



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on March 15, 2019:

Title

Rules and Forms: Technical Form Changes to
Correct Inadvertent Errors

Agenda Item Type

Action Required

Effective Date

April 25, 2019

Rules, Forms, Standards, or Statutes Affected

Revise forms CR-600, CR-601, CR-602, CR-603, CR-604, and CR-605

Date of Report

March 7, 2019

Recommended by

Judicial Council staff
Michael I. Giden, Principal Managing
Attorney
Legal Services

Contact

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Executive Summary

Judicial Council staff have identified errors that are technical in nature in six Judicial Council forms related to preparation of the record for automatic appeals in capital cases. Specifically, the six forms that are to be signed and submitted by the primary counsel for each defendant and the prosecution include signature blocks that require identification of the defendant represented. This creates an ambiguity about whether the prosecution is required to sign and submit the forms. Staff recommend the signature blocks be revised to require the attorney to instead identify the party represented.

Recommendation

Judicial Council staff recommend that the Judicial Council, effective April 25, 2019:

1. Revise the following six forms by removing from the text of the signature block the phrase “NAME OF DEFENDANT” and replacing it with the word “PARTY” in order to clarify that primary counsel for each defendant and the prosecution in a capital trial must sign and submit each of the forms:

- *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).

2. Revise forms CR-602 and CR-603 to remove the words “on behalf of your client” in the instructions section of the two forms.

The revised forms are attached at pages 4–17.

Relevant Previous Council Action

At its meeting on September 21, 2018, the Judicial Council adopted rules 4.119, 4.230, 8.613, 8.616, and 8.619,¹ which require the primary counsel for each defendant and the prosecution in capital trials to sign and submit certain forms in connection with the trial. The purpose of the rules and forms is to remind counsel of their many obligations related to the appellate record and provide helpful checklists. The council at that time also adopted the six mandatory forms described in these rules, which are the subject of this report.

Analysis/Rationale

The rules adopted in September make clear that these forms are to be signed and submitted by “the primary counsel for each defendant and the prosecution.” The intent was that each primary counsel would sign and submit their own forms; it was not anticipated that they would be prepared or signed jointly. However, the forms as adopted in September 2018 each contain a signature block for the attorney signing the form that requires the attorney to indicate the name of the defendant represented:

Date:

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

▶ _____
(SIGNATURE OF ATTORNEY)

This creates an ambiguity as to whether attorneys for the prosecution are even required to fill out the form. To remove that ambiguity, staff recommend that the line on the forms reading “NAME

¹ These rules do not become effective until April 25, 2019, but may be found in the report to the Judicial Council recommending the rules: Judicial Council of Cal., Proposition 66 Rules Working Group, *Criminal and Appellate Procedure: Record Preparation in Death Penalty Cases* (Sept. 7, 2018), <https://jcc.legistar.com/View.ashx?M=F&ID=6613532&GUID=4A5A5D1E-8061-4339-AD6A-461BC0F34938>

OF DEFENDANT” be revised to state instead “PARTY,” so that it does not exclude the prosecution:

Date:

_____, attorney for _____
(TYPE OR PRINT NAME) (PARTY)

▶ _____
(SIGNATURE OF ATTORNEY)

In addition, there is text in the instructions section of two forms that makes reference to exhibits offered (in form CR-602) and motions made (in form CR-603) “on behalf of your client.” This language is not normally used by the prosecuting attorneys and to avoid any ambiguity, staff propose this language be deleted from the two forms.

Policy implications

The proposed revisions will clarify that the primary attorney for the prosecution, as well as the primary attorney for each defendant, must sign and submit the six forms as required by the rules previously adopted by the Judicial Council.

Comments

These proposed revisions were not circulated for public comment because they are noncontroversial technical revisions and are therefore within the Judicial Council’s purview to adopt without circulation. (See Cal. Rules of Court, rule 10.22(d)(2).)

Alternatives considered

The alternative to revising these forms would be *not* to update them or to delay updating them. Staff concluded it would create less confusion for attorneys if these six forms were corrected before they become effective on April 25, 2019.

Fiscal and Operational Impacts

Although the initial adoption of these forms may have imposed new requirements on some trial counsel in the short term, it is anticipated that the forms will reduce court and counsel costs in the long term by making the record preparation process in capital cases more efficient. The revision of the forms recommended in this report will impose no additional fiscal or operational impacts.

Attachments and Links

1. Forms CR-600, CR-601, CR-602, CR-603, CR-604, and CR-605, at pages 4–17

| | |
|---|---|
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME: | FOR COURT USE ONLY <p style="text-align: center;">DRAFT Not approved by the Judicial Council 03-06-2019</p> |
| PEOPLE OF THE STATE OF CALIFORNIA <p style="text-align: center;">v.</p> 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 <ul style="list-style-type: none"> <i>Capital Case Attorney List of Appearances</i> (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 <ul style="list-style-type: none"> <i>Capital Case Attorney List of Exhibits</i> (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. <i>Capital Case Attorney List of Motions</i> (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).) | |

| 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 should notify court of intent to seek death penalty. <ul style="list-style-type: none"> 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. <ul style="list-style-type: none"> 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: <ul style="list-style-type: none"> 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: <ul style="list-style-type: none"> • 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)

 (PARTY)



 (SIGNATURE OF ATTORNEY)

[illegible]

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


| Date | Court Dept./Div. | Name of Attorney Making Appearance | Nature of Appearance |
|------|------------------|------------------------------------|----------------------|
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☐ 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) (PARTY)

 _____

(SIGNATURE OF ATTORNEY)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF

STREET ADDRESS:

MAILING ADDRESS:

CITY AND ZIP CODE:

BRANCH NAME:

FOR COURT USE ONLY

DRAFT
Not approved by
the Judicial Council
03-04-2019

PEOPLE OF THE STATE OF CALIFORNIA

v.

DEFENDANT:

CAPITAL CASE ATTORNEY LIST OF EXHIBITS

☐

Pretrial

☐

Trial

CASE NUMBER:

Instructions: For each exhibit you offer 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 | |
|-------------|-------------|-----------------------------------|------------------------------------|
| | | <input type="checkbox"/> Admitted | <input type="checkbox"/> Lodged |
| | | <input type="checkbox"/> Refused | <input type="checkbox"/> Withdrawn |
| | | <input type="checkbox"/> Admitted | <input type="checkbox"/> Lodged |
| | | <input type="checkbox"/> Refused | <input type="checkbox"/> Withdrawn |
| | | <input type="checkbox"/> Admitted | <input type="checkbox"/> Lodged |
| | | <input type="checkbox"/> Refused | <input type="checkbox"/> Withdrawn |
| | | <input type="checkbox"/> Admitted | <input type="checkbox"/> Lodged |
| | | <input type="checkbox"/> Refused | <input type="checkbox"/> Withdrawn |
| | | <input type="checkbox"/> Admitted | <input type="checkbox"/> Lodged |
| | | <input type="checkbox"/> Refused | <input type="checkbox"/> Withdrawn |
| | | <input type="checkbox"/> Admitted | <input type="checkbox"/> Lodged |
| | | <input type="checkbox"/> Refused | <input type="checkbox"/> Withdrawn |
| | | <input type="checkbox"/> Admitted | <input type="checkbox"/> Lodged |
| | | <input type="checkbox"/> Refused | <input type="checkbox"/> Withdrawn |
| | | <input type="checkbox"/> Admitted | <input type="checkbox"/> Lodged |
| | | <input type="checkbox"/> Refused | <input type="checkbox"/> Withdrawn |

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

| Exhibit No. | Description | Outcome | |
|-------------|-------------|-----------------------------------|------------------------------------|
| | | <input type="checkbox"/> Admitted | <input type="checkbox"/> Lodged |
| | | <input type="checkbox"/> Refused | <input type="checkbox"/> Withdrawn |
| | | <input type="checkbox"/> Admitted | <input type="checkbox"/> Lodged |
| | | <input type="checkbox"/> Refused | <input type="checkbox"/> Withdrawn |
| | | <input type="checkbox"/> Admitted | <input type="checkbox"/> Lodged |
| | | <input type="checkbox"/> Refused | <input type="checkbox"/> Withdrawn |
| | | <input type="checkbox"/> Admitted | <input type="checkbox"/> Lodged |
| | | <input type="checkbox"/> Refused | <input type="checkbox"/> Withdrawn |
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| | | <input type="checkbox"/> Admitted | <input type="checkbox"/> Lodged |
| | | <input type="checkbox"/> Refused | <input type="checkbox"/> Withdrawn |
| | | <input type="checkbox"/> Admitted | <input type="checkbox"/> Lodged |
| | | <input type="checkbox"/> Refused | <input type="checkbox"/> 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) (PARTY)



 (SIGNATURE OF ATTORNEY)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF

STREET ADDRESS:

MAILING ADDRESS:

CITY AND ZIP CODE:

BRANCH NAME:

FOR COURT USE ONLY

DRAFT
Not approved by
the Judicial Council
03-06-2019

PEOPLE OF THE STATE OF CALIFORNIA

v.

DEFENDANT:

CAPITAL CASE ATTORNEY LIST OF MOTIONS

☐

Pretrial

☐

Trial

CASE NUMBER:

Instructions: For each motion you make 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 |
|------|------------------|-------------|--------------------------|
| | | | <input type="checkbox"/> |
| | | | <input type="checkbox"/> |
| | | | <input type="checkbox"/> |
| | | | <input type="checkbox"/> |
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|--|--------------|
| PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: | CASE NUMBER: |
|--|--------------|

| Date | Court Dept./Div. | Description | Awaiting Resolution |
|------|------------------|-------------|--------------------------|
| | | | <input type="checkbox"/> |
| | | | <input type="checkbox"/> |
| | | | <input type="checkbox"/> |
| | | | <input type="checkbox"/> |
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| | | | <input type="checkbox"/> |

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

Date:

(TYPE OR PRINT NAME)

, attorney for

(PARTY)

(SIGNATURE OF ATTORNEY)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF

STREET ADDRESS:

MAILING ADDRESS:

CITY AND ZIP CODE:

BRANCH NAME:

FOR COURT USE ONLY

DRAFT
Not approved by
the Judicial Council
03-06-2019

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 | |
|-----------------|-------------|----------------------------------|--|
| | | <input type="checkbox"/> Given | <input type="checkbox"/> Given as modified |
| | | <input type="checkbox"/> Refused | <input type="checkbox"/> Withdrawn |
| | | <input type="checkbox"/> Given | <input type="checkbox"/> Given as modified |
| | | <input type="checkbox"/> Refused | <input type="checkbox"/> Withdrawn |
| | | <input type="checkbox"/> Given | <input type="checkbox"/> Given as modified |
| | | <input type="checkbox"/> Refused | <input type="checkbox"/> Withdrawn |
| | | <input type="checkbox"/> Given | <input type="checkbox"/> Given as modified |
| | | <input type="checkbox"/> Refused | <input type="checkbox"/> Withdrawn |
| | | <input type="checkbox"/> Given | <input type="checkbox"/> Given as modified |
| | | <input type="checkbox"/> Refused | <input type="checkbox"/> Withdrawn |
| | | <input type="checkbox"/> Given | <input type="checkbox"/> Given as modified |
| | | <input type="checkbox"/> Refused | <input type="checkbox"/> Withdrawn |
| | | <input type="checkbox"/> Given | <input type="checkbox"/> Given as modified |
| | | <input type="checkbox"/> Refused | <input type="checkbox"/> Withdrawn |
| | | <input type="checkbox"/> Given | <input type="checkbox"/> Given as modified |
| | | <input type="checkbox"/> Refused | <input type="checkbox"/> Withdrawn |
| | | <input type="checkbox"/> Given | <input type="checkbox"/> Given as modified |
| | | <input type="checkbox"/> Refused | <input type="checkbox"/> Withdrawn |

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PEOPLE OF THE STATE OF CALIFORNIA v.
DEFENDANT:

CASE NUMBER:

| Instruction No. | Description | Outcome | |
|-----------------|-------------|----------------------------------|--|
| | | <input type="checkbox"/> Given | <input type="checkbox"/> Given as modified |
| | | <input type="checkbox"/> Refused | <input type="checkbox"/> Withdrawn |
| | | <input type="checkbox"/> Given | <input type="checkbox"/> Given as modified |
| | | <input type="checkbox"/> Refused | <input type="checkbox"/> Withdrawn |
| | | <input type="checkbox"/> Given | <input type="checkbox"/> Given as modified |
| | | <input type="checkbox"/> Refused | <input type="checkbox"/> Withdrawn |
| | | <input type="checkbox"/> Given | <input type="checkbox"/> Given as modified |
| | | <input type="checkbox"/> Refused | <input type="checkbox"/> Withdrawn |
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| | | <input type="checkbox"/> Given | <input type="checkbox"/> Given as modified |
| | | <input type="checkbox"/> Refused | <input type="checkbox"/> 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)

(PARTY)



(SIGNATURE OF ATTORNEY)

| | |
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| SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME: | FOR COURT USE ONLY DRAFT Not approved by the Judicial Council 03-06-2019 |
| PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: | |
| CAPITAL CASE ATTORNEY TRIAL CHECKLIST | CASE NUMBER: |
| <p>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.</p> <p>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.</p> | |

| 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 <ul style="list-style-type: none"> • <i>Capital Case Attorney List of Appearances</i> (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 <ul style="list-style-type: none"> • <i>Capital Case Attorney List of Exhibits</i> (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. <i>Capital Case Attorney List of Motions</i> (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. <i>Capital Case Attorney List of Jury Instructions</i> (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. <ul style="list-style-type: none"> • 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 section 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 transcripts and the lists to you, you must: <ul style="list-style-type: none"> 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: <ul style="list-style-type: none"> 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. <ul style="list-style-type: none"> 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)

(PARTY)



(SIGNATURE OF ATTORNEY)