Title
Criminal and Appellate Procedure: Record Preparation in Death Penalty Cases (Action Required)

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.