

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on April 29, 2011,  
effective on July 1, 2011, and July 1, 2012.

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15		

1 **Rule 2.1040. Electronic recordings presented or offered into evidence**

2  
3 **(a) Electronic recordings of deposition or other prior testimony**

- 4  
5 (1) Before a party may present or offer into evidence an electronic sound or  
6 sound-and-video recording of deposition or other prior testimony, the party  
7 must lodge a transcript of the deposition or prior testimony with the court. At  
8 the time the recording is played, the party must identify on the record the  
9 page and line numbers where the testimony presented or offered appears in  
10 the transcript.
- 11  
12 (2) Except as provided in (3), at the time the presentation of evidence closes or  
13 within five days after the recording in (1) is presented or offered into  
14 evidence, whichever is later, the party presenting or offering the recording  
15 into evidence must serve and file a copy of the transcript cover showing the  
16 witness name and a copy of the pages of the transcript where the testimony  
17 presented or offered appears. The transcript pages must be marked to identify  
18 the testimony that was presented or offered into evidence.
- 19  
20 (3) If the court reporter takes down the content of all portions of the recording in  
21 (1) that were presented or offered into evidence, the party offering or  
22 presenting the recording is not required to provide a transcript of that  
23 recording under (2).

24  
25 *(Subd (a) adopted effective July 1, 2011.)*

26  
27 **(a)(b) Transcript of Other electronic recordings**

- 28  
29 (1) ~~Unless otherwise ordered by the trial judge~~ Except as provided in (2) and (3),  
30 before a party may present or offering into evidence any electronic sound or  
31 sound-and-video recording not covered under (a), the party must ~~tender~~  
32 provide to the court and to opposing parties a ~~typewritten~~ transcript of the  
33 electronic recording. ~~The transcript must be marked for identification. A and~~  
34 provide opposing parties with a duplicate of the ~~transcript~~ electronic  
35 recording, as defined in Evidence Code section 260, ~~must be filed by the~~  
36 clerk and must be part of the clerk's transcript in the event of an appeal. The  
37 transcript may be prepared by the party presenting or offering the recording  
38 into evidence; a certified transcript is not required.
- 39  
40 (2) For good cause, the trial judge may permit the party to provide the transcript  
41 or the duplicate recording at the time the presentation of evidence closes or  
42 within five days after the recording is presented or offered into evidence,  
43 whichever is later.

1  
2 (3) No transcript is required to be provided under (1):

3  
4 (A) In proceedings that are uncontested or in which the responding party  
5 does not appear, unless otherwise ordered by the trial judge;

6  
7 (B) If the parties stipulate in writing or on the record that the sound portion  
8 of a sound-and-video recording does not contain any words that are  
9 relevant to the issues in the case; or

10  
11 (C) If, for good cause, the trial judge orders that a transcript is not required.

12  
13 *(Subd (b) amended and relettered effective July 1, 2011; adopted as part of unlettered subd*  
14 *effective July 1, 1988; amended and lettered as subd (a) effective January 1, 2003.)*

15  
16 **(c) Clerk's duties**

17  
18 ~~Any other~~ An electronic recording transcript provided to the jury court under this  
19 rule must also be marked for identification, and a duplicate A transcript provided  
20 under (a)(2) or (b)(1) must be filed by the clerk and made part of the clerk's  
21 transcript in the event of an appeal.

22  
23 *(Subd (c) amended and relettered effective July 1, 2011; adopted as part of unlettered subd*  
24 *effective July 1, 1988; amended and lettered as subd (a) effective January 1, 2003.)*

25  
26 **(b)(d) Transcription Reporting by court reporter not required**

27  
28 Unless otherwise ordered by the trial judge, the court reporter need not take down  
29 ~~or transcribe~~ the content of an electronic recording that is presented or offered  
30 ~~admitted~~ into evidence.

31  
32 *(Subd (d) amended and relettered effective July 1, 2011; adopted as part of unlettered*  
33 *subd. effective July 1, 1988; amended and lettered as subd. (b) effective January 1, 2003.)*

34  
35 *Rule 2.1040 amended effective July 1, 2011; adopted as rule 203.5 effective July 1, 1988;*  
36 *previously amended effective January 1, 1997; previously amended and renumbered as rule*  
37 *243.9 effective January 1, 2003, and as rule 2.1040 effective January 1, 2007.*

38  
39 **Advisory Committee Comment**

40  
41 This rule is designed to ensure that, in the event of an appeal, there is an appropriate record of any  
42 electronic sound or sound-and-video recording that was presented or offered into evidence in the  
43 trial court. The rules on felony, misdemeanor, and infraction appeals require that any transcript

1 provided by a party under this rule be included in the clerk’s transcript on appeal (see rules 8.320,  
2 8.861, and 8.912). In civil appeals, the parties may designate such a transcript for inclusion in the  
3 clerk’s transcript (see rules 8.122(b) and 8.832(a)). The transcripts required under this rule may  
4 also assist the court or jurors during the trial court proceedings. For this purpose, it may be  
5 helpful for the trial court to request that the party offering an electronic recording provide  
6 additional copies of such transcripts for jurors to follow while the recording is played.

7  
8 **Subdivision (a).** Note that, under Code of Civil Procedure section 2025.510(g), if the testimony  
9 at a deposition is recorded both stenographically and by audio or video technology, the  
10 stenographic transcript is the official record of that testimony for the purpose of the trial and any  
11 subsequent hearing or appeal.

12  
13 **Subdivision (a)(2).** The party offering or presenting the electronic recording may serve and file a  
14 copy of the cover and of the relevant pages of the deposition or other transcript; a new transcript  
15 need not be prepared.

16  
17 **Subdivision (b).** Note that, with the exception of recordings covered by Code of Civil Procedure  
18 section 2025.510(g), the recording itself, not the transcript, is the evidence that was offered or  
19 presented (see *People v. Sims* (1993) 5 Cal.4th 405, 448). Sometimes, a party may present or  
20 offer into evidence only a portion of a longer electronic recording. In such circumstances, the  
21 transcript provided to the court and opposing parties should contain only a transcription of those  
22 portions of the electronic recording that are actually presented or offered into evidence. If a party  
23 believes that a transcript provided under this subdivision is inaccurate, the party can raise an  
24 objection in the trial court.

25  
26 **Subdivision (b)(3)(C).** Good cause to waive the requirement for a transcript may include such  
27 factors as (1) the party presenting or offering the electronic recording into evidence lacks the  
28 capacity to prepare a transcript or (2) the electronic recording is of such poor quality that  
29 preparing a useful transcript is not feasible.

30  
31 **Subdivision (c).** The requirement to file a transcript provided to the court under (a)(2) or (b)(1) is  
32 intended to ensure that the transcript is available for inclusion in a clerk’s transcript in the event  
33 of an appeal.

34  
35 **Subdivision (d).** In some circumstances it may be helpful to have the court reporter take down  
36 the content of an electronic recording. For example, when short portions of a sound or sound-and-  
37 video recording of deposition or other testimony are played to impeach statements made by a  
38 witness on the stand, the best way to create a useful record of the proceedings may be for the  
39 court reporter to take down the portions of recorded testimony that are interspersed with the live  
40 testimony.

41  
42 **Chapter 3. General Rules Relating to Mediation of Civil Cases**  
43



1  
2 *Rule 3.895 amended effective July 1, 2012; adopted as rule 1635 effective March 1, 1994;*  
3 *previously amended and renumbered as rule 3.875 effective January 1, 2007; previously*  
4 *renumbered effective July 1, 2009.*

5  
6 **Rule 3.897. Statistical information**

7  
8 **(a) — Quarterly information reports**

9  
10 Each court must submit quarterly to the Judicial Council pertinent information on:

11  
12 (1) — The cost and time savings afforded by mediation;

13  
14 (2) — The effectiveness of mediation in resolving disputes;

15  
16 (3) — The number of cases referred to mediation;

17  
18 (4) — The time cases were in mediation; and

19  
20 (5) — Whether mediation ended in full agreement or nonagreement as to the entire  
21 case or as to particular parties in the case.

22  
23 **(b) — Submission of reports to the Judicial Council**

24  
25 The information required by this rule must be submitted to the Judicial Council  
26 either on the *Statement of Agreement or Nonagreement* (form ADR-100) and *ADR*  
27 *Information Form* (form ADR-101) or as an electronic database that includes, at a  
28 minimum, all of the information required on these forms. The format of any  
29 electronic database used to submit this information must be approved by the  
30 Administrative Office of the Courts.

31  
32 **(c) — Parties and mediators to supply information**

33  
34 Each court must require parties and mediators, as appropriate, to supply pertinent  
35 information for the reports required under this rule.

36  
37 **(d) — Alternative reporting method**

38  
39 On request, a court may report cases in mediation under the rules in this chapter  
40 under the appropriate reporting methods for cases stayed for contractual arbitration.  
41

1 *Rule 3.897 repealed effective July 1, 2012; adopted as rule 1638 effective March 1, 1994;*  
2 *previously amended effective February 9, 1999; previously amended and renumbered as rule*  
3 *3.877 effective January 1, 2007; previously renumbered effective July 1, 2009.*

4  
5 **Rule 3.1113. Memorandum**

6  
7 **(a)–(h) \*\*\***

8  
9 **(i) Copies of ~~non-California~~ authorities**

10  
11 (1) A judge may require that if any authority other than California cases, statutes,  
12 constitutional provisions, or state or local rules is cited, a copy of the  
13 authority must be lodged with the papers that cite the authority and tabbed as  
14 required by rule 3.1110(f).

15  
16 (2) If a California case is cited before the time it is published in the advance  
17 sheets of the Official Reports, the party must include the title, case number,  
18 date of decision, and, if from the Court of Appeal, district of the Court of  
19 Appeal in which the case was decided. A judge may require that a copy of  
20 that case must also be lodged and tabbed as required by rule 3.1110(f).

21  
22 (3) Upon the request of a party to the action, any party citing any authority other  
23 than California cases, statutes, constitutional provisions, or state or local rules  
24 must promptly provide a copy of such authority to the requesting party.

25  
26 *(Subd (i) amended effective July 1, 2011; adopted as part of subd (e) effective January 1,*  
27 *1992; previously amended effective July 1, 1997; previously amended and relettered as*  
28 *subd (h) effective January 1, 2004, and as subd (j) effective January 1, 2007; previously*  
29 *relettered as part of subd (f) effective July 1, 2000, and as subd. (i) effective January 1,*  
30 *2008.)*

31  
32 **(j)–(m) \*\*\***

33  
34 *Rule 3.1113 amended effective July 1, 2011; adopted as rule 313 effective January 1, 1984;*  
35 *previously amended and renumbered effective January 1, 2007; previously amended effective*  
36 *July 1, 1984, January 1, 1992, July 1, 1997, July 1, 2000, January 1, 2003, January 1, 2004, and*  
37 *January 1, 2008.*

38  
39 **Rule 4.104. Procedures and eligibility criteria for attending traffic violator school**

40  
41 **(a) \*\*\***

1 (b) **Authority of a court clerk to grant ~~pretrial diversion~~ a request to attend traffic**  
2 **violator school**

3  
4 (1) *Eligible offenses*

5  
6 Except as provided in (2), a court clerk is authorized to grant a request to  
7 attend traffic violator school when a defendant with a valid driver's license  
8 requests to attend an 8-hour traffic violator school ~~as pretrial diversion~~ under  
9 Vehicle Code sections 41501(a) and 42005 for any infraction under divisions  
10 11 and 12 (rules of the road and equipment violations) of the Vehicle Code if  
11 the violation is reportable to the Department of Motor Vehicles.

12  
13 (2) \*\*\*

14  
15 *(Subd (b) amended effective July 1, 2011; previously amended effective January 1, 2003,*  
16 *September 20, 2005, January 1, 2007; and January 1, 2007.)*

17  
18 (c) **Judicial discretion**

19  
20 (1) A judicial officer may in his or her discretion order attendance at a traffic  
21 violator school in an individual case ~~for diversion~~ under Vehicle Code section  
22 41501(a) or 42005(b); ~~sentencing under Vehicle Code section 42005(a);~~ or  
23 for any other purpose permitted by law. A ~~violation by a~~ defendant having a  
24 class A, class B, or commercial class C driver's license or charged with a  
25 violation that occurs in a commercial vehicle, as defined in Vehicle Code  
26 section 15210(b), is not eligible ~~for diversion~~ to attend traffic violator school  
27 under Vehicle Code sections 41501 or 42005.

28  
29 (2) ~~If a violation occurs within 18 months of a previous violation that was~~  
30 ~~dismissed under Vehicle Code section 41501(a), a judicial officer may order~~  
31 ~~a continuance and dismissal in consideration for completion of a program at a~~  
32 ~~licensed school for traffic violators as specified in Vehicle Code section~~  
33 ~~41501(a). The program must consist of at least 12 hours of instruction as~~  
34 ~~specified in section 41501(a). Under Vehicle Code section 1808.7, a~~  
35 ~~dismissal for completion of the 12-hour program under this subdivision is not~~  
36 ~~confidential.~~

37  
38 (3)(2)A defendant who is otherwise eligible for traffic violator school is not made  
39 ineligible by entering a plea other than guilty or by exercising his or her right  
40 to trial. A traffic violator school request must be considered based on the  
41 individual circumstances of the specific case. The court is not required to  
42 state on the record a reason for granting or denying a traffic violator school  
43 request.



1  
2 (Subd (c) amended effective July 1, 2011; amended and relettered as part of subd (b)  
3 effective January 1, 2003; previously amended effective January 1, 1998, September 20,  
4 2005, January 1, 2007, and January 1, 2007.)  
5

6 Rule 4.104 amended effective July 1, 2011; adopted as rule 851 effective January 1, 1997;  
7 previously amended effective January 1, 1998, July 1, 2001, January 1, 2003, September 20,  
8 2005, and January 1, 2007; previously amended and renumbered effective January 1, 2007.  
9

### 10 **Advisory Committee Comment**

11  
12 **Subdivision (c)(3)(2).** Rule 4.104(c)(3)(2) reflects court rulings in cases where defendants  
13 wished to plead not guilty and have the court order attendance of traffic violator school if found  
14 guilty after trial. A court has discretion to grant or not grant traffic violator school. (*People v.*  
15 *Schindler* (1993) 20 Cal.App.4th 431, 433; *People v. Levinson* (1984) 155 Cal.App.3d Supp. 13,  
16 21.) However, the court may not arbitrarily refuse to consider a request for traffic violator school  
17 because a defendant pleads not guilty. (*Schindler*, supra, at p. 433; *People v. Wozniak* (1987) 197  
18 Cal.App.3d Supp. 43, 44; *People v. Enochs* (1976) 62 Cal.App.3d Supp. 42, 44.) If a judicial  
19 officer believes that a defendant's circumstances indicate that a defendant would benefit from  
20 attending school, such attendance should be authorized and should not be affected by the order in  
21 which the plea, explanation, and request for traffic violator school are presented. (*Enochs*, supra,  
22 at p. 44.) A court is not required to state its reasons for granting or denying traffic violator school  
23 following a defendant's conviction for a traffic violation. (*Schindler*, supra, at p. 433.)  
24

### 25 **Rule 5.118. Application for court order**

26  
27 **(a)–(e) \*\*\***  
28

29 **(f) ~~The court may grant or deny the relief solely on the basis of the application and~~**  
30 **~~responses and any accompanying memorandum of points and authorities.~~**

#### 31 **Declarations supporting applications for orders**

##### 32 **(1) Length of declarations**

33 A declaration attached to an order to show cause or notice of motion and  
34 responsive declaration must not exceed 10 pages in length, and a reply  
35 declaration must not exceed 5 pages in length, unless:  
36  
37

38 **(A) The declaration is of an expert witness, or**

39  
40 **(B) The court grants permission to extend the length of a declaration. A**  
41 **party may apply to the court ex parte with written notice of the**  
42 **application to the other parties, at least 24 hours before the papers are**  
43

1 due, for permission to file a longer declaration. The application must  
2 state reasons why the facts cannot be set forth within the declaration  
3 page limit.

4  
5 (2) Objections to declarations

6  
7 (A) A declaration must be based on personal knowledge and explain how  
8 the person has acquired that knowledge. The statements in the  
9 declaration must be admissible in evidence.

10  
11 (B) If a party thinks that a declaration does not meet the requirements of  
12 (A), the party must object to the declaration at the time of the hearing,  
13 or any objection will be considered waived, and the declaration may be  
14 considered as evidence.

15  
16 (C) If the court does not specifically rule on the objection raised by a party,  
17 the objection is presumed overruled. If an appeal is filed, any presumed  
18 overrulings can be challenged.

19  
20 *(Subd (f) amended effective July 1, 2011; adopted effective January 1, 2004.)*

21  
22 *Rule 5.118 amended effective July 1, 2011; adopted as rule 1225 effective January 1, 1970;*  
23 *previously amended and renumbered effective January 1, 2003; previously amended effective*  
24 *January 1, 1972, July 1, 1977, January 1, 1980; and January 1, 1999, January 1, 2004, and*  
25 *January 1, 2007.*

26  
27 **Rule 5.119. Live testimony**

28  
29 **(a) Purpose**

30  
31 Under Family Code section 217, at a hearing on any order to show cause or notice  
32 of motion brought under the Family Code, absent a stipulation of the parties or a  
33 finding of good cause under (b), the court must receive any live, competent, and  
34 admissible testimony that is relevant and within the scope of the hearing.

35  
36 **(b) Factors**

37  
38 A court must consider the following factors in making a finding of good cause to  
39 refuse to receive live testimony under Family Code section 217:

40  
41 (1) Whether a substantive matter is at issue—such as child custody, parenting  
42 time (visitation), parentage, child support, spousal support, requests for

1                    restraining orders, or the characterization, division, or temporary use and  
2                    control of the property or debt of the parties;

3  
4                    (2) Whether material facts are in controversy;

5  
6                    (3) Whether live testimony is necessary for the court to assess the credibility of  
7                    the parties or other witnesses;

8  
9                    (4) The right of the parties to question anyone submitting reports or other  
10                   information to the court;

11  
12                   (5) In testimony from persons other than the parties, whether there has been  
13                   compliance with Family Code section 217(c); and

14  
15                   (6) Any other factor that is just and equitable.

16  
17                   **(c) Findings**

18  
19                   If the court makes a finding of good cause to exclude live testimony, it must state  
20                   its reasons on the record or in writing. The court is required to state only those  
21                   factors on which the finding of good cause is based.

22  
23                   **(d) Minor children**

24  
25                   When receiving or excluding testimony from minor children, in addition to  
26                   fulfilling the requirements of Evidence Code section 765, the court must follow the  
27                   procedures in Family Code section 3042 and California Rules of Court governing  
28                   children’s testimony.

29  
30                   **(e) Witness lists**

31  
32                   Witness lists required by Family Code section 217(c) must be served along with the  
33                   order to show cause, notice of motion, or responsive papers in the manner required  
34                   for the service of those documents. If no witness list has been served, the court may  
35                   require an offer of proof before allowing any nonparty witness to testify.

36  
37                   **(f) Continuance**

38  
39                   The court must consider whether or not a brief continuance is necessary to allow a  
40                   litigant adequate opportunity to prepare for questioning any witness for the other  
41                   parties. When a brief continuance is granted to allow time to prepare for  
42                   questioning witnesses, the court should make appropriate temporary orders.

1  
2 **(g) Questioning by court**

3  
4 Whenever the court receives live testimony from a party or any witness, it may  
5 elicit testimony by directing questions to the parties and other witnesses.  
6

7 *Rule 5.119 adopted effective July 1, 2011.*  
8

9 **Rule 5.670. Initial hearing; detention hearings; time limit on custody; setting**  
10 **jurisdiction hearing; visitation**

11  
12 **(a)–(f) \*\*\***

13  
14 **(g) Visitation**

15  
16 **(1)** The court must consider the issue of visitation between the child and other  
17 persons, ~~including siblings~~, determine if contact pending the jurisdiction  
18 hearing would be beneficial or detrimental to the child, and make appropriate  
19 orders.  
20

21 **(2)** The court must consider the issue of visitation between the child and any  
22 sibling who was not placed with the child, and who was taken into custody  
23 with the child or is otherwise under the court’s jurisdiction, and enter an  
24 order for sibling visitation pending the jurisdiction hearing, unless the court  
25 finds by clear and convincing evidence that sibling interaction between the  
26 child and the sibling is contrary to the safety or well-being of either child.  
27

28 *(Subd (g) amended effective July 1, 2011; previously amended effective January 1, 2007.)*  
29

30 *Rule 5.670 amended effective July 1, 2011; repealed and adopted as rule 1442 effective January*  
31 *1, 1998; previously amended and renumbered effective January 1, 2007.*  
32

33 **Rule 8.104. Time to appeal**

34  
35 **(a)–(d) \*\*\***

36  
37 **(e) Appealable order**

38  
39 As used in (a) and ~~(e)~~(d), “judgment” includes an appealable order if the appeal is  
40 from an appealable order.  
41

42 *(Subd (e) amended effective July 1, 2011; adopted as subd (f); previously amended*  
43 *effective January 1, 2005; previously relettered effective January 1, 2011.)*

1  
2 *Rule 8.104 amended effective July 1, 2011; repealed and adopted as rule 2 effective January 1,*  
3 *2002; previously amended and renumbered effective January 1, 2007; previously amended*  
4 *effective January 1, 2005, January 1, 2010, and January 1, 2011.*

5  
6 **Rule 8.122. Clerk’s transcript**

7  
8 (a) \*\*\*

9  
10 (b) **Contents of transcript**

11  
12 (1)–(3) \*\*\*

13  
14 (4) Unless the reviewing court orders or the parties stipulate otherwise:

15  
16 (A) The clerk must not copy or transmit to the reviewing court the original  
17 of a deposition except those portions of a deposition presented or  
18 offered into evidence under rule 2.1040.

19  
20 (B) \*\*\*

21  
22 *(Subd (b) amended effective July 1, 2011; previously amended effective January 1, 2007,*  
23 *January 1, 2008, and January 1, 2011.)*

24  
25 (c)–(d) \*\*\*

26  
27 *Rule 8.122 amended effective July 1, 2011; repealed and adopted as rule 5 effective January 1,*  
28 *2002; previously amended and renumbered as rule 8.120 effective January 1, 2007, and as rule*  
29 *8.122 effective January 1, 2008; previously amended effective January 1, 2003, January 1, 2005,*  
30 *July 1, 2009, January 1, 2010, and January 1, 2011.*

31  
32  
33 **Rule 8.130. Reporter’s transcript**

34  
35 (a)–(g) \*\*\*

36  
37 **Advisory Committee Comment**

38  
39 \*\*\*

40  
41 **Subdivision (f).** Subdivision (f)(1) requires the reporter to prepare and file additional copies of  
42 the record “if multiple appellants equally share the cost of preparing the record. . . .” The reason  
43 for the requirement is explained in the comment to rule 8.147(a)(2).

1  
2  
3  
4  
5  
6  
7

Implementing statutory provisions (e.g., Code Civ. Proc., § ~~269271~~, ~~subd. (e)~~; Gov. Code, § 69954), subdivision (f)(4) requires the reporter to provide a party, on request, with a copy of the reporter’s transcript in computer-readable format. But in recognition of the fact that in some instances the reporter may be unable to provide a copy in that format, the subdivision also authorizes the reporter to apply to the superior court for relief from this requirement.