

Rule 8.622 implements Penal Code section 190.8(g).

~~**Rule 8.625. Certifying the record in pre-1997 trials**~~

~~**(a) Application**~~

~~This rule governs the process of certifying the record in any appeal from a judgment of death imposed after a trial that began before January 1, 1997.~~

~~**(b) Sending the transcripts to counsel for review**~~

~~(1) When the clerk and the reporter certify that their respective transcripts are correct, the clerk must promptly send a copy of each transcript to each defendant's trial counsel, to the Attorney General, to the district attorney, to the California Appellate Project in San Francisco, and to the Habeas Corpus Resource Center, noting the sending date on the originals.~~

~~(2) The copies of the reporter's transcript sent to the California Appellate Project and the Habeas Corpus Resource Center must be delivered in electronic form~~

complying with the applicable requirements of rule 8.144 and any additional requirements prescribed by the Supreme Court, and must be further labeled to show the date it was made.

(3) When the clerk is notified of the appointment or retention of each defendant's appellate counsel, the clerk must promptly send that counsel copies of the clerk's transcript and the reporter's transcript, noting the sending date on the originals. The clerk must notify the Supreme Court, the Attorney General, and each defendant's appellate counsel in writing of the date the transcripts were sent to appellate counsel.

(c) Correcting, augmenting, and certifying the record

(1) Within 90 days after the clerk delivers the transcripts to each defendant's appellate counsel, any party may serve and file a request for correction or augmentation of the record. Any request for extension of time must be served and filed in the Supreme Court no later than five days before the 90-day period expires.

(2) If no party files a timely request for correction or augmentation, the clerk must certify on the original transcripts that no party objected to the accuracy or completeness of the record within the time allowed by law.

(3) Within 10 days after any party files a timely request for correction or augmentation, the clerk must deliver the request and the transcripts to the trial judge.

(4) Within 60 days after receiving a request and transcripts under (3), the judge must order the reporter, clerk, or party to make any necessary corrections or do any act necessary to complete the record, fixing the time for performance. If any portion of the oral proceedings cannot be transcribed, the judge may order preparation of a settled statement under rule 8.346.

(5) The clerk must promptly send a copy of any order under (4) to the parties and to the Supreme Court, but any request for extension of time to comply with the order must be addressed to the trial judge.

(6) The original transcripts must be corrected or augmented to reflect all corrections or augmentations ordered. The clerk must promptly send copies of all corrected or augmented pages to the parties.

(7) The judge must allow the parties a reasonable time to review the corrections or augmentations. If no party objects to the corrections or augmentations as

~~prepared, the judge must certify that the record is complete and accurate. If any party objects, the judge must resolve the objections before certifying the record.~~

~~(8) If the record is not certified within 90 days after the clerk sends the transcripts to appellate counsel under (b)(2), the judge must monitor preparation of the record to expedite certification and report the status of the record monthly to the Supreme Court.~~

~~(d) Sending the certified record~~

~~When the clerk certifies that no party objected to the record or the judge certifies that the record is complete and accurate, the clerk must promptly send:~~

~~(1) To the Supreme Court: the original record, including the original certification by the trial judge.~~

~~(2) To each defendant's appellate counsel, the Attorney General, and the California Appellate Project in San Francisco: a copy of the order certifying the record.~~

~~(3) To the Governor: the copies of the transcripts required by Penal Code section 1218, with copies of any corrected or augmented pages inserted.~~

~~(e) Subsequent trial court orders; omissions~~

~~(1) If, after the record is certified, the trial court amends or recalls the judgment or makes any other order in the case, including an order affecting the sentence, the clerk must promptly certify and send a copy of the amended abstract of judgment or other order—as an augmentation of the record—to the persons and entities listed in (d).~~

~~(2) If, after the record is certified, the superior court clerk or the reporter learns that the record omits a document or transcript that any rule or court order requires to be included, the clerk must promptly copy and certify the document or the reporter must promptly prepare and certify the transcript. Without the need for further court order, the clerk must send the document or transcript—as an augmentation of the record—to the persons and entities listed in (d).~~

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	*FOR COURT USE ONLY* **DRAFT** **09-05-18** **Not approved by the Judicial Council**
PEOPLE OF THE STATE OF CALIFORNIA **v.** **DEFENDANT:**	
CAPITAL CASE ATTORNEY PRETRIAL CHECKLIST	CASE NUMBER:

Instructions: This checklist is designed to be a tool for counsel to use throughout the pretrial proceedings in death penalty cases to ensure timely compliance with record preparation requirements and to make the certification of the record of the pretrial proceedings in these cases easier and more efficient for both counsel and the court. To acknowledge that counsel has reviewed this checklist as early as possible in the pretrial proceedings in a case in which the death penalty may be imposed, within 10 days of their first appearance, primary counsel for each defendant and the prosecution in the pretrial proceedings must sign and submit this checklist. Counsel may, but is not required to, use the right-hand column on the checklist to subsequently monitor their compliance with record preparation requirements.

ATTORNEY TASK	FOR OPTIONAL USE BY ATTORNEY
DURING PRETRIAL PROCEEDINGS	
1. Review, sign, and submit checklist. Within 10 days of your first appearance in court, review, sign, and submit this checklist. (Cal. Rules of Court, rule 4.119(b).)	
2. Ensure all exhibits are marked. Make sure that all exhibits that you offer during the pretrial proceedings are properly marked for identification.	
3. Comply with rule 2.1040. If you present or offer into evidence an electronic sound or sound-and-video recording, including a recording of a deposition or other prior testimony or a video that is made part of a digital or electronic presentation, you must comply with Cal. Rules of Court, rule 2.1040. Among other things, this rule requires that you provide a transcript of the electronic recording, which, under rule 8.610, must be included in the record on appeal.	
4. Prepare a list of appearances, exhibits, and motions. Prepare the lists specified in a, b, and c below.	
a. A list of all appearances by the party you represent during pretrial proceedings, including ex-parte appearances • *Capital Case Attorney List of Appearances* (form CR-601) must be used for this purpose. The list must include the date of each appearance, the department in which it was made, the name of the attorney making the appearance, and a brief description of the nature of the appearance. • A separate list of Penal Code section 987.9 appearances must be maintained under seal for each defendant.	
b. A list of all exhibits offered by the party you represent during pretrial proceedings • *Capital Case Attorney List of Exhibits* (form CR-602) must be used for this purpose. The list must include all exhibits offered at any pretrial proceedings and must indicate whether the exhibit was admitted in evidence, refused, lodged, or withdrawn. (Cal. Rules of Court, rule 4.119(c)(1)(B).) • Make sure that all exhibits that you offer during the pretrial proceedings are properly marked for identification.	
c. A list of all motions made by the party you represent during the pretrial proceedings, including ex-parte motions. *Capital Case Attorney List of Motions* (form CR-603) must be used for this purpose. The list must indicate if a motion is awaiting resolution. (Cal. Rules of Court, rule 4.119(c)(1)(C).)	

Form Adopted for Mandatory Use
Judicial Council of California
CR-600 [New April 25, 2019]

Cal. Rules of Court,
rules 4.119 and 4.230
www.courts.ca.gov

PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	CASE NUMBER:

ATTORNEY TASK	FOR OPTIONAL USE BY ATTORNEY
4. d. Providing lists to substituting counsel. In the event of any substitution of attorney during the pretrial proceedings, the relieved attorney must provide the lists of all appearances, exhibits, and motions to substituting counsel within five days of being relieved. (Cal. Rules of Court, rule 4.119(c).)	
AFTER COMPLETION OF PRETRIAL PROCEEDINGS	
5. Prosecution notify court of intent to seek death penalty. • Primary counsel for the prosecution should notify the judge assigned to try the case or, if none is yet assigned, the presiding superior court judge or designee of the presiding judge, about whether the prosecution intends to seek the death penalty. • After the presiding judge has ordered preparation of the pretrial record, primary counsel for the prosecution should notify the judge assigned to try the case if the death penalty is no longer being sought.	
6. Submit and serve completed lists of appearances, exhibits, and motions. • No later than 21 days after the clerk notifies you to do so, submit the completed lists to the court. Serve a copy of all the completed lists, except the list of Penal Code section 987.9 appearances, on all parties. • Unless otherwise provided by local rule, submit the lists to the court in electronic form. (Cal. Rules of Court, rule 4.119(c).)	
a. The completed list of all appearances by the party you represented during pretrial proceedings	
b. The completed list of all exhibits offered by the party you represented during pretrial proceedings	
c. The completed list of all motions filed by the party you represented during the pretrial proceedings	
7. **Review reporter's transcript, court file, and lists.** When the clerk delivers the reporter's transcript of the pretrial proceedings and the lists to you, you must: • Review the reporter's transcript and the lists of appearances, exhibits, and motions to identify any errors or omissions in the transcripts; • Review the docket sheets and minute orders to determine whether all preliminary proceedings have been transcribed; and • Review the court file to determine whether it is complete. (Cal. Rules of Court, rule 8.613(f)(2).)	
8. **Confer.** You must confer with opposing counsel within 21 days after the clerk delivers the reporter's transcripts and lists to you to discuss any errors or omissions in the reporter's transcript or court file identified during the review and determine whether any other proceedings or discussions should have been transcribed. (Cal. Rules of Court, rule 8.613(f)(3).)	
9. **Serve and file declaration and request for corrections or additions/statement.** Within 30 days after the clerk delivers the reporter's transcript and lists, each trial counsel must serve and file both of the following:	
a. A declaration stating that counsel or another person under counsel's supervision has performed the tasks required by 8.613(f), including meeting and conferring with opposing counsel if ordered by the court. (Cal. Rules of Court, rule 8.613(g)(1)(A).)	

PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	CASE NUMBER:

ATTORNEY TASK	FOR OPTIONAL USE BY ATTORNEY
9. b. ONE of the following: • A request for corrections or additions to the reporter's transcript or court file. A request for additions to the reporter's transcript must state the nature and date of the proceedings and, if known, the identity of the reporter who reported them, OR • A statement that counsel does not request any corrections or additions. Counsel may file a joint statement or request. (Cal. Rules of Court, rule 8.613(g)(1)(B) and (C).)	

I acknowledge that I have reviewed this checklist.

Date:

_____ , attorney for _____
(TYPE OR PRINT NAME) (NAME OF DEFENDANT)

▶ _____
(SIGNATURE OF ATTORNEY)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	*FOR COURT USE ONLY* **DRAFT** **09-05-18** **Not approved by the Judicial Council**
PEOPLE OF THE STATE OF CALIFORNIA v. **DEFENDANT:**	
CAPITAL CASE ATTORNEY LIST OF APPEARANCES ☐ Pretrial ☐ Trial ☐ Regular ☐ Penal Code, § 987.9	CASE NUMBER:

Instructions: Primary counsel for a defendant or for the prosecution in a case in which the death penalty may be imposed must list each appearance made on behalf of his or her client, including ex-parte appearances. For each appearance, provide the date of the appearance, the department in which it was made, the name of the attorney making the appearance, and a brief description of the nature of the appearance. Lists of Penal Code section 987.9 appearances must be separate from lists of all other appearances.

Date	Court Dept./Div.	Name of Attorney Making Appearance	Nature of Appearance

(continued on reverse)

Form Adopted for Mandatory Use
Judicial Council of California
CR-601 [New April 25, 2019]

CAPITAL CASE ATTORNEY LIST OF APPEARANCES (Criminal)

Cal. Rules of Court,
rules 4.119 and 4.230
www.courts.ca.gov

PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	CASE NUMBER:

Date	Court Dept./Div.	Name of Attorney Making Appearance	Nature of Appearance

☐ *Check here if you need more space. Attach a sheet of paper and write "CR-601, List of Appearances" for a title.*

Date:

_____ , attorney for _____

(TYPE OR PRINT NAME) (NAME OF DEFENDANT)

▶ _____

(SIGNATURE OF ATTORNEY)

CR-602

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	*FOR COURT USE ONLY* **DRAFT** **09-05-18** **Not approved by the Judicial Council**
PEOPLE OF THE STATE OF CALIFORNIA **v.** **DEFENDANT:**	
CAPITAL CASE ATTORNEY LIST OF EXHIBITS ☐ Pretrial ☐ Trial	CASE NUMBER:

Instructions: For each exhibit you offer on behalf of your client in a case in which the death penalty may be imposed, provide the exhibit number and a brief description of the exhibit and indicate whether the exhibit was admitted in evidence, lodged, refused, or withdrawn.

Exhibit No.	Description	Outcome
		☐ Admitted ☐ Lodged ☐ Refused ☐ Withdrawn
		☐ Admitted ☐ Lodged ☐ Refused ☐ Withdrawn
		☐ Admitted ☐ Lodged ☐ Refused ☐ Withdrawn
		☐ Admitted ☐ Lodged ☐ Refused ☐ Withdrawn
		☐ Admitted ☐ Lodged ☐ Refused ☐ Withdrawn
		☐ Admitted ☐ Lodged ☐ Refused ☐ Withdrawn
		☐ Admitted ☐ Lodged ☐ Refused ☐ Withdrawn
		☐ Admitted ☐ Lodged ☐ Refused ☐ Withdrawn
		☐ Admitted ☐ Lodged ☐ Refused ☐ Withdrawn
		☐ Admitted ☐ Lodged ☐ Refused ☐ Withdrawn

(continued on reverse)

PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	CASE NUMBER:

Exhibit No.	Description	Outcome
		☐ Admitted ☐ Lodged ☐ Refused ☐ Withdrawn
		☐ Admitted ☐ Lodged ☐ Refused ☐ Withdrawn
		☐ Admitted ☐ Lodged ☐ Refused ☐ Withdrawn
		☐ Admitted ☐ Lodged ☐ Refused ☐ Withdrawn
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		☐ Admitted ☐ Lodged ☐ Refused ☐ Withdrawn
		☐ Admitted ☐ Lodged ☐ Refused ☐ Withdrawn
		☐ Admitted ☐ Lodged ☐ Refused ☐ Withdrawn

☐ *Check here if you need more space. Attach a sheet of paper and write "CR-602, List of Exhibits" for a title.*

Date:

______________________________, attorney for ______________________________

(TYPE OR PRINT NAME) (NAME OF DEFENDANT)

▶ ______________________________

(SIGNATURE OF ATTORNEY)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	*FOR COURT USE ONLY* **DRAFT** **09-05-18** **Not approved by the Judicial Council**
PEOPLE OF THE STATE OF CALIFORNIA **v.** **DEFENDANT:**	
CAPITAL CASE ATTORNEY LIST OF MOTIONS ☐ Pretrial ☐ Trial	CASE NUMBER:

Instructions: For each motion you make on behalf of your client in a case in which the death penalty may be imposed, including any ex-parte motions, provide the date the motion was made, the department in which it was made, and a brief description of the motion. For pretrial motions, check the box if the motion is awaiting resolution.

Date	Court Dept./Div.	Description	Awaiting Resolution
			☐
			☐
			☐
			☐
			☐
			☐
			☐
			☐
			☐
			☐
			☐
			☐

(continued on reverse)

PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	CASE NUMBER:

Date	Court Dept./Div.	Description	Awaiting Resolution
			☐
			☐
			☐
			☐
			☐
			☐
			☐
			☐
			☐
			☐
			☐
			☐

☐ *Check here if you need more space. Attach a sheet of paper and write "CR-603, List of Motions" for a title.*

Date:

_____ , attorney for _____
(TYPE OR PRINT NAME) (NAME OF DEFENDANT)

▶ _____
(SIGNATURE OF ATTORNEY)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF	FOR COURT USE ONLY
STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	**DRAFT** **09-05-18** **Not approved by the Judicial Council**
PEOPLE OF THE STATE OF CALIFORNIA **v.** **DEFENDANT:**	
CAPITAL CASE ATTORNEY LIST OF JURY INSTRUCTIONS	CASE NUMBER:

Instructions: For each jury instruction you submit in writing in a case in which the death penalty may be imposed, provide the instruction number and a brief description of the instruction and indicate whether the instruction was given, given as modified, refused, or withdrawn.

Instruction No.	Description	Outcome
		☐ Given ☐ Given as modified ☐ Refused ☐ Withdrawn
		☐ Given ☐ Given as modified ☐ Refused ☐ Withdrawn
		☐ Given ☐ Given as modified ☐ Refused ☐ Withdrawn
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(continued on reverse)

Form Adopted for Mandatory Use
Judicial Council of California
CR-604 [New April 25, 2019]

Cal. Rules of Court, rule 4.230
www.courts.ca.gov

PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	CASE NUMBER:

Instruction No.	Description	Outcome
		☐ Given ☐ Given as modified ☐ Refused ☐ Withdrawn
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		☐ Given ☐ Given as modified ☐ Refused ☐ Withdrawn

☐ *Check here if you need more space. Attach a sheet of paper and write "CR-604, List of Jury Instructions" for a title.*

Date:

______________________________, attorney for ______________________________
(TYPE OR PRINT NAME) (NAME OF DEFENDANT)

▶ ______________________________
(SIGNATURE OF ATTORNEY)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	*FOR COURT USE ONLY* **DRAFT** **09-05-18** **Not approved by the Judicial Council**
PEOPLE OF THE STATE OF CALIFORNIA **v.** **DEFENDANT:**	
CAPITAL CASE ATTORNEY TRIAL CHECKLIST	CASE NUMBER:

Note: Under Penal Code section 1240.1(e)(1), in capital cases, the obligations of defendant's trial counsel, whether retained by the defendant or court-appointed, and the prosecutor include taking all steps necessary to facilitate the preparation and timely certification of the record of all trial court proceedings.

Instructions: This checklist is designed to be a tool for counsel to use throughout the trial in death penalty cases to ensure timely compliance with record preparation requirements and to make the certification of the record of the trial in these cases easier and more efficient for both counsel and the court. To acknowledge that counsel has reviewed this checklist as early as possible in the trial proceedings in a case in which the death penalty may be imposed, within 10 days of their first appearance, primary counsel for each defendant and the prosecution must sign and submit this checklist. Counsel may, but is not required to, use the right-hand column on the checklist to monitor their compliance with record preparation requirements.

ATTORNEY TASK	FOR OPTIONAL USE BY ATTORNEY
DURING TRIAL	
1. **Review, sign, and submit checklist.** Within 10 days of your first appearance in court, review, sign, and submit this checklist. (Cal. Rules of Court, rule 4.230(b).)	
2. **Review daily transcripts and identify errors or omissions.** During trial, you are required to call the court's attention to any errors or omissions you find in the daily reporter's transcripts. Immaterial typographical errors that cannot conceivably cause confusion are not required to be brought to the court's attention. (Cal. Rules of Court, rule 4.230(c).)	
3. **Ensure all exhibits are marked.** Make sure that all exhibits that you offer during the trial are properly marked for identification.	
4. **Comply with rule 2.1040.** If you present or offer into evidence an electronic sound or sound-and-video recording, including a recording of a deposition or other prior testimony or a video that is made part of a digital or electronic presentation, you must comply with Cal. Rules of Court, rule 2.1040. Among other things, this rule requires that you provide a transcript of the electronic recording, which, under rule 8.610, must be included in the record on appeal.	
5. **Provide copies of audio or visual aids to the court.** If you use any audio or visual aids in presentations to the jury that are not subject to rule 2.1040, including digital or electronic presentations, provide a copy of the audio or visual aid to the court. If a visual aid is oversized, provide a photograph of that visual aid in place of the original. For digital or electronic presentations, provide the presentation in its native electronic format and a printout showing the full text of all slides or images. Photographs and printouts must be on 8 1/2 x 11 inch paper. (Cal. Rules of Court, rule 4.230(f).)	

PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	CASE NUMBER:

ATTORNEY TASK	FOR OPTIONAL USE BY ATTORNEY
6. Prepare lists of appearances, exhibits, motions, and jury instructions. Prepare the lists specified in a, b, c, and d below.	
a. A list of all appearances by the party you represent during the trial, including ex-parte appearances • *Capital Case Attorney List of Appearances* (form CR-601) must be used for this purpose. The list must include the date of each appearance, the department in which it was made, the name of the attorney making the appearance, and a brief description of the nature of the appearance. • A separate list of Penal Code section 987.9 appearances must be maintained under seal for each defendant.	
b. A list of all exhibits offered by the party you represent during the trial • *Capital Case Attorney List of Exhibits* (form CR-602) must be used for this purpose. The list must include all exhibits offered during the trial and must indicate whether the exhibit was admitted in evidence, refused, lodged, or withdrawn. (Cal. Rules of Court, rule 4.230(d)(1)(B).) • Make sure that all exhibits that you offer during the trial are properly marked for identification.	
c. A list of all motions made by the party you represent during the trial, including ex-parte motions. *Capital Case Attorney List of Motions* (form CR-603) must be used for this purpose. (Cal. Rules of Court, rule 4.230(d)(1)(C).)	
d. A list of all jury instructions submitted in writing by the party you represent during the trial. *Capital Case Attorney List of Jury Instructions* (form CR-604) must be used for this purpose. The list must indicate whether the instruction was given, given as modified, refused, or withdrawn. (Cal. Rules of Court, rule 4.230(d)(1)(D).)	
e. Providing lists to substituting counsel. In the event of any substitution of attorney during the trial, the relieved attorney must provide the lists of all appearances, exhibits, motions, and jury instructions to substituting counsel within five days of being relieved. (Cal. Rules of Court, rule 4.230(d)(1)(A).)	
AFTER COMPLETION OF TRIAL IF DEATH PENALTY IS IMPOSED Note that under Penal Code section 1240.1(e)(1), to expedite certification of the entire record on appeal in all capital cases, the defendant's trial counsel, whether retained by the defendant or court-appointed, and the prosecutor must continue to represent the respective parties until the record is certified.	
7. Submit and serve completed lists of appearances, exhibits, and motions. • No later than 21 days after the imposition of a sentence of death, you must submit the lists to the court and serve a copy of all the lists, except the list of Penal Code § 987.9 appearances, on all parties. If the clerk's and reporter's transcripts, combined, exceed 10,000 pages, this time limit is extended by 3 days for each 1,000 pages of combined transcripts over 10,000 pages. • Unless otherwise provided by local rule, submit the lists to the court in electronic form. (Cal. Rules of Court, rule 4.230(d)(2))	
a. The completed list of all appearances by the party you represent during the trial	
b. The completed list of all exhibits offered by the party you represent during the trial	
c. The completed list of all motions made by the party you represent during the trial	
d. The completed list of all jury instructions submitted in writing by the party you represent during the trial	

PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	CASE NUMBER:

ATTORNEY TASK	FOR OPTIONAL USE BY ATTORNEY
8. Review reporter's transcript, clerk's transcript, and lists. When the clerk delivers the clerk's and reporter's transcript and the lists to you, you must: • Review the docket sheets, minute orders, and lists of appearances, exhibits, motions, and jury instructions to determine whether the reporter's transcript is complete; and • Review the court file to determine whether the clerk's transcript is complete. (Cal. Rules of Court, rule 8.619(a)(1).)	
9. Confer. Within 21 days after the clerk delivers the transcripts and lists, you must confer with opposing counsel to discuss any errors or omissions in the reporter's or clerk's transcript identified during your review. If the clerk's and reporter's transcripts, combined, exceed 10,000 pages, this time limit is extended by 3 days for each 1,000 pages of combined transcript over 10,000 pages. (Cal. Rules of Court, rule 8.619(a)(2).)	
10. Serve and file declaration and request for corrections or additions/statement. Within 30 days after the clerk delivers the transcripts and lists to you, each trial counsel must serve and file both of the following (if the clerk's and reporter's transcripts, combined, exceed 10,000 pages, this time limit is extended by 3 days for each 1,000 pages of combined transcript over 10,000 pages):	
a. A declaration stating that counsel or another person under counsel's supervision has performed the tasks required by 8.613(f), including meeting and conferring with opposing counsel. (Cal. Rules of Court, rule 8.619(b)(1)(A).)	
b. ONE of the following: • A request to include additional materials in the record or to correct errors that have come to counsel's attention. A request for additions to the reporter's transcript must state the nature and date of the proceedings and, if known, the identity of the reporter who reported them; OR • A statement that counsel does not request any corrections or additions. Counsel may file a joint statement or request. (Cal. Rules of Court, rule 8.619(b)(1).)	
11. Participate in hearing to certify the record for completeness. If any party files a request for corrections or additions to the record, the trial court will set a hearing to consider the request. (Cal. Rules of Court, rule 8.619(c).)	
12. Participate, as necessary, in certification of the record for accuracy. • When appellate counsel for the defendant is retained or appointed, the trial court will send that counsel a copy of the record that has been certified for completeness. Within 90 days after that, appellate counsel or any other party may serve and file a request for corrections or additions to the record. If the clerk's and reporter's transcripts, combined, exceed 10,000 pages, this time limit is extended by 15 days for each 1,000 pages of combined transcripts over 10,000 pages. • If a request for corrections or additions to the record is filed, unless otherwise ordered by the trial court, within 10 days after that request is filed, defendant's appellate counsel and the trial counsel from the prosecutor's office must meet and confer, in person or by telephone, to discuss the request and any application to unseal records served on the prosecutor's office.	

I acknowledge that I have reviewed this checklist.

Date:

_____ , attorney for _____

(TYPE OR PRINT NAME) (NAME OF DEFENDANT)

▶ _____

(SIGNATURE OF ATTORNEY)

_____

(SIGNATURE OF ATTORNEY)

SP18-11

Criminal and Appellate Procedure: Record Preparation in Death Penalty Cases (Amend Cal. Rules of Court, rules 8.610, 8.613, 8.616, 8.619, and 8.622; adopt rules 4.119, 4.230, 8.608, and 8.611; repeal rule 8.625; adopt forms CR-600 and CR-605; and approve forms CR-601, CR-602, CR-603, and CR-604)

All comments are verbatim unless indicated by an asterisk (*).

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	**Position**	**Comment**	**Working Group Response**
1.	Michael Breton San Francisco, California	A	See comments on specific provisions below	See responses to specific comments below.
2.	California Lawyers Association Committee on Appellate Courts, Litigation Section Saul Bercovitch, Director of Governmental Affairs Kelly Woodruff San Francisco, California	NI	The Committee on Appellate Courts supports the proposed new rules and amendments to the Rules of Court relating to preparation of the record on appeal in death penalty cases. The Committee notes that the new rules and amendments apply almost exclusively to the trial courts and trial counsel, and therefore the Committee has no specific comments with respect to most proposed changes. See comments on specific provisions below.	The working group notes the commenter's support for these rules. See responses to specific comments below.
3.	Criminal Justice Legal Foundation Kent Scheidegger, Legal Director Sacramento, California	NI	The Criminal Justice Legal Foundation, an organization dedicated to the protection of the rights of victims of crime, submits this comment on the proposed rule on record preparation in capital cases. The proposed rules are generally a step in the right direction, but we believe they can use some tightening up. See comments on specific provisions below.	See responses to specific comments below.
4.	Michele Hanisee Deputy District Attorney Los Angeles County District Atty	A	See comments on specific provisions below.	See responses to specific comments below.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

SP18-11

Criminal and Appellate Procedure: Record Preparation in Death Penalty Cases (Amend Cal. Rules of Court, rules 8.610, 8.613, 8.616, 8.619, and 8.622; adopt rules 4.119, 4.230, 8.608, and 8.611; repeal rule 8.625; adopt forms CR-600 and CR-605; and approve forms CR-601, CR-602, CR-603, and CR-604)

All comments are verbatim unless indicated by an asterisk (*).

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	**Position**	**Comment**	**Working Group Response**
5.	Virginia C. Lindsay Senior Staff Attorney California Appellate Project San Francisco, California	NI	***Does the proposal appropriately address the stated purpose?*** Not entirely. The Stated purpose seems to be to Increase Efficiency. The methods for achieving increased efficiency seems to be: See comments on specific provisions below.	See responses to specific comments below.
6.	Los Angeles County Public Defender Jennifer Friedman, Deputy Public Defender IV	AM	The following are comments submitted on behalf of the Los Angeles County Public Defender's Office regarding Judicial Council proposed Rule SPR18-11. See comments on specific provisions below.	See responses to specific comments below.
7.	Office of the State Public Defender Mary K. McComb, State Public Defender Oakland, California	NI	The Office of the State Public Defender ("OSP D") represents over 120 men and women on California's death row. By statute, OSPD's "primary responsibility" is representing death-sentenced inmates in direct appeal proceedings (Gov. Code, § 15420) and therefore has a particular interest, and expertise, in the preparation of the record in capital cases. We submit the following comments on the proposed rules regarding Record Preparation in Death Penalty Cases, Item SP18-11. * * * OSPD appreciates the Judicial Council's consideration of the above comments. Please do	See responses to specific comments below.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

SP18-11

Criminal and Appellate Procedure: Record Preparation in Death Penalty Cases (Amend Cal. Rules of Court, rules 8.610, 8.613, 8.616, 8.619, and 8.622; adopt rules 4.119, 4.230, 8.608, and 8.611; repeal rule 8.625; adopt forms CR-600 and CR-605; and approve forms CR-601, CR-602, CR-603, and CR-604)

All comments are verbatim unless indicated by an asterisk (*).

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	**Position**	**Comment**	**Working Group Response**
			not hesitate to contact me to discuss these comments further. See comments on specific provisions below.	
8.	Michael Ogul Deputy Public Defender Santa Clara County Public Defender	AM	I am pleased to submit the following comments in regards to the proposed changes to the Rules of Court concerning the duties of trial counsel in regard to Record Preparation in Death Penalty Cases, Item Number SP18-11. **Statement of Interest** I am the attorney supervising the homicide unit ("Special Trial Unit") of the Santa Clara County Public Defender's Office. I also continue to litigate murder cases, including as lead counsel in a pending death penalty case. I have been a public defender for over 37 years, and I have been counsel of record in death penalty cases throughout that time, with occasional short breaks in between capital cases. I have been lead counsel at the penalty or punishment phase of three death penalty jury trials, each of which resulted in verdicts, two of life imprisonment without the possibility of parole, and one of death. I was also counsel in over 20 other death penalty cases that eventually resolved for lesser sentences or resulted in the prosecution dropping the death penalty. I am the author of the chapter on Death Penalty Cases in California Criminal Law, Procedure and Practice,	See responses to specific comments below.

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SP18-11

Criminal and Appellate Procedure: Record Preparation in Death Penalty Cases (Amend Cal. Rules of Court, rules 8.610, 8.613, 8.616, 8.619, and 8.622; adopt rules 4.119, 4.230, 8.608, and 8.611; repeal rule 8.625; adopt forms CR-600 and CR-605; and approve forms CR-601, CR-602, CR-603, and CR-604)

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List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	**Position**	**Comment**	**Working Group Response**
			Continuing Education of the Bar, 2016-2018 annual editions; was the defense attorney consultant to the Death Penalty Benchguide, California Center for Judicial Education and Research, © Judicial Council of California, from its inception through 2011; and have been the editor of, and author of selected chapters in, the California Death Penalty Defense Manual, California Attorneys for Criminal Justice and the California Public Defenders Association, from 2004 through the present. I have been active in training defense counsel in capital cases since 1990, and have authored well over 100 articles on various topics of capital defense. **Position** I agree with some of the proposals if they are modified. I do not agree with others. My position is spelled out in detail below. See comments on specific provisions below.	
9.	Superior Court of Los Angeles County	AM	The Los Angeles Superior Court generally supports the approach incorporated in these procedures. They are important means through which the trial courts can manage the record preparation process in death penalty cases. ***Does the proposal appropriately address the stated purpose?***	The working group notes the commenter's general support for these rules.

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SP18-11

Criminal and Appellate Procedure: Record Preparation in Death Penalty Cases (Amend Cal. Rules of Court, rules 8.610, 8.613, 8.616, 8.619, and 8.622; adopt rules 4.119, 4.230, 8.608, and 8.611; repeal rule 8.625; adopt forms CR-600 and CR-605; and approve forms CR-601, CR-602, CR-603, and CR-604)

All comments are verbatim unless indicated by an asterisk (*).

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	**Position**	**Comment**	**Working Group Response**
			Yes. See comments on specific provisions below.	See responses to specific comments below.
10.	Superior Court of Orange County	NI	The Judicial Council seeks input to fulfill its rule-making obligations under Proposition 66 by making the record preparation process in death penalty cases more efficient. The two main premises of the proposal as stated on page 4 of the Invitation are good but the proposed solutions, rather than reducing the level of complexity for the timely preparation of the trial record instead increases it by introducing new mandatory forms and rules into the process. Many times, increased complexity equates to decreased efficiency in completing a process. ***Does the proposal appropriately address the stated purpose?*** Likely no. See comments on specific provisions below.	See responses to specific comments below.
11.	Superior Court of Placer County Jake Chatters, Court Executive Officer	A	On behalf of the Superior Court of Placer County, thank you for the opportunity to comment on the proposed California Rules of Court rules and forms outlined in SP 18-11, Criminal and Appellate Procedure: Record Preparation in Death Penalty Cases. The court appreciates the Proposition 66 Working Group's	The working group notes the commenter's general support for these rules.

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SP18-11

Criminal and Appellate Procedure: Record Preparation in Death Penalty Cases (Amend Cal. Rules of Court, rules 8.610, 8.613, 8.616, 8.619, and 8.622; adopt rules 4.119, 4.230, 8.608, and 8.611; repeal rule 8.625; adopt forms CR-600 and CR-605; and approve forms CR-601, CR-602, CR-603, and CR-604)

All comments are verbatim unless indicated by an asterisk (*).

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	**Position**	**Comment**	**Working Group Response**
			proactive approach to record preparation, maintenance, and certification. The court supports the proposed rules but does offer the following in response to the request for specific comments: See comments on specific provisions below.	 See responses to specific comments below.
12.	Superior Court of San Diego County Mike Roddy, Court Executive Officer	A	***Does the proposal appropriately address the stated purpose?*** Yes See comments on specific provisions below.	The working group notes the commenter's general support for these rules. See responses to specific comments below.
13.	Kristin Traicoff Attorney Sacramento, California	AM	As a capital appellate and habeas corpus practitioner in California, I agree with many of the proposed rules. See comments on specific provisions below.	 See responses to specific comments below.

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SP18-11

Criminal and Appellate Procedure: Record Preparation in Death Penalty Cases (Amend Cal. Rules of Court, rules 8.610, 8.613, 8.616, 8.619, and 8.622; adopt rules 4.119, 4.230, 8.608, and 8.611; repeal rule 8.625; adopt forms CR-600 and CR-605; and approve forms CR-601, CR-602, CR-603, and CR-604)

All comments are verbatim unless indicated by an asterisk (*).

Rules 4.119(b) and 4.230(b) and forms CR-600 and CR-605 – Pretrial and Trial Checklists		
Commenter	**Comment**	**Working Group Response**
Virginia C. Lindsay Senior Staff Attorney California Appellate Project San Francisco, California	***Should counsel be required to sign and submit proposed Capital Case Attorney Pretrial Checklist (form CR-600) and Capital Case Attorney Trial Checklist (form CR605), and if so, should only primary counsel or all counsel submit these checklists, or should these instead be informational forms?*** If the forms are filed with the court, then the form is primarily for the court to use in tracking proceedings. I have not seen any cases on appeal from L.A. with these forms in the ROA. How long have they been used? Have they been assessed for impact on length of time to file the ROA with the CSC? I don't see that signatures add anything to the forms, and if signatures are required, I do not see why there is not one form for all the parties to sign instead a multiple forms. This does not seem efficient. ***Should any additional obligations be identified in proposed Capital Case Attorney Pretrial Checklist (form CR-600) and Capital Case Attorney Trial Checklist (form CR605), or should any items on the proposed forms be removed?*** The need to preserve records should be addressed on the Trial Checklist. There should be a form for that as well. It makes no sense to wait until appellate counsel is appointed to file a motion to preserve the evidence and records. Trial counsel should do this as part of the record	The working group's intent is for forms CR-600 and CR-605 to be used primarily as tools by the attorneys in pretrial and trial proceedings in capital cases to help them recognize and carry out their responsibilities related to preparation of the record, rather than as a tool for tracking by the courts. The signature and submission requirements are intended as the attorney's acknowledgement to the court at the outset of their involvement in the case that they have reviewed the responsibilities outlined on the form. The working group has made several changes to the proposed rules and forms to better clarify this intent, including revising the instructions on the forms, removing the heading indicating the right hand column is for court use, and adding a sentence above the signature line indicating that the attorney is acknowledging he or she has reviewed the form. The working group appreciates this suggestion. Under rule 10.22, substantive changes to the Rules of Court need to be circulated for public comment before being recommended to the Judicial Council for adoption unless they are minor changes that are unlikely to create

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SP18-11

Criminal and Appellate Procedure: Record Preparation in Death Penalty Cases (Amend Cal. Rules of Court, rules 8.610, 8.613, 8.616, 8.619, and 8.622; adopt rules 4.119, 4.230, 8.608, and 8.611; repeal rule 8.625; adopt forms CR-600 and CR-605; and approve forms CR-601, CR-602, CR-603, and CR-604)

All comments are verbatim unless indicated by an asterisk (*).

Rules 4.119(b) and 4.230(b) and forms CR-600 and CR-605 – Pretrial and Trial Checklists		
Commenter	**Comment**	**Working Group Response**
	correction proceedings in the trial court. It would be nice if there was a rule of court which automatically called for the preservation of records.	controversy. Adding the obligations and form suggested would not be a minor substantive change and thus would need to be circulated for public comment. There is not sufficient time for the working group to consider, develop, and circulate another proposal in advance of when the working group has determined this proposal needs to be presented to the Judicial Council. Therefore the working group recommends that this suggestion be considered by the appropriate Judicial Council advisory body at a later time.
Los Angeles County Public Defender Jennifer Friedman, Deputy Public Defender IV	**Checklists:** The checklists described in this proposed rule should serve as a guide to trial counsel and should be informational only. Capital trial counsel has many responsibilities and in our view imposing additional obligations on trial counsel is counter-productive and may increase the length of time necessary to prepare for trial and increase the length of the trial itself. The signature of trial counsel seems unnecessary. At most, there should be an acknowledgement on the record that counsel has been provided a checklist, has read it and understands it.	Please see response to the comments of Virginia C. Lindsay, above. Consistent with this comment, the working group's intent is for forms CR-600 and CR-605 to be primarily informational. The signature and submission requirements are intended as the attorney's acknowledgement to the court at the outset of their involvement in the case that they have reviewed the responsibilities outlined on the form. The working group has made several changes to the proposed rules and forms to better clarify this intent, including revising the rules to indicate that the counsel is acknowledging having reviewed the form by signing it, revising the instructions on the form, removing the heading indicating the right hand column is for court use, and adding a sentence above the signature line indicating that the attorney is acknowledging having reviewed the form.

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SP18-11

Criminal and Appellate Procedure: Record Preparation in Death Penalty Cases (Amend Cal. Rules of Court, rules 8.610, 8.613, 8.616, 8.619, and 8.622; adopt rules 4.119, 4.230, 8.608, and 8.611; repeal rule 8.625; adopt forms CR-600 and CR-605; and approve forms CR-601, CR-602, CR-603, and CR-604)

All comments are verbatim unless indicated by an asterisk (*).

Rules 4.119(b) and 4.230(b) and forms CR-600 and CR-605 – Pretrial and Trial Checklists		
Commenter	**Comment**	**Working Group Response**
Michael Ogul Deputy Public Defender Santa Clara County Public Defender	Broadly speaking, while many of the proposed checklists and ideas are good, there is a difference between providing checklists that might help counsel better perform their existing duties and imposing additional obligations regarding those checklists. . . . Further, CR-600 (pretrial checklist) and CR-605 (trial checklist) should be informational only. Form CR-600: I object to making execution of this list mandatory. While this checklist provides useful guidance to trial counsel, requiring counsel to sign these checklists serves no purpose. It doesn't insure that counsel will actually perform these tasks. Instead, the list should be provided only for informational purposes. Therefore, I urge the following change in the "Instructions" portion of this form: Please delete the second sentence: "Primary counsel for each defendant and the prosecution in the pretrial proceedings in a case in which the death penalty may be imposed must review, sign, and file this checklist." Alternatively, modify the foregoing sentence to read: "Primary counsel for each defendant and the prosecution in the pretrial proceedings in a case in which the death penalty may be imposed should review and keep a copy of this checklist."	Please see the response to the comments of the Los Angeles County Public Defender above. The working group declined to delete this sentence. The working group's view is that the requirements for signing and submitting the checklists to the court will encourage counsel to review these checklists. However, the working group did revise the sentence to clarify that counsel's signature is to acknowledge having reviewed the checklist. The working group agrees that counsel should be encouraged to retain a copy of these checklists and has revised the proposed rules and forms to so indicate.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

SP18-11

Criminal and Appellate Procedure: Record Preparation in Death Penalty Cases (Amend Cal. Rules of Court, rules 8.610, 8.613, 8.616, 8.619, and 8.622; adopt rules 4.119, 4.230, 8.608, and 8.611; repeal rule 8.625; adopt forms CR-600 and CR-605; and approve forms CR-601, CR-602, CR-603, and CR-604)

All comments are verbatim unless indicated by an asterisk (*).

Rules 4.119(b) and 4.230(b) and forms CR-600 and CR-605 – Pretrial and Trial Checklists		
Commenter	**Comment**	**Working Group Response**
	Form CR-600, box 3.c.: Modify to "The list must indicate all motions that have been ruled upon and those that are awaiting resolution" Form CR-600, box 5 (page 2): Delete "Serve a copy of all the completed lists, except the list of PC 987.9 appearances, on all parties" Form CR-605: I object to making execution of this list mandatory. While this checklist provides useful guidance to trial counsel, requiring counsel to sign these checklists serves no purpose. It doesn't insure that counsel will actually perform these tasks. Instead, the list should be provided only for informational purposes. Therefore, I urge the following change in the "Instructions" portion of this form: Please delete the second sentence: "Primary counsel for each defendant and the prosecution in the trial in a case in which the death penalty may be imposed must review, sign, and file this checklist."	The working group has modified the language of rule 4.119 and CR-600 to clarify that the list must indicate if any of the motions listed are still pending. The working group declined to make this suggested change. These checklists would be submitted to the court. If they are not served on the other party, this would be ex parte communication with the court. The working group also does not see a reason why these checklists, which, once submitted to the court, will be public court records, should not be served on opposing counsel. Please see the response to the comments of the Los Angeles County Public Defender above. The working group declined to delete this sentence. As noted above, the working group's view is that the requirements for signing and submitting the checklists to the court will encourage counsel to review these checklists. However, the working group did revise the

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SP18-11

Criminal and Appellate Procedure: Record Preparation in Death Penalty Cases (Amend Cal. Rules of Court, rules 8.610, 8.613, 8.616, 8.619, and 8.622; adopt rules 4.119, 4.230, 8.608, and 8.611; repeal rule 8.625; adopt forms CR-600 and CR-605; and approve forms CR-601, CR-602, CR-603, and CR-604)

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Rules 4.119(b) and 4.230(b) and forms CR-600 and CR-605 – Pretrial and Trial Checklists		
Commenter	**Comment**	**Working Group Response**
	Alternatively, modify the foregoing sentence to read: "Primary counsel for each defendant and the prosecution in the trial in a case in which the death penalty may be imposed should review and keep a copy of this checklist."	sentence to clarify that counsel's signature is to acknowledge having reviewed the checklist. The working group agrees that counsel should be encouraged to retain a copy of these checklists and has revised the proposed rules and forms to so indicate.
Superior Court of Los Angeles County	***Should counsel be required to sign and submit proposed Capital Case Attorney Pretrial Checklist (form CR-600) and Capital Case Attorney Trial Checklist (form CR-605), and if so, should only primary counsel or all counsel submit these checklists, or should these instead be informational forms?*** Yes. All counsel should submit the forms. ***Should any additional obligations be identified in proposed Capital Case Attorney Pretrial Checklist (form CR-600) and Capital Case Attorney Trial Checklist (form CR- 605), or should any items on the proposed forms be removed?*** No.	Based on the comments received, the working group has kept the requirement that the forms be signed and submitted only by primary counsel for the defendant and the prosecution.
Superior Court of Orange County	If the proposed method of preparation, including the requirement for the types of forms put forth in the Invitation, has resulted in improved efficiencies in the appellate process, it would be helpful to know this. But without some sort of analysis of how the model put forth has benefitted the current process and based on the anticipated increase in workload requirements that	The Supreme Court staff who review the records in capital cases report that the records received from the Superior Court of Los Angeles County require the fewest corrections of any of the records that they receive in capital cases. The view of the working group is that this can be attributed, at least in part, to the checklists and lists of appearances, exhibits, motions, and jury

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Rules 4.119(b) and 4.230(b) and forms CR-600 and CR-605 – Pretrial and Trial Checklists		
Commenter	**Comment**	**Working Group Response**
	implementation of this model would require, there seems to be no justification for adopting this pattern, especially those aspects that would be mandatory. It must be considered that bringing a capital case to trial which results in the imposition of the death penalty is a complex and lengthy process – one which takes years. Cases can take unforeseen circuitous turns before, during or after the guilt or penalty phases. Due to the nature of these cases themselves, it appears there will always be the opportunity for lost efficiencies, no matter the best efforts of those involved. It is therefore difficult to imagine that simply adding another layer to an already existing process would be anything but duplicative. If, however the Council's view is that the process will be expedited by reducing or eliminating need for further examination of the record before submission to the Supreme Court, the proposals may be construed as justifiable. Alternatively, if the process remains unchanged it would be acceptable if the checklists are advisory only to assist the court. ***Does the proposal appropriately address the stated purpose?*** Likely no. Additional forms, checklists, and review procedures for trial counsel would more likely than not invite further delays. While the premise that counsel participating in the pretrial and trial proceedings are in the best position to ensure completeness and accuracy of the record sounds true, getting trial counsel to comply	instructions that the Superior Court of Los Angeles County requires and that these are therefore good models to incorporate in statewide rules. Please see the response to the comments of the Los Angeles County Public Defender above. It is the working group's intent that these checklists be primarily informational tools for the attorneys in pretrial and trial proceedings in capital cases to help them recognize and carry out their responsibilities related to preparation of the record and has modified the rules and forms to clarify this. The working group acknowledges that there will be some additional burden on pre-trial and trial counsel in reviewing and submitting the checklists and completing and filing the lists of appearances, exhibits, motions, and jury instructions. The working group's view is that this devotion of additional time at this point in the capital

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Rules 4.119(b) and 4.230(b) and forms CR-600 and CR-605 – Pretrial and Trial Checklists		
Commenter	**Comment**	**Working Group Response**
	with capital case appellate procedures will add delay as trial counsel is likely unfamiliar and more resistant to comply with the California Rules of Court, based on our experiences. Further there is nothing provided in the Invitation to indicate that this is a 'best practice' solution that can be quantified and should therefore be adopted. ***Should counsel be required to sign and submit proposed 'Capital Case Attorney Pretrial Checklist' and 'Capital Case Attorney Trial Checklist'?*** No. These forms and checklists would be redundant with complete and accurate minutes. Counsel is already required to review the minutes of a case to ensure their filings are contained in the record. These check lists would be an added layer of processing that would likely require multiple follow ups and reminders with trial counsel. If these forms are provided at all, they should be informational or advisory only. ***Should any additional obligation be identified in proposed 'Capital Case Attorney Pretrial Checklist' and 'Capital Case Attorney Trial Checklist' or should any items on the proposed forms be removed?*** No. Again, these checklists would be redundant with complete and accurate minutes.	case process will ultimately reduce the overall time and resources spent in producing a complete and accurate record in capital cases. Please see first paragraph of the response above. Please see response above. The checklists are intended to be an informational tool for counsel, not a substitute for court minutes. The working group's view is that the requirements for signing and submitting the checklists to the court will encourage counsel to review these checklists.

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Rules 4.119(b) and 4.230(b) and forms CR-600 and CR-605 – Pretrial and Trial Checklists		
Commenter	**Comment**	**Working Group Response**
Superior Court of Placer County Jake Chatters, Court Executive Officer	New Forms CR-600 and CR-605: Counsel should be required to sign and submit these proposed forms. This will fulfill the intended purpose of ongoing record maintenance to expedite the appeals process and can assist court staff in actively monitoring the status of the case. To reduce the burden of paperwork for counsel and court staff, we would suggest that only primary counsel should be required to sign and submit these checklists.	Based on this and other comments received, the working group has kept the requirement that the forms be signed and submitted only by primary counsel for the defendant and the prosecution. The working group has modified the rules and forms to further clarify that the checklists are intended primarily as an informational tool to help counsel fulfill their record preparation responsibilities.
Superior Court of San Diego County Mike Roddy, Court Executive Officer	***Should counsel be required to sign and submit proposed Capital Case Attorney Pretrial Checklist (form CR-600) and Capital Case Attorney Trial Checklist (form CR- 605), and if so, should only primary counsel or all counsel submit these checklists, or should these instead be informational forms?*** Yes, only primary counsel should be required to sign and submit these checklists as it would be a helpful tool for the court. ***Should any additional obligations be identified in proposed Capital Case Attorney Pretrial Checklist (form CR-600) and Capital Case Attorney Trial Checklist (form CR- 605), or should any items on the proposed forms be removed?*** No, the checklists seem complete.	Please see the response to the comment of the Superior Court of Placer County above. The working group appreciates this input.

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Rules 4.119(c) and 4.230(d) and forms CR-601 - CR-604 – Pretrial and Trial Lists of Appearances, Exhibits, Motions, and Jury Instructions		
Commenter	**Comment**	**Working Group Response**
Michele Hanisee Deputy District Attorney Los Angeles County District Atty	**List of appearances** This list seems a bit superfluous since both the minute orders and reporter's transcript will reflect the appearances. However – if this rule is to be implemented as mandatory, it needs to be clarified whether the list of appearances should include ex-parte appearances in the trial court or in other courts, to obtain ex-parte orders. And if so, at what point the list is filed, thus revealing the existence of ex-parte orders. The time of filing of the list should probably be after verdict and sentence. That said – the lists should be provided to counsel at least from the time the prosecution announces they are seeking death so the parties will be noticed that they need to keep track of their appearances which is more easily done contemporaneous to the appearance. **List of motions filed** This is a good idea to have as a mandatory list, as there are so many motions filed and it is hard to reconstruct when certifying the record for appeal. Need to clarify if this includes ex-parte motions and also non -substantive motions (e.g. medical orders, showers for the defendant) Again – time of filing of the list should be after verdict	The working group's view is that the attorney's list of appearances will serve as a cross-check, not a replacement for, the court minutes and reporter's transcript, and will help ensure that a complete record is prepared as early as possible. The working group agrees that the rule and forms should make clear that the list must include ex parte appearances and has modified them accordingly. Under proposed rule 8.613(d), the clerk will notify counsel to submit the lists for the preliminary proceedings at the same time as preparation of the record of the preliminary proceedings must begin - after the prosecution notifies the court that is seeking the death penalty. Under proposed rule 4.230(d)(2), counsel must submit the trial lists to the court no later than 21 days after the imposition of a sentence of death. Proposed forms CR-600 and CR-605 indicate that the lists should be prepared during the pretrial and trial proceedings. To further encourage simultaneous updating of lists, the working group has added comments to rules 4.119 and 4.230 addressing this topic. The working group agrees that the rule and forms should make clear that the list must include ex parte motions and has modified them accordingly.

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Rules 4.119(c) and 4.230(d) and forms CR-601 - CR-604 – Pretrial and Trial Lists of Appearances, Exhibits, Motions, and Jury Instructions		
Commenter	**Comment**	**Working Group Response**
	and sentence, to avoid disclosure of work product or ex-parte orders that remain under seal.	
Virginia C. Lindsay Senior Staff Attorney California Appellate Project San Francisco, California	**Better identifying what items must be included in the record** This will result in increased efficiency, without doubt. . . . The . . . use of forms for motions and jury instructions will all make the process of record correction more efficient. **Relieving courtroom clerks of the responsibility for tracking appearances in criminal proceedings** This is a very bad idea. The forms for motions and jury instructions are good ideas because motions and jury instructions are often left out of the court file inadvertently and they are uniquely known to the defense. However, keeping track of court appearances is different altogether. Requiring both defense and prosecution to keep track of proceedings for the court is basically telling courtroom clerks they are not responsible for that information. This sends the wrong message and will not result in increased efficiency. I actually think the Working Group has it backwards. They say they considered extra training and best practices, but concluded that these would supplement rule changes and forms, but would not substitute for them. Instead, I think the forms should supplement training, but they are no substitute for increasing professionalism among court staff through proper staffing, best practices and training, as well as better	The working group appreciates this input. The working group's view is that the attorney's list of appearances will serve as a cross-check, not a replacement for, the court tracking of appearances, and will help ensure that a complete record is prepared as early as possible. For this reason, the working group did not modify the proposal to eliminate this requirement.

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Rules 4.119(c) and 4.230(d) and forms CR-601 - CR-604 – Pretrial and Trial Lists of Appearances, Exhibits, Motions, and Jury Instructions		
Commenter	**Comment**	**Working Group Response**
	court technology. The requirement to keep track of every appearance of a party in the case should be removed from the checklist. Court clerks should keep track of every appearance. At the end of pretrial and trial proceedings, the clerk could print out a list of appearances to be verified by counsel, but to require all parties to produce their own lists is inefficient and unhelpful. The idea that this will reduce costs is a joke. ***Should counsel be required to submit lists of appearances, exhibits, motions, and jury instructions to the court and serve them on opposing counsel?*** I see no problem with this except for lists of appearances, which should be maintained by the court clerk. ***Should use of proposed Capital Case Attorney List of Appearances (form CR-601), Capital Case Attorney List of Exhibits (form CR-602), Capital Case Attorney List of Motions (form CR-603), and Capital Case Attorney List of Jury Instructions (form CR604) be mandatory or should these be optional forms?*** I see no problem with either approach except for lists of appearances, which should be maintained by the court clerk. ***Are the proposed time frames for submission of these lists to the court appropriate?*** I don't think the time frames make sense at all. How can you know what motions you will file or what	The working group appreciates this input. Based on other comments, the working group is recommending that these be mandatory forms. The intent is for these lists to be completed as the appearances and motions are actually made, exhibits

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Rules 4.119(c) and 4.230(d) and forms CR-601 - CR-604 – Pretrial and Trial Lists of Appearances, Exhibits, Motions, and Jury Instructions		
Commenter	**Comment**	**Working Group Response**
	appearances you make or funds request within 21 days? The forms should be used by counsel at the appropriate times. The list of motions would be filed before the start of trial. The lists of exhibits would be filed at the start of the case-in-chief and the start of the defense case, and the list of jury instructions would be filed after the close of evidence. The checklists are just case management tools. I don't see why they need to be filed by counsel at all. Counsel could sign them in court as part of the proceedings.	offered, and jury instructions submitted. The working group has modified the proposal to add advisory committee comments to rules 4.119 and 4.230 to clarify this intent. Under proposed rules 8.613(d) and 4.230(d)(2), the completed list are not submitted to the court until after the conclusion of the pretrial or trial proceedings.
Los Angeles County Public Defender Jennifer Friedman, Deputy Public Defender IV	**Proposed Rules 4.119 and 4.230: Lists of appearances, exhibits, motions, and jury instructions would require counsel**—during both the pretrial and trial stages in a case in which the death penalty might be imposed—to prepare lists of all the court appearances and motions that they make and all the exhibits they offer and, at the trial stage, jury instructions that they offer. Trial counsel has numerous responsibilities to ensure her client is effectively represented at trial. One of the busiest times for trial counsel is the months just prior to the commencement of trial. This is also the period of time when numerous motions are filed and heard by the trial court. Imposing these responsibilities on trial counsel during this period of time will significantly add to trial counsel's already heavy burden. It will inevitably lead to delays because trial counsel will not have the necessary time to prepare these lists. Thus, such lists which are certainly important to post-conviction counsel should be prepared in the first instance by the court clerk	The working group acknowledges that there would be some additional burden on pre-trial and trial counsel in preparing the lists of appearances, exhibits, motions, and jury instructions. However, it is counsel who is making the appearances and motions, offering the exhibits, and submitting the jury instructions. Therefore, the working group's view is that counsel are in an ideal position to track these activities and that it will not be a substantial burden on them to note these activities on the required lists as the activities are undertaken. The court clerk also makes a record of these activities and the intent is for the attorney's lists to serve as a cross-check for the court

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Rules 4.119(c) and 4.230(d) and forms CR-601 - CR-604 – Pretrial and Trial Lists of Appearances, Exhibits, Motions, and Jury Instructions		
Commenter	**Comment**	**Working Group Response**
	and then reviewed by trial counsel for accuracy within a specified period of time following the imposition of a death sentence. The court clerk is the person responsible for inputting information to the court docket and thus, is the person who has the information and is in a position to compile it. Trial counsel should have an opportunity to be heard regarding the accuracy of these lists and should be able to supplement them as necessary but it should not be trial counsel's responsibility to compile these lists in the first instance.	tracking of these activities. The working group's view is that if pretrial and trial counsel devote some additional time to track these activities during the proceedings, it will ultimately reduce the overall time and resources spent by both counsel and the courts in producing a complete and accurate record in capital cases.
Michael Ogul Deputy Public Defender Santa Clara County Public Defender	Broadly speaking, while many of the proposed checklists and ideas are good, there is a difference between providing checklists that might help counsel better perform their existing duties and imposing additional obligations regarding those checklists. I agree that some checklists should be mandatory, e.g., CR-602 (list of exhibits), CR-603 (list of motions), and CR-604 (list of jury instructions). I object to CR-601 (list of appearances) as unnecessary, duplicative, and creating an undue burden on trial counsel. For those lists that counsel must file, they should not be required to serve a copy on opposing counsel. Ultimately, all counsel will have an opportunity to review the clerk's transcript on appeal and are responsible to bring any omissions to the court's attention. These lists are limited to documents filed or offered by that counsel, not opposing counsel, and requiring counsel to serve opposing counsel with these lists imposes an unnecessary burden.	Based on this and other comments, the working group is recommending that these be mandatory forms. Please see response to more detailed explanation of this objection below. The working group declined to make this suggested change. These lists would be submitted to the court. If they are not served on the other party, this would be ex parte communication with the court. The working group also does not see a reason why these lists, which, once submitted to the court, will be public court records, should not be served on opposing counsel.

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Rules 4.119(c) and 4.230(d) and forms CR-601 - CR-604 – Pretrial and Trial Lists of Appearances, Exhibits, Motions, and Jury Instructions		
Commenter	**Comment**	**Working Group Response**
	Rule 4.119(c)(3): Change 21 days after the clerk notifies counsel to "21 days after the clerk notifies counsel or 21 days after counsel receives both the clerk's transcript and reporter's transcripts, whichever occurs later"	The working group declines to make this suggested change. Penal Code section 190.9 requires that, unless an extension of time is granted, the court is required to certify the record of the preliminary proceedings no later than 120 days following the prosecution's notification that the death penalty will be sought. Existing rule 8.613 establishes the procedures designed to meet this short timeframe, including by requiring counsel who represented the parties in the preliminary proceedings to complete their review of the reporter's transcript and of the docket sheets and minute orders within 30 days after delivery of the reporter's transcript to them (note that this rule does not require preparation of a clerk's transcript of the preliminary proceedings at this time). The proposed attorney lists of pretrial appearances, motions, and exhibits are intended to facilitate that review. This would not be possible if the lists were delivered 21 days after the reporter's transcript is delivered to counsel.
	Delete the requirement of serving a copy of the lists on opposing counsel	Please see the response to the comments above about service of the pretrial lists.
	Rule 4.230(d)(1)(C): Insert "written" so that it reads "A list of all written motions made by that party."	The working group declines to make this change. It will be a helpful cross-check for the clerk's and reporter's transcripts for the attorney list of motions to include both written and oral motions.
	Rule 4.230(d)(2): Change "21 days after the imposition …." to "Not later than 21 days after the imposition of a sentence of death	The working group declines to make this suggested change. The proposed attorney lists of trial appearances, motions, exhibits and jury instructions are intended to

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Rules 4.119(c) and 4.230(d) and forms CR-601 - CR-604 – Pretrial and Trial Lists of Appearances, Exhibits, Motions, and Jury Instructions		
Commenter	**Comment**	**Working Group Response**
	or receipt of the corrected copies of the Clerk's and Reporter's Transcripts, whichever occurs later, …"	facilitate the court's preparation of the initial version of the clerk's transcript and counsel's review and the correction of both this and reporter's transcripts. The use of the lists for these purposes would not be possible if the lists were delivered 21 days after receipt of the corrected transcripts.
	Form CR-601: I object to this form. Requiring a list of appearances is different than lists of exhibits, written motions, or jury instructions, for several reasons. First, it does not help promote counsel's effectiveness. Second, because it is not critical to compile or maintain such a list as the case is progressing, it will impose an onerous requirement to compile this list at the conclusion of the proceedings. Third, the court clerk can compile it as easy as counsel can, and the appearances will undoubtedly be listed in the court's database. Fourth, requiring counsel to submit this list may create a situation where counsel inadvertently leaves an appearance off the list, leading the clerk to overlook including the minutes, orders, and transcripts from that appearance in the appellate record. If this form remains, please change the box labeled "Regular" to "Post-trial" in the section "Capital Case Attorney List of Appearances".	The working group acknowledges that there would be some additional burden on pre-trial and trial counsel in preparing the lists of appearances. However, the working group's view is that, because it is counsel who is making these appearances, counsel are in an ideal position to track them and that it will not be a substantial burden on them to note these appearances on the required lists as they are made. The court clerk also makes a record of these appearances and the intent is for the attorney's lists to serve as a cross-check for the court tracking. If there are inconsistencies between the information recorded by the clerk and the attorney's record of appearances, the process of reviewing both will allow this to be addressed by those involved in the proceedings soon after the proceedings took place.
	Form CR-603: Change title to "Capital Case Attorney List of Written Motions"	Please see response to suggestion regarding limitation to written motions above.

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Rules 4.119(c) and 4.230(d) and forms CR-601 - CR-604 – Pretrial and Trial Lists of Appearances, Exhibits, Motions, and Jury Instructions		
Commenter	**Comment**	**Working Group Response**
Superior Court of Los Angeles County	***Should counsel be required to submit lists of appearances, exhibits, motions, and jury instructions to the court and serve them on opposing counsel?*** Yes. Most of the listings are already provided to the courtroom and served on opposing counsel without the requirement. ***Should use of proposed Capital Case Attorney List of Appearances (form CR-601), Capital Case Attorney List of Exhibits (form CR-602), Capital Case Attorney List of Motions (form CR-603), and Capital Case Attorney List of Jury Instructions (form CR- 604) be mandatory or should these be optional forms?*** Yes, they should be mandatory forms. ***Are the proposed time frames for submission of these lists to the court appropriate?*** Yes.	The working group notes the commenter's support for this requirement. Based on this and other comments, the working group is recommending that these be mandatory forms. The working group notes the commenter's support for these timeframes.
Superior Court of Orange County	***Should counsel be required to submit lists of appearances, exhibits, motions, and jury instructions to the court and serve them on opposing counsel?*** No. All this information would be redundant with complete and accurate minutes. Furthermore, in our experience, trial counsel is not as concerned with completeness and accuracy to the extent that appellate counsel is. If trial counsel submits inaccurate lists, this would create confusion for appellate counsel and require further resolution during the accuracy phase to clear up.	The working group's view is that the attorney's list of appearances, motions, exhibits, and jury instructions will serve as a cross-check for the court minutes and reporter's transcript of the proceedings, and will help ensure that a complete record is prepared as early as possible. The working group appreciates that some courts do an outstanding job of tracking all of these items in the minutes, but in the experience of working group members, courts often face difficulties in preparing complete and accurate records of capital cases. Problems with the completeness and accuracy of records become

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Rules 4.119(c) and 4.230(d) and forms CR-601 - CR-604 – Pretrial and Trial Lists of Appearances, Exhibits, Motions, and Jury Instructions		
Commenter	**Comment**	**Working Group Response**
	List of Jury Instructions (form CR-604) be mandatory or should these be optional forms? Should not be mandatory for the reasons explained above. ***Are the proposed time frames for submission of these lists to the court appropriate?*** No.	more difficult to correct the more time passes after the completion of the proceedings. It is therefore the working group's view that counsel participating in the capital pretrial and trial proceedings, the trial court judge, court reporters, and court staff are in the best position during and immediately after the proceedings to identify and correct errors in the record. The working group understands that, in some places, this may require a shift in culture. It is the working group's expectation that these proposed rules, combined with educational efforts by justice system partners, can help with that cultural shift. Based on the weight of the comments received, the working group is recommending that these be mandatory forms.
Superior Court of Placer County Jake Chatters, Court Executive Officer	New Forms CR-601, CR-602, CR-603 and CR-604: The proposed forms should be mandatory to ensure consistency and accuracy of the record. This will in turn expedite the record preparation process for appeals.	Based on this and other comments, the working group is recommending that these be mandatory forms.
Superior Court of San Diego County Mike Roddy, Court Executive Officer	***Should counsel be required to submit lists of appearances, exhibits, motions, and jury instructions to the court and serve them on opposing counsel?*** Yes, again this is helpful information for the court.	The working group notes the commenter's support for these requirements.

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Rules 4.119(c) and 4.230(d) and forms CR-601 - CR-604 – Pretrial and Trial Lists of Appearances, Exhibits, Motions, and Jury Instructions		
Commenter	**Comment**	**Working Group Response**
	Should use of proposed Capital Case Attorney List of Appearances (form CR-601), Capital Case Attorney List of Exhibits (form CR-602), Capital Case Attorney List of Motions (form CR-603), and Capital Case Attorney List of Jury Instructions (form CR-604) be mandatory or should these be optional forms? These forms should be made Mandatory so all courts are using the same forms.	Based on this and other comments, the working group is recommending that these be mandatory forms.
	Are the proposed time frames for submission of these lists to the court appropriate? Yes	The working group notes the commenter's support for these timeframes.

Rules 8.613(d)(3) and 8.616(a)(1)(B) – Clerk Notice to Submit Lists of Appearances, Exhibits, Motions, and Jury Instructions		
Commenter	**Comment**	**Working Group Response**
Virginia C. Lindsay Senior Staff Attorney California Appellate Project San Francisco, California	***Are the proposed requirements for the clerk to notify counsel that they must submit these lists and to distribute the lists to counsel with the reporter's transcript appropriate?*** NO. This is a waste of time and it will have a negative effect on the professionalism of the court clerks.	The working group considered all of the comments it received on this question and decided to keep the requirement that the clerk provide this notice in the proposal. Under the existing procedures in rule 4.116 for preparation of the record of the preliminary proceedings, it is the clerk that triggers the preparation of the record after being notified that the prosecution is seeking the death penalty. The working group's view is that this is also the appropriate time for counsel to submit the pretrial lists of appearances, exhibits and motions and that it makes sense for the clerk to notify counsel of this

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SP18-11

Criminal and Appellate Procedure: Record Preparation in Death Penalty Cases (Amend Cal. Rules of Court, rules 8.610, 8.613, 8.616, 8.619, and 8.622; adopt rules 4.119, 4.230, 8.608, and 8.611; repeal rule 8.625; adopt forms CR-600 and CR-605; and approve forms CR-601, CR-602, CR-603, and CR-604)

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Rules 8.613(d)(3) and 8.616(a)(1)(B) – Clerk Notice to Submit Lists of Appearances, Exhibits, Motions, and Jury Instructions		
Commenter	**Comment**	**Working Group Response**
		obligation when the clerk notifies the court reporters. For simplicity and consistency between this phase of the record preparation process and the preparation of the record of the trial, the working group also concluded that it was appropriate for the clerk to notify counsel of their obligation to submit the trial lists of lists of appearances, exhibits, motions, and jury instructions.
Superior Court of Los Angeles County	***Are the proposed requirements for the clerk to notify counsel that they must submit these lists and to distribute the lists to counsel with the reporter's transcript appropriate?*** Yes.	Please see the response to the comments of Virginia C. Lindsay above.
Superior Court of Placer County Jake Chatters, Court Executive Officer	New Rule 4.119(c)(3), amended Rule 8.613(d)(2), and amended Rule 8.616(1)(B): Notifying counsel to submit lists of appearances, exhibits, and motions should not be mandatory for the clerk. The court suggests that counsel submit these lists after having met and conferred pursuant to Rules 8.613(f)(3) and 8.619(a)(2), thus allowing the opportunity for cross-referencing against the transcript(s) and promoting consistency across pre-trial and trial documentation. The timeline for document submission could then coincide with the declaration and request for additions or corrections.	Please see the response to the comments of Virginia C. Lindsay above. The working group declined to make the suggested change as the lists are intended to be a resource for both the court in preparing the clerk's transcript after trial and for the attorneys in reviewing either the minutes and docket entries for preliminary proceedings or the clerk's transcript of the trial proceedings and reporter's transcripts before submitting requests for additions and corrections. This would not be possible if the lists were not submitted until after these steps in the record preparation process were completed.
Superior Court of San Diego County Mike Roddy, Court Executive Officer	***Are the proposed requirements for the clerk to notify counsel that they must submit these lists***	

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Rules 8.613(d)(3) and 8.616(a)(1)(B) – Clerk Notice to Submit Lists of Appearances, Exhibits, Motions, and Jury Instructions		
Commenter	**Comment**	**Working Group Response**
	and to distribute the lists to counsel with the reporter's transcript appropriate? Yes	Please see the response to the comments of Virginia C. Lindsay above.
Superior Court of Orange County	***Are the proposed requirements for the clerk to notify counsel that they must submit these lists and to distribute the lists to counsel with the reporter's transcript appropriate?*** No.	Please see the response to the comments of Virginia C. Lindsay above.

Rule 4.230(c) – Review of Daily Transcripts by Counsel During Trial		
Commenter	**Comment**	**Working Group Response**
Virginia C. Lindsay Senior Staff Attorney California Appellate Project San Francisco, California	***Should the rules specify a timeframe for when counsel must call the court's attention to errors or omissions in a daily transcript?*** There should be no blanket rule because the demands on trial counsel during trial are extreme. Any such requirement will inevitably run up against obvious errors which must be corrected in a capital case, regardless of trial counsel's failure to spot mistakes.	The working group is not proposing a timeframe for making corrections at this time.
Los Angeles County Public Defender Jennifer Friedman, Deputy Public Defender IV	**Review of daily transcripts.** Penal Code section 190.8(c) Errors or omissions should not be required to call attention to errors or omissions in the daily transcript until a specified time after a death sentence has been imposed.	As noted in the invitation to comment and by the commenter, Penal Code section 190.8 establishes the requirement that trial counsel bring errors in the daily transcripts to the attention of the court during the course of a trial. This requirement cannot be changed by Rule of Court.

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Rule 4.230(c) – Review of Daily Transcripts by Counsel During Trial		
Commenter	**Comment**	**Working Group Response**
	While trial counsel is required to submit errors and omissions to the court during trial, as a practical matter these issues are frequently not addressed until after trial. The trial court does not want to keep a jury waiting in order to address these issues during the trial. Additionally, the trial court is frequently called upon to address other issues that come up during a trial and often does not have time to correct the record during the trial.	
Michael Ogul Deputy Public Defender Santa Clara County Public Defender	I recommend additional rule proposals concerning requests for corrections to the daily transcript. Specifically, there should be a timetable for such requests, and they should be submitted within one to two weeks after receipt of the transcript, when the testimony is fresher in the minds of all concerned. Further, Rule 1.150 of the Rules of Court should be amended to expressly permit counsel to use personal recording devices as a tool to assist in preparing their requests for correcting the transcript.	The working group is not proposing a timeframe for making corrections at this time. Under rule 10.22, substantive changes to the Rules of Court need to be circulated for public comment before being recommended to the Judicial Council for adoption unless they are minor changes that are unlikely to create controversy. Based on the comments received, specifying a timeframe within which counsel must call the court's attention to errors or omission in a daily transcript does not appear to be an uncontroversial minor substantive change. There is not sufficient time for the working group to consider, develop, and circulate another proposal in advance of when the working group has determined this proposal needs to be presented to the Judicial Council. Therefore the working group recommends that this suggestion be considered by the appropriate Judicial Council advisory body at a later time.

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Rule 4.230(c) – Review of Daily Transcripts by Counsel During Trial		
Commenter	**Comment**	**Working Group Response**
Superior Court of Los Angeles County	***Should the rules specify a timeframe for when counsel must call the court's attention to errors or omissions in a daily transcript?*** Yes, to expedite the certification and accuracy process.	Please see the response to the comments of Michael Ogul above.
Superior Court of Orange County	***Should the rules specify a timeframe for when counsel must call the court's attention to errors or omissions in a daily transcript?*** Yes, with flexibility.	Please see the response to the comments of Michael Ogul above.
Superior Court of San Diego County Mike Roddy, Court Executive Officer	***Should the rules specify a timeframe for when counsel must call the court's attention to errors or omissions in a daily transcript?*** Yes, this would be helpful to include.	Please see the response to the comments of Michael Ogul above.

Rules 4.230(e) and 8.610(a)(1)(Q) – Contents of the Record - Copies of Visual Aids		
Commenter	**Comment**	**Working Group Response**
Virginia C. Lindsay Senior Staff Attorney California Appellate Project San Francisco, California	**Better identifying what items must be included in the record** This will result in increased efficiency, without doubt. [P]owerpoints used during arguments. . . . are all documents which somehow are often not included in the ROA, even though they are present in the court file. The additions to the rules listing these items . . . will all make the process of record correction more efficient.	The working group appreciates this input.

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Rules 4.230(e) and 8.610(a)(1)(Q) – Contents of the Record - Copies of Visual Aids		
Commenter	**Comment**	**Working Group Response**
Office of the State Public Defender Mary K. McComb, State Public Defender Oakland, California	**Variety of electronic media, rule 4.230(e).** The current proposed rule 4.230(e) does not adequately cover the variety of electronic media used in capital trials. Since the rule is intended to include all manner of visual presentations of information to the jury during jury selection and trial, we suggest the following modification of the proposed rule, with the suggested insertions in bold (and we suggest striking the word "similar" as extraneous): Primary counsel must provide the clerk with copies of any visual aids used in presentations to the jury **or during jury selection**, including PowerPoint, **videos, digitally projected photographs, spreadsheets** or other similar digital or electronic presentations. If a visual aid is oversized, a photograph of that visual aid must be provided in place of the original. For PowerPoint or other digital or electronic similar presentations, counsel must supply both a copy of the presentation in its native format, **including any audio or video played for the jury**, and printouts showing the full text of each slide **or image**.	In response to this and other comments, the working group has made several changes to the proposed amendments to rule 4.230, including: • Adding a proposed new subdivision clarifying that the requirements of existing rule 2.1040, regarding electronic recordings presented or offered into evidence, must be followed, including when such electronic recordings are incorporated with a PowerPoint or other digital or electronic presentation; • Clarifying the working group's intent that these requirements apply to audio as well as video aids; • Clarifying the working group's intent that these requirements apply to presentations made during jury selection; and • Clarifying that the photographs and printouts provided under this subdivision must not exceed 8 ½ by 11 inches in size.
Michael Ogul Deputy Public Defender Santa Clara County Public Defender	Rule 4.230(e): This provision should explicitly state, "This requirement applies to any visual aids used in any presentation at any time any juror is present, including jury selection, the taking of testimony, or presentation of any opening statements, closing arguments, or other arguments."	Please see the response to the comments of the Office of the State Public Defender above.

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Rules 4.230(e) and 8.610(a)(1)(Q) – Contents of the Record - Copies of Visual Aids		
Commenter	**Comment**	**Working Group Response**
	Rule 8.610(a)(1)(Q): As with Rule 4.230(e), above, this provision should explicitly state, "This requirement applies to any visual aids used in any presentation at any time any juror is present, including jury selection, the taking of testimony, or presentation of any opening statements, closing arguments, or other arguments."	To make the relationship between rule 4.230(f) and rule 8.610(a)(1)(Q) clearer, the working group has revised the latter to replace the description of the visual aids to be included with a reference to visual aids provided to the clerk under rule 4.230(f).
Superior Court of Los Angeles County	***Are any of the proposed additions to the clerk's transcript unnecessary?*** Yes as to item Q. If a visual aid it is not an exhibit to the case, the court shouldn't be required to track and account for it. All other documents and items listed, we currently provide.	In the experience of members of the working group, the types of visual aids described in proposed new rule 8.610(a)(1)(Q) are frequently needed for purposes of the appeal and must often be added to the record through augmentation motions. As noted in the invitation to comment, one of the general premises of the working group's recommendations is that it is preferable for necessary items to be included in the record early in the record preparation process. The working group therefore concluded that it would be preferable to include these visual aids in the record from the outset of the record preparation process, rather than requiring counsel and the court to identify that they are missing, file and rule on an augmentation motion, and add them to the record late in the record preparation process.
Superior Court of Orange County	**Rule 8.610:** Contents of the record	

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Rules 4.230(e) and 8.610(a)(1)(Q) – Contents of the Record - Copies of Visual Aids		
Commenter	**Comment**	**Working Group Response**
	The working group is proposing additions and clarifications to the specific list of items that rule 8.610 requires be included in the clerk's transcript in capital cases. Proposed additions to this list include: • Visual aids used in presentations to the jury; Comment: If this rule is to be implemented then a concurrent rule of court should be added to compel trial counsel to submit visual aids to the court in a format that can be easily printed on 8 ½ by 11 inch paper. ***Should any other items be included in the clerk's transcript?*** If visual aids used in presentations to the jury are to be included in the record on appeal, then an enforcement mechanism in the Rules of Court should be added to compel trial counsel to submit such to the clerk for filing.	As a companion to proposed rule 8.610(a)(1)(Q), the working group is proposing new rule 4.230(f), which would require counsel to supply these visual aids. The working group has modified proposed new rule 4.230(f) to specifically require that the photographs and printouts required under this rule must not exceed 8 ½ by 11 inches in size.
Superior Court of San Diego County Mike Roddy, Court Executive Officer	***Are any of the proposed additions to the clerk's transcript unnecessary?*** Visual aids used in presentations to the jury if never marked for identification seem unnecessary.	Please see the response to the comment of the Superior Court of Los Angeles County above.
Kristin Traicoff Attorney Sacramento, California	I believe one change needs to be made concerning the contents of the record on appeal. Proposed Rule 8.610(a)(1)(Q) proposes to include in the record all visual aids shown to the jury, including digital media such as PowerPoints. The relevant text of the proposed rule reads, "Any visual aids used in presentations to the jury,	The working group appreciates the commenter pointing out that what it is recommending be submitted to the court under rule 4.230 is not the same as what it is recommending be included in the clerk's transcript under 8.610(a)(1)(Q). The working group discussed this distinction and agrees that this is an issue that needs to be

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Rules 4.230(e) and 8.610(a)(1)(Q) – Contents of the Record - Copies of Visual Aids		
Commenter	**Comment**	**Working Group Response**
	including PowerPoint and other similar digital or electronic presentations. . . .For PowerPoint or other similar presentations, printouts showing the full text of each slide must be included." This differs, however, from what is requested from counsel in the proposed form "Capital Case Attorney Trial Checklist" where, at Task #4 on p. 1, it requires attorneys to provide the court with the following: "For PowerPoint or other similar digital or electronic presentations, provide the presentation in its native electronic format and a printout showing the full text of all slides." While the form requests counsel provide to the court electronic media in their native format, the proposed rule would not require the Clerk to make the native format part of the record on appeal. I believe this is erroneous and that electronic media must be included in their native format at part of the record on appeal, as a matter of course. Electronic versions of media such as PowerPoint presentations often contain elements that cannot be captured by paper printouts: animations, graphics, videos, and sound. Each of these may create an effect in the viewer (i.e., the factfinder) that prejudiced the defendant in a manner that would not be revealed by mere examination of the paper printouts alone: for example, a sentimental hymn being used as audio for a victim impact PowerPoint in the penalty phase, or an animated graphic of puzzle pieces magically fitting together on which the prosecutor relies when describing the reasonable doubt	addressed. However, currently, the clerk's transcript is structured as a compilation of paper documents; it is not structured to contain electronic or digital presentations in their native format. Modifying the rules to restructure the clerk's transcript or to establish a separate process for including these items in the record on appeal would be a major substantive change to the Rules of Court. Under rule 10.22, such substantive changes to the Rules of Court need to be circulated for public comment before being recommended to the Judicial Council for adoption. There is not sufficient time for the working group to consider, develop, and circulate another proposal in advance of when the working group has determined this proposal needs to be presented to the Judicial Council. In addition, this issue arises not only in capital cases, but also in non-capital criminal cases and civil cases as well, and thus the working group's view is that a comprehensive look at how this issue should be addressed is warranted. Therefore the working group recommends that this suggestion be considered by the appropriate Judicial Council advisory body or bodies at a later time.

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Rules 4.230(e) and 8.610(a)(1)(Q) – Contents of the Record - Copies of Visual Aids		
Commenter	**Comment**	**Working Group Response**
	standard in his guilt-phase closing argument. In short, the record should contain, to the fullest extent possible and at the very least, a faithful recreation of those items the factfinders received and considered in the course of the trial, including all aspects of digital media shown to them, as those elements may very well be material to a claim that the defendant is owed a new trial as a result of prejudicial errors. Proposed Rule 8.610(a)(1)(Q) should therefore be amended to include all language at Task #4 of the proposed "Capital Case Attorney Trial Checklist."	

Rules 8.610(a) and 8.622(a)(1)(A) – Contents of the Record - Inclusion of Exhibits in the Clerk's Transcript		
Commenter	**Comment**	**Working Group Response**
California Lawyers Association Committee on Appellate Courts, Litigation Section Saul Bercovitch, Director of Governmental Affairs Kelly Woodruff San Francisco, California	The Committee[] believes the proposed changes regarding inclusion of documentary exhibits in the clerk's transcript are not sufficient and do not advance the stated purpose of streamlining the record preparation and certification process. The Working Group proposes to amend Rule 8.622 to provide that, after delivery of the record to defendant's appellate counsel, any party may request that documentary exhibits admitted, refused, or lodged in the trial court be added to the record. The proposal, however, would require the requesting party to provide a justification for including any documentary exhibits in the record. The Committee	Please see the discussion of this topic in the body of the report. The committee considered all of the comments received on this issue and, by an extremely close vote, it was decided to recommend adoption of the proposed amendments to rule 8.622(a)(1)(A) as circulated for public comment. It is anticipated, however, that the working group will consider other ways to potentially address at least one of the concerns that commenters suggested warranted including all documentary exhibits in the clerk's transcript – how best to facilitate state habeas corpus counsel's access to exhibits.

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Rules 8.610(a) and 8.622(a)(1)(A) – Contents of the Record - Inclusion of Exhibits in the Clerk's Transcript		
Commenter	**Comment**	**Working Group Response**
	strongly believes that all documentary exhibits should automatically be included in the record at the outset and no justification should be required. We note that the Working Group had considered making it automatically permissive or even mandatory to include documentary exhibits in the record, but ultimately concluded that "requiring a justification for inclusion of exhibits in the record on appeal was preferable because inclusion of exhibits that are not relevant to the issues on appeal would make these records even larger, increasing record review time and storage costs." (Invitation to Comment, p. 9.) The Committee believes that the alternative proposal considered by the Working Group is far preferable to the proposed changes to Rule 8.622. As the Working Group noted, the proposed overhaul of the rules governing record preparation in death penalty cases is based on two main premises: (1) it is more efficient for necessary items to be identified and included in the record from the outset, and (2) the trial courts and trial counsel are in the best position during and immediately after proceedings to identify and include necessary items in the record. (Invitation to Comment, p. 4.) Both of these premises should lead to a rule that includes all documentary evidence in the record at the outset. It is reasonable to assume that all documentary exhibits offered in evidence at trial were considered relevant by at least one of the parties. Therefore, it would be much	

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Rules 8.610(a) and 8.622(a)(1)(A) – Contents of the Record - Inclusion of Exhibits in the Clerk's Transcript		
Commenter	**Comment**	**Working Group Response**
	more efficient to have all such exhibits included automatically in the record rather than requiring a party to file an inevitable request to add exhibits to the record and requiring the trial court to hold a hearing to address the issue. While including all documentary exhibits in the record at the outset may increase the size of the record, it will not increase record review time as appellate counsel will need to review all documentary exhibits regardless to determine whether to request that any exhibits be added to the record. Further, trial courts and trial counsel are in the best position to ensure that all documentary exhibits admitted, refused, or lodged are included, and that none inadvertently get overlooked. Trial counsel should not be tasked with the responsibility of determining what exhibits may or may not be relevant to issues on appeal or in habeas proceedings; appellate counsel with expertise in making those determinations should have the final say. However, requiring appellate (and habeas) counsel to determine what exhibits may be relevant to issues on appeal or habeas shortly after getting the record is unrealistic, and potentially raises due process issues for the defendant. If exhibits are not automatically made part of the record initially, Appellate (and habeas) counsel may not recognize that a particular exhibit is relevant and may overlook an opportunity to raise an issue on appeal or investigate a claim on habeas. Further, if new evidence comes to light later (sometimes many years later), it can be difficult, if not impossible, to locate the trial exhibits. This is especially important in capital	

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Rules 8.610(a) and 8.622(a)(1)(A) – Contents of the Record - Inclusion of Exhibits in the Clerk's Transcript		
Commenter	**Comment**	**Working Group Response**
	cases where someone's life is at stake. The Committee therefore recommends adding "any exhibit admitted in evidence, refused, or lodged that is a document in paper or electronic format" to Rule 8.610 governing the contents of the record. Alternatively, the Committee recommends deleting "The requesting party must state the reason that the exhibit needs to be included in the clerk's transcript" from the proposed new subsection (A) to Rule 8.622(a)(1). We appreciate your consideration of the Committee's comments. Please do not hesitate to contact us if you have questions or would like to discuss these comments further.	
Michele Hanisee Deputy District Attorney Los Angeles County District Atty	**Exhibits** Documentary exhibits should be part of the record on appeal and available to appellate counsel, as should any non-documentary exhibits, upon a showing that they are necessary to the appeal. Exhibits (particularly defense exhibits) that are not received because the court denied a request should be lodged with the court as a court's exhibit, to make a record.	Please see the response to the comment of the California Lawyers Association above.
Virginia C. Lindsay Senior Staff Attorney California Appellate Project San Francisco, California	***Should any other items be included in the clerk's transcript?*** All documentary exhibits should be included in the record and reproduced for use during the appeal. It would be more efficient to simply include them rather	Please see the response to the comment of the California Lawyers Association above.

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Rules 8.610(a) and 8.622(a)(1)(A) – Contents of the Record - Inclusion of Exhibits in the Clerk's Transcript		
Commenter	**Comment**	**Working Group Response**
	than require their inclusion be specifically justified. The exhibits are necessary to understand the testimony set out in the reporters' transcripts. The number of such exhibits in most cases is relatively small and in any case, they are a necessary part of the record on appeal. ***Should counsel be required to provide a justification for requesting that documentary exhibits be included in the clerk's transcript at the certification for accuracy stage and, if so, should the rule include more specifics about what needs to be shown to justify such a request?*** Defense counsel will need to examine each and every exhibit in order to rule out or identify appellate issues. S/he will often need copies of the exhibits to understand the testimony of witnesses. Sometimes the need for an exhibit does not become clear until a legal issue is partially developed. The need to obtain copies of exhibits during the briefing process leads to substantial delays in the filing of opening briefs. To the extent that exhibits can be easily photocopied, it will be most efficient to automatically include them in the record without requiring justification.	
Office of the State Public Defender Mary K. McComb, State Public Defender Oakland, California	**Documentary exhibits, rule 8.610(a).** We think that written and electronic exhibits should be included in the clerk's transcript in all death penalty appeals. Frequently, documentary exhibits are critical to issues in post-conviction litigation. As presently written, revised proposed rule 8.610(a) does not specify that documentary or electronic exhibits be included in the clerk's transcript. Instead, the inclusion of exhibits in the	Please see the response to the comment of the California Lawyers Association above.

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Rules 8.610(a) and 8.622(a)(1)(A) – Contents of the Record - Inclusion of Exhibits in the Clerk's Transcript		
Commenter	**Comment**	**Working Group Response**
	record is a discretionary choice made by the trial court. Revised proposed rule 8.622(a)(l) provides that any party "may" request that exhibits be added to the record and requires that the request include a statement of "the reasons that the exhibit needs to be included in the clerk's transcript." Including all documentary and electronic exhibits in the clerk's transcript does create some additional work for the clerk in the initial production of the record. However, in the long run, it will provide a net benefit to the efficient and orderly review of the typical case. First, each reviewing court will have easy access to, and a ready ability to reference, the exhibits. Second, state habeas counsel (and federal habeas counsel if the case proceeds on) will also have efficient access to the exhibits. Third, many times the reason that an exhibit needs to be in the record is not apparent at the time of initial record production and only becomes clear later. Given that both state habeas counsel and the reviewing courts will be under intense time pressure as a result of the Proposition 66 deadlines, the elimination of the time and effort necessary to track down exhibits later in post-conviction litigation will be of benefit to all parties and the system as a whole and may ultimately reduce the overall demands on the trial court clerk, who will not have to locate and add exhibits to the record years after the judgement was entered.	

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Criminal and Appellate Procedure: Record Preparation in Death Penalty Cases (Amend Cal. Rules of Court, rules 8.610, 8.613, 8.616, 8.619, and 8.622; adopt rules 4.119, 4.230, 8.608, and 8.611; repeal rule 8.625; adopt forms CR-600 and CR-605; and approve forms CR-601, CR-602, CR-603, and CR-604)

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Rules 8.610(a) and 8.622(a)(1)(A) – Contents of the Record - Inclusion of Exhibits in the Clerk's Transcript		
Commenter	**Comment**	**Working Group Response**
	Consequently, we believe that revised proposed rule 8.610(a) should include all documentary and electronic exhibits, whether admitted, lodged, or rejected, as a standard item included in the clerk's transcript.	
Michael Ogul Deputy Public Defender Santa Clara County Public Defender	In regards to the question whether copies of the exhibits should automatically be included in the Clerk's Transcript, I recommend that all exhibits should be included in the Clerk's Transcript without requiring any justification from trial counsel unless the exhibit was withdrawn. The mere fact they were offered or admitted should be sufficient by itself because, by definition, it would then pertain to potential issues that are cognizable on appeal (i.e., either the particular exhibit is part of the evidence or its exclusion is an issue itself). **Rule 8.622(1)(A):** Delete the 4th sentence: "The requesting party must state the reason that the exhibit needs to be included in the clerk's transcript." Or modify it to read "If the exhibit was neither offered nor admitted in evidence, the requesting party must state the reason that the exhibit needs to be included in the clerk's transcript."	Please see the response to the comment of the California Lawyers Association above.
Superior Court of Los Angeles County	***Should counsel be required to provide a justification for requesting that documentary exhibits be included in the clerk's transcript at the certification for accuracy stage and, if so, should the rule include more specifics about what needs to be shown to justify such a request?*** Requiring a justification would be helpful.	Please see the response to the comment of the California Lawyers Association above.

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Rules 8.610(a) and 8.622(a)(1)(A) – Contents of the Record - Inclusion of Exhibits in the Clerk's Transcript		
Commenter	**Comment**	**Working Group Response**
Superior Court of Orange County	**Rule 8.622:** The working group is also proposing that rule 8.622 be amended to provide that, at the time the record is reviewed for accuracy, counsel could request that copies of particular documentary exhibits be included in the clerk's transcript. Currently, rule 8.610(a)(3) provides that all exhibits are considered part of the record on appeal, but that they may only be transmitted to the court at the time oral argument is set, which is after all briefing is completed. The proposed amendment would allow copies of key documentary exhibits to be included in the clerk's transcript, making it easier for counsel to cite to these exhibits in their briefs. The working group would particularly appreciate comments about whether counsel should be required to provide a justification for requesting that documentary exhibits be included in the clerk's transcript at the certification for accuracy stage and, if so, whether the rule should include more specifics about what needs to be shown to justify such a request. Comment: If added then the trial courts will be stuck with increasing costs. For this, and other reasons: 1. The rule should not be mandatory but rather discretionary with the final say resting with the judge. 2. Counsel should be obligated to provide a justification which goes beyond mere convenience. 3. Counsel should be obligated to pinpoint exactly only the relevant portions of the exhibit to be included.	Please see the response to the comment of the California Lawyers Association above.

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Rules 8.610(a) and 8.622(a)(1)(A) – Contents of the Record - Inclusion of Exhibits in the Clerk's Transcript		
Commenter	**Comment**	**Working Group Response**
	Should counsel be required to provide a justification for requesting that documentary exhibits be included in the clerk's transcript at the certification for accuracy stage and, if so, should the rule include more specifics about what needs to be shown to justify such a request? Yes. Appellate counsel is now in the habit of requesting that all documentary exhibits be included in the record on appeal despite the Rules of Court already deeming those exhibits as included. Appellate counsel does not request these items for completeness and accuracy reasons; rather, their argument is one of convenience. What is convenient for them is not convenient for the court staff nor is it friendly towards trial court budgets. More often nowadays, cell phone records are introduced at trial as documentary exhibits. This could constitute between 300 and 1,000 pages. Dumping just one exhibit into the record could then add 2,700 or 9,000 pages, as nine copies of the record on appeal are required. Thus, these types of requests expand the record on appeal almost exponentially from the trial court's perspective. If trial counsel is to be given the authority to request documentary exhibits for inclusion in the record on appeal, then three things should be required. First, a court should retain discretion as to whether to add the documentary exhibits; that is, the rule should not be mandatory. Second, the party requesting inclusion should provide pinpoint requests and not simply request	

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Rules 8.610(a) and 8.622(a)(1)(A) – Contents of the Record - Inclusion of Exhibits in the Clerk's Transcript		
Commenter	**Comment**	**Working Group Response**
	that a large documentary exhibit be added. There is no reason why counsel cannot request that some pages be added rather than all. Third, counsel requesting the inclusion of documentary exhibits should be required to provide a justification as to why the exhibit or portions of the exhibit is relevant that goes beyond for their own convenience. Proposition 66 did not provide additional funding to the trial courts and adding documentary exhibits will increase costs to the trial courts.	
Superior Court of San Diego County Mike Roddy, Court Executive Officer	***Should counsel be required to provide a justification for requesting that documentary exhibits be included in the clerk's transcript at the certification for accuracy stage and, if so, should the rule include more specifics about what needs to be shown to justify such a request?*** Yes	Please see the response to the comment of the California Lawyers Association above.

Rule 8.610. Contents and Form of the Record - Other		
Commenter	**Comment**	**Working Group Response**
Criminal Justice Legal Foundation Kent Scheidegger, Legal Director Sacramento, California	With regard to the contents and length of the record, it is surprising that the proposal would reenact a notorious deficiency of the present system. Existing Rule 8.610(a)(1)(P), to be renumbered (V) in the proposal, requires inclusion in the record of "each juror questionnaire, whether or not the juror was selected." In a capital case, a large number of venire members	The working group appreciates this suggestion. Under rule 10.22, substantive changes to the Rules of Court need to be circulated for public comment before being recommended to the Judicial Council for adoption unless they are minor changes that are unlikely to create controversy. It is the understanding of working group members that the questionnaires of all potential jurors are

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Rule 8.610. Contents and Form of the Record - Other		
Commenter	**Comment**	**Working Group Response**
	(incorrectly called "jurors" in the present language) may be summoned and fill out questionnaires. The total can be voluminous, but the questionnaires of venire members who never made it to voir dire are irrelevant. The proposal would merely move the present language to new paragraph (R) without change. The questionnaires of seated jurors and members of the venire who were challenged or excused over objection matter. The questionnaires of those who never made it to the box do not. The length of the record and the resulting alterations in deadlines should not depend on the inclusion of voluminous, irrelevant material. Paragraph (R) should be changed to include only possibly relevant questionnaires.	sometimes relevant to issues on appeal, such as challenges to the denial of a change of venue. Therefore, the working group's view is that eliminating the current requirement that all juror questionnaires be included in the clerk's transcript would not meet rule 10.22's standard of being an uncontroversial minor change and thus would need to be circulated for public comment before potentially being recommended for adoption. There is not sufficient time for the working group to consider, develop, and circulate another proposal in advance of when the working group has determined this proposal needs to be presented to the Judicial Council. Therefore the working group recommends that this suggestion be considered by the appropriate Judicial Council advisory body or bodies at a later time.
Virginia C. Lindsay Senior Staff Attorney California Appellate Project San Francisco, California	**Better identifying what items must be included in the record** This will result in increased efficiency, without doubt. Defense motions, proposed jury instructions, powerpoints used during arguments, documentary exhibits, expert resumes, emails, psych reports and juror information are all documents which somehow are often not included in the ROA, even though they are present in the court file. The additions to the rules listing these items and the use of forms for motions and jury instructions will all make the process of record correction more efficient. The rules should be further clarified to prohibit trial courts from lumping juror questionnaires into court	The working group acknowledges the commenter's support for these proposed changes. The working group appreciates this suggestion. Under rule 10.22, substantive changes to the Rules of Court

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Rule 8.610. Contents and Form of the Record - Other		
Commenter	**Comment**	**Working Group Response**
	exhibits. This is done to avoid the need to itemize the questionnaires in the CT index. This results in delays in reviewing the record and preparing the opening brief, because it makes it very difficult to locate relevant questionnaires. Each questionnaire should be individual listed in the CT index in every case. The proposed changes are not effective in terms of insuring they are properly indexed. ***Are any of the proposed additions to the clerk's transcript unnecessary?*** The suggested additions will all help to make appellate record correction proceedings more efficient.	need to be circulated for public comment before being recommended to the Judicial Council for adoption unless they are minor changes that are unlikely to create controversy. Adding new requirements for the format of the clerk's transcript would not be an uncontroversial minor change and thus would need to be circulated for public comment. There is not sufficient time for the working group to consider, develop, and circulate another proposal in advance of when the working group has determined this proposal needs to be presented to the Judicial Council. Therefore the working group recommends that this suggestion be considered by the appropriate Judicial Council advisory body at a later time.
Michael Ogul Deputy Public Defender Santa Clara County Public Defender	Rule 8.610(a)(2)(N): This subdivision should be expanded to read: "The oral proceedings on any motion in addition to those listed above, including a motion for modification of a death sentence pursuant to Penal Code section 190.4(e);"	The working group declined to make this suggested change. In the experience of working group members, the oral proceedings on motions for modification of a death sentence under Penal Code section 190.4(e) are already generally included in the reporter's transcript under either current 8.610(a)(2)(N) or (O) so it does not seem necessary to modify the rule to specifically identify the oral proceedings on these motions as needing to be included in this transcript.
Superior Court of Orange County	**Rule 8.610:** **Contents of the record** The working group is proposing additions and clarifications to the specific list of items that rule 8.610 requires be included in the clerk's transcript in capital cases. Proposed additions to this list include:	

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Rule 8.610. Contents and Form of the Record - Other		
Commenter	**Comment**	**Working Group Response**
	• Court-ordered diagnostic or psychological reports required under Penal Code section 1369; Comment: This is already included in the record as standard operating procedure. Not necessary. • The table correlating juror's names and identifying numbers; and Comment: Already included in the record as standard operating procedure. Not necessary. • Documents filed or lodged under Penal Code sections 987.9 or 987.2. Comment: Already included in the record as standard operating procedure. Not necessary. ***Are any of the proposed additions to the clerk's transcript unnecessary?*** Yes. Documents filed or lodged under Penal Code 987 are already necessary to include in the record when they exist. The same is true with a table correlating juror's names and identifying numbers. Court ordered diagnostic or psychological reports are already included in the record on appeal.	The working group appreciates that this commenter and likely other courts do regularly include these items in the record on appeal in capital cases. However, in the experience of members of the working group and, as evidenced by some of the other comments, not all courts are clear that these items should be included in the record. Amending the rule to clarify that these items should be included in the record will help ensure that more complete records are prepared from the outset in all capital cases.
Superior Court of San Diego County Mike Roddy, Court Executive Officer	***Should any other items be included in the clerk's transcript?*** No	The working group appreciates this input.

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Rule 8.611. Juror-Identifying Information		
Commenter	**Comment**	**Working Group Response**
Office of the State Public Defender Mary K. McComb, State Public Defender Oakland, California	**Contact information of jurors, rule 8.611(b).** Proposed rule 8.611 implements Code of Civil Procedure section 237. That code section requires the clerk to remove juror information from the record but retain it under seal. The proposed rule requires the clerk to delete the juror information but omits the need to retain the information under seal, potentially causing confusion or inconsistency with CCP 237. Thus, we suggest adding subdivision (b)(3) to clarify: "The names, addresses and numbers of trial jurors and alternates sworn to hear the case shall be retained under seal until further order of the court."	Proposed new rule 8.611(b)(2), which is modeled on existing rule 8.322, addresses Code of Civil Procedure section 237's requirement by providing that "[t]he superior court clerk must prepare and keep under seal in the case file a table correlating the jurors' names with their identifying numbers." The working group's view is that this language is sufficient.
Superior Court of Orange County	**Rule 8.610(c):** ***New rule regarding juror-identifying information.*** Rule 8.610(c) currently contemplates that courts will comply with the requirements of rule 8.332, which addresses the removal of juror-identifying information from the record on appeal in noncapital felony cases. However, rule 8.332 does not clearly apply in capital cases**.** To prevent any confusion, the working group is proposing the adoption of new rule 8.611, which would specifically address the removal of juror- identifying information in the record on appeal in capital cases. Comment: This is a training issue for the judicial council to work with the trial courts on. It does not need a new rule of court.	The working group's view is that having a rule that specifically addresses this topic in the context of capital cases will make the clerk's duties clearer.

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Rules 8.613(f)(3), 8.619(a)(2) and 8.622(a)(3) – Meet and Confer Requirements		
Commenter	**Comment**	**Working Group Response**
Michele Hanisee Deputy District Attorney Los Angeles County District Atty	**Joint request for corrections / Meet and Confer** Counsel should also be permitted meet and confer to occur via email. That way the attorneys can communicate even if their daily schedules prevent them from speaking directly.	In response to this and other comments, the working group has deleted the reference to counsel meeting, so that the rules now require only that counsel confer. The working group has also removed the requirement that this take place in person or by telephone. This leaves counsel the discretion to determine the most effective mechanism for conferring.
Virginia C. Lindsay Senior Staff Attorney California Appellate Project San Francisco, California	***Will it be helpful for counsel to meet and confer during the process of certifying the record of the pretrial proceedings, certifying the trial record for completeness, and certifying the trial record for accuracy?*** It will differ from case to case. Such meetings are best left informal. State-wide micromanaging is not desireable. ***When should the meet-and-confer process take place at each of these stages?*** It depends on the specifics of each case.	The working group believes that a requirement that counsel confer is likely to expedite the record correction process by encouraging agreements regarding some corrections or additions to the record and so has maintained this requirement in the proposal. However, as noted in the response to the comments of Michele Hanisee above, the working group has deleted the reference to counsel meeting, so that the rules now require only that counsel confer, and has also removed the requirement that this take place in person or by telephone. This leaves counsel the discretion to determine the most effective mechanism for conferring.
Los Angeles County Public Defender Jennifer Friedman, Deputy Public Defender IV	**Meet and confer procedure.** This may or may not be productive depending on the dynamics of the relationship between trial counsel and the prosecutor. In some cases, it may actually add to the time it will take to settle the record. Additionally, as a practical matter trial counsel does not have the time to meet and confer during the trial or preparation phase.	The working group acknowledges that the relationship between defense counsel and the prosecutor shortly after the imposition of a death sentence may be difficult. However, Penal Code section 190.8(d) establishes deadlines for correcting and certifying the record for completeness, which require that the trial record be reviewed by trial counsel shortly after the imposition of a

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Rules 8.613(f)(3), 8.619(a)(2) and 8.622(a)(3) – Meet and Confer Requirements		
Commenter	**Comment**	**Working Group Response**
	Additionally, even if counsel were to meet and confer, the trial court will still be required to have a hearing to reconcile disagreements between trial counsel and the prosecutor. It is unlikely this provision will save the court any time. A meet and confer will clearly require more time of counsel and still require the Court to rule on the requested corrections.	death sentence. The proposed requirement that counsel confer is intended to improve the efficiency of this required process by encouraging discussion and possible agreements regarding some corrections or additions to the record. The working group has therefore maintained this requirement in the proposal. However, as noted in the response to the comments of Michele Hanisee above, the working group has deleted the reference to counsel meeting, so that the rules now require only that counsel confer, and has also removed the requirement that this be in person or by telephone. This leaves counsel the discretion to determine the most effective mechanism for conferring.
Office of the State Public Defender Mary K. McComb, State Public Defender Oakland, California	**Meet and confer requirement, proposed rule 8.622(a)(3).** The parties should be able to fulfill the meet and confer requirement by any means they deem effective and efficient. Thus we recommend the following addition to rule 8.622(a)(3)(addition in bold): "... defendant's appellate counsel and the trial counsel from the prosecutor's office must meet and confer, in person, by telephone, **or by any other means of electronic communication,** to discuss . . .	In response to this and other comments, the working group has deleted the reference to counsel meeting, so that the rules now require only that counsel confer, and has also removed the requirement that this be in person or by telephone. This leaves counsel the discretion to determine the most effective mechanism for conferring.
Michael Ogul Deputy Public Defender Santa Clara County Public Defender	I strongly disagree with the proposal to impose "meet and confer requirements". Having successfully convinced the prosecution to drop the death penalty in well over 20 capital cases, I entirely agree with the need to get along with opposing counsel whenever possible. However, the	See response to the comments of the Los Angeles County Public Defender above

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Rules 8.613(f)(3), 8.619(a)(2) and 8.622(a)(3) – Meet and Confer Requirements		
Commenter	**Comment**	**Working Group Response**
	meet and confer requirements would apply only during the record correction process—only after a death sentence has been pronounced by the jury—when any defense counsel who genuinely cares about their client will not want to meet and confer with the prosecutor who obtained a death verdict against that client. Death penalty litigation is not ordinary litigation. No attorney should represent a death penalty defendant unless that attorney understands that person's humanity and genuinely cares about that client. No attorney can possibly understand the mitigating circumstances about their client's life or be able to present them to a capital jury unless that attorney has taken the time and made the effort to understand their client's life history, including having spent hundreds of hours with their client. And any attorney who has suffered a death sentence is not going to simply forget that this very same prosecutor has produced a death sentence against that client, and then be at their productive best in a personal meeting with that prosecutor. If anything, any such meeting should be limited to electronic communications. **Rule 8.613(f)(3):** I object to this subdivision in its entirety. It should be deleted. Alternatively, the requirement should be satisfied through electronic communication, by changing the provision to read: "…trial counsel must meet and confer, in person, by telephone, or through e-mail or other electronic communication, …."	

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Rules 8.613(f)(3), 8.619(a)(2) and 8.622(a)(3) – Meet and Confer Requirements		
Commenter	**Comment**	**Working Group Response**
	Rule 8.619(b)(1)(A): Please delete "including meeting and conferring with opposing counsel;" Alternatively, the requirement should be satisfied through electronic communication, by changing the provision to read: "…trial counsel must meet and confer, in person, by telephone, or through e-mail or other electronic communication, …." **Rule 8.622(a)(3):** Please delete this subdivision entirely. Alternatively, the requirement should be satisfied through electronic communication, by changing the provision to read: "…trial counsel must meet and confer, in person, by telephone, or through e-mail or other electronic communication, …." **Form CR-600, box 7, Meet and confer:** Delete this box entirely. Alternatively, the requirement should be satisfied through electronic communication, by changing the provision to read: "…trial counsel must meet and confer, in person, by telephone, or through e-mail or other electronic communication, …." **Form CR-605, box 9 (page 3):** Delete this box entirely.	

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Rules 8.613(f)(3), 8.619(a)(2) and 8.622(a)(3) – Meet and Confer Requirements		
Commenter	**Comment**	**Working Group Response**
	Alternatively, the requirement should be satisfied through electronic communication, by changing the provision to read: "…trial counsel must meet and confer, in person, by telephone, or through e-mail or other electronic communication, …."	
Superior Court of Los Angeles County	***Will it be helpful for counsel to meet and confer during the process of certifying the record of the pretrial proceedings, certifying the trial record for completeness, and certifying the trial record for accuracy?*** Yes.	The working group acknowledges the commenter's support for this requirement. Please see the response to the comments of Michele Hanisee above for changes the working group made to this aspect of the proposal.
Superior Court of Orange County	***Will it be helpful for counsel to meet and confer during the process of certifying the record of the pretrial proceedings, certifying the trial record for completeness, and certifying the trial record for accuracy?*** It should be understood, that based on experience, trial counsel is reluctant to participate in record correction and accuracy proceedings.	The working group acknowledges that the relationship between defense counsel and the prosecutor shortly after the imposition of a death sentence may be difficult. However, Penal Code section 190.8(d) establishes deadlines for correcting and certifying the record for completeness, which require that the trial record be reviewed by trial counsel shortly after the imposition of a death sentence. The proposed requirement that counsel confer is intended to improve the efficiency of this required process by encouraging discussion and possible agreements regarding some corrections or additions to the record. The working group has therefore maintained this requirement in the proposal.
Superior Court of San Diego County Mike Roddy, Court Executive Officer	***Will it be helpful for counsel to meet and confer during the process of certifying the record of the pretrial***	

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Rules 8.613(f)(3), 8.619(a)(2) and 8.622(a)(3) – Meet and Confer Requirements		
Commenter	**Comment**	**Working Group Response**
	proceedings, certifying the trial record for completeness, and certifying the trial record for accuracy? It should only be required if any of counsel fail to serve and file a declaration of task performed, stating the transcripts, minute orders, and court file were reviewed and then detail all request for additions or corrections. ***When should the meet-and-confer process take place at each of these stages?*** If any additions or corrections are requested at any stage.	Please see the response to the comments of the Superior Court of Orange County above. This suggested timing would be very difficult at the preliminary proceedings and certification for completeness phases because the judge has only 30 days to review all requests for correction and to certify the record, so there is little time for additional input from counsel. The working group therefore did not modify the proposed timeframe for the meet and confer in these phases of the record preparation process.

Rules 8.613(g)(1)(C), 8.619(b)(1)(C), and 8.622(a)(1)(A) – Joint Statements/Requests for Corrections		
Commenter	**Comment**	**Working Group Response**
Michele Hanisee Deputy District Attorney Los Angeles County District Atty	**Joint request for corrections / Meet and Confer** The parties should each have to file a motion in which they delineate which corrections are agreed upon, and which are not.	The working group declined to add a requirement for a motion. Counsel can indicate either in separate or joint requests for corrections what corrections are and are not agreed upon.

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Criminal and Appellate Procedure: Record Preparation in Death Penalty Cases (Amend Cal. Rules of Court, rules 8.610, 8.613, 8.616, 8.619, and 8.622; adopt rules 4.119, 4.230, 8.608, and 8.611; repeal rule 8.625; adopt forms CR-600 and CR-605; and approve forms CR-601, CR-602, CR-603, and CR-604)

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Rules 8.613(g)(1)(C), 8.619(b)(1)(C), and 8.622(a)(1)(A) – Joint Statements/Requests for Corrections		
Commenter	**Comment**	**Working Group Response**
Virginia C. Lindsay Senior Staff Attorney California Appellate Project San Francisco, California	***Should counsel be required, rather than encouraged, to submit a joint request for corrections or additions to the record rather than separate requests?*** This is a ridiculous proposal. Prop 66 did not abolish the adversarial system.	The working group's view is that even within adversarial processes, parties on opposite sides may agree on issues. An optional joint request for corrections is simply a vehicle for conveying to the court if there is agreement on items to be corrected in the record.
Michael Ogul Deputy Public Defender Santa Clara County Public Defender	Likewise, counsel should not be required to submit joint requests for corrections to the reporter's or clerk's transcript. If opposing counsel agrees with the requests submitted by the other party, they can say that. But insisting upon or even formally encouraging such joint requests is not appropriate after a death sentence due to the realities of the tolls of the litigation. **Rule 8.613(g)(1)(C):** I suggest this subdivision should be modified to read as follows: "The requirement of this subdivision may be satisfied by a joint statement or request filed by counsel for all parties." **Rule 8.619(b)(1)(C):** As with Rule 8.613(g)(1)(C), above, this subdivision should be modified to read as follows: "The requirement of this subdivision may be satisfied by a joint statement or request filed by counsel for all parties."	The working group has modified the proposal consistent with the commenter's suggestion to more neutrally indicate that a joint statement or request may be submitted.

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Rules 8.613(g)(1)(C), 8.619(b)(1)(C), and 8.622(a)(1)(A) – Joint Statements/Requests for Corrections		
Commenter	**Comment**	**Working Group Response**
Superior Court of Los Angeles County	***Should counsel be required, rather than encouraged, to submit a joint request for corrections or additions to the record rather than separate requests?*** No. The efficacy of requiring a joint request may be limited, since appellate counsel often ask for changes that are not part of the record.	The working group has modified the proposal to more neutrally indicate that a joint statement or request may be submitted.
Superior Court of Orange County	***Should counsel be required, rather than encouraged, to submit a joint request for corrections or additions to the record rather than separate requests?*** No. In our experience, the District Attorney or Attorney General very rarely submit a list of corrections as thorough as defense trial or appellate counsel. The bulk of corrections come from appellate counsel and a joint request is likely to add delay.	The working group has modified the proposal to more neutrally indicate that a joint statement or request may be submitted.
Superior Court of San Diego County Mike Roddy, Court Executive Officer	***Should counsel be required, rather than encouraged, to submit a joint request for corrections or additions to the record rather than separate requests?*** No	The working group has modified the proposal to more neutrally indicate that a joint statement or request may be submitted.

Rules 8.613(g), 8.619(b)(1)(C), and 8.622(a)(1)(A) – Necessity to Seek Correction of Immaterial Typographical Errors		
Commenter	**Comment**	**Working Group Response**
Virginia C. Lindsay Senior Staff Attorney	Corrections of typographical errors, <u>especially of all proper nouns and all numbers</u>, are crucial to enable	The inclusion of the proposed language regarding typographical errors is intended to track Penal Code

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Rules 8.613(g), 8.619(b)(1)(C), and 8.622(a)(1)(A) – Necessity to Seek Correction of Immaterial Typographical Errors		
Commenter	**Comment**	**Working Group Response**
California Appellate Project San Francisco, California	appellate counsel to conduct electronic searches of the record on appeal, which is how lawyers work these days. Fortunately, there are fewer and fewer typographical errors because of the use of computers with spell check. I have even seen cases where there was not one typographical error in the ROA. Given the ease with which errors can be corrected – at the stroke of a key -- the emphasis on restricting typographical corrections is a throwback to another century. It is an insult to the professionalism of court staff to say that typographical errors are okay, when they can easily avoid them. It is more efficient to correct spelling errors because it enables accurate digital searches of the record on appeal, rather than forcing counsel to spend hours scanning each page of the record.	section 190.8(c), which provides that "[c]orrections to the record shall not be required to include immaterial typographical errors that cannot conceivably cause confusion." In response to this and other comments, the working group has modified the proposed rule language to provide only that immaterial typographical errors that cannot conceivably cause confusion are not required to be brought to the court's attention. This will permit counsel to bring to the court's attention errors, such as the spelling of witness names that are important to correct for reasons other than potential confusion, such as facilitating ease of searching, while still making clear that not all typographical errors need to be brought to the court's attention. While court reporters can easily correct such errors, it still takes counsel, court, and court reporter time and resources to identify, rule on, and make requested corrections.
Office of the State Public Defender Mary K. McComb, State Public Defender Oakland, California	**Modification of language to include search functions, rule 8.622(a)(l)(A)** Most obvious typographical errors do not cause confusion but some may undermine the ability to conduct full text searches. For example, the incorrect or inconsistent spelling of a proper name, not uncommon, undermines the ability to electronically search for references to that individual. Such errors should be corrected when detected. We offer the following modification of a sentence in proposed revised rule 8.622(a)(l)(A)(addition in bold): "Immaterial typographical errors that cannot conceivably cause confusion **or hinder the ability of a party to perform**	Please see the response to the comments of Virginia C. Lindsay, above.

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Rules 8.613(g), 8.619(b)(1)(C), and 8.622(a)(1)(A) – Necessity to Seek Correction of Immaterial Typographical Errors		
Commenter	**Comment**	**Working Group Response**
	an electronic search of the record are not required to be brought to the court's attention or corrected."	

Rules 8.619(b)(2) and (c)(7) and 8.622(a)(4) and (b)(4) –Extensions of Time to Review and Certify the Record		
Commenter	**Comment**	**Working Group Response**
Criminal Justice Legal Foundation Kent Scheidegger, Legal Director Sacramento, California	The background information notes on page 3 that under current law, "[u]nless an extension of time is granted, the court is required to certify the record for accuracy no later than 120 days after the record was delivered to appellate counsel." Yet, on page 4, it is noted that a third of the present delay "on average, approximately two years, elapses between the appointment of appellate counsel and the filing of the record." Few, if any, other states tolerate such long delays. The problem must be approached with the clear-eyed understanding that needless delay has become routine, whether through negligence or malice, and courts have failed to put a sufficient priority on timeliness to stop it. Proposed Rules 8.619(b)(2) and 8.622(a)(4) provide automatic extensions of time for correction requests for cases with long records for the completeness and accuracy certifications, respectively. That is not a problem in itself, provided the issue of unduly inflated records is addressed, as discussed below, but then other rules make even the extended limit a mirage.	The working group is recommending changes to the rules with the intent of trying to reduce the need for corrections, and thus the time spent on the certification for accuracy process. However, as a general matter, the working group notes that the bulk of the time that elapses during the overall record preparation process is not during this process nor during the certification for completeness, during which the extensions addressed by the commenter may occur, but after certification for completeness has been completed and before the process for certification for accuracy can begin because appointment of appellate counsel is pending. The recommended changes to these rules are intended to reduce counsel and court time spent on preparing and ruling on requests for extension that, under the existing statutes and rules, are recognized as warranted. This should free up counsel and court time and resources to work on other important aspects of these cases.

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Rules 8.619(b)(2) and (c)(7) and 8.622(a)(4) and (b)(4) –Extensions of Time to Review and Certify the Record		
Commenter	**Comment**	**Working Group Response**
	Rules 8.619(e)(1) and 8.622(d)(1) grant open-ended authority to the court to grant extensions of time. The standard for an extension is only the minimal "good cause." The proposed changes to Rules 8.619(c)(7) and 8.622(b)(4) then start the clock for the court's deadline at the date of the last change. With no overall cap, the trial court is empowered to extend its own deadline indefinitely by granting overly generous extensions to counsel. The wording also fails to specify a deadline if counsel does not make a correction or makes it after the time set by the court. In short, the present system of deadlines is too loose, and the proposal makes it even looser instead of tightening it up. Penal Code section 1239.1, subdivision (a) indicates the kind of language that is in order here. The section applies to briefs in the Supreme Court, but the record completion is part of the same process, and the same priorities apply. The rule should state that it is the duty of the court to expedite the process and that extensions should only be granted for compelling reasons. "I am too busy with my other cases," is not a good enough reason. The overall time caps in the existing rules should not be abandoned, but instead an enlarged overall cap should be retained as a "whichever is earlier" or "but in no case more than . . . " alternative to the proposed limit. The court should also be empowered to deal with cases of intentional or seriously negligent delay. Monetary	Penal Code section 190.8 establishes the "good cause" standard for granting extensions of time for the certification of the record for completeness and accuracy. The working group's view is that this standard is also appropriate for requests for extension of time by clerks, court reporters, and counsel that may be made during these certification processes. Current rule 8.600(c), which would be renumbered as rule 8.608(b) under this proposal, requires that when a trial court is permitted to extend timeframes for the record preparation process, the court must consider the relevant policies and factors stated in rule 8.63. Among other things, these policies make clear that the deadlines in the rules should generally be met, that the court must take into consideration the degree of prejudice that might be caused to other parties by granting an extension, and specifically provide that mere conclusory statements that more time is needed because of other pressing business will not suffice to justify an extension of time. The working group's view is that, under the policies and factors in rule 8.63, it is unlikely that trial court judges will grant unwarranted extensions of time to prepare the record. With respect to the proposed amendments to rules 8.619(c)(7) and 8.622(b)(4), the working group notes that these changes operate to give the trial judge 30 days to rule on any requests for correction and certify the record, which is the same period of time the judge has if no extensions of time are granted to the clerk, court reporters, or counsel. Without this change, if timeframes

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Rules 8.619(b)(2) and (c)(7) and 8.622(a)(4) and (b)(4) –Extensions of Time to Review and Certify the Record		
Commenter	**Comment**	**Working Group Response**
	sanctions should be expressly authorized for such situations.	for preparation of the record by the clerk or court reporters or the timeframes for counsel to review and request corrections of this record are extended for any reason, the trial judge's deadline for certifying the record may expire before the transcripts have been prepared or before counsel has completed their review of these transcripts. This would necessitate the trial judge taking time out of his or her substantive work to request an extension of time to certify the record and for the court to rule on this request. Penal Code section 190.8(a) already gives trial courts authority to impose sanctions to ensure compliance with all applicable statutes and rules of court pertaining to record certification in capital appeals and thus this topic need not be addressed in the rules. In addition, existing rule 8.23 provides authority to impose sanctions on clerks or court reporters if they fail to perform any duty imposed by statute or the appellate rules that delays the filing of the appellate record, which would include the failure to timely prepare a transcript or make ordered corrections to the record.
Michele Hanisee Deputy District Attorney Los Angeles County District Atty	**Deadline for certification** The deadline should start running at the time of sentence, not when the parties submit corrections to the court. If the attorneys are not under deadline to do the corrections to the record, it will not get done timely. The parties should be able to request extensions for good cause due to length of record, or due to other scheduling issues.	The proposed amendments to rules 8.619(c)(7) and 8.622(b)(4) operate to give the trial judge 30 days to rule on any requests for correction and certify the record for completeness and accuracy, respectively. Under both the existing and proposed rules, clerks and court reporters are under deadlines to prepare the record and counsel are under deadlines to review and request corrections to the record. However, they can, for good cause, request

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Rules 8.619(b)(2) and (c)(7) and 8.622(a)(4) and (b)(4) –Extensions of Time to Review and Certify the Record		
Commenter	**Comment**	**Working Group Response**
		extensions of these deadlines. Without the amendments to rules 8.619(c)(7) and 8.622(b)(4), if timeframes for preparation of the record by the clerk or court reporters or the timeframes for counsel to review and request corrections of this record are extended for any reason, the trial judge's deadline for certifying the record may expire before the transcripts have been prepared or before counsel has completed their review of these transcripts. This would necessitate the trial judge taking time out of his or her substantive work to request an extension of time to certify the record and for the court to rule on this request.

Rules 8.619 and 8.622 – Other		
Commenter	**Comment**	**Working Group Response**
Michele Hanisee Deputy District Attorney Los Angeles County District Atty	**Items under seal** A review of all items under seal should be undertaken by the trial court and trial counsel as part of the certification of the record. Most items will no longer need to be sealed after a verdict is reached. The court should identify confidentially to each party – what records remain under seal that were filed by that party, and request briefing as to any that the party is requesting remain under seal. **Correction of Reporters transcript** This should only be done by trial counsel. Appellate counsel should not be able to request corrections to the	The working group appreciates this input. Under proposed rule 8.622(a)(1)(B), this review will be conducted by trial counsel and the trial court.

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Rules 8.619 and 8.622 – Other		
Commenter	**Comment**	**Working Group Response**
	reporter's transcript absent a showing that there is a material error that would significantly affect the outcome of the appeal.	
Virginia C. Lindsay Senior Staff Attorney California Appellate Project San Francisco, California	**Identifying any omissions in the record sooner than later** This may or may not result in improved efficiency, and it adds significant duties to trial attorneys at a time when they have just experienced a traumatic event (the condemnation of their client). The Working Group ignores the mental state of trial attorneys immediately after having a client sentenced to death. S/he is not necessarily going to be in a proper state of mind to immediately review the record. In addition, conflicts of interest may interfere with judgements concerning what to include in the record on appeal. But it is true that memories will be fresher.	The working group acknowledges that shortly after the imposition of a death sentence may be a difficult time for defense counsel. However, Penal Code section 190.8(d) establishes deadlines for correcting and certifying the record for completeness which require that the trial record be reviewed by trial counsel shortly after the imposition of a death sentence. The proposed rules and forms are intended to improve the efficiency of this statutorily-required process.
Michael Ogul Deputy Public Defender Santa Clara County Public Defender	**Rule 8.622(e):** Query: why doesn't counsel for the parties get a copy of the clerk's transcript??? Or is that in another rule??	Under current rule 8.619(g), which would be relettered as 8.619(h) under the proposal, appellate and habeas corpus counsel receive copies of the clerk's transcript that is certified for completeness. Under rule 8.622, appellate counsel participate in the process of certifying the record for accuracy and they and habeas corpus counsel get a copy of the order certifying the record as accurate. In the experience of working group members, changes to the clerk's transcript after the certification of the record for completeness are made by providing additional records in volumes that supplement the transcript that was certified for completeness, rather than by modifications to that

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Rules 8.619 and 8.622 – Other		
Commenter	**Comment**	**Working Group Response**
		transcript. Counsel will either receive these supplemental volumes as part of the later record correction process or can obtain these from the trial court after receiving a copy of a court order making an addition to the clerk's transcript.

Fiscal and Operational Impacts		
Commenter	**Comment**	**Working Group Response**
Los Angeles County Public Defender Jennifer Friedman, Deputy Public Defender IV	Implementation of these rules will require significant training of the courts, court staff and lawyers.	The working group appreciates this input.
Superior Court of Orange County	***Would the proposal provide cost savings?*** No.	The working group appreciates this input.
Superior Court of San Diego County Mike Roddy, Court Executive Officer	***Would the proposal provide cost savings? If so, please quantify.*** Unknown. ***What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.*** Staff training and revising processes & procedures.	The working group appreciates this input.

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Fiscal and Operational Impacts		
Commenter	**Comment**	**Working Group Response**
	How well would this proposal work in courts of different sizes? It should work well for all courts.	

Time for Implementation		
Commenter	**Comment**	**Working Group Response**
Los Angeles County Public Defender Jennifer Friedman, Deputy Public Defender IV	The judicial council should provide a year to implement these rules.	Under amendments to Penal Code section 190.6 adopted as part of Proposition 66, the Judicial Council is required to adopt initial rules designed to expedite the processing of capital appeals and state habeas corpus review within 18 months of the effective date of this initiative. The initiative became effective on October 25, 2017. Thus, the initial rules must be adopted by the Judicial Council no later than April 25, 2019. However, in light of this and other comments, the working group is recommending that these rules take effect on April 25, 2019, rather than January 1, 2019.
Superior Court of Los Angeles County	***Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?*** Yes.	In light of other comments, the working group is recommending that these rules take effect on April 25, 2019, rather than January 1, 2019.
Superior Court of San Diego County Mike Roddy, Court Executive Officer	***Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?*** Six months would be more appropriate.	In light of this and other comments, the working group is recommending that these rules take effect on April 25, 2019, rather than January 1, 2019.

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Other Comments		
Commenter	**Comment**	**Working Group Response**
Office of the State Public Defender Mary K. McComb, State Public Defender Oakland, California	**Reference to "disk", rule 8.613(i)(3), rule 8.619(d)(3).** Proposed rule 8.613(i)(3) and proposed rule 8.619(d)(3) involve the delivery of electronic data and refer specifically to a "disk." Assuming that other means of delivery are acceptable (e.g., flashdrives, cloud services, etc.) the rule should not specify a "disk." Thus, we suggest modifying the language to say simply that the transcript in electronic form should be "provided separately and clearly labeled."	Rule 8.45 already addresses the delivery of sealed and confidential records, as well as the labeling of these records. The working group is therefore recommending that rule 8.613(i)(3) and rule 8.619(d)(3) be revised to cross-reference to rule 8.45 for guidance on these issues.
Michael Breton San Francisco, California	Should this actually expedite the processes in which the failing judicial system has already ruled on death penalty cases and to which we cannot execute prisoners who commit violent crimes fast enough to prove a point; life in prison is nothing to these men and women. Execute them quickly and efficiently and no problems would occur.	No response required.
Criminal Justice Legal Foundation Kent Scheidegger, Legal Director Sacramento, California	The Judicial Council should never forget that a constitutional right of victims of crime is routinely trampled upon in these cases. See Cal. Const. art. I, § 28, subd. (b)(9), Penal Code § 190.6, subd. (d). This violation should be treated every bit as seriously as violations of other constitutional rights. The Council is tasked with correcting the problem to the extent possible. We hope and expect that the final version of this proposal and the forthcoming proposals will demonstrate a high	The working group has taken seriously its charge to recommend rule and form changes to fulfill the Judicial Council's rulemaking responsibilities under Proposition 66.

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Other Comments		
Commenter	**Comment**	**Working Group Response**
	priority for the protection of this right and an awareness of the Council's duty in this regard.	

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