Rule 1.20. Effective Date of Filing 6
Rule 1.201. Protection of privacy 7
Rule 2.100. Form and format of papers presented for filing in the trial courts 8
Rule 2.103. Size, quality, and color of papers 8
Rule 2.104. ~~Printing;~~ Font size; printing 9
Rule 2.105. Font style 9
Rule 2.109. Page numbering 9
Rule 2.110. Footer 9
Rule 2.111. Format of first page 9
Rule 2.114. Exhibits 10
Rule 2.118. Acceptance of papers for filing 10
Rule 2.140. Judicial Council forms 11
Rule 2.251. Electronic service 11
Rule 2.256. Responsibilities of electronic filer 12
Rule 2.306. Service of papers by fax transmission 13
Rule 2.551. Procedures for filing records under seal 13
Rule 2.577. Procedures for filing confidential name change records under seal 15
Rule 2.810. Temporary judges appointed by the trial courts 17
Rule 3.250. Limitations on the filing of papers 17
Rule 3.751. Electronic service 18
Rule 3.823. Rules of evidence at arbitration hearing 18
Rule 3.1110. General format 19
Rule 3.1113. Memorandum 20
Rule 3.1302. Place and manner of filing 21
Rule 3.1306. Evidence at hearing 22
Rule 3.1362. Motion to be relieved as counsel 22
Rule 4.403. Application 24
Rule 4.405. Definitions 24
Rule 4.406. Reasons 26
Rule 4.409. Consideration of criteria 27
Rule 4.410. General objectives in sentencing 27
Rule 4.411.5. Probation officer's presentence investigation report 28

Rule 4.412. Reasons—agreement to punishment as an adequate reason and as abandonment of certain claims 29
Rule 4.414. Criteria affecting probation 29
Rule 4.415. Criteria affecting the imposition of mandatory supervision 30
Rule 4.420. Selection of term of imprisonment 31
Rule 4.421. Circumstances in aggravation 33
Rule 4.423. Circumstances in mitigation 35
Rule 4.425. Criteria affecting concurrent or consecutive sentences 35
Rule 4.427. Hate crimes 36
Rule 4.431. Proceedings at sentencing to be reported 36
Rule 4.433. Matters to be considered at time set for sentencing 36
Rule 4.435. Sentencing on revocation of probation 39
Rule 4.452. Determinate sentence consecutive to prior determinate sentence 40
Rule 4.472. Determination of presentence custody time credit 40
Rule 4.480. Judge's statement under section 1203.01 40
Rule 4.530. Intercounty transfer of probation and mandatory supervision cases 41
Rule 5.66. Proof of service 43
Rule 5.504. Judicial Council forms 44
Rule 5.324. Telephone appearance in title IV-D hearings and conferences 44
Rule 5.380. Agreement and judgment of parentage in Domestic Violence Prevention Act cases 45
Rule 5.390. Bifurcation of issues 45
Rule 5.392. Interlocutory appeals 45
Rule 5.534. General provisions—all proceedings 47
Rule 5.555. Hearing to consider termination of juvenile court jurisdiction over a nonminor—dependents or wards of the juvenile court in a foster care placement and nonminor dependents (§§ 224.1(b), 303, 366.31, 391, 451, 452, 607.2, 607.3, 16501.1~~(f)~~(g)(16)) 50
Rule 5.610. Transfer-out hearing 55
Rule 5.612. Transfer-in hearing 57
Rule 5.613. Transfer of nonminor dependents 58
Rule 5.668. Commencement of hearing—explanation of proceedings (§§ 316, 316.2) 62

Rule 5.670. Initial hearing; detention hearings; time limit on custody; setting jurisdiction hearing; visitation (§§ 309, 311, 313, 315, 362.1) ... 63
Rule 5.674. Conduct of hearing; admission, no contest, submission ... 65
~~Rule 5.680. Detention rehearings; prima facie hearings~~ ... 66
Rule 5.682. Commencement of jurisdiction hearing—advisement of trial rights; admission, no contest, submission ... 67
Rule 5.684. Contested hearing on petition ... 69
~~Rule 5.686. Continuance pending disposition hearing~~ ... 71
~~Rule 5.688. Failure to cooperate with services (§ 360(b))~~ ... 71
Rule 5.690. General conduct of disposition hearing ... 72
Rule 5.695. Findings and orders of the court—disposition ... 73
Rule 5.706. Family maintenance review hearings (§ 364) ... 83
Rule 5.708. General review hearing requirements ... 84
Rule 5.710. Six-month review hearing ... 90
Rule 5.715. Twelve-month permanency hearing ... 94
Rule 5.720. Eighteen-month permanency review hearing ... 98
Rule 5.722. Twenty-four-month subsequent permanency review hearing ... 102
Rule 5.725. Selection of permanent plan (§§ 366.24, 366.26, 727.31) ... 105
Rule 5.726. Prospective adoptive parent designation (§§ 366.26(n), 16010.6) ... 111
Rule 5.727. Proposed removal (§ 366.26(n)) ... 115
Rule 5.728. Emergency removal (§ 366.26(n)) ... 117
Rule 5.730. Adoption (§§ 366.24, 366.26(e), Fam. Code, § 8600 et seq.) ... 120
Rule 5.735. Legal guardianship ... 120
Rule 5.740. Hearings subsequent to a permanent plan (§§ 366.26, 366.3, 16501.1) ... 121
Article 2. Service, Filing, Filing Fees, Form, and ~~Number of Documents~~ Privacy ... 125
Rule 8.41. Protection of privacy in documents and records ... 125
Rule 8.45. General provisions ... 125
Rule 8.70. ~~Purpose,~~ aApplication, construction, and definitions ... 126
~~Rule 8.71. Electronic service~~ ... 127
Rule 8.71. Electronic filing ... 130
~~Rule 8.72. Documents that may be filed electronically~~ ... 131
~~Rule 8.73. Court order requiring electronic service or filing~~ ... 132

Rule ~~8.74~~ 8.72. Responsibilities of court 133
Rule ~~8.75~~ 8.73. Contracts with electronic filing service providers 133
Rule ~~8.76~~ 8.74. Responsibilities of electronic filer 134
Rule ~~8.77~~ 8.75. Requirements for signatures on documents 135
Rule ~~8.78~~ 8.76. Payment of filing fees 135
Rule ~~8.79~~ 8.77. Actions by court on receipt of electronic filing 135
Rule ~~8.71~~ 8.78. Electronic service 137
Rule ~~8.73~~ 8.79. Court order requiring electronic service ~~or filing~~ 139
Article 7. Privacy 141
Rule 8.90. Privacy in opinions 141
Rule 8.104. Time to appeal 142
Rule 8.124. Appendixes 143
Rule 8.130. Reporter's transcript 143
Rule 8.144. Form of the record 144
Rule 8.150. Filing the record 145
Rule 8.200. Briefs by parties and amici curiae 145
Rule 8.204. Contents and form of briefs 145
Rule 8.336. Preparing, certifying, and sending the record 146
Rule 8.400. Application 147
Rule 8.407. Record on appeal 147
Rule 8.409. Preparing and sending the record 149
Rule 8.416. Appeals from all terminations of parental rights; dependency appeals in Orange, Imperial, and San Diego Counties and in other counties by local rule 150
Rule 8.450. Notice of intent to file writ petition to review order setting hearing under Welfare and Institutions Code section 366.26 151
Rule 8.452. Writ petition to review order setting hearing under Welfare and Institutions Code section 366.26 152
Rule 8.454. Notice of intent to file writ petition under Welfare and Institutions Code section 366.28 to review order designating specific placement of a dependent child after termination of parental rights 153
Rule 8.456. Writ petition under Welfare and Institutions Code section 366.28 to review order designating or denying specific placement of a dependent child after termination of parental rights 154
Rule 8.480. Appeal from order establishing conservatorship 155

Rule 8.482. Appeal from judgment authorizing conservator to consent to sterilization of conservatee 155
Rule 8.487. Opposition and ~~Attorney General~~ amicus curiae briefs 155
Rule 8.489. Notice to trial court..... 156
Rule 8.613. Preparing and certifying the record of preliminary proceedings..... 157
Rule 8.619. Certifying the trial record for completeness..... 157
Rule 8.625. Certifying the record in pre-1997 trials..... 158
Rule 8.834. Reporter's transcript..... 159
Rule 8.866. Preparation of reporter's transcript..... 159
Rule 8.919. Preparation of reporter's transcript..... 160
Rule 8.1007. Transmitting record to Court of Appeal..... 160
Rule 10.742. Use of attorneys as court-appointed temporary judges 161
Rule 10.1028. Preservation and destruction of Court of Appeal records 161

Rule 1.20. Effective Date of Filing

~~**(a) Effective date of filing**~~

Unless otherwise provided, a document is deemed filed on the date it is received by the court clerk.

~~**(b) Protection of privacy**~~

~~(1) *Scope*~~

~~The requirements of this subdivision that parties or their attorneys must not include, or must redact, certain identifiers from documents or records filed with the court do not apply to documents or records that by court order or operation of law are filed in their entirety either confidentially or under seal.~~

~~(2) *Exclusion or redaction of identifiers*~~

~~To protect personal privacy and other legitimate interests, parties and their attorneys must not include, or must redact where inclusion is necessary, the following identifiers from all pleadings and other papers filed in the court's public file, whether filed in paper or electronic form, unless otherwise provided by law or ordered by the court:~~

~~(A) Social security numbers. If an individual's social security number is required in a pleading or other paper filed in the public file, only the last four digits of that number may be used.~~

~~(B) Financial account numbers. If financial account numbers are required in a pleading or other paper filed in the public file, only the last four digits of these numbers may be used.~~

~~(3) *Responsibility of the filer*~~

~~The responsibility for excluding or redacting identifiers identified in (b)(2) from all documents filed with the court rests solely with the parties and their attorneys. The court clerk will not review each pleading or other paper for compliance with this provision.~~

~~(4) *Confidential reference list*~~

~~If the court orders on a showing of good cause, a party filing a document containing identifiers listed in (b)(2) may file, along with the redacted~~

~~document that will be placed in the public file, a reference list. The reference list is confidential. A party filing a confidential reference list must use *Confidential Reference List of Identifiers* (form MC-120) for that purpose. The confidential list must identify each item of redacted information and specify an appropriate reference that uniquely corresponds to each item of redacted information listed. All references in the case to the redacted identifiers included in the confidential reference list will be understood to refer to the corresponding complete identifier. A party may amend its reference list as of right.~~

Rule 1.20 amended effective January 1, 2017; adopted effective January 1, 2007; previously amended effective January 1, 2008.

Rule 1.201. Protection of privacy

(a) Exclusion or redaction of identifiers

To protect personal privacy and other legitimate interests, parties and their attorneys must not include, or must redact where inclusion is necessary, the following identifiers from all pleadings and other papers filed in the court's public file, whether filed in paper or electronic form, unless otherwise provided by law or ordered by the court:

(1) Social security numbers. If an individual's social security number is required in a pleading or other paper filed in the public file, only the last four digits of that number may be used.

(2) Financial account numbers. If financial account numbers are required in a pleading or other paper filed in the public file, only the last four digits of these numbers may be used.

(b) Responsibility of the filer

The responsibility for excluding or redacting identifiers identified in (a) from all documents filed with the court rests solely with the parties and their attorneys. The court clerk will not review each pleading or other paper for compliance with this provision.

(c) Confidential reference list

If the court orders on a showing of good cause, a party filing a document containing identifiers listed in (a) may file, along with the redacted document that will be placed in the public file, a reference list. The reference list is confidential. A

party filing a confidential reference list must use *Confidential Reference List of Identifiers* (form MC-120) for that purpose. The confidential list must identify each item of redacted information and specify an appropriate reference that uniquely corresponds to each item of redacted information listed. All references in the case to the redacted identifiers included in the confidential reference list will be understood to refer to the corresponding complete identifier. A party may amend its reference list as of right.

(d) Scope

The requirements of this rule do not apply to documents or records that by court order or operation of law are filed in their entirety either confidentially or under seal.

Rule 1.201 adopted effective January 1, 2017.

Rule 2.100. Form and format of papers presented for filing in the trial courts

(a)–(b) * * *

(c) Electronic format of papers

Papers that are submitted or filed electronically must meet the requirements in rule 2.256(b).

(Subd (c) adopted effective January 1, 2017.)

Rule 2.100 amended effective January 1, 2017; adopted as rule 201 effective January 1, 1949; previously amended effective April 1, 1962, May 1, 1962, July 1, 1964, January 1, 1966, July 1, 1969, July 1, 1971, January 1, 1973, July 1, 1974, January 1, 1976, January 1, 1978, May 6, 1978, January 1, 1984, April 1, 1990, July 1, 1990, January 1, 1992, July 1, 1992, January 1, 1993, July 1, 1993, January 1, 1994, January 1, 1998, January 1, 1999, July 1, 1999, July 1, 2000, January 1, 2001, January 1, 2003, and January 1, 2006; previously amended and renumbered as rule 2.100 effective January 1, 2007.

Rule 2.103. Size, quality, and color of papers

All papers filed must be 8½ by 11 inches. All papers not filed electronically must be on opaque, unglazed paper, white or unbleached, of standard quality not less than 20-pound weight.

Rule 2.103 amended effective January 1, 2017; adopted effective January 1, 2007; previously amended effective January 1, 2016.

Rule 2.104. ~~Printing;~~ Font size; printing

Unless otherwise specified in these rules, all papers filed must be prepared using a font size not smaller than 12 points. All papers not filed electronically must be printed or typewritten or be prepared by a photocopying or other duplication process that will produce clear and permanent copies equally as legible as printing ~~in a font not smaller than 12 points~~.

Rule 2.104 amended effective January 1, 2017; adopted effective January 1, 2007; previously amended effective January 1, 2016.

Rule 2.105. Font style

The font style must be essentially equivalent to Courier, Times New Roman, or Arial.

Rule 2.105 amended effective January 1, 2017; adopted effective January 1, 2007; previously amended effective January 1, 2016.

Rule 2.109. Page numbering

Each page must be numbered consecutively at the bottom unless a rule provides otherwise for a particular type of document. The page numbering must begin with the first page and use only Arabic numerals (e.g., 1, 2, 3). The page number may be suppressed and need not appear on the first page.

Rule 2.105 amended effective January 1, 2017; adopted effective January 1, 2007.

Rule 2.110. Footer

(a)–(b) * * *

(c) ~~Type~~ Font size

The title of the paper in the footer must be in at least 10-point ~~type~~ font.

Rule 2.110 amended effective January 1, 2017; adopted effective January 1, 2007.

Rule 2.111. Format of first page

The first page of each paper must be in the following form:

(1) In the space commencing 1 inch from the top of the page with line 1, to the left of the center of the page, the name, office address or, if none, residence address or mailing address (if different), telephone number, fax number and e-mail address ~~(if available)~~, and State Bar membership number of the attorney for the party in whose behalf the paper is presented, or of the party if he or she is appearing in person. The inclusion of a fax number or e-mail address on any document does not constitute consent to service by fax or e-mail unless otherwise provided by law.

(2)–(11) * * *

Rule 2.111 amended effective January 1, 2017; adopted effective January 1, 2007; previously amended effective January 1, 2008, and January 1, 2016.

Rule 2.114. Exhibits

Exhibits submitted with papers not filed electronically may be fastened to pages of the specified size and, when prepared by a machine copying process, must be equal to computer-processed materials in legibility and permanency of image. Exhibits submitted with papers filed electronically must meet the requirements in rule 2.256(b).

Rule 2.114 amended effective January 1, 2017; adopted effective January 1, 2007; previously amended effective January 1, 2016.

Rule 2.118. Acceptance of papers for filing

(a) Papers not in compliance

The clerk of the court must not accept for filing or file any papers that do not comply with the rules in this chapter, except the clerk must not reject a paper for filing solely on the ground that:

(1) It is handwritten or hand-printed; ~~or~~

(2) The handwriting or hand printing on the paper is in a color other than black or blue-black~~.~~; or

(3) The font size is not exactly the point size required by rules 2.104 and 2.110(c) on papers submitted electronically in portable document format (PDF). Minimal variation in font size may result from converting a document created using word processing software to PDF.

(Subd (a) amended effective January 1, 2017.)

(b)–(c) * * *

Rule 2.118 amended effective January 1, 2017; adopted effective January 1, 2007.

Rule 2.140. Judicial Council forms

Judicial Council forms are governed by the rules in this chapter and chapter 4 of title 1. Electronic Judicial Council forms must meet the requirements in rule 2.256.

Rule 2.140 amended effective January 1, 2017; adopted effective January 1, 2007.

Rule 2.251. Electronic service

(a)–(h) * * *

(i) Proof of service

(1) Proof of electronic service may be by any of the methods provided in Code of Civil Procedure section 1013a, ~~except that~~ with the following exceptions:

(A) The proof of electronic service does not need to state that the person making the service is not a party to the case.

(B) The proof of electronic service must state:

~~(A)~~(i) The electronic service address of the person making the service, in addition to that person's residence or business address;

~~(B)~~(ii) The date ~~and time~~ of the electronic service, instead of the date and place of deposit in the mail;

~~(C)~~(iii) The name and electronic service address of the person served, in place of that person's name and address as shown on the envelope; and

~~(D)~~(iv) That the document was served electronically, in place of the statement that the envelope was sealed and deposited in the mail with postage fully prepaid.

(2) * * *

(3) Under rule 3.1300(c), proof of electronic service of the moving papers must be filed at least five court days before the hearing.

(4) * * *

(Subd (i) amended effective January 1, 2017; adopted as subd (c); previously amended effective January 1, 2007, January 1, 2009, July 1, 2009, and January 1, 2010; previously amended and relettered as subd (g) effective January 1, 2011; previously relettered as subd (f) effective January 1, 2008, and as subd (i) effective July 1, 2013.)

(j) * * *

Rule 2.251 amended effective January 1, 2017; adopted as rule 2060 effective January 1, 2003; previously amended and renumbered as rule 2.260 effective January 1, 2007, and as rule 2.251 effective January 1, 2011; previously amended effective January 1, 2008, January 1, 2009, July 1, 2009, January 1, 2010, July 1, 2013, and January 1, 2016.

Rule 2.256. Responsibilities of electronic filer

(a) * * *

(b) Format of documents to be filed electronically

A document that is filed electronically with the court must be in a format specified by the court unless it cannot be created in that format. The format adopted by a court must meet the following requirements:

(1)–(2) * * *

(3) The document must be text searchable when technologically feasible without impairment of the document's image.

If a document is filed electronically under the rules in this chapter and cannot be formatted to be consistent with a formatting rule elsewhere in the California Rules of Court, the rules in this chapter prevail.

(Subd (b) amended effective January 1, 2017; previously amended effective January 1, 2006, January 1, 2008, and January 1, 2010.)

Rule 2.256 amended effective January 1, 2017; adopted as rule 2056 effective January 1, 2003; previously amended and renumbered effective January 1, 2007; previously amended effective January 1, 2006, January 1, 2008, January 1, 2010, January 1, 2011, and July 1, 2013.

Advisory Committee Comment

Subdivision (b)(3). The term "technologically feasible" does not require more than the application of standard, commercially available optical character recognition (OCR) software.

Rule 2.306. Service of papers by fax transmission

(a)–(g) * * *

(h) Proof of service by fax

Proof of service by fax may be made by any of the methods provided in Code of Civil Procedure section 1013(a), except that:

(1) The ~~time,~~ date~~,~~ and sending fax machine telephone number must be used instead of the date and place of deposit in the mail;

(2)–(5) * * *

(Subd (h) amended effective January 1, 2017; adopted as subd (e) effective March 1, 1992; previously amended effective July 1, 1997, and May 1, 1998; previously amended and relettered as subd (g) effective January 1, 2007; previously relettered as subd (h) effective January 1, 2008.)

Rule 2.306 amended effective January 1, 2017; adopted as rule 2008 effective March 1, 1992; previously amended and renumbered effective January 1, 2007; previously amended effective July 1, 1997, May 1, 1998, January 1, 2008, and July 1, 2008.

Rule 2.551. Procedures for filing records under seal

(a) * * *

(b) Motion or application to seal a record

(1)–(2) * * *

(3) *Procedure for party not intending to file motion or application*

(A) * * *

(B) If the party that produced the documents and was served with the notice under (A)(iii) fails to file a motion or an application to seal the records within 10 days or to obtain a court order extending the time to file such a motion or an application, the clerk must promptly ~~remove~~ transfer all the documents in (A)(i) from the envelope, container, or secure

electronic file ~~where they are located and place them in~~ to the public file. If the party files a motion or an application to seal within 10 days or such later time as the court has ordered, these documents are to remain conditionally under seal until the court rules on the motion or application and thereafter are to be filed as ordered by the court.

(4)–(5) * * *

(6) *Return of lodged record*

If the court denies the motion or application to seal, ~~the clerk must return the lodged record to the submitting party and must not place it in the case file unless that party notifies the clerk in writing that the record is to be filed. Unless otherwise ordered by the court, the submitting party must notify the clerk within 10 days after the order denying the motion or application.~~ the moving party may notify the court that the lodged record is to be filed unsealed. This notification must be received within 10 days of the order denying the motion or application to seal, unless otherwise ordered by the court. On receipt of this notification, the clerk must unseal and file the record. If the moving party does not notify the court within 10 days of the order, the clerk must (1) return the lodged record to the moving party if it is in paper form or (2) permanently delete the lodged record if it is in electronic form.

(Subd (b) amended effective January 1, 2017; previously amended effective January 1, 2004, January 1, 2007, and January 1, 2016.)

(c)–(d) * * *

(e) Order

(1) If the court grants an order sealing a record and if the sealed record is in paper format, the clerk must substitute on the envelope or container for the label required by (d)(2) a label prominently stating "SEALED BY ORDER OF THE COURT ON *(DATE)*," and must replace the cover sheet required by (d)(3) with a filed-endorsed copy of the court's order. If the sealed record is in ~~an~~ electronic form~~at~~, the clerk must file the court's order, ~~store~~ maintain the record ordered sealed in a secure manner, and clearly identify the record as sealed by court order on a specified date.

(2)–(4) * * *

(Subd (e) amended effective January 1, 2017; previously amended effective January 1, 2004, January 1, 2007, and January 1, 2016.)

(f) Custody of sealed records

Sealed records must be securely filed and kept separate from the public file in the case. If the sealed records are in electronic form, appropriate access controls must be established to ensure that only authorized persons may access the sealed records.

(Subd (f) amended effective January 1, 2017; previously amended effective January 1, 2004.)

(g)–(h) * * *

Rule 2.551 amended effective January 1, 2017; adopted as rule 243.2 effective January 1, 2001; previously amended and renumbered as rule 2.551 effective January 1, 2007; previously amended effective January 1, 2004, and January 1, 2016.

Rule 2.577. Procedures for filing confidential name change records under seal

(a) * * *

(b) Application to file records in confidential name change proceedings under seal

An application by a confidential name change petitioner to file records under seal must be filed at the time the petition for name change is submitted to the court. The application must be made on the *Application to File Documents Under Seal in Name Change Proceeding Under Address Confidentiality Program (Safe at Home)* (form NC-410) and be accompanied by a *Declaration in Support of Application to File Documents Under Seal in Name Change Proceeding Under Address Confidentiality Program (Safe at Home)* (form NC-420), containing facts sufficient to justify the sealing.

(Subd (b) amended effective January 1, 2017.)

(c) * * *

(d) Procedure for lodging of petition for name change

(1)–(3) * * *

(4) If the court denies the application to seal, ~~the clerk must return the lodged record to the petitioner and must not place it in the case file unless the petitioner notifies the clerk in writing within 10 days after the order denying the application that the unsealed petition and related papers are to be filed.~~

the moving party may notify the court that the lodged record is to be filed unsealed. This notification must be received within 10 days of the order denying the motion or application to seal, unless otherwise ordered by the court. On receipt of this notification, the clerk must unseal and file the record. If the moving party does not notify the court within 10 days of the order, the clerk must (1) return the lodged record to the moving party if it is in paper form or (2) permanently delete the lodged record if it is in electronic form.

(Subd (d) amended effective January 1, 2017; previously amended effective January 1, 2016.)

(e) * * *

(f) Order

(1)–(2) * * *

(3) For petitions transmitted in paper form, if the court grants an order sealing a record, the clerk must strike out the notation required by (d)(2) on the *Confidential Cover Sheet* that the matter is filed "CONDITIONALLY UNDER SEAL," add a notation to that sheet prominently stating "SEALED BY ORDER OF THE COURT ON *(DATE)*," and file the documents under seal. For petitions transmitted electronically, the clerk must file the court's order, ~~store~~ maintain the record ordered sealed in a secure manner, and clearly identify the record as sealed by court order on a specified date.

(4)–(5) * * *

(Subd (f) amended effective January 1, 2017; previously amended effective January 1, 2016.)

(g) Custody of sealed records

Sealed records must be securely filed and kept separate from the public file in the case. If the sealed records are in electronic form, appropriate access controls must be established to ensure that only authorized persons may access the sealed records.

(Subd (g) amended effective January 1, 2017.)

(h) * * *

Rule 2.577 amended effective January 1, 2017; adopted effective January 1, 2010; previously amended effective January 1, 2016.

Rule 2.810. Temporary judges appointed by the trial courts

(a)–(c) * * *

(d) Exception for extraordinary circumstances

A presiding judge may appoint an attorney who is qualified under rule 2.812(a), but who has not satisfied the other requirements of that rule, only in case of extraordinary circumstances. Any appointment under this subdivision based on extraordinary circumstances must be made before the attorney serves as a temporary judge~~, must be recorded for reporting purposes under rule 10.742(c)(3),~~ and must not last more than 10 court days in a three-year period.

(Subd (d) amended effective January 1, 2017; previously amended effective January 1, 2007.)

Rule 2.810 amended effective January 1, 2017; adopted as rule 243.11 effective July 1, 2006; previously amended and renumbered as rule 2.810 effective January 1, 2007; previously amended effective January 1, 2009.

Rule 3.250. Limitations on the filing of papers

(a) * * *

(b) Retaining originals of papers not filed

(1) Unless the paper served is a response, the party who serves a paper listed in (a) must retain the original with the original proof of service affixed. If served electronically under rule 2.251, the proof of electronic service must meet the requirements in rule 2.251(i).

(2) The original of a response must be served, and it must be retained by the person upon whom it is served.

(3) An original must be retained under (1) or (2) in the paper or electronic form in which it was created or received.

(4) All original papers must be retained until six months after final disposition of the case, unless the court on motion of any party and for good cause shown orders the original papers preserved for a longer period.

(Subd (b) amended effective January 1, 2017; amended effective January 1, 2003, and January 1, 2007.)

(c) * * *

Rule 3.250 amended effective January 1, 2017; adopted as rule 201.5 effective July 1, 1987; previously amended effective January 1, 2001, and January 1, 2003; previously amended and renumbered as rule 3.250 effective January 1, 2007.

Rule 3.751. Electronic service

Parties may consent to electronic service, or the court may require electronic service by local rule or court order, under rule 2.251. The court may provide in a case management order that documents filed electronically in a central electronic depository available to all parties are deemed served on all parties.

Rule 3.751 amended effective January 1, 2017; adopted as rule 1830 effective January 1, 2000; renumbered as rule 3.751 effective January 1, 2007.

Rule 3.823. Rules of evidence at arbitration hearing

(a)–(c) * * *

(d) Delivery of documents

For purposes of this rule, "delivery" of a document or notice may be accomplished manually, by electronic means under Code of Civil Procedure section 1010.6 and rule 2.251, or ~~by mail~~ in the manner provided by Code of Civil Procedure section 1013. If service is by electronic means, the times prescribed in this rule for delivery of documents, notices, and demands are increased as provided by Code of Civil Procedure section 1010.6. ~~by two days.~~ If service is in the manner provided by ~~mail~~ Code of Civil Procedure section 1013, the times prescribed in this rule are increased as provided by ~~five days~~ that section.

(Subd (d) amended effective January 1, 2017; adopted effective January 1, 1988; previously amended effective January 1, 2004, and January 1, 2016.)

Rule 3.823 amended effective January 1, 2017; adopted as rule 1613 effective July 1, 1976; previously amended and renumbered as rule 3.823 effective January 1, 2007; previously amended effective July 1, 1979, January 1, 1984, January 1, 1988, July 1, 1990, January 1, 2004, January 1, 2008, and January 1, 2016.

Rule 3.1110. General format

(a)–(b) * * *

(c) Pagination of documents

Documents ~~bound together~~ must be consecutively paginated. The page numbering must begin with the first page and use only Arabic numerals (e.g., 1, 2, 3). The page number may be suppressed and need not appear on the first page.

(Subd (c) amended effective January 1, 2017; adopted as part of subd (b); previously amended and lettered as subd (c) effective January 1, 2007.

(d)–(e) * * *

(f) Format of exhibits

(1) An index of exhibits must be provided. The index must briefly describe the exhibit and identify the exhibit number or letter and page number.

(2) Pages from a single deposition must be designated as a single exhibit.

(3) Each paper exhibit must be separated by a hard 8½ x 11 sheet with hard paper or plastic tabs extending below the bottom of the page, bearing the exhibit designation. ~~An index to exhibits must be provided. Pages from a single deposition and associated exhibits must be designated as a single exhibit.~~

(4) Electronic exhibits must meet the requirements in rule 2.256(b). Unless they are submitted by a self-represented party, electronic exhibits must include electronic bookmarks with links to the first page of each exhibit and with bookmark titles that identify the exhibit number or letter and briefly describe the exhibit.

(Subd (f) amended effective January 1, 2017; adopted as subd (e) effective July 1, 1997; previously amended and relettered as subd (f) effective January 1, 2007.)

(g) * * *

Rule 3.1110 amended effective January 1, 2017; adopted as rule 311 effective January 1, 1984; previously amended effective July 1, 1997; previously amended and renumbered as rule 3.1110 effective January 1, 2007; previously amended effective July 1, 1997, and January 1, 2016.

Advisory Committee Comment

Subdivision (f)(4). Under current technology, software programs that allow users to apply electronic bookmarks to electronic documents are available for free.

Rule 3.1113. Memorandum

(a)–(c) * * *

(d) Length of memorandum

Except in a summary judgment or summary adjudication motion, no opening or responding memorandum may exceed 15 pages. In a summary judgment or summary adjudication motion, no opening or responding memorandum may exceed 20 pages. No reply or closing memorandum may exceed 10 pages. The page limit does not include the caption page, the notice of motion and motion, exhibits, declarations, attachments, the table of contents, the table of authorities, or the proof of service.

(Subd (d) amended effective January 1, 2017; adopted as part of a longer subd (d); previously amended effective July 1, 1984, January 1, 1992, and January 1, 2004.)

(e)–(g) * * *

(h) Pagination of memorandum

The pages of a memorandum must be numbered consecutively beginning with the first page and using only Arabic numerals (e.g., 1, 2, 3). The page number may be suppressed and need not appear on the first page.

~~Notwithstanding any other rule, a memorandum that includes a table of contents and a table of authorities must be paginated as follows:~~

~~(1) The caption page or pages must not be numbered;~~

~~(2) The pages of the tables must be numbered consecutively using lower-case roman numerals starting on the first page of the tables; and~~

~~(3) The pages of the text must be numbered consecutively using Arabic numerals starting on the first page of the text.~~

(Subd (h) amended effective January 1, 2017; adopted as subd (e) effective July 1, 2000; previously amended and relettered as subd (f) effective January 1, 2004, and as subd (h) effective January 1, 2007.)

(i) Copies of authorities

(1) A judge may require that if any authority other than California cases, statutes, constitutional provisions, or state or local rules is cited, a copy of the authority must be lodged with the papers that cite the authority. ~~and~~ If in paper form, the authority must be tabbed or separated as required by rule 3.1110(f)(3). If in electronic form, the authority must be electronically bookmarked as required by rule 3.1110(f)(4).

(2) If a California case is cited before the time it is published in the advance sheets of the Official Reports, the party must include the title, case number, date of decision, and, if from the Court of Appeal, district of the Court of Appeal in which the case was decided. A judge may require that a copy of that case must be lodged. ~~and~~ If in paper form, the copy must be tabbed or separated as required by rule 3.1110(f)(3). If in electronic form, the copy must be electronically bookmarked as required by rule 3.1110(f)(4).

(3) * * *

(Subd (i) amended effective January 1, 2017; adopted as part of subd (e) effective January 1, 1992; previously amended and relettered as subd (h) effective January 1, 2004, and as subd (j) effective January 1, 2007; previously relettered as part of subd (f) effective July 1, 2000, and as subd. (i) effective January 1, 2008; previously amended effective July 1, 1997, July 1, 2011, and January 1, 2016.)

(j)–(m) * * *

Rule 3.1113 amended effective January 1, 2017; adopted as rule 313 effective January 1, 1984; previously amended and renumbered as rule 3.1113 effective January 1, 2007; previously amended effective July 1, 1984, January 1, 1992, July 1, 1997, July 1, 2000, January 1, 2003, January 1, 2004, January 1, 2008, July 1, 2011, and January 1, 2016.

Rule 3.1302. Place and manner of filing

(a) * * *

(b) Requirements for lodged material

Material lodged physically with the clerk must be accompanied by an addressed envelope with sufficient postage for mailing the material. Material lodged electronically must clearly specify the electronic address to which ~~the materials may be returned~~ a notice of deletion may be sent. After determination of the matter, the clerk may mail or send the material if in paper form back to the party lodging it. If the lodged material is in electronic form, the clerk may permanently delete it after sending notice of the deletion to the party who lodged the material.

(Subd (b) amended effective January 1, 2017; previously amended effective January 1, 2007, and January 1, 2016.)

Rule 3.1302 amended effective January 1, 2017; adopted as rule 319 effective January 1, 1984; previously amended and renumbered as rule 3.1302 effective January 1, 2007; previously amended effective January 1, 2016.

Rule 3.1306. Evidence at hearing

(a)–(b) * * *

(c) Judicial notice

A party requesting judicial notice of material under Evidence Code sections 452 or 453 must provide the court and each party with a copy of the material. If the material is part of a file in the court in which the matter is being heard, the party must:

(1) * * *

(2) Either make arrangements with the clerk to have the file in the courtroom at the time of the hearing or confirm with the clerk that the file is electronically accessible to the court.

(Subd (c) amended effective January 1, 2017; adopted as subd (b); previously amended and relettered effective January 1, 2003; previously amended effective January 1, 2007.)

Rule 3.1306 amended effective January 1, 2017; adopted as rule 323 effective January 1, 1984; previously amended effective January 1, 2003; previously amended and renumbered as rule 3.1306 effective January 1, 2007.

Rule 3.1362. Motion to be relieved as counsel

(a)–(c) * * *

(d) Service

The notice of motion and motion, the declaration, and the proposed order must be served on the client and on all other parties who have appeared in the case. The notice may be by personal service, electronic service, or mail.

(1) If the notice is served on the client by mail under Code of Civil Procedure section 1013, it must be accompanied by a declaration stating facts showing that either:

(~~1~~A) The service address is the current residence or business address of the client; or

(~~2~~B) The service address is the last known residence or business address of the client and the attorney has been unable to locate a more current address after making reasonable efforts to do so within 30 days before the filing of the motion to be relieved.

(2) If the notice is served on the client by electronic service under Code of Civil Procedure section 1010.6 and rule 2.251, it must be accompanied by a declaration stating that the electronic service address is the client's current electronic service address.

As used in this rule, "current" means that the address was confirmed within 30 days before the filing of the motion to be relieved. Merely demonstrating that the notice was sent to the client's last known address and was not returned or no electronic delivery failure message was received is not, by itself, sufficient to demonstrate that the address is current. If the service is by mail, Code of Civil Procedure section 1011(b) applies.

(Subd (d) amended effective January 1, 2017; adopted as subd (c); previously relettered and amended effective July 1, 2000; previously amended effective July 1, 1991, January 1, 1996, January 1, 2007, and January 1, 2009.)

(e) * * *

Rule 3.1362 amended effective January 1, 2017; adopted as rule 376 effective July 1, 1984; previously amended and renumbered effective January 1, 2007; previously amended effective July 1, 1991, January 1, 1996, July 1, 2000, and January 1, 2009.

Rule 4.403. Application

These rules apply only to criminal cases in which the defendant is convicted of one or more offenses punishable as a felony by a determinate sentence imposed under Penal Code part 2, title 7, chapter 4.5 (commencing with section 1170).

Rule 4.403 amended effective January 1, 2017; adopted as rule 403 effective July 1, 1977; previously amended and renumbered effective January 1, 2001; previously amended effective July 1, 2003, and January 1, 2007.

Advisory Committee Comment

The sentencing rules do not apply to offenses carrying a life term or other indeterminate sentences for which sentence is imposed under section 1168(b).

The operative portions of section 1170 deal exclusively with prison sentences; and the mandate to the Judicial Council in section 1170.3 is limited to criteria affecting the length of prison sentences, sentences in county jail under section 1170(h), and the grant or denial of probation. ~~Criteria dealing with jail sentences, fines, or jail time and fines as conditions of probation, would substantially exceed the mandate of the legislation.~~

Rule 4.405. Definitions

As used in this division, unless the context otherwise requires:

(1)–(3) * * *

(4) "Aggravation" or "circumstances in aggravation" means factors that the court may consider in its broad discretion in imposing one of the three authorized ~~prison~~ terms of imprisonment referred to in section 1170(b).

(5) "Mitigation" or "circumstances in mitigation" means factors that the court may consider in its broad discretion in imposing one of the three authorized ~~prison~~ terms of imprisonment referred to in section 1170(b) or factors that may justify the court in striking the additional punishment for an enhancement when the court has discretion to do so.

(6)–(7) * * *

(8) "Imprisonment" means confinement in a state prison or county jail under section 1170(h).

(9)–(10) * * *

(11) "Mandatory supervision" means the period of supervision defined in section 1170(h)(5)(A), (B).

(12) "Postrelease community supervision" means the period of supervision governed by section 3451 et seq.

(13) "Evidence-based practices" means supervision policies, procedures, programs, and practices demonstrated by scientific research to reduce recidivism among individuals under probation, parole, or postrelease supervision.

(14) "Community-based corrections program" means a program consisting of a system of services for felony offenders under local supervision dedicated to the goals stated in section 1229(c)(1)–(5).

(15) "Local supervision" means the supervision of an adult felony offender on probation, mandatory supervision, or postrelease community supervision.

(16) "County jail" means local county correctional facility.

Rule 4.405 amended effective January 1, 2017; adopted as rule 405 effective July 1, 1977; previously renumbered effective January 1, 2001; previously amended effective July 28, 1977, January 1, 1991, July 1, 2003, January 1, 2007, and May 23, 2007.

Advisory Committee Comment

"Base term" is the term of imprisonment selected under section 1170(b) from the three possible terms. (See section 1170(a)(3); *People v. Scott* (1994) 9 Cal.4th 331, 349.) Following the United States Supreme Court decision in *Cunningham v. California* (2007) 549 U.S. 270 ~~[127 S.Ct. 856.]~~, the Legislature amended the determinate sentencing law. (See Sen. Bill 40; Stats. 2007, ch. 3.) To comply with those changes, these rules were also amended. In light of those amendments, for clarity, the phrase "base term" in (4) and (5) was replaced with "one of the three authorized prison terms." This language was subsequently changed to "three authorized terms of imprisonment" to incorporate county jail sentences under section 1170(h) in light of more recent legislative amendments to the determinate sentencing law. (See Assem. Bill 109; Stats. 2011, ch. 15.) It is an open question whether the definitions in (4) and (5) apply to enhancements for which the statute provides for three possible terms. The Legislature in SB 40 amended section 1170(b) but did not modify sections 1170.1(d), 12022.2(a), 12022.3(b), or any other section providing for an enhancement with three possible terms. The latter sections provide that "the court shall impose the middle term unless there are circumstances in aggravation or mitigation." (See, e.g., section 1170.1(d).) It is possible, although there are no cases addressing the point, that this enhancement

triad with the presumptive imposition of the middle term runs afoul of Cunningham. Because of this open question, rule 4.428(b) was deleted.

"Enhancement." The facts giving rise to an enhancement, the requirements for pleading and proving those facts, and the court's authority to strike the additional term are prescribed by statutes. See, for example, sections 667.5 (prior prison terms), 12022 (being armed with a firearm or using a deadly weapon), 12022.5 (using a firearm), 12022.6 (excessive taking or damage), 12022.7 (great bodily injury), 1170.1(e) (pleading and proof), and 1385(c) (authority to strike the additional punishment). Note: A consecutive sentence is not an enhancement. (See section 1170.1(a); *People v. Tassell* (1984) 36 Cal.3d 77, 90 [overruled on other grounds in *People v. Ewoldt* (1994) 7 Cal.4th 380, 401].)

"Sentence choice." Section 1170(c) requires the judge to state reasons for the sentence choice. This general requirement is discussed in rule 4.406.

"Imprisonment" in state prison or county jail under section 1170(h) is distinguished from confinement in other types of facilities.

"Charged" and "found." Statutes require that the facts giving rise to all enhancements be charged and found. See section 1170.1(e).

Item (13), see sections 17.5(a)(9) and 3450(b)(9).

Item (15), see section 1229(e).

Rule 4.406. Reasons

(a) * * *

(b) When reasons required

Sentence choices that generally require a statement of a reason include:

(1) Granting probation;

(2) Imposing a prison sentence or sentence in county jail under section 1170(h) and thereby denying probation;

(3)–(8) * * *

(9) Not committing an eligible defendant to the California Rehabilitation Center; ~~and~~

(10) Striking an enhancement or prior conviction allegation under section 1385(a).; and

(11) Denying mandatory supervision in the interests of justice under section 1170(h)(5)(A).

(Subd (b) amended effective January 1, 2017; previously amended effective January 1, 2001, July 1, 2003, January 1, 2006, January 1, 2007, and May 23, 2007.)

Rule 4.406 amended effective January 1, 2017; adopted as rule 406 effective January 1, 1991; previously amended and renumbered effective January 1, 2001; previously amended effective July 1, 2003, January 1, 2006, January 1, 2007, and May 23, 2007.

Rule 4.409. Consideration of criteria

* * *

Advisory Committee Comment

Relevant criteria are those applicable to the facts in the record of the case; not all criteria will be relevant to each case. The judge's duty is similar to the duty to consider the probation officer's report. Section 1203.

In deeming the sentencing judge to have considered relevant criteria, the rule applies the presumption of Evidence Code section 664 that official duty has been regularly performed. (See *People v. Moran* (1970) 1 Cal.3d 755, 762 ([trial court presumed to have considered referring eligible defendant to California Youth Authority in absence of any showing to the contrary, citing Evidence Code section 664)].)

Rule 4.410. General objectives in sentencing

(a) General objectives of sentencing include:

(1)–(5) * * *

(6) Securing restitution for the victims of crime; and

(7) Achieving uniformity in sentencing.; and

(8) Increasing public safety by reducing recidivism through community-based corrections programs and evidence-based practices.

(Subd (a) amended effective January 1, 2017; previously amended effective July 1, 2003, ad January 1, 2007.)

(b) * * *

Rule 4.410 amended effective January 1, 2017; adopted as rule 410 effective July 1, 1977; previously renumbered effective January 1, 2001; previously amended effective July 1, 2003, ND January 1, 2007.

Advisory Committee Comment

Statutory expressions of policy include:

Welfare and Institutions Code section 1820 et seq., which provides partnership funding for county juvenile ranches, camps, or forestry camps.

Section 1203(b)(3), which requires that eligible defendants be considered for probation and authorizes probation if circumstances in mitigation are found or justice would be served.

Section 1170(a)(1), which expresses the policies of uniformity, proportionality of ~~prison~~ terms of imprisonment to the seriousness of the offense, and the use of imprisonment as punishment.

Sections 17.5, 1228, and 3450, which express the policies promoting reinvestment of criminal justice resources to support community-based corrections programs and evidence-based practices to improve public safety through a reduction in recidivism.

Other statutory provisions that prohibit the grant of probation in particular cases.

Rule 4.411.5. Probation officer's presentence investigation report

(a) Contents

A probation officer's presentence investigation report in a felony case must include at least the following:

(1)–(5) * * *

(6) Any relevant facts concerning the defendant's social history, including those categories enumerated in section 1203.10, organized under appropriate subheadings, including, whenever applicable, "Family," "Education," "Employment and income," "Military," "Medical/psychological," "Record of substance abuse or lack thereof," and any other relevant subheadings. This includes facts relevant to whether the defendant may be suffering from sexual

trauma, traumatic brain injury, posttraumatic stress disorder, substance abuse, or mental health problems as a result of his or her U.S. military service.

(7)–(12) * * *

(Subd (a) amended effective January 1, 2017; previously amended effective January 1, 1991, July 1, 2003, January 1, 2007, and January 1, 2015.)

(b)–(c) * * *

Rule 4.411.5 amended effective January 1, 2017; adopted as rule 419 effective July 1, 1981; previously amended and renumbered as rule 411.5 effective January 1, 1991; previously renumbered effective January 1, 2001; previously amended effective July 1, 2003 January 1, 2007, and January 1, 2015.

Rule 4.412. Reasons—agreement to punishment as an adequate reason and as abandonment of certain claims

(a) * * *

(b) Agreement to sentence abandons section 654 claim

By agreeing to a specified term in prison or county jail under section 1170(h) ~~term~~ personally and by counsel, a defendant who is sentenced to that term or a shorter one abandons any claim that a component of the sentence violates section 654's prohibition of double punishment, unless that claim is asserted at the time the agreement is recited on the record.

(Subd (b) amended effective January 1, 2017; previously amended effective January 1, 2007.)

Rule 4.412 amended effective January 1, 2017; adopted as rule 412 effective January 1, 1991; previously amended and renumbered effective January 1, 2001; previously amended effective January 1, 2007.

Rule 4.414. Criteria affecting probation

Criteria affecting the decision to grant or deny probation include facts relating to the crime and facts relating to the defendant.

(a) * * *

(b) Facts relating to the defendant

Facts relating to the defendant include:

(1) * * *

(2) Prior performance and present status on probation, mandatory supervision, postrelease community supervision, or parole ~~and present probation or parole status~~;

(3)–(8) * * *

(Subd (b) amended effective January 1, 2017; previously amended effective January 1, 1991, July 1, 2003, and January 1, 2007.)

Rule 4.414 amended effective January 1, 2017; adopted as rule 414 effective July 1, 1977; previously renumbered effective January 1, 2001; previously amended effective January 1, 1991, July 1, 2003, and January 1, 2007.

Advisory Committee Comment

The sentencing judge's discretion to grant probation is unaffected by the Uniform Determinate Sentencing Act (section ~~§~~ 1170(a)(3)).

The decision whether to grant probation is normally based on an overall evaluation of the likelihood that the defendant will live successfully in the general community. Each criterion points to evidence that the likelihood of success is great or small. A single criterion will rarely be determinative; in most cases, the sentencing judge will have to balance favorable and unfavorable facts.

Under criteria (b)(3) and (b)(4), it is appropriate to consider the defendant's expressions of willingness to comply and his or her apparent sincerity, and whether the defendant's home and work environment and primary associates will be supportive of the defendant's efforts to comply with the terms of probation, among other factors.

Rule 4.415. Criteria affecting the imposition of mandatory supervision

(a) Presumption

Except where the defendant is statutorily ineligible for suspension of any part of the sentence, when imposing a term of imprisonment in county jail under section 1170(h), the court must suspend execution of a concluding portion of the term to be served as a period of mandatory supervision unless the court finds, in the interests

of justice, that mandatory supervision is not appropriate in a particular case. Because section 1170(h)(5)(A) establishes a statutory presumption in favor of the imposition of a period of mandatory supervision in all applicable cases, denials of a period of mandatory supervision should be limited.

(Subd (a) amended effective January 1, 2017.)

(b)–(d) * * *

Rule 4.415 amended effective January 1, 2017; adopted effective January 1, 2015.

Advisory Committee Comment

Penal Code section 1170.3 requires the Judicial Council to adopt rules of court that prescribe criteria for the consideration of the court at the time of sentencing regarding the court's decision to "[d]eny a period of mandatory supervision in the interests of justice under paragraph (5) of subdivision (h) of Section 1170 or determine the appropriate period of and conditions of mandatory supervision."

Subdivision (a). Penal Code section 1170(h)(5)(A): "Unless the court finds, in the interests of justice, that it is not appropriate in a particular case, the court, when imposing a sentence pursuant to paragraph (1) or (2) of this subdivision, shall suspend execution of a concluding portion of the term for a period selected at the court's discretion." Under *People v. Borynack* (2015) 238 Cal.App.4th 958, review denied, courts may not impose mandatory supervision when the defendant is statutorily ineligible for a suspension of part of the sentence.

Subdivisions (b)(3), (b)(4), and (c)(3). * * *

Subdivision (c)(7). * * *

Rule 4.420. Selection of term of imprisonment

(a) * * *

(b) In exercising his or her discretion in selecting one of the three authorized ~~prison~~ terms of imprisonment referred to in section 1170(b), the sentencing judge may consider circumstances in aggravation or mitigation, and any other factor reasonably related to the sentencing decision. The relevant circumstances may be obtained from the case record, the probation officer's report, other reports and statements properly received, statements in aggravation or mitigation, and any evidence introduced at the sentencing hearing.

(Subd (b) amended effective January 1, 2017; previously amended effective July 28, 1977, January 1, 1991, January 1, 2007, May 23, 2007, and January 1, 2008.)

(c)-(d) * * *

(e) The reasons for selecting one of the three authorized ~~prison~~ terms of imprisonment referred to in section 1170(b) must be stated orally on the record.

(Subd (e) amended effective January 1, 2017; previously amended and relettered effective January 1, 1991; previously amended effective July 28, 1977, January 1, 2007, and May 23, 2007.)

Rule 4.420 amended effective January 1, 2017; adopted as rule 439 effective July 1, 1977; previously amended and renumbered as rule 420 effective January 1, 1991; previously renumbered effective January 1, 2001; previously amended effective July 28, 1977, January 1, 2007, May 23, 2007, and January 1, 2008.

Advisory Committee Comment

The determinate sentencing law authorizes the court to select any of the three possible ~~prison~~ terms of imprisonment even though neither party has requested a particular term by formal motion or informal argument. Section 1170(b) vests the court with discretion to impose any of the three authorized ~~prison~~ terms of imprisonment and requires that the court state on the record the reasons for imposing that term.

It is not clear whether the reasons stated by the judge for selecting a particular term qualify as "facts" for the purposes of the rule prohibition on dual use of facts. Until the issue is clarified, judges should avoid the use of reasons that may constitute an impermissible dual use of facts. For example, the court is not permitted to use a reason to impose a greater term if that reason also is either (1) the same as an enhancement that will be imposed, or (2) an element of the crime. The court should not use the same reason to impose a consecutive sentence as to impose an upper term of imprisonment. (*People v. Avalos* (1984) 37 Cal.3d 216, 233.) It is not improper to use the same reason to deny probation and to impose the upper term. (*People v. Bowen* (1992) 11 Cal.App.4th 102, 106.)

The rule makes it clear that a fact charged and found as an enhancement may, in the alternative, be used as a factor in aggravation.

People v. Riolo (1983) 33 Cal.3d 223, 227 (and note 5 on 227) held that section 1170.1(a) does not require the judgment to state the base term (upper, middle, or lower) and enhancements, computed independently, on counts that are subject to automatic reduction under the one-third formula of section 1170.1(a).

Even when sentencing is under section 1170.1, however, it is essential to determine the base term and specific enhancements for each count independently, in order to know which is the principal term count. The principal term count must be determined before any calculation is made using the one-third formula for subordinate terms.

In addition, the base term (upper, middle, or lower) for each count must be determined to arrive at an informed decision whether to make terms consecutive or concurrent; and the base term for each count must be stated in the judgment when sentences are concurrent or are fully consecutive (i.e., not subject to the one-third rule of section 1170.1(a)).

Rule 4.421. Circumstances in aggravation

Circumstances in aggravation include factors relating to the crime and factors relating to the defendant.

(a) * * *

(b) Factors relating to the defendant

Factors relating to the defendant include that:

(1)–(2) * * *

(3) The defendant has served a prior <u>term in</u> prison <u>or county jail under section 1170(h)</u> ~~term~~;

(4) The defendant was on probation<u>, mandatory supervision, postrelease community supervision,</u> or parole when the crime was committed; and

(5) The defendant's prior performance on probation<u>, mandatory supervision, postrelease community supervision,</u> or parole was unsatisfactory.

(Subd (b) amended effective January 1, 2017; previously amended effective January 1, 1991, January 1, 2007, and May 23, 2007.)

(c) * * *

Rule 4.421 amended effective January 1, 2017; adopted as rule 421 effective July 1, 1977; previously renumbered effective January 1, 2001; previously amended effective January 1, 1991, January 1, 2007, and May 23, 2007.

Advisory Committee Comment

Circumstances in aggravation may justify imposition of the upper of three possible ~~prison~~ terms of imprisonment. (Section 1170(b).)

The list of circumstances in aggravation includes some facts that, if charged and found, may be used to enhance the sentence. The rule does not deal with the dual use of the facts; the statutory prohibition against dual use is included, in part, in rule 4.420.

Conversely, such facts as infliction of bodily harm, being armed with or using a weapon, and a taking or loss of great value may be circumstances in aggravation even if not meeting the statutory definitions for enhancements.

Facts concerning the defendant's prior record and personal history may be considered. By providing that the defendant's prior record and simultaneous convictions of other offenses may not be used both for enhancement and in aggravation, section 1170(b) indicates that these and other facts extrinsic to the commission of the crime may be considered in aggravation in appropriate cases. This resolves whatever ambiguity may arise from the phrase "circumstances in aggravation . . . of the crime." The phrase "circumstances in aggravation or mitigation of the crime" necessarily alludes to extrinsic facts.

Refusal to consider the personal characteristics of the defendant in imposing sentence would also raise serious constitutional questions. The California Supreme Court has held that sentencing decisions must take into account "the nature of the offense and/or the offender, with particular regard to the degree of danger both present to society." *In re Rodriguez* (1975) 14 Cal.3d 639, 654, quoting *In re Lynch* (1972) 8 Cal.3d 410, 425. In *In re Rodriguez* the court released petitioner from further incarceration because "[I]t appears that neither the circumstances of his offense *nor his personal characteristics* establish a danger to society sufficient to justify such a prolonged period of imprisonment." (*Id*. at 655.) (Footnote omitted, emphasis added.) "For the determination of sentences, justice generally requires . . . that there be taken into account the circumstances of the offense together with the character and propensities of the offender." (*Pennsylvania v. Ashe* (1937) 302 U.S. 51, 55, quoted with approval in *Gregg v. Georgia* (1976) 428 U.S. 153, 189.)

The scope of "circumstances in aggravation or mitigation" under section 1170(b) is, therefore, coextensive with the scope of inquiry under the similar phrase in section 1203.

The 1990 amendments to this rule and the comment included the deletion of most section numbers. These changes recognize changing statutory section numbers and the fact that there are numerous additional code sections related to the rule, including numerous statutory enhancements enacted since the rule was originally adopted.

Former subdivision (a)(4), concerning multiple victims, was deleted to avoid confusion; cases in which that possible circumstance in aggravation was relied on were frequently reversed on appeal

because there was only a single victim in a particular count.

Old age or youth of the victim may be circumstances in aggravation; see section 1170.85(b). Other statutory circumstances in aggravation are listed, for example, in sections 422.76, 1170.7, 1170.71, ~~1170.75,~~ 1170.8, and 1170.85.

Rule 4.423. Circumstances in mitigation

Circumstances in mitigation include factors relating to the crime and factors relating to the defendant.

(a) * * *

(b) Factors relating to the defendant

Factors relating to the defendant include that:

(1)–(5) * * *

(6) The defendant's prior performance on probation, mandatory supervision, postrelease community supervision, or parole was satisfactory.

(Subd (b) amended effective January 1, 2017; previously amended effective January 1, 1991, January 1, 2007, and May 23, 2007.)

Rule 4.423 amended effective January 1, 2017; adopted as rule 423 effective July 1, 1977; previously renumbered effective January 1, 2001; previously amended effective January 1, 1991, July 1, 1993, January 1, 2007, and May 23, 2007.

Rule 4.425. Criteria affecting concurrent or consecutive sentences

Criteria affecting the decision to impose consecutive rather than concurrent sentences include:

(a) * * *

(b) Other criteria and limitations

Any circumstances in aggravation or mitigation may be considered in deciding whether to impose consecutive rather than concurrent sentences, except:

(1) * * *

(2) A fact used to otherwise enhance the defendant's sentence in prison or county jail under section 1170(h) ~~sentence~~; and

(3) * * *

(Subd (b) amended effective January 1, 2017; previously amended effective January 1, 1991, and January 1, 2007.)

Rule 4.425 amended effective January 1, 2017; adopted as rule 425 effective July 1, 1977; previously renumbered effective January 1, 2001; previously amended effective January 1, 1991, and January 1, 2007.

Rule 4.427. Hate crimes

(a) * * *

(b) Felony sentencing under section 422.7

If one of the three factors listed in section 422.7 is pled and proved, a misdemeanor conviction that constitutes a hate crime under section 422.55 may be sentenced as a felony. The punishment is imprisonment in state prison or county jail under section 1170(h) as provided by section 422.7.

(Subd (b) amended effective January 1, 2017.)

(c)–(e) * * *

Rule 4.427 amended effective January 1, 2017; adopted effective January 1, 2007.

Rule 4.431. Proceedings at sentencing to be reported

* * *

Advisory Committee Comment

Reporters' transcripts of the sentencing proceedings are required on appeal (rule ~~8.420~~ 8.320, except in certain cases under subdivision (d) of that rule), and when the defendant is sentenced to prison (section 1203.01).

Rule 4.433. Matters to be considered at time set for sentencing

(a) In every case, at the time set for sentencing under section 1191, the sentencing judge must hold a hearing at which the judge must:

(1) Hear and determine any matters raised by the defendant under section 1201; ~~and~~

(2) Determine whether a defendant who is eligible for probation should be granted or denied probation, unless consideration of probation is expressly waived by the defendant personally and by counsel~~.~~; and

(3) Determine whether to deny a period of mandatory supervision in the interests of justice under section 1170(h)(5)(A).

(Subd (a) amended effective January 1, 2017; previously amended effective January 1, 2007.)

(b) If the imposition of a sentence is to be suspended during a period of probation after a conviction by trial, the trial judge must identify and state circumstances that would justify imposition of one of the three authorized ~~prison~~ terms of imprisonment referred to in section 1170(b) if probation is later revoked. The circumstances identified and stated by the judge must be based on evidence admitted at the trial or other circumstances properly considered under rule 4.420(b).

(Subd (b) amended effective January 1, 2017; previously amended effective July 28, 1977, January 1, 2007, May 23, 2007, and January 1, 2008.)

(c) If a sentence of imprisonment is to be imposed, or if the execution of a sentence of imprisonment is to be suspended during a period of probation, the sentencing judge must:

(1) Determine, under section 1170(b), whether to impose one of the three authorized ~~prison~~ terms of imprisonment referred to in section 1170(b) and state on the record the reasons for imposing that term~~.~~;

(2)–(5) * * *

(Subd (c) amended effective January 1, 2017; previously amended effective July 28, 1977, July 1, 2003, January 1, 2007, and May 23, 2007.)

(d) * * *

(e) When a sentence of imprisonment is imposed under (c) or under rule 4.435, the sentencing judge must inform the defendant~~,~~:

(1) Under section 1170(c)~~,~~ of the parole period provided by section 3000 to be served after expiration of the sentence, in addition to any period of incarceration for parole violation~~.~~;

(2) Of the period of postrelease community supervision provided by section 3456 to be served after expiration of the sentence, in addition to any period of incarceration for a violation of postrelease community supervision; or

(3) Of any period of mandatory supervision imposed under section 1170(h)(5)(A), (B), in addition to any period of imprisonment for a violation of mandatory supervision.

(Subd (e) amended effective January 1, 2017; previously amended effective July 28, 1977, January 1, 1979, July 1, 2003, and January 1, 2007.)

Rule 4.433 amended effective January 1, 2017; adopted as rule 433 effective July 1, 1977; previously renumbered effective January 1, 2001; previously amended effective July 28, 1977, January 1, 1979, July 1, 2003, January 1, 2007, May 23, 2007, and January 1, 2008.

Advisory Committee Comment

This rule summarizes the questions that the court is required to consider at the time of sentencing, in their logical order.

Subdivision (a)(2) makes it clear that probation should be considered in every case, without the necessity of any application, unless the defendant is statutorily ineligible for probation.

Under subdivision (b), when imposition of sentence is to be suspended, the sentencing judge is not to make any determinations as to possible length of a ~~prison~~ term of imprisonment on violation of probation (section 1170(b)). If there was a trial, however, the judge must state on the record the circumstances that would justify imposition of one of the three authorized ~~prison~~ terms of imprisonment based on the trial evidence.

Subdivision (d) makes it clear that all sentencing matters should be disposed of at a single hearing unless strong reasons exist for a continuance.

Rule 4.435. Sentencing on revocation of probation

(a) * * *

(b) On revocation and termination of probation under section 1203.2, when the sentencing judge determines that the defendant will be committed to prison or county jail under section 1170(h):

(1) * * *

(2) If the execution of sentence was previously suspended, the judge must order that the judgment previously pronounced be in full force and effect and that the defendant be committed to the custody of the Secretary of the Department of Corrections and Rehabilitation or local county correctional administrator or sheriff for the term prescribed in that judgment.

(Subd (b) amended effective January 1, 2017; previously amended effective July 1, 2003, January 1, 2006, and January 1, 2007.)

Rule 4.435 amended effective January 1, 2017; adopted as rule 435 effective July 1, 1977; previously renumbered effective January 1, 2001; previously amended effective January 1, 1991, July 1, 2003, January 1, 2006, and January 1, 2007.

Advisory Committee Comment

Subdivision (a) makes it clear that there is no change in the court's power, on finding cause to revoke and terminate probation under section 1203.2(a), to continue the defendant on probation.

The restriction of subdivision (b)(1) is based on *In re Rodriguez* (1975) 14 Cal.3d 639, 652: "[T]he primary term must reflect the circumstances existing at the time of the offense."

A judge imposing ~~a prison sentence~~ imprisonment on revocation of probation will have the power granted by section 1170(d) to recall the commitment on his or her own motion within 120 days after the date of commitment, and the power under section 1203.2(e) to set aside the revocation of probation, for good cause, within 30 days after the court has notice that execution of the sentence has commenced.

Consideration of conduct occurring after the granting of probation should be distinguished from consideration of preprobation conduct that is discovered after the granting of an order of probation and before sentencing following a revocation and termination of probation. If the preprobation conduct affects or nullifies a determination made at the time probation was granted,

the preprobation conduct may properly be considered at sentencing following revocation and termination of probation. (See *People v. Griffith* (1984) 153 Cal.App.3d 796, 801.)

Rule 4.452. Determinate sentence consecutive to prior determinate sentence

If a determinate sentence is imposed under section 1170.1(a) consecutive to one or more determinate sentences imposed previously in the same court or in other courts, the court in the current case must pronounce a single aggregate term, as defined in section 1170.1(a), stating the result of combining the previous and current sentences. In those situations:

(1)–(2) * * *

(3) Discretionary decisions of the judges in the previous cases may not be changed by the judge in the current case. Such decisions include the decision to impose one of the three authorized ~~prison~~ terms of imprisonment referred to in section 1170(b), making counts in prior cases concurrent with or consecutive to each other, or the decision that circumstances in mitigation or in the furtherance of justice justified striking the punishment for an enhancement.

Rule 4.452 amended effective January 1, 2017; adopted as rule 452 effective January 1, 1991; previously renumbered effective January 1, 2001; previously amended effective July 1, 2003, January 1, 2007, and May 23, 2007.

Rule 4.472. Determination of presentence custody time credit

At the time of sentencing, the court must cause to be recorded on the judgment or commitment the total time in custody to be credited on the sentence under sections 2900.5, 2933.1(c), ~~and~~ 2933.2(c), and 4019. On referral of the defendant to the probation officer for an investigation and report under section 1203(b) or 1203(g), or on setting a date for sentencing in the absence of a referral, the court must direct the sheriff, probation officer, or other appropriate person to report to the court and notify the defendant or defense counsel and prosecuting attorney within a reasonable time before the date set for sentencing as to the number of days that defendant has been in custody and for which he or she may be entitled to credit. Any challenges to the report must be heard at the time of sentencing.

Rule 4.472 amended effective January 1, 2017; adopted as rule 252 effective January 1, 1977; previously amended and renumbered as rule 472 effective January 1, 1991, and as rule 4.472 effective January 1, 2001; previously amended effective July 1, 2003, and January 1, 2007.

Rule 4.480. Judge's statement under section 1203.01

A sentencing judge's statement of his or her views under section 1203.01 respecting a person sentenced to the Department of Corrections and Rehabilitation, Division of Adult Operations is required only in the event that no probation report is filed. Even though it is not required, however, a statement should be submitted by the judge in any case in which he or she believes that the correctional handling and the determination of term and parole should be influenced by information not contained in other court records.

The purpose of a section 1203.01 statement is to provide assistance to the Department of Corrections and Rehabilitation, Division of Adult Operations in its programming and institutional assignment and to the Board of Parole Hearings with reference to term fixing and parole release of persons sentenced indeterminately, and parole and postrelease community supervision waiver of persons sentenced determinately. It may amplify any reasons for the sentence that may bear on a possible suggestion by the Secretary of the Department of Corrections and Rehabilitation or the Board of Parole Hearings that the sentence and commitment be recalled and the defendant be resentenced. To be of maximum assistance to these agencies, a judge's statements should contain individualized comments concerning the convicted offender, any special circumstances that led to a prison sentence rather than local incarceration, and any other significant information that might not readily be available in any of the accompanying official records and reports.

If a section 1203.01 statement is prepared, it should be submitted no later than two weeks after sentencing so that it may be included in the official Department of Corrections and Rehabilitation, Division of Adult Operations case summary that is prepared during the time the offender is being processed at the Reception-Guidance Center of the Department of Corrections and Rehabilitation, Division of Adult Operations.

Rule 4.480 amended effective January 1, 2017; adopted as section 12 of the Standards of Judicial Administration effective January 1, 1973; previously amended and renumbered as rule 4.480 effective January 1, 2001; previously amended effective July 1, 1978, July 1, 2003, January 1, 2006, and January 1, 2007.

Rule 4.530. Intercounty transfer of probation and mandatory supervision cases

(a)–(f) * * *

(g) Transfer

(1)–(2) * * *

(3) Transfer is effective the date the transferring court orders the transfer. Upon transfer of the case, the receiving court must accept the entire jurisdiction over the case.

(4) * * *

(5) Upon transfer of the case, t~~T~~he transferring court must transmit ~~any records of payments and~~ the entire original court file~~, except exhibits,~~ to the receiving court ~~within two weeks of the transfer order~~ in all cases in which the supervisee is the sole defendant, except the transferring court shall not transfer (A) exhibits or (B) any records of payments. If transfer is ordered in a case involving more than one defendant, the transferring court must transmit certified copies of the entire original court file, except exhibits and any records of payments, to the receiving court upon transfer of the case.

(6) Upon transfer t~~T~~he probation officer of the transferring county must transmit, at a minimum, any court orders, probation or mandatory supervision reports, and case plans~~, and all records of payments~~ to the probation officer of the receiving county ~~within two weeks of the transfer order~~.

(7) * * *

(Subd (g) amended effective January 1, 2017; previously amended effective November 1, 2012.)

(h) Court-ordered debt

(1) In accordance with Penal Code section 1203.9(d) and (e):

(A) If the transferring court has ordered the defendant to pay fines, fees, forfeitures, penalties, assessments, or restitution, the transfer order must require that those and any other amounts ordered by the transferring court that are still unpaid at the time of transfer be paid by the defendant to the collection program for the transferring court for proper distribution and accounting once collected.

(B) The receiving court and receiving county probation department may impose additional local fees and costs as authorized.

(C) Upon approval of a transferring court, a receiving court may elect to collect all of the court-ordered payments from a defendant attributable to the case under which the defendant is being supervised.

(2) Policies and procedures for implementation of the collection, accounting, and disbursement of court-ordered debt under this rule must be consistent with Judicial Council fiscal procedures available at *www.courts.ca.gov*.

(Subd (h) adopted effective January 1, 2017.)

Rule 4.530 amended effective January 1, 2017; adopted effective July 1, 2010; previously amended effective November 1, 2012, and February 20, 2014.

Advisory Committee Comment

Subdivision (g)(5) requires the transferring court to transmit the entire original court file, except exhibits and any records of payments, to the court of the receiving county in all cases in which the supervisee is the sole defendant. Before transmitting the entire original court file, transferring courts should consider retaining copies of the court file in the event of an appeal or a writ. In cases involving more than one defendant, subdivision (g)(5) requires the transferring court to transmit certified copies of the entire original court file to ensure that transferring courts are able to properly adjudicate any pending or future codefendant proceedings. Only documents related to the transferring defendant must be transmitted to the receiving court.

Subdivision (g)(7) clarifies that any jail sentence imposed as a condition of probation or mandatory supervision before transfer must be served in the transferring county unless otherwise authorized by law. For example, Penal Code section 1208.5 authorizes the boards of supervisors of two or more counties with work furlough programs to enter into agreements to allow work-furlough-eligible persons sentenced to or imprisoned in one county jail to transfer to another county jail.

Subdivision (h) requires defendants still owing fines, fees, forfeitures, penalties, assessments, or restitution to pay the transferring court's collection program. In counties where the county probation department collects this court-ordered debt, the term "collection program" is intended to include the county probation department.

Rule 5.66. Proof of service

(a) Requirements to file proof of service

Parties must file with the court a completed form to prove that the other party received the petition or complaint or response to petition or complaint.

(Subd (a) amended and lettered effective January 1, 2017; adopted as unlettered subd.)

(b) Methods of proof of service

(1) The proof of service of summons may be on a form approved by the Judicial Council or a document or pleading containing the same information required in *Proof of Service of Summons* (form FL-115).

(2) The proof of service of response to petition or complaint may be on a form approved by the Judicial Council or a document or pleading containing the same information required in *Proof of Service by Mail* (form FL-335) ~~or,~~ *Proof of Personal Service* (form FL-330), or *Proof of Electronic Service* (form POS-050/EFS-050).

(Subd (b) amended and lettered effective January 1, 2017; adopted as unlettered subd.)

Rule 5.66 amended effective January 1, 2017; adopted effective January 1, 2013.

Rule 5.504. Judicial Council forms

(a)–(b) * * *

(c) Implementation of new and revised mandatory forms

To help implement mandatory Judicial Council juvenile forms:

(1) * * *

(2) Until January 1, 201~~7~~9, a court may produce court orders in any form or format as long as:

(A)–(D) * * *

(Subd (c) amended effective January 1, 2017; adopted effective January 1, 2006; previously amended effective January 1, 2007, and January 1, 2012.)

Rule 5.504 amended effective January 1, 2017; adopted as rule 1402 effective January 1, 1991; previously amended and renumbered effective January 1, 2007; previously amended effective July 1, 1991, January 1, 1992, July 1, 1992, January 1, 1993, January 1, 1994, January 1, 1998, January 1, 2001, January 1, 2006, July 1, 2006, and January 1, 2012.

Rule 5.324. Telephone appearance in title IV-D hearings and conferences

(a)–(c) * * *

(d) Exceptions

A telephone appearance is not permitted for any of the following except as permitted by Family Code section 5700.316~~4930~~:

(1)–(2) * * *

(Subd (d) amended effective January 1, 2017; previously amended effective January 1, 2008.)

(e)–(k) * * *

Rule 5.324 amended effective January 1, 2017; adopted effective July 1, 2005; previously amended effective January 1, 2007, January 1, 2008, July 1, 2008, July 1, 2011, and January 1, 2014.

Rule 5.380. Agreement and judgment of parentage in Domestic Violence Prevention Act cases

(a)–(b) * * *

(c) Notice of Entry of Judgment

When an *Agreement and Judgment of Parentage* (form DV-180) is filed, the court must ~~mail~~ serve a *Notice of Entry of Judgment* (form FL-190) on the parties.

(Subd (c) amended effective January 1, 2017.)

Rule 5.380 amended effective January 1, 2017; adopted effective January 1, 2012.

Rule 5.390. Bifurcation of issues

(a)–(d) * * *

(e) Notice by clerk

Within 10 days after the order deciding the bifurcated issue and any statement of decision under rule 3.1591 have been filed, the clerk must ~~mail~~ serve copies to the parties and file a certificate of mailing or a certificate of electronic service.

(Subd (e) amended effective January 1, 2017.)

Rule 5.390 amended effective January 1, 2017; adopted effective January 1, 2013.

Rule 5.392. Interlocutory appeals

(a) * * *

(b) Certificate of probable cause for appeal

(1) * * *

(2) If it was not in the order, within 10 days after the clerk ~~mails~~ serves the order deciding the bifurcated issue, a party may notice a motion asking the court to certify that there is probable cause for immediate appellate review of the order. The motion must be heard within 30 days after the order deciding the bifurcated issue is ~~mailed~~ served.

(3) The clerk must promptly ~~mail~~ serve notice of the decision on the motion to the parties. If the motion is not determined within 40 days after ~~mailing of~~ serving the order on the bifurcated issue, it is deemed granted on the grounds stated in the motion.

(Subd (b) amended effective January 1, 2017; previously amended effective January 1, 2002, and January 1, 2003.)

(c) * * *

(d) Motion to appeal

(1) If the certificate is granted, a party may, within 15 days after the ~~mailing of~~ court serves the notice of the order granting it, serve and file in the Court of Appeal a motion to appeal the decision on the bifurcated issue. On ex parte application served and filed within 15 days, the Court of Appeal or the trial court may extend the time for filing the motion to appeal by not more than an additional 20 days.

(2)–(6) * * *

(Subd (d) amended effective January 1, 2017; previously amended effective January 1, 2002, January 1, 2003, and January 1, 2007.)

(e) * * *

(f) Proceedings if motion to appeal is granted

(1) * * *

(2) The partial record filed with the motion will be considered the record for the appeal unless, within 10 days from the date notice of the grant of the motion

is ~~mailed~~ served, a party notifies the Court of Appeal of additional portions of the record that are needed for the full consideration of the appeal.

(3)–(4) * * *

(Subd (f) amended effective January 1, 2017; previously amended effective January 1, 2002, January 1, 2003, and January 1, 2007.)

(g)–(h) * * *

Rule 5.392 renumbered effective January 1, 2017; adopted as rule 1269.5 effective July 1, 1989; previously amended and renumbered as rule 5.180 effective January 1, 2003; previously amended effective January 1, 1994, January 1, 2002, January 1, 2007, and January 1, 2013.

Rule 5.534. General provisions—all proceedings

~~(a) Control of proceedings (§§ 350, 680)~~

~~The court must control all proceedings with a view to quickly and effectively ascertaining the jurisdictional facts and all information relevant to the present condition and welfare of the child.~~

~~(b) Conduct of proceedings (§§ 350, 680)~~

~~Unless there is a contested issue of fact or law, the proceedings must be conducted in a nonadversarial atmosphere.~~

~~(c) Testimony of child in chambers (§ 350)~~

~~In a hearing under section 300 et seq., a child may testify in chambers and outside the presence of the child's parent or guardian if the parent or guardian is represented by counsel who is present, subject to the right of the parent or guardian to have the court reporter read back the child's testimony, and if the court determines, based on the petitioner's report or other offers of proof or other evidence, that any of the following circumstances exist:~~

~~(1) Testimony in chambers is necessary to ensure truthful testimony;~~

~~(2) The child is likely to be intimidated by a formal courtroom setting; or~~

~~(3) The child is afraid to testify in front of the parent or guardian.~~

~~**(d) Burden of proof (§§ 350, 701.1)**~~

~~Meeting the burden of proof:~~

~~(1) In any hearing under section 300 in which the county welfare agency has the burden of proof, the court may consider whether the burden of proof has been met only after completion of the agency's case and the presentation of any material evidence offered by the child. The court may then, on motion of any party or on the court's own motion, order whatever action the law requires if the court, based on all the evidence then before it, finds that the burden of proof has not been met.~~

~~(2) In any hearing under section 601 or 602, after the completion of the petitioner's case, the court may, on the motion of any party or on the court's own motion, order whatever action the law requires if the court, based on all the evidence then before it, finds that the burden of proof has not been met.~~

~~(e)~~(a) * * *

(Subd (a) relettered effective January 1, 2017; adopted as subd (e); previously amended effective January 1, 2007, and January 1, 2014.)

~~(f)~~(b) * * *

(Subd (b) relettered effective January 1, 2017; adopted as subd (f); previously amended effective January 1, 2007, January 1, 2011, and January 1, 2014.)

~~(g)~~(c) * * *

(Subd (c) relettered effective January 1, 2017; adopted as subd (g); previously amended effective July 1, 2002, January 1, 2007, and January 1, 2014.)

~~(h)~~(d) * * *

(Subd (d) relettered effective January 1, 2017; adopted as subd (h); previously amended effective July 1, 2002, January 1, 2007, and January 1, 2014.)

~~(i)~~(e) * * *

(Subd (e) relettered effective January 1, 2017; adopted as subd (i) effective January 1, 1997; previously amended effective July 1, 2002, and January 1, 2007.)

~~(j)~~**(f)** * * *

(Subd (f) relettered effective January 1, 2017; adopted as subd (j) effective January 1, 2008; previously amended effective January 1, 2014.)

~~(k)~~**(g) Advisement of hearing rights (§§ 301, 311, 341, 630, 702.5, 827)**

(1) The court must advise the child, parent, and guardian in section 300 cases, and the child in section 601 or section 602 cases, of the following rights:

(A) ~~Any~~ The right to assert the privilege against self-incrimination;

(B)–(D) * * *

(2)–(3) * * *

(Subd (g) amended and relettered effective January 1, 2017; adopted as subd (i); previously amended effective July 1, 2002, and January 1, 2007; previously relettered as subd (j) effective January 1, 1997, and as subd (k) effective January 1, 2008.

~~(l)~~**(h)** * * *

*(Subd (h) relettered effective January 1, 2017; adopted as subd (j); previously amended effective July 1, 2002, and January 1, 2007; previously relettered as subd (k) effective January 1, 1997, and as subd (*l*) effective January 1, 2008.)*

~~(m)~~**(i)** * * *

(Subd (i) relettered effective January 1, 2017; adopted as subd (k) effective January 1, 1994; previously relettered as subd (l) *effective January 1, 1997; previously relettered as subd (m) effective January 1, 2008; previously amended effective July 1, 2002, January 1, 2007, and July 1, 2016.)*

~~(n)~~**(j)** * * *

(Subd (j) relettered effective January 1, 2017; adopted as subd (m) effective October 1, 2007; previously relettered as subd (n) effective January 1, 2008; previously amended effective January 1, 2016.)

~~**(o) Periodic reports (§ 365)**~~

~~The court may require the petitioner or any other agency to submit reports concerning a child or youth subject to the jurisdiction of the court.~~

~~**(p) Presence of child (§ 349)**~~

~~(1) A child who is the subject of a juvenile court hearing is entitled to be present at the hearing. If the child is present at the hearing, the court must allow the child, if the child so desires, to address the court and participate in the hearing.~~

~~(2) If the child is 10 years of age or older and he or she is not present at the hearing, the court must determine whether the child was properly notified of his or her right to attend the hearing and ask why the child is not present at the hearing and whether the child was given an opportunity to attend. If the court finds that the child was not properly notified or that the child wished to be present and was not given an opportunity to be present, the court must continue the hearing to allow the child to attend unless the court finds that it is in the best interest of the child not to continue the hearing. Any such continuance must be only for that period of time necessary to provide notice and secure the presence of the child. The court may issue any and all orders reasonably necessary to ensure that the child has an opportunity to attend.~~

Rule 5.534 amended effective January 1, 2017; adopted as rule 1412 effective January 1, 1991; previously amended and renumbered as rule 5.534 effective January 1, 2007; previously amended effective January 1, 1994, July 1, 1995, January 1, 1997, January 1, 2000, July 1, 2002, January 1, 2005, October 1, 2007, January 1, 2008, January 1, 2010, January 1, 2011, January 1, 2014, January 1, 2016, and July 1, 2016.

Advisory Committee Comment

Because the intent of subdivision ~~(n)~~(j) is to expand access to the courts for caregivers of children in out-of-home care, the rule should be liberally construed. To promote caregiver participation and input, judicial officers are encouraged to permit caregivers to orally address the court when caregivers would like to share information about the child. In addition, court clerks should allow filings by caregivers even if the caregiver has not strictly adhered to the requirements in the rule regarding number of copies and filing deadlines.

Rule 5.555. Hearing to consider termination of juvenile court jurisdiction over a nonminor—dependents or wards of the juvenile court in a foster care placement and nonminor dependents (§§ 224.1(b), 303, 366.31, 391, 451, 452, 607.2, 607.3, 16501.1~~(f)~~(g)(16))

(a) * * *

(b) Setting a hearing

(1) A court hearing must be placed on the appearance calendar and ~~held~~ completed before ~~prior to terminating~~ juvenile court jurisdiction is terminated.

(2) The hearing under this rule may be held during any regularly scheduled review hearing or a hearing ~~required~~ on a petition filed under section ~~366 (g), 366.3, 366.31, 727.2, or 727.3 or rule 5.903~~ 388 or section 778.

(3) Notice of the hearing must be given as required by section 295.

(4) Notice of the hearing to the parent~~s~~ of a nonminor dependent as defined in section 11400(v) is not required, unless the parent~~s are~~ is receiving court-ordered family reunification services or the nonminor is living in the home of the parent or former legal guardian.

~~(4)~~(5) * * *

~~(5)~~(6) The hearing must be continued for no more than five court days for the submission of additional information as ordered by the court if the court determines that the report, the Transitional Independent Living Plan, the Transitional Independent Living Case Plan, ~~(TILCP)~~ if required, or the 90-day Transition Plan submitted by the social worker or probation officer does not provide the information required by (c) and the court is unable to make the findings and orders required by (d).

(Subd (b) amended effective January 1, 2017; previously amended effective July 1, 2012, and January 1, 2014.)

(c) Reports

(1) ~~In addition to complying with all other statutory and rule requirements applicable to the report prepared by the social worker or probation officer for any hearing during which termination of the court's jurisdiction will be considered,~~ The report prepared by the social worker or probation officer for a hearing under this rule must, in addition to any other elements required by law, include:

(A)–(C) * * *

(D) Whether the nonminor has applied for title XVI Supplemental Security Income benefits and, if so, the status of ~~any in-progress~~ that application

~~pending for title XVI Supplemental Security Income benefits~~, and whether remaining under juvenile court jurisdiction until a final decision has been issued is in the nonminor's best interests;

(E) Whether the nonminor has applied for Special Immigrant Juvenile status or other immigration relief and, if so, the status of ~~any in-progress~~ that application, ~~pending for Special Immigrant Juvenile Status or other applicable application for legal residency~~ and whether an active juvenile court case is required for that application;

(F)–(H) * * *

(I) ~~For a nonminor who is not present for the hearing:~~ If the social worker or probation officer has reason to believe that the nonminor will not appear at the hearing, documentation of the basis for that belief, including:

(i) Documentation of the nonminor's statement that he or she ~~did~~ does not wish to appear in ~~court~~ person or by telephone for the ~~scheduled~~ hearing; or

(ii) Documentation of ~~the~~ reasonable efforts ~~made~~ to ~~locate~~ find the nonminor when his or her ~~current~~ location is unknown;

(J)–(K) * * *

(2) The social worker or probation officer must file with the report a completed *Termination of Juvenile Court Jurisdiction—Nonminor* (form JV-365).

(3) The social worker or probation officer must also file with the report the nonminor's:

(A) * * *

(B) Most recent Transitional Independent Living Plan ~~(TILP)~~; and

(C) * * *

(4) The social worker's or probation officer's report and all documents required by ~~(c)~~(2)–(3) must be filed with the court at least 10 calendar days before the hearing, and the social worker or probation officer must provide copies of the report and other documents to the nonminor, the nonminor's parent~~s~~, and all attorneys of record. If the nonminor is under juvenile court jurisdiction as a

nonminor dependent, the social worker or probation officer is not required to provide copies of the report and other documents to the nonminor dependent's parent~~s~~, unless the ~~nonminor dependent's~~ parent~~s are~~ is receiving court-ordered family reunification services.

(Subd (c) amended effective January 1, 2017; previously amended effective July 1, 2012, and January 1, 2014.)

(d) Findings and orders

~~In addition to complying with all other statutory and rule requirements applicable to the hearing,~~ The court must, in addition to any other determinations required by law, make the following ~~judicial~~ findings and orders ~~must be made~~ and include~~d~~ them in the written ~~court~~ documentation of the hearing:

(1) *Findings*

(A)–(D) * * *

(E) Whether the nonminor has an ~~in-progress~~ application pending for title XVI Supplemental Security Income benefits, and if ~~such an application is pending~~ so, whether it is in the nonminor's best interests to continue juvenile court jurisdiction until a final decision has been issued to ensure that the nonminor receives continued assistance with the application process;

(F) Whether the nonminor has an ~~in-progress~~ application pending for Special Immigrant Juvenile status or other ~~applicable application for legal residency~~ immigration relief, and whether an active juvenile court case is required for that application;

(G)–(K) * * *

(L) Whether the nonminor's:

(i) * * *

(ii) Transitional Independent Living Plan identifies the nonminor's level of functioning, emancipation goals, and ~~the~~ specific skills ~~he or she~~ needs~~ed~~ to prepare ~~to live independently~~ for independence and successful adulthood ~~up~~on leaving foster care; and

(iii) * * *

(M) For a nonminor who ~~is not present~~ does not appear in person or by telephone for the hearing, whether ~~the reason for his or her failure to appear was~~:

(i) The nonminor~~'s~~ expressed a wish ~~to~~ not to appear ~~in court~~ for the ~~scheduled~~ hearing; or

(ii) The nonminor's ~~current~~ location remains unknown ~~although~~ and, if so, whether reasonable efforts were made to ~~locate~~ find the nonminor.

(N) * * *

(2) *Orders*

(A)–(B) * * *

(C) For a nonminor who does not meet and does not intend to meet the eligibility requirements for nonminor dependent status but who is otherwise eligible to and will remain under juvenile court jurisdiction in a foster care placement, the court must set an appropriate statutory review hearing ~~under section 366.21, 366.22, 366.25, 366.3, 727.2, or 727.3~~ within six months of the date of the nonminor's most recent status review hearing.

(D) * * *

(E) For a nonminor ~~(1)~~ who does not meet one or more of the eligibility criteria of section 11403(b) and is not otherwise eligible to remain under juvenile court jurisdiction~~, (2) who does~~ or, alternatively, who meets one or more of the eligibility criteria of section 11403(b) but either does not wish to remain under the jurisdiction of the juvenile court as a nonminor dependent~~, or (3) who does meet one or more of the eligibility criteria of section 11403(b) but~~ or is not participating in a reasonable and appropriate Transitional Independent Living Case Plan, the court may order the termination of juvenile court jurisdiction only after entering the following findings ~~and orders~~:

(i)–(ii) * * *

(iii) The nonminor was informed that if juvenile court jurisdiction is terminated, he or she has the right to file a request to return to foster care and ~~to file a request to~~ have the juvenile court resume jurisdiction over him or her as a nonminor dependent until he or she has ~~attained the age of~~ reached 21 years of age;

(iv)–(vi) * * *

(F) * * *

(Subd (d) amended effective January 1, 2017; previously amended effective July 1, 2012, July 1, 2013, January 1, 2014, and January 1, 2016.)

Rule 5.555 amended effective January 1, 2017; adopted effective January 1, 2012; previously amended effective July 1, 2012, July 1, 2013, January 1, 2014, and January 1, 2016.

Rule 5.610. Transfer-out hearing

(a) * * *

(b) Verification of residence

The residence of the person entitled to physical custody may be verified ~~by that person in court or~~ by declaration of a social worker or probation officer in the transferring or receiving county.

(Subd (b) amended effective January 1, 2017; previously amended effective January 1, 2004, and January 1, 2007.)

(c)–(d) * * *

(e) Conduct of hearing

(1) The request for transfer must be made on *Motion for Transfer Out* (form JV-548), which must include all required information.

(2) After the court determines the identity and residence of the child's custodian, the court must consider whether transfer of the case would be in the child's best interest. The court may not transfer the case unless it determines that the transfer will protect or further the child's best interest.

(Subd (e) amended effective January 1, 2017; repealed and adopted effective January 1, 1990; previously amended effective January 1, 1993, January 1, 2004, and January 1, 2007.)

(f) Date of transfer-in hearing

(1) If the transfer-out motion is granted, the sending court must set a date certain for the transfer-in hearing in the receiving court: within 5 court days of the transfer-out order if the child is in custody, and within 10 court days of the transfer-out order if the child is out of custody. The sending court must state on the record the date, time, and location of the hearing in the receiving court.

(2) The website for every court must include up-to-date contact information for the court clerks handling dependency and delinquency matters, as well as up-to-date information on when and where transfer-in hearings are held.

(Subd (f) adopted effective January 1, 2017.)

~~(f)~~(g) Order of transfer (§§ 377, 752)

The order of transfer must be entered on *Juvenile Court Transfer-Out Orders* (form JV-550), which must include all required information and findings.

(Subd (g) amended and relettered effective January 1, 2017; repealed and adopted as subd (f) effective January 1, 1990; previously amended effective January 1, 1993, January 1, 2004, and January 1, 2007.)

~~(g)~~(h) * * *

(Subd (h) relettered January 1, 2017; adopted as subd (g) effective January 1, 2007; previously amended January 1, 2015.)

~~(h)~~(i) Transport of child and transmittal of documents (§§ 377, 752)

(1) If the child is ordered transported in custody to the receiving county, the child must be delivered to the receiving county ~~within 7 court days~~ at least two business days before the transfer-in hearing, and the clerk of the court of the transferring county must prepare a certified copy of the complete case file so that it may be transported with the child to the court of the receiving county.

(2) If the child is not ordered transported in custody, the clerk of the transferring court must transmit to the clerk of the court of the receiving county within ~~10~~ five court days a certified copy of the complete case file.

(3) The file may be transferred electronically, if possible. A certified copy of the complete case file is deemed an original.

(Subd (i) amended and relettered effective January 1, 2017; repealed and adopted as subd (g); previously amended effective January 1, 1992, January 1, 1993, July 1, 1999, and January 1, 2004; previously amended and relettered as subd (h) effective January 1, 2007.)

~~(i)~~**(j)** * * *

(Subd (j) relettered effective January 1, 2017; repealed and adopted as subd (h); previously amended effective January 1, 1992, and January 1, 2004; previously amended and relettered as subd (i) effective January 1, 2007.)

Rule 5.610 amended effective January 1, 2017; adopted as rule 1425 effective January 1, 1990; previously amended and renumbered effective January 1, 2007; previously amended effective January 1, 1992, January 1, 1993, July 1, 1999, January 1, 2004, and January 1, 2015.

Advisory Committee Comment

* * *

Juvenile Court Transfer-Out Orders (form JV-550) was adopted for mandatory use commencing January 1, 1992. Although the finding regarding the best interest of the child was noted on the original form, the language has been emphasized on the amended form.

Rule 5.612. Transfer-in hearing

(a) Procedure on transfer (§§ 378, 753)

~~(1)~~ On receipt and filing of a certified copy of a transfer order, the receiving court must accept jurisdiction of the case. The receiving court may not reject the case. The clerk of the receiving court must ~~immediately place the transferred case on the court calendar for a transfer-in hearing~~ confirm the transfer-in hearing date scheduled by the sending court and ensure that date is on the receiving court's calendar. The receiving court must notify the transferring court on receipt and filing of the certified copies of the transfer order and complete case file.

(~~A~~) ~~Within two court days after the transfer-out order and documents are received if the child has been transported in custody and remains detained; or~~

~~(B) Within 10 court days after the transfer-out order and documents are received if the child is not detained in custody.~~

~~(2) No requests for additional time for the transfer-in hearing may be approved. The clerk must immediately cause notice to be given to the child and the parent or guardian, orally or in writing, of the time and place of the transfer-in hearing. The receiving court must notify the transferring court on receipt and filing of the certified copies of the transfer order and complete case file.~~

(Subd (a) amended effective January 1, 2017; repealed and adopted effective January 1, 1990; previously amended effective January 1, 1992, July 1, 1999, January 1, 2004, and January 1, 2007.)

(b)–(f) * * *

Rule 5.612 amended effective January 1, 2017; adopted as rule 1426 effective January 1, 1990; previously amended effective January 1, 1992, July 1, 1999, and January 1, 2004; previously amended and renumbered as rule 5.612 effective January 1, 2007.

Rule 5.613. Transfer of nonminor dependents

(a) Purpose

This rule applies to requests to transfer the county of jurisdiction of a nonminor dependent as allowed by Welfare and Institutions Code section 375. This rule sets forth the procedures that a court is to follow when it seeks to order a transfer of a nonminor dependent and those to be followed by the court receiving the transfer. All other intercounty transfers of juveniles are subject to rules 5.610 and 5.612.

(b) Transfer-out hearing

(1) *Determination of residence—special rule on intercounty transfers (§§ 17.1, 375)*

(A) For purposes of this rule, the residence of a nonminor dependent who is placed in a planned permanent living arrangement may be either the county in which the court that has jurisdiction over the nonminor is located or the county in which the nonminor has resided continuously for at least one year as a nonminor dependent and the nonminor dependent has expressed his or her intent to remain.

(B) If a nonminor dependent's dependency jurisdiction has been resumed, or if transition jurisdiction has been assumed or resumed by the juvenile court that retained general jurisdiction over the nonminor under section 303, the county that the nonminor dependent is residing in may be deemed the county of residence of the nonminor dependent. The court may make this determination if the nonminor has established a continuous physical presence in the county for one year as a nonminor and has expressed his or her intent to remain in that county after the court grants the petition to resume jurisdiction. The period of continuous physical presence includes any period of continuous residence immediately before filing the petition.

(2) *Verification of residence*

The residence of a nonminor may be verified by declaration of a social worker or probation officer in the transferring or receiving county.

(3) *Transfer to county of nonminor's residence (§ 375)*

If the court is resuming dependency jurisdiction or assuming or resuming transition jurisdiction of a nonminor for whom the court has retained general jurisdiction under section 303(b) as a result of a petition filed under section 388(e), after granting the petition, the court may order the transfer of the case to the juvenile court of the county in which the nonminor is living if the nonminor establishes residency in that county as provided in (b)(1) and the court finds that the transfer is in the minor's best interest.

(4) *Transfer on change in nonminor's residence (§ 375)*

If a nonminor dependent under the dependency or transition jurisdiction of the court is placed in a planned permanent living arrangement in a county other than the county with jurisdiction over the nonminor, the court may, on an application for modification under rule 5.570, transfer the case to the juvenile court of the county in which the nonminor is living if the nonminor establishes residency in that county as provided in (b)(1).

(5) *Conduct of hearing*

(A) The request for transfer must be made on *Motion for Transfer Out* (form JV-548), which must include all required information.

(B) After the court determines whether a nonminor has established residency in another county as required in (b)(1), the court must

consider whether transfer of the case would be in the nonminor's best interest. The court may not transfer the case unless it determines that the nonminor supports the transfer and that the transfer will protect or further the nonminor's best interest.

(C) If the transfer-out motion is granted, the sending court must set a date certain for the transfer-in hearing in the receiving court, which must be within 10 court days of the transfer-out order. The sending court must state on the record the date, time, and location of the hearing in the receiving court.

(6) *Order of transfer (§ 377)*

The order of transfer must be entered on *Juvenile Court Transfer-Out Orders—Nonminor Dependent* (form JV-552), which must include all required information and findings.

(7) *Modification of form JV-552*

Juvenile Court Transfer-Out Orders—Nonminor Dependent (form JV-552) may be modified as follows:

(A) Notwithstanding the mandatory use of form JV-552, the form may be modified for use by a formalized regional collaboration of courts to facilitate the efficient processing of transfer cases among those courts if the modification has been approved by the Judicial Council.

(B) The mandatory form must be used by a regional collaboration when transferring a case to a court outside the collaboration or when accepting a transfer from a court outside the collaboration.

(8) *Transmittal of documents (§ 377)*

The clerk of the transferring court must transmit to the clerk of the court of the receiving county no later than five court days from the date of the transfer-out order a certified copy of the entire nonminor file and, at a minimum, all documents associated with the last status review hearing held before the nonminor reached majority, including the court report and all findings and orders. The files may be transferred electronically, if possible. A certified copy of the complete case file is deemed an original.

(9) *Appeal of transfer order (§ 379)*

The order of transfer may be appealed by the transferring or receiving county, and notice of appeal must be filed in the transferring county, under rule 8.400. Notwithstanding the filing of a notice of appeal, the receiving county must assume jurisdiction of the case on receipt and filing of the order of transfer.

(c) Transfer-in hearing

(1) *Procedure on transfer (§ 378)*

On receipt and filing of a certified copy of a transfer order, the receiving court must accept jurisdiction of the case. The receiving court may not reject the case. The receiving court must notify the transferring court on receipt and filing of the certified copies of the transfer order and complete case file. The clerk of the receiving court must confirm the transfer-in hearing date scheduled by the sending court and ensure that date is on the receiving court's calendar.

(2) *Conduct of hearing*

At the transfer-in hearing, the court must:

(A) Advise the nonminor of the purpose and scope of the hearing; and

(B) Provide for the appointment of counsel, if appropriate.

(3) *Subsequent proceedings*

The proceedings in the receiving court must commence at the same phase as when the case was transferred. The court may continue the hearing for an investigation and a report to a date not to exceed 15 court days.

(4) *Setting six-month review (§ 366.31)*

When an order of transfer is received and filed relating to a nonminor dependent, the court must set a date for a six-month review within six months of the most recent review hearing or, if the sending court transferred the case immediately after assuming or resuming jurisdiction, within six months of the date a voluntary reentry agreement was signed.

(5) *Change of circumstances or additional facts (§§ 388, 778)*

If the receiving court believes that a change of circumstances or additional

facts indicate that the nonminor does not reside in the receiving county, a transfer-out hearing must be held under this rule and rule 5.570. The court may direct the department of social services or the probation department to seek a modification of orders under section 388 or section 778 and under rule 5.570.

Rule 5.613 adopted effective January 1, 2017.

Rule 5.668. Commencement of hearing—explanation of proceedings (§§ 316, 316.2)

(a) Commencement of hearing

At the beginning of the initial hearing on the petition, whether the child is detained or not detained, the court must give advisement as required by rule 5.534 and must inform each parent and guardian present, and the child, if present:

(1)–(3) * * *

(4) If the petition is sustained and the child is declared a dependent of the court and removed from the custody of the parent or guardian, the court-ordered reunification services must be considered to have been offered or provided on the date the petition is sustained or 60 days after the child's initial removal, whichever is earlier. The time for services must not exceed 12 months for a child three years of age or older ~~aged three or over~~ at the time of the initial removal and must not exceed 6 months for a child who was under ~~the age of~~ three years of age or who is in a sibling group in which one sibling was under three years of age at the time of the initial removal if the parent or guardian fails to participate regularly and make substantive progress in any court-ordered treatment program.

(Subd (a) amended effective January 1, 2017; adopted effective January 1, 1999; previously amended effective January 1, 2001, and January 1, 2007.)

(b) Parentage inquiry

The court must also inquire of the child's mother and of any other appropriate person present as to the identity and address of any and all presumed or alleged parents of the child as set forth in section 316.2. ~~Questions, at the discretion of the court, may include:~~

~~(1) Has there been a judgment of parentage?~~

~~(2) Was the mother married, or did she believe she was married, at or any time after the time of conception?~~

~~(3) Was the mother cohabiting at the time of conception?~~

~~(4) Has the mother received support payments or promises of support for the child or for the mother during her pregnancy?~~

~~(5) Has anyone formally or informally acknowledged parentage, including through the execution of a voluntary declaration under Family Code section 7571?~~

~~(6) Have tests to determine biological parentage been administered and, if so, what were the results?~~

(Subd (b) amended effective January 1, 2017; adopted effective January 1, 1999; previously amended effective January 1, 2007, and January 1, 2015.)

(c) * * *

Rule 5.668 amended effective January 1, 2017; repealed and adopted as rule 1441 effective January 1, 1998; previously amended and renumbered effective January 1, 2007; previously amended effective January 1, 1999, January 1, 2001, January 1, 2002, January 1, 2008, and January 1, 2015.

Rule 5.670. Initial hearing; detention hearings; time limit on custody; setting jurisdiction hearing; visitation <u>(§§ 309, 311, 313, 315, 362.1)</u>

(a) * * *

~~(b) Time limit on custody, filing petition, setting hearing (§§ 311, 313)~~

~~If the social worker takes the child into custody, the social worker must immediately file a petition with the clerk of the juvenile court, and the clerk must immediately set the matter for hearing on the detention hearing calendar. A child who is detained must be released within 48 hours, excluding noncourt days, unless a petition has been filed.~~

~~(c) Detention—child in medical facility (§ 309(b))~~

~~For purposes of these rules, a child is deemed taken into custody and delivered to the social worker if the child is under medical care and cannot immediately be~~

~~moved and there is reasonable cause to believe the child is described by section 300.~~

~~**(d) Detention hearing—time of (§ 315)**~~

~~Unless the child has been released sooner, the matter concerning a child who is taken into custody must be brought before the juvenile court for a detention hearing as soon as possible, but in any event before the end of the next court day after a petition has been filed. At the detention hearing, the court must determine whether the child is to continue to be detained in custody. If the detention hearing is not commenced within that time, the child must be immediately released from custody.~~

~~(e)~~(b) Detention hearing—warrant cases, transfers in, changes in placement

Notwithstanding ~~(c)~~ section 309(b), and unless the child has been released sooner, a detention hearing must be held as soon as possible, but no later than 48 hours, excluding noncourt days, after the child arrives at a facility within the county if:

(1)–(3) * * *

At the hearing the court must determine whether the child is to continue to be detained in custody. If the hearing is not commenced within that time, the child must be immediately released from custody.

(Subd (b) amended and relettered effective January 1, 2017; adopted as subd (e); previously amended effective January 1, 2007.)

~~**(f) Setting jurisdiction hearing (§ 334)**~~

~~If the child is not detained, the court must set a jurisdiction hearing to be held within 30 days of the date the petition is filed. If the court orders the child to be detained, the court must set a jurisdiction hearing within 15 court days of the order of detention.~~

~~(g)~~(c) * * *

(Subd (c) relettered effective January 1, 2017; adopted as subd (g); previously amended effective January 1, 2007, and July 1, 2011.)

Rule 5.670 amended effective January 1, 2017; repealed and adopted as rule 1442 effective January 1, 1998; previously amended and renumbered effective January 1, 2007; previously amended effective July 1, 2011.

Rule 5.674. Conduct of hearing; admission, no contest, submission

(a)–(b) * * *

~~**(c) Detention hearing; examination by court (§ 319)**~~

~~Subject to (d), the court must examine the child's parent, guardian, or other person having knowledge relevant to the issue of detention and must receive any relevant evidence that the petitioner, the child, a parent, a guardian, or counsel for a party wishes to present.~~

~~(d)~~(c) Detention hearing; rights of child, parent, or guardian (§§ 311, 319)

At the detention hearing, the child, the parent, and the guardian have the right to assert the privilege against self-incrimination and the right to confront and cross-examine:

(1) * * *

(2) Any person examined by the court under ~~(c)~~ section 319. If the child, parent, or guardian asserts the right to cross-examine preparers of documents submitted for court consideration, the court may not consider any such report or document unless the preparer is made available for cross-examination.

(Subd (c) amended and relettered effective January 1, 2017; adopted as subd (c); previously amended and relettered as subd (d) effective July 1, 2002; previously amended effective January 1, 2007.)

(d) No parent or guardian present and not noticed (§ 321)

If the court orders the child detained at the detention hearing and no parent or guardian is present and no parent or guardian has received actual notice of the detention hearing, a parent or guardian may file an affidavit alleging the failure of notice and requesting a detention rehearing. The clerk must set the rehearing for a time within 24 hours of the filing of the affidavit, excluding noncourt days. At the rehearing the court must proceed under rules 5.670–5.678.

(Subd (d) adopted effective January 1, 2017.)

(e) Hearing for further evidence; prima facie case (§ 321)

If the court orders the child detained, and the child, a parent, a guardian, or counsel requests that evidence of the prima facie case be presented, the court must set a prima facie hearing for a time within 3 court days to consider evidence of the prima facie case or set the matter for jurisdiction hearing within 10 court days. If at the hearing the petitioner fails to establish the prima facie case, the child must be released from custody.

(Subd (e) adopted effective January 1, 2017.)

Rule 5.674 amended effective January 1, 2017; repealed and adopted as rule 1444 effective January 1, 1998; previously amended and renumbered as rule 5.674 effective January 1, 2007; previously amended effective July 1, 2002, and January 1, 2016.

~~**Rule 5.680. Detention rehearings; prima facie hearings**~~

~~**(a) No parent or guardian present and not noticed (§ 321)**~~

~~If the court orders the child detained at the detention hearing and no parent or guardian is present and no parent or guardian has received actual notice of the detention hearing, a parent or guardian may file an affidavit alleging the failure of notice and requesting a detention rehearing. The clerk must set the rehearing for a time within 24 hours of the filing of the affidavit, excluding noncourt days. At the rehearing the court must proceed under rules 5.670–5.678.~~

~~**(b) Parent or guardian noticed, not present (§ 321)**~~

~~If the court determines that the parent or guardian received adequate notice of the detention hearing, and the parent or guardian fails to appear at the hearing, the request of the parent or guardian for a detention rehearing must be denied absent a finding that the failure to appear at the hearing was due to good cause.~~

~~**(c) Parent or guardian present; preparers available (§ 321)**~~

~~If a parent or guardian has received notice of the detention hearing, is present at the hearing, and the preparers of any reports or other documents relied on by the court in its order detaining the child are present in court or otherwise available for cross-examination, the request for a detention rehearing must be denied.~~

~~**(d) Hearing for further evidence; prima facie case (§ 321)**~~

~~If the court orders the child detained, and the child, a parent, a guardian, or counsel requests that evidence of the prima facie case be presented, the court must set a prima facie hearing for a time within 3 court days to consider evidence of the prima~~

~~facie case or set the matter for jurisdiction hearing within 10 court days. If at the hearing petitioner fails to establish the prima facie case, the child must be released from custody.~~

Rule 5.680 repealed effective January 1, 2017; repealed and adopted as rule 1447 effective January 1, 1998; previously amended and renumbered effective January 1, 2007.

Rule 5.682. Commencement of jurisdiction hearing—advisement of trial rights; admission, no contest, submission

~~**(a) Petition read and explained (§ 353)**~~

~~At the beginning of the jurisdiction hearing, the petition must be read to those present. On request of the child or the parent, guardian, or adult relative, the court must explain the meaning and contents of the petition and the nature of the hearing, its procedures, and the possible consequences.~~

~~(b)~~(a) Rights explained (§§ 341, 353, 361.1)

After giving the advisement required by rule 5.534, the court must advise the parent or guardian of the following rights:

(1) The right to a hearing by the court on the issues raised by the petition; and

~~(2) The right to assert any privilege against self-incrimination;~~

~~(3) The right to confront and to cross-examine all witnesses called to testify;~~

~~(4) The right to use the process of the court to compel attendance of witnesses on behalf of the parent or guardian; and~~

~~(5)~~(2) * * *

(Subd (a) amended and relettered effective January 1, 2017; adopted as subd (b); previously amended effective January 1, 2005, and January 1, 2007.)

~~(c)~~(b) Admission of allegations; prerequisites to acceptance

The court must then inquire whether the parent or guardian intends to admit or deny the allegations of the petition. If the parent or guardian neither admits nor denies the allegations, the court must state on the record that the parent or guardian does not admit the allegations. If the parent or guardian wishes to admit the allegations, the court must first find and state on the record that it is satisfied that

the parent or guardian understands the nature of the allegations and the direct consequences of the admission, and understands and waives the rights in ~~(b)~~ (a) and (e)(3).

(Subd (b) amended and relettered effective January 1, 2017; adopted as subd (c); previously amended effective January 1, 2007.)

~~(d)~~(c) * * *

(Subd (c) relettered effective January 1, 2017; adopted as subd (d); previously amended effective January 1, 2007.)

~~(e)~~(d) Admission, no contest, submission

The parent or guardian may elect to admit the allegations of the petition~~,~~ or plead no contest~~, or submit the jurisdictional determination to the court based on the information provided to the court~~ and waive further jurisdictional hearing. The parent or guardian may elect to submit the jurisdictional determination to the court based on the information provided to the court and choose whether to waive further jurisdictional hearing. If the parent or guardian submits to the jurisdictional determination in writing, *Waiver of Rights—Juvenile Dependency* (form JV-190) ~~may~~ must be completed by the parent or guardian and counsel and submitted to the court.

(Subd (d) amended and relettered effective January 1, 2017; adopted as subd (e); previously amended effective January 1, 2007.)

~~(f)~~(e) Findings of court (§ 356)

After admission, plea of no contest, or submission, the court must make the following findings noted in the order of the court:

(1)–(6) * * *

(7) Those allegations of the petition as admitted are true as alleged; or ~~and~~

(8) Whether the allegations of the petition as submitted are true as alleged; and

~~(8)~~(9) The child is described ~~under~~ by one or more specific subdivisions of section 300.

(Subd (e) amended and relettered effective January 1, 2017; adopted as subd (f); previously amended effective January 1, 2007.)

~~(g)~~(f) Disposition

After accepting an admission, plea of no contest, or submission, the court must proceed to a disposition hearing under rule~~s 5.686 and~~ 5.690.

(Subd (f) amended and relettered effective January 1, 2017; adopted as subd (g); previously amended effective January 1, 2007.)

Rule 5.682 amended effective January 1, 2017; adopted as rule 1449 effective January 1, 1991; previously amended effective January 1, 2005; amended and renumbered as rule 5.692 effective January 1, 2007.

Rule 5.684. Contested hearing on petition

(a) * * *

(b) Admissibility of evidence—general (§§ 355, 355.1)

Except as provided in section~~s~~ 355(c) and 355.1 and (c)~~, (d),~~ and ~~(e)~~ (d) of this rule, the admission and exclusion of evidence must be in accordance with the Evidence Code as it applies to civil cases.

(Subd (b) amended effective January 1, 2017; previously amended effective July 1, 1997, and January 1, 2007.)

(c) Reports

(1) A social study, with hearsay evidence contained in it, is admissible ~~and is sufficient to support a finding that the child is described by section 300.~~ as provided in section 355.

~~(1)~~ (2) The social study must be provided to all parties and their counsel by the county welfare department within a reasonable time before the hearing.

~~(2) The preparer of the report must be made available for cross-examination on the request of any party. The preparer may be on telephone standby if the preparer can be present in court within a reasonable time.~~

(Subd (c) amended effective January 1, 2017; previously amended effective July 1, 1997, and January 1, 2007.)

~~**(d) Hearsay in the report (§ 355)**~~

~~If a party makes an objection with reasonable specificity to particular hearsay in the report and provides petitioner a reasonable period to meet the objection, that evidence must not be sufficient in and of itself to support a jurisdictional finding, unless:~~

~~(1) The hearsay is admissible under any statutory or judicial hearsay exception;~~

~~(2) The hearsay declarant is a child under 12 years of age who is the subject of the petition, unless the objecting party establishes that the statement was produced by fraud, deceit, or undue influence and is therefore unreliable;~~

~~The hearsay declarant is a peace officer, a health practitioner, a social worker, or a teacher and the statement would be admissible if the declarant were testifying in court; or~~

~~The hearsay declarant is available for cross-examination.~~

~~(e)~~(d) * * *

(Subd (d) relettered effective January 1, 2017; adopted as subd (e); previously amended effective July 1, 1997, and January 1, 2007.)

~~(f)~~(e) Findings of court—allegations true (§ 356)

If the court determines by a preponderance of the evidence that the allegations of the petition are true, the court must make findings on each of the following, noted in the minutes:

(1)–(3) * * *

(4) The child is described ~~under~~ by one or more ~~specific~~ subdivisions of section 300.

(Subd (e) amended and relettered effective January 1, 2017; adopted as subd (f); previously amended effective January 1, 2007.)

~~(g)~~(f) Disposition and continuance pending disposition hearing (§§ 356, 358)

After making the findings in ~~(f)~~ (e), the court must proceed to a disposition hearing under rule~~s 5.686 and~~ 5.690. The court may continue the disposition hearing as provided in section 358.

(Subd (f) amended and relettered effective January 1, 2017; adopted as subd (g); previously amended effective July 1, 1997, and January 1, 2007.)

~~(h)~~**(g)** * * *

(Subd (g) relettered effective January 1, 2017; adopted as subd (h); previously amended effective July 1, 1997, January 1, 2005, and January 1, 2007.)

Rule 5.684 amended effective January 1, 2017; adopted as rule 1450 effective January 1, 1991; previously amended effective July 1, 1997, and January 1, 2005; previously amended and renumbered as rule 5.684 effective January 1, 2007.

~~**Rule 5.686. Continuance pending disposition hearing**~~

~~**(a) Continuance pending disposition hearing (§ 358)**~~

~~Except as provided in (b), the court may continue the disposition hearing to a date not to exceed 10 court days if the child is detained or, if the child is not detained, to a date not to exceed 30 calendar days from the date of the finding under section 356. The court may for good cause continue the hearing for an additional 15 calendar days if the child is not detained.~~

~~**(b) Continuance if nonreunification is requested**~~

~~If petitioner alleges that section 361.5(b) is applicable, the court must continue the proceedings not more than 30 calendar days. The court must order the petitioner to notify each parent or guardian of the contents of section 361.5(b) and must inform each parent that if reunification is not ordered at the disposition hearing, a section 366.26 implementation hearing will be held and parental rights may be terminated.~~

~~**(c) Detention pending continued hearing (§ 358)**~~

~~The court in its discretion may order release or detention of the child during the continuance.~~

Rule 5.686 repealed effective January 1, 2017; adopted as rule 1451 effective January 1, 1990; previously amended and renumbered as rule 5.686 effective January 1, 2007.

~~**Rule 5.688. Failure to cooperate with services (§ 360(b))**~~

~~**(a) Petition**~~

~~If the court has ordered services under section 360(b), and within the time period consistent with section 301 the family is unable or unwilling to cooperate with the services provided, a petition may be filed as provided in section 360(c).~~

~~**(b) Order**~~

~~At the hearing on the petition the court must dismiss the petition or order a new disposition hearing to be conducted under rule 5.690.~~

Rule 5.688 repealed effective January 1, 2017; adopted as rule 1452 effective January 1, 1990; previously amended effective July 1, 2000; previously amended and renumbered as rule 5.688 effective January 1, 2007.

Rule 5.690. General conduct of disposition hearing

(a) Social study (§§ 280, 358, 358.1, 360, 361.5, 16002(b))

The petitioner must prepare a social study of the child. The social study must include a discussion of all matters relevant to disposition and a recommendation for disposition.

(1) The petitioner must comply with the following when preparing the social study:

(A)–(B) * * *

(C) The social study ~~should~~ must include a discussion of the social worker's efforts to comply with rule 5.637, including but not limited to:

(i)–(iv) * * *

(D) If siblings are not placed together, the social study must include an explanation of why they have not been placed together in the same home, what efforts are being made to place the siblings together, or why making those efforts would be contrary to the safety and well-being of any of the siblings.

~~(D)~~(E) * * *

~~(E)~~(F) * * *

(2) * * *

(Subd (a) amended effective January 1, 2017; previously amended effective July 1, 1995, January 1, 2000, January 1, 2007, and January 1, 2011.)

(b) * * *

(c) Case plan (§ 16501.1)

Whenever child welfare services are provided, the social worker must prepare a case plan.

(1)–(2) * * *

(3) For a child 12 years of age or older and in a permanent placement, the court must consider the case plan and must find as follows:

(A)–(B) * * *

(C) Whether the case plan was developed in compliance with and meets the requirements of section 16501.1(g). If the court finds that the development of the case plan does not comply with section 16501.1(g) the court must order the agency to comply with the requirements of section 16501.1(g).

(Subd (c) amended effective January 1, 2017; adopted effective January 1, 2007; previously amended effective January 1, 2009, and July 1, 2010.)

Rule 5.690 amended effective January 1, 2017; adopted as rule 1455 effective January 1, 1991; previously amended and renumbered effective January 1, 2007; previously amended effective July 1, 1995, January 1, 2000, January 1, 2009, July 1, 2010, and January 1, 2011.

Rule 5.695. Findings and orders of the court—disposition

(a) Orders of the court (§§ 245.5, 358, 360, 361, 361.2, 390)

At the disposition hearing, the court may:

(1) * * *

(2) Place the child under a program of supervision ~~as provided in~~ for a time period consistent with section 301 and order that services be provided;

(3) Appoint a legal guardian for the child without declaring dependency and order the clerk to issue letters of guardianship, which are not subject to the

confidential protections of juvenile court documents as described in section 827;

(4) Declare dependency and appoint a legal guardian for the child if the requirements of section 360 are met and order the clerk to issue letters of guardianship, which are not subject to the confidential protections of juvenile court documents as described in section 827;

(5)–(7) * * *

(Subd (a) amended effective January 1, 2017; previously amended effective July 1, 1995, January 1, 2007, and January 1, 2015.)

~~**(b) Appointment of a legal guardian (§ 360)**~~

~~(1) At the disposition hearing, the court may appoint a legal guardian for the child if:~~

~~(A) The parent has advised the court that the parent does not wish to receive family maintenance services or family reunification services;~~

~~(B) The parent has executed and submitted *Waiver of Reunification Services (Juvenile Dependency)* (form JV-195);~~

~~(C) The court finds that the parent, and the child if of sufficient age and comprehension, knowingly and voluntarily waive their rights to reunification services and agree to the appointment of the legal guardian; and~~

~~(D) The court finds that the appointment of the legal guardian is in the best interest of the child.~~

~~(2) If the court appoints a legal guardian, it must:~~

~~(A) State on the record or in the minutes that it has read and considered the assessment;~~

~~(B) State on the record or in the minutes its findings and the factual bases for them;~~

~~(C) Advise the parent that no reunification services will be offered or provided;~~

~~(D) Make any appropriate orders regarding visitation between the child and the parent or other relative, including any sibling; and~~

~~(E) Order the clerk to issue letters of guardianship, which are not subject to the confidential protections of juvenile court documents as described in section 827.~~

~~(3) The court may appoint a legal guardian without declaring the child a dependent of the court. If dependency is declared, a six-month review hearing must be set.~~

~~(c)~~(b) * * *

(Subd (b) relettered effective January 1, 2017; adopted as subd (b); previously relettered as subd (c) effective July 1, 1995; previously amended effective July 1, 2002, January 1, 2004, January 1, 2007, January 1, 2008, and January 1, 2014.)

~~(d)~~(c) Removal of custody—required findings (§ 361)

The court may not order a dependent removed from the physical custody of a parent or guardian with whom the child resided at the time the petition was filed, unless the court ~~finds~~ makes one or more of the findings in subdivision (c) of section 361 by clear and convincing evidence. ~~any of the following:~~

~~(1) There is a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the child, or will be if the child is returned home, and there is no reasonable alternative means to protect that child;~~

~~(2) The parent or guardian is unwilling to have physical custody of the child and has been notified that if the child remains out of the parent's or guardian's physical custody for the period specified in section 366.26, the child may be declared permanently free of his or her custody and control;~~

~~(3) The child is suffering severe emotional damage, as indicated by extreme anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, and no reasonable alternative means to protect the child's emotional health exists;~~

~~(4) The child has been sexually abused by a parent or guardian or member of the household or other person known to his or her parent and there is no reasonable alternative means to protect the child or the child does not wish to return to the parent or guardian; or~~

~~(5) The child has been left without any provisions for his or her support and there is no parent or guardian available to maintain or provide for the care, custody, and control of the child.~~

(Subd (c) amended and relettered effective January 1, 2017; adopted as subd (c); previously relettered as subd (d) effective July 1, 1995; previously amended effective July 1, 1997, July 1, 1999, July 1, 2002, and January 1, 2007.)

~~(e)~~(d) Reasonable efforts finding

The court must consider whether reasonable efforts to prevent or eliminate the need for removal have been made and make one of the following findings:

(1) Reasonable efforts have been made to prevent removal; or

(2) Reasonable efforts have not been made to prevent removal.

(Subd (d) amended and relettered effective January 1, 2017; adopted as subd (d); previously relettered as subd (e) effective July 1, 1995; amended effective July 1, 2002, and January 1, 2006.)

~~(f)~~(e) Family-finding determination (§ 309)

(1) If the child is removed, the court must consider and determine whether the social worker has exercised due diligence in conducting the required investigation to identify, locate, and notify the child's relatives. The court may consider the activities listed in ~~(g)~~(f) as examples of due diligence. The court must document its determination by making a finding on the record.

If the dispositional hearing is continued, the court may set a hearing to be held 30 days from the date of removal or as soon as possible thereafter to consider and determine whether the social worker has exercised due diligence in conducting the required investigation to identify, locate, and notify the child's relatives.

(2) * * *

(Subd (e) amended and relettered effective January 1, 2017; adopted as subd (f) effective January 1, 2011; previously amended effective January 1, 2014, and January 1, 2015.)

~~(g)~~(f) Due diligence (§ 309)

When making the determination required in ~~(f)~~(e), the court may consider, among other examples of due diligence, whether the social worker has done any of the following:

(1)–(7) * * *

(Subd (f) amended and relettered effective January 1, 2017; adopted as subd (g) effective January 1, 2011; previously amended effective January 1, 2014, and January 1, 2015.)

~~(h)~~(g) Provision of reunification services (§ 361.5)

(1) Unless the court makes a finding that reunification services need not be provided under subdivision (b) of section 361.5 ~~Except as provided in (6),~~ if a child is removed from the custody of a parent or legal guardian, the court must order the county welfare department to provide reunification services to the child and the child's mother and statutorily presumed parent, or the child's legal guardian, to facilitate reunification of the family as required in section 361.5. ~~For a child who was three years of age or older on the date of initial removal, services must be provided during the time period beginning with the dispositional hearing and ending 12 months after the date the child entered foster care, as defined by section 361.49. For a child who was under three years of age on the date of initial removal, services must be provided for a period of 6 months from the dispositional hearing, but no longer than 12 months from the date the child entered foster care, as defined by section 361.49. The time period for the provision of family reunification services must be calculated consistent with section 361.5(a). The court must inform the parent or legal guardian of a child who was under three when initially removed that failure to participate regularly and make substantive progress in court-ordered treatment programs may result in the termination of reunification efforts after 6 months from the date of the dispositional hearing.~~

~~(2) If a child is a member of a sibling group removed from parental custody at the same time, and one member of the sibling group was under three at the time of the initial removal, reunification services for some or all members of the sibling group may be limited to 6 months from the dispositional hearing, and no later than 12 months from the date the children entered foster care. The court must inform the parent or legal guardian of a child who is a member of such a sibling group that failure to participate regularly and make substantive progress in court-ordered treatment programs may result in termination of reunification efforts after 6 months for one or more members of the sibling group.~~

~~(3)~~(2) * * *

~~(4) Any motion to terminate reunification services before the permanency hearing set under section 366.21(f) for a child age three or older, or before the 6-month review hearing set under section 366.21(e) for a child under age three, must follow the requirements in section 388(c) and rule 5.570. A motion to terminate reunification services at the 6-month review hearing is not required if the court finds by clear and convincing evidence that one or more of the circumstances described in section 361.5(a)(2) and rule 5.710(c)(1)(A) is true.~~

~~(5)~~(3) * * *

~~(6)~~(4) Reunification services must not be provided when the parent has voluntarily relinquished the child and the relinquishment has been filed with the State Department of Social Services, or if the court has appointed a guardian under section 360. ~~Reunification services need not be provided to a parent or guardian if the court finds, by clear and convincing evidence, any of the following:~~

~~(A) The whereabouts of the parent or guardian are unknown. This finding must be supported by a declaration or by proof that a reasonably diligent search has failed to locate the parent. Posting or publishing notice is not required.~~

~~(B) The parent or guardian is suffering from a mental disability described in chapter 2 (commencing with section 7820) of part 4 of division 12 of the Family Code that renders the parent incapable of using those services.~~

~~(C) The child had been previously declared a dependent under any subdivision of section 300 as a result of physical or sexual abuse; following that adjudication the child had been removed from the custody of the parent or guardian under section 361; the child has been returned to the custody of the parent or guardian from whom the child had been taken originally; and the child is being removed under section 361 because of additional physical or sexual abuse.~~

~~(D) The parent or guardian of the child has caused the death of another child through abuse or neglect.~~

~~(E) The child was brought within the jurisdiction of the court under (e) of section 300 because of the conduct of that parent or guardian.~~

~~(F) The child is a dependent as a result of the determination that the child, a sibling, or a half-sibling suffered severe sexual abuse, as defined in section 361.5(b)(6), by the parent or guardian or that the parent or guardian inflicted severe physical harm, as defined in section 361.5(b)(6), on the child, a sibling, or a half-sibling, and the court finds that attempts to reunify would not benefit the child. The court must specify on the record the basis for the finding that the child suffered severe sexual abuse or the infliction of severe physical harm.~~

~~(G) The parent or guardian is not receiving reunification services for a sibling or half-sibling of the child, for reasons under (C), (E), or (F).~~

~~(H) The child was conceived as a result of the parent having committed an offense listed in Penal Code section 288 or 288.5, or by an act described by either section but committed outside California.~~

~~(I) The court has found that the child is described by (g) of section 300, that the child was willfully abandoned by the parent or guardian, and that the abandonment constituted serious danger to the child as defined in section 361.5(b)(9).~~

~~(J) The court has terminated reunification services for a sibling or half-sibling of the child because the parent failed to reunify with the sibling or half-sibling, and the parent or guardian has not made a reasonable effort to treat the problems that led to the removal of the sibling or half-sibling from that parent or guardian.~~

~~(K) The parental rights of a parent over any sibling or half-sibling of the child have been terminated, and the parent has not subsequently made a reasonable effort to treat the problem that led to the removal of the sibling or half-sibling.~~

~~(L) The parent or guardian has been convicted of a violent felony as defined in Penal Code section 667.5(c).~~

~~(M) The parent or guardian has a history of extensive, abusive, and chronic use of alcohol or other drugs and has not sought or participated in treatment during the three years immediately prior to the filing of the petition under section 300, or has failed, on at least two prior occasions, to comply with an available and accessible treatment program described in the case plan required by section 358.1, and the removal of the child is based in whole or in part on the risk to the child presented by the use of alcohol or other drugs.~~

(N) The parent or guardian, who must be represented by counsel, has advised the court through the execution and submission of *Waiver of Reunification Services (Juvenile Dependency)* (form JV-195) that that parent or guardian does not wish to receive family maintenance or reunification services and does not wish the child returned or placed in the custody of that parent or guardian. The court may accept the waiver only on a finding on the record that the parent or guardian has knowingly and intelligently waived the right to services.

(O) On at least one occasion, the parent or guardian has abducted the child or a sibling or half-sibling from placement and has refused to disclose the abducted child's whereabouts or has refused to return custody of the abducted child to the placement or to the social worker.

(7) In deciding whether to order reunification in any case in which petitioner alleges that section 361.5(b) applies, the court must consider the report prepared by petitioner, which must discuss the factors contained in section 361.5(c).

(8) If the petitioner alleges that section 361.5(c) applies, the report prepared for disposition must address the issue of reunification services. At the disposition hearing, the court must consider the factors stated in section 361.5.

(9) If the court finds under (6)(A) that the whereabouts of the parent or guardian are unknown and that a diligent search has failed to locate the parent or guardian, the court may not order reunification services and must set the matter for a 6-month review hearing. If the parent or guardian is located prior to the 6-month review and requests reunification services, the welfare department must seek a modification of the disposition orders. The time limits for reunification services must be calculated from the date of the initial removal, and not from the date the parent is located or services are ordered.

(10) If the court finds that allegations under (6)(B) are proved, the court must nevertheless order reunification services unless evidence by mental health professionals establishes by clear and convincing evidence that the parent is unlikely to be able to care for the child within the next 12 months.

(11) If the court finds that the allegations under (6)(C), (D), (F), (G), (H), (I), (J), (K), (L), (M), (N), or (O) have been proved, the court may not order reunification services unless the party seeking the order for services proves by clear and convincing evidence that reunification is in the best interest of the child. If (6)(F) is found to apply, the court must consider the factors in

~~section 361.5(h) in determining whether the child will benefit from services and must specify on the record the factual findings on which it based its determination that the child will not benefit.~~

~~(12) If the court finds that the allegations under (6)(E) have been proved, the court may not order reunification services unless it finds, based on consideration of factors in section 361.5(b) and (c), that services are likely to prevent reabuse or continued neglect or that failure to attempt reunification will be detrimental to the child.~~

~~(13) If the parent or guardian is institutionalized, incarcerated, or detained by the United States Department of Homeland Security, or has been deported to his or her country of origin, the court must order reunification services unless it finds by clear and convincing evidence that the services would be detrimental to the child, with consideration of the factors in section 361.5(e). The court may order reunification services with an institutionalized, incarcerated, detained, or deported biological father whose paternity has been declared by the juvenile court or another court of competent jurisdiction, if the court determines that such services would benefit the child, with consideration of the factors in section 361.5(e).~~

~~(14)~~(5) ~~If, with the exception of (6)(A)~~Except when the order is made under paragraph (1) of subdivision (b) of section 361.5, if the court orders no reunification services for every parent otherwise eligible for such services ~~under (1) and (2)~~, the court must conduct a hearing under section 366.26 within 120 days and:

(A)–(B) * * *

~~(15)~~(6) A judgment, order, or decree setting a hearing under section 366.26 is not an immediately appealable order. Review may be sought only by filing a *Notice of Intent to File Writ Petition and Request for Record (California Rules of Court, Rule 8.450)* (form JV-820) or other notice of intent to file a writ petition and request for record, and a *Petition for Extraordinary Writ (California Rules of Court, Rules 8.452, 8.456)* (form JV-825) or other petition for extraordinary writ. If a party wishes to preserve any right to review on appeal of the findings and orders made under this rule, the party must seek an extraordinary writ under rules 8.450 and 8.452.

~~(16)~~(7) A judgment, order, or decree setting a hearing under section 366.26 may be reviewed on appeal following the order of the 366.26 hearing only if the following have occurred:

(A) An extraordinary writ was sought by the timely filing of a *Notice of Intent to File Writ Petition and Request for Record (California Rules of Court, Rule 8.450)* (form JV-820) or other notice of intent to file a writ petition and request for record, and a *Petition for Extraordinary Writ (California Rules of Court, Rules 8.452, 8.456)* (form JV-825) or other petition for extraordinary writ; and

(B) * * *

~~(17)~~(8) * * *

~~(18)~~(9) Failure to file a notice of intent to file a writ petition and request for record and a petition for extraordinary writ review within the period specified by rules 8.450 and 8.452 to substantively address the issues challenged, or to support the challenge by an adequate record, precludes subsequent review on appeal of the findings and orders made under this rule.

~~(19)~~(10) * * *

(Subd (g) amended and relettered effective January 1, 2017; adopted as subd (e); previously relettered as subd (f) effective July 1, 1995, and as subd (h) January 1, 2011; previously amended effective January 1, 1993, July 1, 1993, January 1, 1994, January 1, 1995, January 1, 1996, July 1, 1997, January 1, 1999, July 1, 1999, January 1, 2001, July 1, 2001, July 1, 2002, January 1, 2007, January 1, 2010, January 1, 2014, and January 1, 2015.)

~~(i)~~(h) * * *

(Subd (h) relettered effective January 1, 2017; adopted as subd (f); previously relettered as subd (g) effective July 1, 1995, and as subd (i) effective January 1, 2011; previously amended effective January 1, 2001, July 1, 2002, January 1, 2015.)

~~(j) Setting 6-month review (§§ 361.5, 366)~~

~~Review of the status of every dependent child must be performed within 6 months after the date of the original disposition order, and no later than 6 months after the date the child is determined to have entered foster care; the review must be scheduled on the appearance calendar. The court must advise the dependent child of the child's right to petition for modifications of court orders as required in section 353.1.~~

~~**(k) Fifteen-day reviews (§ 367)**~~

~~If a child is detained pending the execution of the disposition order, the court must review the case at least every 15 calendar days to determine whether the delay is reasonable. During each review the court must inquire about the action taken by the probation or welfare department to carry out the court's order, the reasons for the delay, and the effect of the delay on the child.~~

~~(l)~~(i) * * *

(Subd (i) relettered effective January 1, 2017; adopted as subd (j) effective July 1, 1997; previously amended effective July 1, 2002; previously relettered as subd (l) effective January 1, 2011.)

Rule 5.695 amended effective January 1, 2017; adopted as rule 1456 effective January 1, 1991; previously amended and renumbered effective January 1, 2007; previously amended effective January 1, 1993, July 1, 1993, January 1, 1994, January 1, 1995, July 1, 1995, January 1, 1996, January 1, 1997, July 1, 1997, January 1, 1999, July 1, 1999, January 1, 2001, July 1, 2001, July 1, 2002, January 1, 2004, January 1, 2006, January 1, 2008, January 1, 2010, January 1, 2011, January 1, 2014, and January 1, 2015.

Rule 5.706. Family maintenance review hearings (§ 364)

~~**(a) Setting of hearing (§ 364)**~~

~~If the child remains in the custody of the parent or legal guardian, a review hearing must be held within six months after the date of the original dispositional hearing and no less frequently than once every six months thereafter as long as the child remains a dependent.~~

~~(b)~~(a) * * *

(Subd (a) relettered effective January 1, 2017; adopted as subd (b).)

~~**(c) Reports (§ 364)**~~

~~At least 10 calendar days before the hearing, the petitioner must file a supplemental report with the court describing the services offered to the family, the progress made by the family in eliminating the conditions or factors requiring court supervision, and the petitioner's recommendation regarding the necessity of continued supervision. A copy of the report must be provided to all parties at least 10 calendar days before the hearing.~~

~~(d)~~**(b)** * * *

(Subd (b) relettered effective January 1, 2017; adopted as subd (d).)

~~(e)~~**(c) Conduct of hearing (§ 364)**

~~(1) The court must determine whether continued supervision is necessary. The court must terminate its dependency jurisdiction unless the court finds that the petitioner has established by a preponderance of the evidence that existing conditions would justify initial assumption of jurisdiction under section 300 or that such conditions are likely to exist if supervision is withdrawn. Failure of the parent or legal guardian to participate regularly in any court-ordered treatment program constitutes prima facie evidence that the conditions that justified initial assumption of jurisdiction still exist and that continued supervision is necessary.~~

~~(2)~~ If the court retains jurisdiction, the court must order continued services and set a review hearing within six months. ~~under this rule.~~ The court must determine whether continued supervision is necessary under section 364(c).

(Subd (c) amended and relettered effective January 1, 2017; adopted as subd (e).)

~~(f)~~**(d)** * * *

(Subd (d) relettered effective January 1, 2017; adopted as subd (f).)

~~(g)~~**(e) Child's education (§§ 361, 366, 366.1)**

The court must consider the child's education, including whether it is necessary to limit the right of the parent or legal guardian to make educational or developmental-services decisions for the child, following the requirements and procedures in rules 5.649, 5.650, and 5.651 and in section 361(a).

(Subd (e) amended and relettered effective January 1, 2017; adopted as subd (g).)

Rule 5.706 amended effective January 1, 2017; adopted effective January 1, 2010.

Rule 5.708. General review hearing requirements

~~**(a) Setting of review hearings (§ 366)**~~

~~The status of every dependent child who has been removed from the custody of the parent or legal guardian must be reviewed periodically but no less frequently than~~

~~once every 6 months until the section 366.26 hearing is completed. Review hearings must be set as described in rule 5.710 (for 6-month review hearings), rule 5.715 (for 12-month permanency hearings), rule 5.720 (for 18-month permanency review hearings), or rule 5.722 (for 24-month subsequent permanency review hearings).~~

~~(b)~~(a) Notice of hearing (§ 293)

The petitioner or the clerk must serve written notice of review hearings on *Notice of Review Hearing* (form JV-280), in the manner provided in sections 224.2 or 293 as appropriate, to all persons or entities entitled to notice under sections 224.2 and 293 and to any CASA volunteer, educational rights holder, or surrogate parent appointed to the case.

(Subd (a) amended and relettered effective January 1, 2017; adopted as subd (b); previously amended effective January 1, 2014.)

~~(c)~~(b) * * *

(Subd (b) relettered effective January 1, 2017; adopted as subd (c); previously amended effective July 1, 2010, and January 1, 2016.)

~~(d) Return of child—detriment finding (§§ 366.21, 366.22, 366.25)~~

~~(1) If the child was removed from the custody of the parent or legal guardian, the court must order the child returned unless the court finds by a preponderance of the evidence that return of the child to the parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker has the burden of establishing that detriment.~~

~~(2) The court must consider whether the child can be returned to the custody of his or her parent who is enrolled in a certified substance abuse treatment facility that allows a dependent child to reside with his or her parent.~~

~~(3) Failure of the parent or legal guardian to regularly participate and make substantive progress in any court-ordered treatment program is prima facie evidence that continued supervision is necessary or that return would be detrimental.~~

~~(4) In making its determination about whether returning the child would be detrimental, the court must consider the following:~~

~~(A) The social worker's report and recommendations and the report and recommendations of any CASA volunteer who has been appointed on the case;~~

~~(B) The efforts or progress demonstrated by the parent or legal guardian; and~~

~~(C) The extent to which the parent or legal guardian availed himself or herself of the services provided, taking into account the particular barriers to an incarcerated or institutionalized parent or legal guardian's access to court-mandated services and the ability to maintain contact with his or her child.~~

~~(5) If the parent or legal guardian agreed to submit fingerprints to obtain criminal history information as part of the case plan, the court must consider the criminal history of the parent or legal guardian after the child's removal to the extent that the criminal record is substantially related to the welfare of the child or the parent's or legal guardian's ability to exercise custody and control regarding his or her child.~~

~~(6) Regardless of whether the child is returned home, the court must specify the factual basis for its conclusion that the return would or would not be detrimental.~~

~~(e)~~(c) Reasonable services (§§ 366, 366.21, 366.22, 366.25, 366.3)

(1) If the child is not returned to the custody of the parent or legal guardian, the court must consider whether reasonable services have been offered or provided. The court must find that~~:~~

~~(A) R~~reasonable services have been offered or provided~~;~~ or

~~(B) Reasonable services~~ have not been offered or provided.

~~(2) The following factors are not sufficient, in and of themselves, to support a finding that reasonable services have not been offered or provided:~~

~~(A) The child has been placed in a preadoptive home or with a family that is eligible to adopt the child;~~

~~(B) The case plan includes services to achieve legal permanence for the child if reunification cannot be accomplished; or~~

~~(C) Services to achieve legal permanence for the child if reunification efforts fail are being provided concurrently with reunification services.~~

(2) If the child is not returned to the custody of the parent or legal guardian, the court must consider the safety of the child and make the findings listed in sections 366(a) and 16002.

(Subd (c) amended and relettered effective January 1, 2017; adopted as subd (e).)

~~(f)~~(d) * * *

(Subd (d) relettered effective January 1, 2017; adopted as subd (f); previously amended effective January 1, 2014, and January 1, 2016.)

~~(g)~~(e) Case plan (§§ 16001.9, 16501.1)

The court must consider the case plan submitted for the hearing and must determine:

(1) Whether the child was actively involved, as age- and developmentally appropriate, in the development of ~~his or her own~~ the case plan and plan for permanent placement. If the court finds ~~that~~ the child ~~or youth~~ was not appropriately involved, the court must order the agency to actively involve the child in the development of ~~his or her own~~ the case plan and plan for permanent placement, unless the court finds ~~that~~ the child is unable, unavailable, or unwilling to participate.

(2) Whether each parent or legal guardian was actively involved in the development of the case plan and plan for permanent placement. If the court finds that any parent or legal guardian was not actively involved, the court must order the agency to actively involve that parent or legal guardian in the development of the case plan and plan for permanent placement, unless the court finds that the parent is unable, unavailable, or unwilling to participate.

(3)–(4) * * *

(5) Whether the case plan was developed in compliance with and meets the requirements of section 16501.1(g). If the court finds that the development of the case plan does not comply with section 16501.1(g), the court must order the agency to comply with the requirements of section 16501.1(g).

(Subd (e) amended and relettered effective January 1, 2016; adopted as subd (g); previously amended effective July 1, 2010, January 1, 2014, and January 1, 2016.)

~~**(h) Out-of-state placement (§§ 361.21, 366)**~~

~~If the child has been placed out of the state, the court must consider whether the placement continues to be the most appropriate placement for the child and in the child's best interest. If the child is in an out-of-state group home, the court must follow the requirements in section 361.21.~~

~~**(i) Title IV-E findings (§ 366)**~~

~~Regardless of whether or not the child is returned home, the court must consider the safety of the child and must determine all of the following:~~

~~(1) The continuing necessity for and appropriateness of the placement;~~

~~(2) The extent of the agency's compliance with the case plan in making reasonable efforts or, in the case of an Indian child, active efforts as described in section 361.7, to return the child to a safe home and to complete any steps necessary to finalize the permanent placement of the child. These steps include efforts to maintain relationships between a child who is 10 years or older who has been in an out-of-home placement for 6 months or longer and individuals other than the child's siblings who are important to the child, consistent with the child's best interest;~~

~~(3) The extent of progress that has been made by the parents or legal guardians toward alleviating or mitigating the causes necessitating placement in foster care; and~~

~~(4) The likely date by which the child may be returned to and safely maintained in the home or placed for adoption, legal guardianship, or in another planned permanent living arrangement.~~

~~**(j)**~~**(f)** * * *

(Subd (f) relettered effective January 1, 2017; adopted as subd (j); previously amended effective January 1, 2016.)

~~**(k)**~~**(g)** * * *

(Subd (g) relettered effective January 1, 2017; adopted as subd (k).)

~~**(l)**~~**(h)** * * *

(Subd (h) relettered effective January 1, 2017; adopted as subd (l).)

~~(m) Setting a hearing under section 366.26; reasonable services requirement (§§ 366.21, 366.22)~~

~~At any 6-month, 12-month, or 18-month hearing, the court may not set a hearing under section 366.26 unless the court finds by clear and convincing evidence that reasonable services have been provided or offered to the parent or legal guardian.~~

~~(n)~~(i) Requirements on setting a section 366.26 hearing (§§ 366.21, 366.22, 366.25)

The court must make the following orders and determinations when setting a hearing under section 366.26:

~~(1) The court must terminate reunification services to the parent or legal guardian and:~~

~~(A) Order that the social worker provide a copy of the child's birth certificate to the caregiver as consistent with sections 16010.4(e)(5) and 16010.5(b)–(c); and~~

~~(B) Order that the social worker provide a child 16 years of age or older with a copy of his or her birth certificate unless the court finds that provision of the birth certificate would be inappropriate.~~

~~(2) The court must continue to permit the parent or legal guardian to visit the child, unless it finds that visitation would be detrimental to the child;~~

~~(3) If the child is 10 years of age or older and is placed in an out-of-home placement for 6 months or longer, the court must enter any other appropriate orders to enable the child to maintain relationships with other individuals who are important to the child, consistent with the child's best interest. Specifically, the court:~~

~~(A) Must determine whether the agency has identified individuals, in addition to the child's siblings, who are important to the child and will maintain caring, permanent relationships with the child, consistent with the child's best interest;~~

~~(B) Must determine whether the agency has made reasonable efforts to nurture and maintain the child's relationships with those individuals, consistent with the child's best interest; and~~

~~(C) May make any appropriate order to ensure that those relationships are maintained.~~

~~(4) The court must direct the county child welfare agency and the appropriate county or state adoption agency to prepare an assessment under section 366.21(i), 366.22(c), or 366.25(b);~~

~~(5)~~(1) The court must ensure that notice is provided as required by section 294.

~~(6)~~(2) The court must follow all procedures in rule 5.590 regarding writ petition rights, advisements, and forms.

(Subd (i) amended and relettered effective January 1, 2017; adopted as subd (n); previously amended effective July 1, 2010, January 1, 2014, January 1, 2015, January 1, 2016, and July 1, 2016.)

~~(o)~~(j) *** * ***

(Subd (j) relettered effective January 1, 2017; adopted as subd (o).)

Rule 5.708 amended effective January 1, 2017; adopted effective January 1, 2010; previously amended effective July 1, 2010, January 1, 2014, January 1, 2015, January 1, 2016, and July 1, 2016.

Rule 5.710. Six-month review hearing

~~(a) Setting 6-month review; notice (§§ 364, 366, 366.21)~~

~~The case of any dependent child whom the court has removed from the custody of the parent or legal guardian under section 361 or 361.5 must be set for a review hearing within 6 months of the date of the dispositional hearing, but no later than 12 months from the date the child entered foster care, as defined by section 361.49, whichever occurs earlier. Notice must be provided as described in section 293 and rule 5.708.~~

~~(b)~~(a) Determinations and conduct of hearing (§§ 364, 366, 366.1, 366.21)

At the hearing, the court and all parties must comply with all relevant requirements and procedures in rule 5.708, General review hearing requirements. The court must make all appropriate findings and orders specified in rule 5.708 and proceed under section 366.21(e) and as follows:

(1) *Order return of the child or find that return would be detrimental*

~~The court must order the child returned to the custody of the parent or legal guardian unless the court finds that the petitioner has established by a preponderance of the evidence that return would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The requirements in rule 5.708(d) must be followed in establishing detriment. The requirements in rule 5.708(e) must be followed in entering a reasonable services finding.~~ If the child is returned, the court may order the termination of dependency jurisdiction or order continued dependency services and set a review hearing within 6 months.

(2) *Place with noncustodial parent*

If the court has previously placed or at this hearing places the child with a noncustodial parent, the court must follow the procedures in rule 5.708~~(k)~~(g) and section 361.2.

(3) *Set a section 366.26 hearing*

If the court does not return custody of the child to the parent or legal guardian, the court may set a hearing under section 366.26 within 120 days, as provided in ~~(c)~~(b).

(4) *Continue the case for a 12-month permanency hearing*

If the child is not returned and the court does not set a section 366.26 hearing, the court must order that any reunification services previously ordered will continue to be offered to the parent or legal guardian, if appropriate. The court may modify those services as appropriate or order additional services reasonably believed to facilitate the return of the child to the parent or legal guardian. The court must set a date for the next hearing no later than 12 months from the date the child entered foster care as defined in section 361.49.

(Subd (a) amended and relettered effective January 1, 2017; repealed and adopted as subd (d); relettered as subd (e) effective January 1, 1992; previously amended effective January 1, 1999, July 1, 1999, January 1, 2001, July 1, 2002, January 1, 2004, January 1, 2005, and January 1, 2007; previously amended and relettered as subd (b) effective January 1, 2010.)

~~(c)~~(b) Setting a section 366.26 hearing (§§ 366.21, 366.215)

(1) The court may set a hearing under section 366.26 within 120 days if any of the conditions in section 366.21(e) are met; or ~~:~~

~~(A) The child was removed under section 300(g) and the court finds by clear and convincing evidence that the parent's whereabouts are still unknown, or the parent has failed to contact and visit the child, or the parent has been convicted of a felony indicating parental unfitness. The court must take into account any particular barriers to a parent's ability to maintain contact with his or her child due to the parent's incarceration or institutionalization;~~

~~(B) The court finds by clear and convincing evidence that the parent has been convicted of a felony indicating parental unfitness;~~

~~(C)~~ ~~T~~the parent is deceased. ~~; or~~

~~(D) The child was under the age of three when initially removed, or a member of a sibling group described in section 361.5(a)(1)(C), and the court finds by clear and convincing evidence that the parent has failed to participate regularly and make substantive progress in any court-ordered treatment plan. If, however, the court finds a substantial probability that the child may be returned within 6 months or within 12 months of the date the child entered foster care, whichever is sooner, or that reasonable services have not been offered or provided, the court must continue the case to the 12-month permanency hearing.~~

~~(i) In order to find a substantial probability that the child may be returned within the applicable time period, the court should consider the following factors along with any other relevant evidence:~~

~~a. Whether the parent or legal guardian has consistently and regularly contacted and visited the child;~~

~~b. Whether the parent or legal guardian has made significant progress in resolving the problems that led to the removal of the child; and~~

~~c. Whether the parent or legal guardian has demonstrated the capacity and ability to complete the objectives of the treatment plan and to provide for the child's safety, protection, physical and emotional health, and special needs.~~

~~(ii) The court, in determining whether court-ordered services may be extended to the 12-month point, must take into account any particular barriers to a parent's or guardian's ability to maintain contact with his or her child due to the parent's or guardian's incarceration, institutionalization, detention by the United States Department of Homeland Security, or deportation. The court may also consider, among other factors, whether the incarcerated, institutionalized, detained, or deported parent or guardian has made good faith efforts to maintain contact with the child and whether there are any other barriers to the parent's or guardian's access to services.~~

(2) * * *

(Subd (b) amended and relettered effective January 1, 2017; repealed and adopted as subd (e); previously amended and relettered as subd (f) effective January 1, 1992; previously amended effective January 1, 1993, January 1, 1995, July 1, 1997, January 1, 1999, July 1, 1999, January 1, 2000, January 1, 2001, July 1, 2002, January 1, 2004, January 1, 2005, January 1, 2006, January 1, 2007, January 1, 2010, January 1, 2011, and January 1, 2014; previously amended and relettered subd (c) effective January 1, 2015.)

~~(d) Sibling groups (§ 366.21)~~

~~In determining whether to set a hearing under section 366.26 for one or more members of a sibling group when one member of that group was under the age of three at the time of the initial removal, the court may terminate or continue services for any or all members of the group, based on the following considerations and for reasons specified on the record:~~

~~(1) Whether the siblings were removed as a group;~~

~~(2) The closeness and strength of the sibling bond;~~

~~(3) The ages of the siblings;~~

~~(4) The appropriateness of maintaining the sibling group together;~~

~~(5) The detriment to the child if sibling ties are not maintained;~~

~~(6) The likelihood of finding a permanent home for the group;~~

~~(7) Whether the group is placed together in a preadoptive home, if there is a concurrent plan for permanency for all siblings in the same home;~~

~~(8) The wishes of each child; and~~

~~(9) The best interest of each member of the sibling group.~~

Rule 5.710 amended effective January 1, 2017; adopted as rule 1460 effective January 1, 1990; previously amended and renumbered effective January 1, 2007; previously amended effective January 1, 1992, January 1, 1993, January 1, 1995, July 1, 1995, July 1, 1997, January 1, 1999, July 1, 1999, January 1, 2000, January 1, 2001, July 1, 2002, January 1, 2004, January 1, 2005, January 1, 2006, January 1, 2010, January 1, 2011, January 1, 2014, and January 1, 2015.

Rule 5.715. Twelve-month permanency hearing

(a) Requirement for 12-month review; setting of hearing~~; notice~~ (§§ 293, 366.21)

The case of any dependent child whom the court has removed from the custody of the parent or legal guardian must be set for a permanency hearing within 12 months of the date the child entered foster care, as defined in section 361.49, and no later than 18 months from the date of the initial removal. ~~Notice of the hearing must be provided as described in section 293 and rule 5.708.~~

(Subd (a) amended effective January 1, 2017; previously amended effective January 1, 2001, January 1, 2004, January 1, 2006, January 1, 2007, and January 1, 2010.)

(b) Determinations and conduct of hearing (§§ 309(e), 361.5, 366, 366.1, 366.21)

At the hearing, the court and all parties must comply with all relevant requirements and procedures in rule 5.708, General review hearing requirements. The court must make all appropriate findings and orders specified in rule 5.708 and proceed under section 366.21(f) and as follows:

~~(1) The court must order the child returned to the custody of the parent or legal guardian unless the court finds the petitioner has established, by a preponderance of the evidence, that return would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. Failure of the parent or legal guardian to regularly participate and make substantive progress in a court-ordered treatment program is prima facie evidence that return would be detrimental. The requirements in rule 5.708(d) must be followed in establishing detriment.~~

~~(2)~~(1) The requirements in rule 5.708~~(e)~~(c) must be followed in entering a reasonable services finding.

~~(3)~~(2) If the court has previously placed or at this hearing places the child with a noncustodial parent, the court must follow the procedures in rule 5.708~~(k)~~(g) and section 361.2.

~~(4)~~(3) ~~If the court does not order return of the child to the parent or legal guardian and the time period for providing court-ordered services has been met or exceeded, as provided in section 361.5(a)(1), the court must specify the factual basis for its finding of risk of detriment to the child and proceed as follows in selecting a permanent plan:~~

~~(A) If the court finds that there is a substantial probability that the child will be returned within 18 months or that reasonable services have not been offered or provided, the court must continue the case for a permanency review hearing to a date not later than 18 months from the date of the initial removal. If the court continues the case for an 18-month permanency review hearing, the court must inform the parent or legal guardian that if the child cannot be returned home by the next hearing, a proceeding under section 366.26 may be instituted.~~

~~(i) In order to find a substantial probability that the child will be returned within the 18-month period, the court must find all of the following:~~

~~a. The parent or legal guardian has consistently and regularly contacted and visited the child;~~

~~b. The parent or legal guardian has made significant progress in resolving the problems that led to the removal of the child; and~~

~~c. The parent or legal guardian has demonstrated the capacity and ability to complete the objectives of the treatment plan and to provide for the child's safety, protection, physical and emotional health, and special needs.~~

~~(ii) In determining whether court-ordered services may be extended to the 18-month point, the court must consider the special circumstances of a parent or legal guardian who is incarcerated, institutionalized or court-ordered to a residential substance abuse treatment program, or arrested and issued an immigration hold,~~

~~detained by the United States Department of Homeland Security, or deported to his or her country of origin, including, but not limited to, barriers to the parent's or legal guardian's access to services and ability to maintain contact with his or her child. The court must also consider, among other factors, good faith efforts that the parent or legal guardian has made to maintain contact with the child.~~

~~(B) If (1), (4)(A), or (4)(C) do not apply, the court must terminate reunification services and order a hearing under section 366.26 within 120 days. The court and all parties must comply with all relevant requirements, procedures, findings, and orders related to section 366.26 hearings in rule 5.708.~~

~~(C) If the court finds by clear and convincing evidence, including a recommendation by the appropriate state or county adoption agency, that there is a compelling reason for determining that a section 366.26 hearing is not in the best interest of the child because the child is not a proper subject for adoption and has no one willing to accept legal guardianship:~~

~~(i) The court must terminate reunification services and order that the child remain in a planned permanent living arrangement.~~

~~(ii) If the court orders that the child remain in a planned permanent living arrangement, it must identify the foster care setting by name and identify a specific permanency goal for the child.~~

~~(iii)~~ The court may order that the name and address of the foster home remain confidential.

~~(iv) The court must continue to permit the parent or legal guardian to visit the child, unless it finds that visitation would be detrimental to the child.~~

~~(v) If the child is 10 years of age or older and is placed in out-of-home placement for six months or longer, the court must enter any other appropriate orders to enable the child to maintain relationships with other individuals who are important to the child, consistent with the child's best interest. Specifically, the court:~~

~~a. Must determine whether the agency has identified individuals, in addition to the child's siblings, who are important to the child and will maintain caring, permanent relationships with the child, consistent with the child's best interest;~~

~~b. Must determine whether the agency has made reasonable efforts to nurture and maintain the child's relationships with those individuals, consistent with the child's best interest; and~~

~~c. May make any appropriate order to ensure that those relationships are maintained.~~

~~(5)~~(4) In the case of an Indian child, ~~I~~if the child is not returned to his or her parent or legal guardian, the court must ~~consider and state, for the record, in-state and out-of-state options for permanent placement, including, in the case of an Indian child,~~ determine whether:

(A) The agency has consulted the child's tribe about tribal customary adoption;

(B) The child's tribe concurs with tribal customary adoption; and

(C) Tribal customary adoption is an appropriate permanent plan for the child.

(5) If the child is not returned to his or her parent or legal guardian and the court terminates reunification services, the court must find as follows:

(A) The agency has made diligent efforts to locate an appropriate relative; or

(B) The agency has not made diligent efforts to locate an appropriate relative. If the court makes such a finding, the court or administrative review panel must order the agency to make diligent efforts to locate an appropriate relative; and

(C) Each relative whose name has been submitted to the agency as a possible caregiver has been evaluated as an appropriate placement resource; or

(D) Each relative whose name has been submitted to the agency as a possible caregiver has not been evaluated as an appropriate placement resource. If the court makes such a finding, the court must order the agency to evaluate as an appropriate placement resource each relative whose name has been submitted to the agency as a possible caregiver.

(Subd (b) amended effective January 1, 2017; repealed and adopted as subd (c)(2); previously amended and relettered as subd (c) effective July 1, 1999, as subd (d) effective January 1, 2002, as subd (c) effective January 1, 2001, and as subd (b) effective January 1, 2010; previously amended effective January 1, 1992, January 1, 1993, January 1, 1995, July 1, 1995, July 1, 1997, January 1, 1999, January 1, 2004, January 1, 2005, January 1, 2007, July 1, 2010, and January 1, 2014.)

Rule 5.715 amended effective January 1, 2017; adopted as rule 1461 effective January 1, 1990; previously amended and renumbered effective January 1, 2007; previously amended effective January 1, 1992, January 1, 1993, January 1, 1994, January 1, 1995, July 1, 1995, July 1, 1997, January 1, 1999, July 1, 1999, January 1, 2000, January 1, 2001, January 1, 2004, January 1, 2005, January 1, 2006, January 1, 2010, July 1, 2010, and January 1, 2014.

Rule 5.720. Eighteen-month permanency review hearing

~~**(a) Requirement for 18-month permanency review hearing; setting of hearing; notice (§§ 293, 366.22)**~~

~~For any dependent child whom the court has removed from the custody of the parent or legal guardian, and who was not returned at the 6- or 12-month review hearing, a permanency review hearing must be held no later than 18 months from the date of the initial removal. Notice of the hearing must be given as provided in section 293 and rule 5.708(b).~~

~~(b)~~(a) Determinations and conduct of hearing (§§ 309(e), 361.5, 366.22)

At the hearing the court and all parties must comply with all relevant requirements and procedures in rule 5.708, General review hearing requirements. The court must make all appropriate findings and orders specified in rule 5.708, and proceed under section 366.22 and as follows:

~~(1) The court must order the child returned to the custody of the parent or legal guardian unless the court finds the petitioner has established, by a preponderance of the evidence, that return would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. Failure of the parent or legal guardian to regularly participate and make substantive progress in a court-ordered treatment program is prima facie~~

~~evidence that continued supervision is necessary or that return would be detrimental. The requirements in rule 5.708(d) must be followed in establishing detriment. The requirements in rule 5.708(e) must be followed in entering a reasonable services finding.~~

~~(2)~~(1) If the court has previously placed or at this hearing places the child with a noncustodial parent, the court must follow the procedures in rule 5.708~~(k)~~(g) and section 361.2.

~~(3)~~(2) ~~If the court does not order return of the child to the custody of the parent or legal guardian, the court must specify the factual basis for its finding of risk of detriment and do one of the following:~~

~~(A) Continue the case for a subsequent permanency review hearing not later than 24 months from the date of the initial removal if the court finds that there is a substantial probability that the child will be returned within that time or that reasonable services have not been offered or provided. To extend services to the 24-month point, the court must also find by clear and convincing evidence that additional reunification services are in the best interest of the child and that the parent or legal guardian is making significant and consistent progress in a substance abuse treatment program, or a parent or legal guardian has recently been discharged from incarceration, institutionalization, or the custody of the United States Department of Homeland Security and is making significant and consistent progress in establishing a safe home for the child's return. The court must also inform the parent or legal guardian that, if the child cannot be returned home by the subsequent permanency review hearing, a hearing under section 366.26 may be instituted.~~

~~In order to find a substantial probability that the child will be returned within the 24-month period, the court must find all of the following:~~

~~(i) The parent or legal guardian has consistently and regularly contacted and visited the child;~~

~~(ii) The parent or legal guardian has made significant and consistent progress in the prior 18 months in resolving the problems that led to the removal of the child; and~~

~~(iii) The parent or legal guardian has demonstrated the capacity and ability both to complete the objectives of his or her substance abuse treatment plan as evidenced by reports from a substance~~

~~abuse provider, as applicable, or to complete a treatment plan postdischarge from incarceration, institutionalization, or detention or following deportation to his or her country of origin or his or her return to the United States, and to provide for the child's safety, protection, physical and emotional health, and special needs.~~

~~(B) Terminate reunification services and order that the child remain in a planned permanent living arrangement, if it finds by clear and convincing evidence already presented, including a recommendation by the appropriate state or county adoption agency, that there is a compelling reason for determining that a section 366.26 hearing is not in the best interest of the child because the child is not a proper subject for adoption and has no one willing to accept legal guardianship.~~

~~(i) If the court orders that the child remain in a planned permanent living arrangement, it must identify the foster care setting by name and identify a specific permanency goal for the child.~~

~~(ii)~~ The court may order that the name and address of the foster home remain confidential.

~~(iii) The court must continue to permit the parent or legal guardian to visit the child, unless it finds that visitation would be detrimental to the child;~~

~~(iv) If the child is 10 years of age or older and is placed in out-of-home placement for six months or longer, the court must enter any other appropriate orders to enable the child to maintain relationships with other individuals who are important to the child, consistent with the child's best interest. Specifically, the court:~~

~~a. Must determine whether the agency has identified individuals, in addition to the child's siblings, who are important to the child and will maintain caring, permanent relationships with the child, consistent with the child's best interest;~~

~~b. Must determine whether the agency has made reasonable efforts to nurture and maintain the child's relationships with those individuals, consistent with the child's best interest; and~~

~~c. May make any appropriate order to ensure that those relationships are maintained.~~

~~(C) If (1), (3)(A), or (3)(B) do not apply, the court must terminate reunification services and order a hearing under section 366.26 within 120 days. The court and all parties must comply with all relevant requirements, procedures, and findings and orders related to section 366.26 hearings in rule 5.708.~~

~~(4)~~(3) In the case of an Indian child, ~~I~~if the child is not returned to his or her parent or legal guardian, the court must ~~consider and state, for the record, in-state and out-of-state options for permanent placement, including, in the case of an Indian child,~~ determine whether:

(A) The agency has consulted the child's tribe about tribal customary adoption;

(B) The child's tribe concurs with tribal customary adoption; and

(C) Tribal customary adoption is an appropriate permanent plan for the child.

(4) If the child is not returned to his or her parent or legal guardian and the court terminates reunification services, the court must find as follows:

(A) The agency has made diligent efforts to locate an appropriate relative; or

(B) The agency has not made diligent efforts to locate an appropriate relative. If the court makes such a finding, the court must order the agency to make diligent efforts to locate an appropriate relative; and

(C) Each relative whose name has been submitted to the agency as a possible caregiver has been evaluated as an appropriate placement resource; or

(D) Each relative whose name has been submitted to the agency as a possible caregiver has not been evaluated as an appropriate placement resource. If the court makes such a finding, the court must order the agency to evaluate as an appropriate placement resource each relative whose name has been submitted to the agency as a possible caregiver.

(Subd (a) amended and relettered effective January 1, 2017; repealed and adopted as subd (b); previously amended and relettered as subd (c) effective January 1, 2005, and as subd (b) effective January 1, 2010; previously amended effective July 1, 1991, January 1, 1992, January 1, 1993, January 1, 1995, July 1, 1995, January 1, 1999, July 1, 1999, January 1, 2006, July 1, 2006, January 1, 2007, July 1, 2007, July 1, 2010, January 1, 2014, and January 1, 2015.)

Rule 5.720 amended effective January 1, 2017; repealed and adopted as rule 1462 effective January 1, 1990; previously amended and renumbered effective January 1, 2007; previously amended effective July 1, 1991, January 1, 1992, January 1, 1993, January 1, 1994, January 1, 1995, July 1, 1995, July 1, 1997, January 1, 1999, July 1, 1999, January 1, 2001, January 1, 2005, January 1, 2006, July 1, 2006, July 1, 2007, January 1, 2010, July 1, 2010, January 1, 2014, and January 1, 2015.

Rule 5.722. Twenty-four-month subsequent permanency review hearing

~~**(a) Requirement for 24-month subsequent permanency review hearing; setting of hearing; notice (§ 366.25)**~~

~~For any dependent child whom the court has removed from the custody of the parent or legal guardian, and whose case has been continued under section 366.22(b), the subsequent permanency review hearing must be held no later than 24 months from the date of initial removal. Notice must be provided as described in rule 5.708.~~

~~(b)~~(a) Determinations and conduct of hearing (§§ 309(e), 366, 366.1, 366.25)

At the hearing, the court and all parties must comply with all relevant requirements and procedures in rule 5.708, General review hearing requirements. The court must make all appropriate findings and orders specified in rule 5.708, and proceed under section 366.25 and as follows:

(1) ~~The court must order the child returned to the custody of the parent or legal guardian unless the court finds that petitioner has established by a preponderance of the evidence that return would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. Failure of the parent or legal guardian to regularly participate and make substantive progress in a court-ordered treatment program is prima facie evidence that return would be detrimental. The requirements in rule 5.708(d) must be followed in establishing detriment.~~ The requirements in rule 5.708~~(e)~~(c) must be followed in entering a reasonable services finding.

(2) If the court does not order the return of the child to the custody of the parent or legal guardian, the court must specify the factual basis for its finding of risk of detriment ~~and do one of the following:~~.

~~(A) If the court finds by clear and convincing evidence, including a recommendation by the appropriate state or county adoption agency, that there is a compelling reason for determining that a section 366.26 hearing is not in the best interest of the child because the child is not a proper subject for adoption and has no one willing to accept legal guardianship, the court must terminate reunification services and order that the child remain in a planned permanent living arrangement.~~

~~(i) If the court orders that the child remain in a planned permanent living arrangement, it must identify the foster care setting by name and identify a specific permanency goal for the child.~~

~~(ii)~~(3) The court may order that the name and address of the foster home remain confidential.

~~(iii) The court must continue to permit the parent or legal guardian to visit the child, unless it finds that visitation would be detrimental to the child.~~

~~(iv) If the child is 10 years of age or older and is placed in out-of-home placement for six months or longer, the court must enter any other appropriate orders to enable the child to maintain relationships with other individuals who are important to the child, consistent with the child's best interest. Specifically, the court:~~

~~a. Must determine whether the agency has identified individuals, in addition to the child's siblings, who are important to the child and will maintain caring, permanent relationships with the child, consistent with the child's best interest;~~

~~b. Must determine whether the agency has made reasonable efforts to nurture and maintain the child's relationships with those individuals, consistent with the child's best interest; and~~

~~c. May make any appropriate order to ensure that those relationships are maintained.~~

~~(B) If (1) or (2)(A) do not apply, the court must terminate reunification services and order that a hearing be held under section 366.26 within 120 days.~~ The court and all parties must comply with all relevant requirements, procedures, findings, and orders related to section 366.26 hearings in rule 5.708~~*(l)* (o).~~ (h) (j).

~~(3)~~(4) In the case of an Indian child, ~~I~~if the child is not returned to his or her parent or legal guardian, the court must ~~consider and state, for the record, in-state and out-of-state options for permanent placement, including, in the case of an Indian child,~~ determine whether:

(A) The agency has consulted the child's tribe about tribal customary adoption;

(B) The child's tribe concurs with tribal customary adoption; and

(C) Tribal customary adoption is an appropriate permanent plan for the child.

(5) If the child is not returned to his or her parent or legal guardian and the court terminates reunification services, the court must find as follows:

(A) The agency has made diligent efforts to locate an appropriate relative; or

(B) The agency has not made diligent efforts to locate an appropriate relative. If the court makes such a finding, the court must order the agency to make diligent efforts to locate an appropriate relative; and

(C) Each relative whose name has been submitted to the agency as a possible caregiver has been evaluated as an appropriate placement resource; or

(D) Each relative whose name has been submitted to the agency as a possible caregiver has not been evaluated as an appropriate placement resource. If the court makes such a finding, the court must order the agency to evaluate as an appropriate placement resource each relative whose name has been submitted to the agency as a possible caregiver.

(Subd (a) relettered and amended effective January 1, 2017; adopted as subd (b); previously amended effective July 1, 2010.)

Rule 5.722 amended effective January 1, 2017; adopted effective January 1, 2010; previously amended effective July 1, 2010.

Rule 5.725. Selection of permanent plan (§§ 366.24, 366.26, 727.31)

(a) Application of rule

This rule applies to children who have been declared dependents or wards of the juvenile court.

~~(1) Only section 366.26 and division 12, part 3, chapter 5 (commencing with section 7660) of the Family Code or Family Code sections 8604, 8605, 8606, and 8700 apply for the termination of parental rights. Part 4 (commencing with section 7800) of division 12 of the Family Code does not apply.~~

~~(2)~~(1) The court may not terminate the rights of only one parent under section 366.26 unless that parent is the only surviving parent; or unless the rights of the other parent have been terminated ~~under division 12, part 3, chapter 5 (commencing with section 7660), or division 12, part 4 (commencing with section 7800) of the Family Code, or Family Code sections 8604, 8605, or 8606~~ by a California court of competent jurisdiction or by a court of competent jurisdiction of another state under the statutes of that state; or unless the other parent has relinquished custody of the child to the welfare department.

~~(3)~~(2) Only sections 366.26 and 727.31 apply ~~applies~~ for establishing legal guardianship.

~~(4)~~(3) For termination of the parental rights of an Indian child, the procedures in this rule and in rule 5.485 must be followed.

(Subd (a) amended effective January 1, 2017; previously amended effective January 1, 1994, July 1, 2002, January 1, 2007, and January 1, 2009.)

(b) Notice of hearing (§ 294)

In addition to the requirements stated in section 294, notice must be given to any CASA volunteer, ~~the child's present caregiver~~ Indian custodian, and ~~any~~ de facto parent on *Notice of Hearing on Selection of a Permanent Plan* (form JV-300).

(Subd (b) amended effective January 1, 2017; previously amended effective January 1, 1992, July 1, 1992, July 1, 1995, July 1, 2002, January 1, 2005, January 1, 2006, and January 1, 2007.)

(c) * * *

(d) Conduct of hearing

At the hearing, the court must state on the record that the court has read and considered the report of petitioner, the report of any CASA volunteer, the case plan submitted for this hearing, any report submitted by the child's caregiver under section 366.21(d), and any other evidence, and must proceed under section 366.26 and as follows:

(1) In the case of an Indian child, after the agency has consulted with the tribe, when the court has determined with the concurrence of the tribe that tribal customary adoption is the appropriate permanent plan for the child, order a tribal customary adoption in accordance with section 366.24.~~; or~~

~~(2) Order parental rights terminated and the child placed for adoption if the court determines, by clear and convincing evidence, that it is likely the child will be adopted, unless:~~

~~(A) At each and every hearing at which the court was required to consider reasonable efforts or services, the court has found that reasonable efforts were not made or that reasonable services were not offered or provided; or~~

~~(B) The child is living with a relative who is unable or unwilling to adopt the child because of circumstances that do not include an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment through legal guardianship, and removal from the home of the relative would be detrimental to the emotional well-being of the child. For an Indian child, "relative" includes an "extended family member," as defined in the federal Indian Child Welfare Act (25 U.S.C. §1903(2)); or~~

~~(C) The court finds a compelling reason to determine that termination would be detrimental to the child because of the existence of one of the following circumstances:~~

~~(i) The parents or guardians have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship;~~

~~(ii) A child 12 years of age or older objects to termination of parental rights;~~

~~(iii) The child is placed in a residential treatment facility and adoption is unlikely or undesirable while the child remains in that placement, and continuation of parental rights will not prevent the finding of an adoptive home if the parents cannot resume custody when residential care is no longer needed;~~

~~(iv) The child is living with a foster parent or Indian custodian who is unable or unwilling to adopt the child because of exceptional circumstances, but who is willing and capable of providing the child with a stable and permanent home, and removal from the home of the foster parent or Indian custodian would be detrimental to the emotional well-being of the child. This exception does not apply to (1) a child under 6 or (2) a child who has a sibling under 6 who is also a dependent and with whom the child should be placed permanently; or~~

~~(v) There would be a substantial interference with the child's relationship with a sibling, taking into consideration the nature and extent of the relationship. To make this determination, the court may consider whether the child was raised in the same home as the sibling, whether the child and the sibling shared common experiences or have close and strong bonds, and whether ongoing contact with the sibling is in the child's best interest. For purposes of this subdivision, determination of the child's best interest may include a comparison of the child's long-term emotional interest with the benefit of legal permanence in an adoptive home.~~

~~(vi) The child is an Indian child and termination of parental rights would substantially interfere with the child's connection to his or her tribal community or the child's tribal membership rights, or the child's tribe has identified guardianship, long-term foster care with a fit and willing relative, tribal customary adoption, or another planned permanent living arrangement as the appropriate permanent plan for the child.~~

~~(3) The court must not fail to find that the child is likely to be adopted based on the fact that the child is not yet placed in a preadoptive home or with a relative or foster family willing to adopt the child.~~

~~(4)~~(2) The party claiming that termination of parental rights would be detrimental to the child has the burden of proving the detriment.

~~(5) If the court finds termination of parental rights to be detrimental to the child for reasons stated in (2)(B), the court must state the reasons in writing or on the record.~~

~~(6) If termination of parental rights would not be detrimental to the child, but the child is difficult to place for adoption because the child (1) is a member of a sibling group that should stay together; (2) has a diagnosed medical, physical, or mental handicap; or (3) is 7 years of age or older and no prospective adoptive parent is identified or available, the court may, without terminating parental rights, identify adoption as a permanent placement goal and order the public agency responsible for seeking adoptive parents to make efforts to locate an appropriate adoptive family for a period not to exceed 180 days. During the 180-day period, in order to identify potential adoptive parents, the agency responsible for seeking adoptive parents for each child must, to the extent possible, ask each child who is 10 years of age or older and who is placed in out-of-home placement for six months or longer to identify any individuals who are important to the child. The agency may ask any other child to provide that information, as appropriate. After that period the court must hold another hearing and proceed according to (1), (2), or (7).~~

~~(7)~~(3) If the court finds that ~~(2)(A) or (2)(B)~~ section 366.26(c)(1)(A) or section 366.26(c)(2)(A) applies, the court must appoint the present custodian or other appropriate person to become the child's legal guardian or must order the child to remain in foster care.

(A) ~~If the court orders that the child remain in foster care, it must identify the foster care setting by name and identify a specific permanency goal for the child.~~ If the court orders that the child remain in foster care, ~~The court~~ it may order that the name and address of the foster home remain confidential.

~~(B) Legal guardianship must be given preference over foster care when it is in the interest of the child and a suitable guardian can be found.~~

~~(C) A child who is 10 years of age or older who is placed in a out-of-home placement for six months or longer must be asked to identify any adults who are important to him or her in order for the agency to investigate and the court to determine whether any of those adults would be appropriate to serve as legal guardians. Other children may be asked for this information, as age and developmentally appropriate.~~

~~(D)~~(B) If the court finds that removal of the child from the home of a foster parent or relative who is not willing to become a legal guardian for the child would be seriously detrimental to the emotional well-being of the child, then the child must not be removed. The foster parent or relative must be willing to provide, and capable of providing, a stable and permanent home for the child and must have substantial psychological ties with the child.

~~(E) The court must make an order for visitation with each parent or guardian unless the court finds by a preponderance of the evidence that the visitation would be detrimental to the child.~~

~~(8)~~(4) The court must consider the case plan submitted for this hearing and must ~~find as follows:~~ make the required findings and determinations in rule 5.708(e).

~~(A) The child was actively involved in the development of his or her own case plan and plan for permanent placement as age and developmentally appropriate, including being asked for a statement regarding his or her permanent placement plan, and the case plan contains the social worker's assessment of those stated wishes; or~~

~~(B) The child was not actively involved in the development of his or her own case plan and plan for permanent placement, including being asked for a statement regarding his or her permanent placement plan and the case plan does not contain the social worker's assessment of those stated wishes. If the court makes such a finding, the court must order the agency to actively involve the child in the development of his or her own case plan and plan for permanent placement, including asking the child for a statement regarding his or her permanent plan, unless the court finds that the child is unable, unavailable, or unwilling to participate. If the court finds that the case plan does not contain the social worker's assessment of the child's stated wishes, the court must order the agency to submit the assessment to the court; and~~

~~(C) In the case of an Indian child, the agency consulted with the child's tribe and the tribe was actively involved in the development of the case plan and plan for permanent placement, including consideration of whether tribal customary adoption is an appropriate permanent plan for the child if reunification is unsuccessful; or~~

~~(D) In the case of an Indian child, the agency did not consult with the child's tribe. If the court makes such a finding, the court must order the agency to consult with the tribe, unless the court finds that the tribe is unable, unavailable, or unwilling to participate.~~

~~(9) For a child 12 years of age or older and in a permanent placement, the court must consider the case plan and must find as follows:~~

~~(A) The child was given the opportunity to review the case plan, sign it, and receive a copy; or~~

~~(B) The child was not given the opportunity to review the case plan, sign it, and receive a copy. If the court makes such a finding, the court must order the agency to give the child the opportunity to review the case plan, sign it, and receive a copy.~~

~~(10) If no adult is available to become legal guardian, and no suitable foster home is available, the court may order the care, custody, and control of the child transferred to a licensed foster family agency, subject to further orders of the court.~~

(Subd (d) amended effective January 1, 2017; repealed and adopted as subd (c); previously amended and relettered as subd (d) effective January 1, 1992, and as subd (e) effective January 1, 2005; previously relettered as subd (d) effective January 1, 2010; previously amended effective July 1, 1994, January 1, 1999, July 1, 1999, July 1, 2002, January 1, 2006, January 1, 2007, January 1, 2009, July 1, 2010, and January 1, 2015.)

(e) Procedures—adoption

(1) The court must follow the procedures in section 366.24 or 366.26, as appropriate.

~~(1) The court may not terminate parental rights or order adoption if a review of the prior findings and orders reveals that at each and every prior hearing at which the court was required to consider reasonable efforts or services the court found that reasonable efforts had not been made or that reasonable services had not been offered or provided. If at any prior hearing the court found that reasonable efforts had been made or that reasonable services had been offered or provided, the court may terminate parental rights.~~

(2) An order of the court terminating parental rights, ordering adoption under section 366.26 or, in the case of an Indian child, ordering tribal customary adoption under section 366.24, is conclusive and binding on the child, the

parent, and all other persons who have been served under the provisions of section 294. The order may not be set aside or modified by the court, except as provided in section 366.26(i)(3) and rules 5.538, 5.540, and 5.542 with regard to orders by a referee.

~~(3) If the court declares the child free from custody and control of the parents, the court must at the same time order the child referred to a licensed county adoption agency for adoptive placement. A petition for adoption of the child may be filed and heard in the juvenile court but may not be granted until the appellate rights of all parents have been exhausted.~~

~~(4) In the case of an Indian child for whom tribal customary adoption has been ordered in accordance with section 366.24, the court may continue the hearing for up to 120 days to permit the tribe to complete the process for tribal customary adoption. In its discretion, the court may grant a further continuance not exceeding 60 days.~~

~~(A) No less than 20 days before the date set for the continued hearing, the tribe must file the completed tribal customary adoption order with the court.~~

~~(B) The social worker must file an addendum report with the court at least 7 days before the hearing.~~

~~(C) If the tribe does not file the tribal customary adoption order within the designated time period, the court must make new findings and orders under section 366.26(b) and select a new permanent plan for the child.~~

(Subd (e) amended effective January 1, 2017; adopted as subd (d); previously relettered as subd (e) effective January 1, 1992, as subd (f) effective January 1, 2005, and as subd (e) effective January 1, 2010; previously amended effective July 1, 1992, January 1, 1995, July 1, 2002, January 1, 2006, January 1, 2007, July 1, 2010, and January 1, 2015.)

(f)–(h) * * *

Rule 5.725 amended effective January 1, 2017; repealed and adopted as rule 1463 effective January 1, 1991; previously amended and renumbered effective January 1, 2007; previously amended effective January 1, 1992, July 1, 1992, January 1, 1994, July 1, 1994, January 1, 1995, July 1, 1995, July 1, 1997, January 1, 1999, July 1, 1999, July 1, 2002, January 1, 2005, January 1, 2006, January 1, 2009, January 1, 2010, July 1, 2010, and January 1, 2015.

Rule 5.726. Prospective adoptive parent designation (§§ 366.26(n), 16010.6)

(a) * * *

(b) ~~**Criteria for designation as prospective adoptive parent**~~ **Facilitation steps**

~~A caregiver must meet the following criteria to be designated as a prospective adoptive parent:~~

~~(1) The child has lived with the caregiver for at least six months;~~

~~(2) The caregiver currently expresses a commitment to adopt the child; and~~

~~(3) The caregiver has taken at least one step to facilitate the adoption process.~~ Steps to facilitate the adoption process include~~:~~ those listed in section 366.26(n)(2) and, in

(~~A) Applying for an adoption home study;~~

~~(B) Cooperating with an adoption home study;~~

~~(C) Being designated by the court or the licensed adoption agency as the adoptive family;~~

~~(D)~~ ~~In~~ the case of an Indian child when tribal customary adoption has been identified as the child's permanent plan, the child's identified Indian tribe has designated the caregiver as the prospective adoptive parent.~~;~~

~~(E) Requesting de facto parent status;~~

~~(F) Signing an adoptive placement agreement;~~

~~(G) Discussing a postadoption contact agreement with the social worker, child's attorney, child's CASA volunteer, adoption agency, or court;~~

~~(H) Working to overcome any impediments that have been identified by the California Department of Social Services and the licensed adoption agency; and~~

~~(I) Attending any of the classes required of prospective adoptive parents.~~

(Subd (b) amended effective January 1, 2017; previously amended effective January 1, 2007, and July 1, 2010.)

(c) Hearing on request for prospective adoptive parent designation

(1) The court must ~~evaluate~~ determine whether the caregiver meets the criteria in ~~(b)~~ section 366.26(n)(1).

~~(1) The petitioner must show on the request that the caregiver meets the criteria in (b).~~

(2) If the court finds ~~that the petitioner does not show~~ that the caregiver does not meet~~s~~ the criteria in ~~(b),~~ section 366.26(n)(1), the court may deny the request without a hearing.

(3) If the court finds ~~that the petitioner has shown~~ that the ~~current~~ caregiver meets the criteria in ~~(b),~~ section 366.26(n)(1), the court must set a hearing as set forth in (4) below.

(4) If it appears to the court that the request for designation as a prospective adoptive parent will be contested, or if the court wants to receive further evidence on the request, the court must set a hearing.

(A) If the request for designation is made at the same time ~~as an objection~~ a petition is filed to object to removal of the child from the caregiver's home, the court must set a hearing as follows:

(i) The hearing must be set as soon as possible and not later than five court days after the ~~objection~~ petition objecting to removal is filed with the court.

(ii) If the court for good cause ~~is unable to~~ cannot set the matter for hearing five court days after the petition objecting to removal is filed, the court must set the matter for hearing as soon as possible.

(iii) The matter may be set for hearing more than five court days after the ~~objection~~ petition objecting to removal is filed if this delay is necessary to allow participation by the child's identified Indian tribe or the child's Indian custodian.

(B) If the request for designation is made before ~~a request for removal is filed~~ the agency serves notice of a proposed removal or before an emergency removal has occurred, the court must ~~order that the~~ set a hearing ~~be set at a time~~ within 30 calendar days after the ~~filing of the~~ request for designation is made.

(5) If all parties stipulate to the ~~request for~~ designation of the caregiver as a prospective adoptive parent, the court may order the designation without a hearing.

(Subd (c) amended effective January 1, 2017.)

(d) Notice of designation hearing

After the court has ordered a hearing on a request for prospective-adoptive-parent designation, notice of the hearing must be as described below.

(1) * * *

(2) If the request for designation ~~was~~ is made at the same time as a request for hearing on a proposed or emergency removal, notice of the designation hearing must be provided with notice of the hearing on proposed removal ~~hearing~~, as stated in rule 5.727(f).

(3) If the request for designation ~~was~~ is made before ~~a request for removal was filed~~ the agency serves notice of a proposed removal or before an emergency removal occurred, notice must be as follows:

(A)–(E) * * *

(Subd (d) amended effective January 1, 2017; previously amended effective January 1, 2007, and January 1, 2008.)

(e) Termination of designation

If the prospective adoptive parent no longer meets the criteria in ~~rule 5.726(b),~~ section 366.26(n)(1), a request to vacate the order designating the caregiver as a prospective adoptive parent may be filed under section 388 and rule 5.570.

(Subd (e) amended effective January 1, 2017; previously amended effective January 1, 2007.)

(f) * * *

Rule 5.726 amended effective January 1, 2017; adopted as rule 1463.1 effective July 1, 2006; previously amended and renumbered as rule 5.726 effective January 1, 2007; previously amended effective January 1, 2008, and July 1, 2010.

Rule 5.727. Proposed removal (§ 366.26(n))

(a) Application of rule

This rule applies, after termination of parental rights or, in the case of tribal customary adoption, modification of parental rights, to the removal by the Department of Social Services (DSS) or a licensed adoption agency of a dependent child from a prospective adoptive parent ~~under rule 5.726(b)~~ or from a caregiver who may meet the criteria for designation as a prospective adoptive parent ~~under rule 5.726(b)~~ in section 366.26(n)(1). This rule does not apply if the caregiver requests the child's removal.

(Subd (a) amended effective January 1, 2017; previously amended effective January 1, 2007, and July 1, 2010.)

(b) Participants to be served with notice

Before removing a child from the home of a prospective adoptive parent ~~under rule 5.726(b)~~ as defined in section 366.26(n)(1) or from the home of a caregiver who may meet the criteria of a prospective adoptive parent ~~under rule 5.726(b)~~ in section 366.26(n)(1), and as soon as possible after a decision is made to remove the child, the agency must notify the following participants of the proposed removal:

(1) * * *

(2) The current caregiver, if that caregiver either is a designated prospective adoptive parent or, on the date of service of the notice, meets the criteria in ~~rule 5.726(b)~~ section 366.26(n)(1);

(3)–(7) * * *

(Subd (b) amended effective January 1, 2017; previously amended effective January 1, 2007.)

(c) Form of notice

DSS or the agency must provide notice on *Notice of Intent to Remove Child* (form JV-323). A blank copy of *Objection to Removal* (form JV-325) and *Request for Prospective Adoptive Parent Designation* (form JV-321) must also be provided to all participants listed in (b) except the court.

(Subd (c) amended effective January 1, 2017; previously amended effective January 1, 2007, and January 1, 2008.)

(d) Service of notice

DSS or the agency must serve notice of its intent to remove a child as follows:

(1)–(2) * * *

(3) Notice to the child's identified Indian tribe and Indian custodian must ~~be given under rule 5.481~~ comply with the requirements of section 224.2.

(4) ~~Proof of service of the notice on~~ *Proof of Notice* (form JV-326) must be filed with the court before the hearing on the proposed removal.

(Subd (d) amended effective January 1, 2017; previously amended effective January 1, 2007, January 1, 2008, and January 1, 2011.)

(e) Objection to proposed removal

Each participant who receives notice under (b) may object to the proposed removal of the child and may request a hearing.

(1) * * *

(2) A request for hearing on the proposed removal must be made within five court or seven calendar days from the date of notification, whichever is longer. If service of the notification is by mail, time to ~~respond~~ request a hearing is extended by five calendar days.

(3) The court must ~~order~~ set a hearing as follows:

(A)–(C) * * *

(Subd (e) amended effective January 1, 2017; previously amended effective January 1, 2007, and January 1, 2008.)

(f) Notice of hearing on proposed removal

After the court has ordered a hearing on a proposed removal, notice of the hearing must be as follows:

(1)–(2) * * *

(3) Notice must be ~~either~~ by personal service or by telephone. Notice by personal service must include a copy of the completed forms *Notice of Intent to Remove Child* (form JV-323) and *Objection to Removal* (form JV-325). Telephone notice must include the reasons for and against the removal, as indicated on forms JV-323 and JV-325.

(4) ~~Proof of notice on~~ *Proof of Notice* (form JV-326) must be filed with the court before the hearing on the proposed removal.

(Subd (f) amended effective January 1, 2017; previously amended effective January 1, 2007, and January 1, 2008.)

(g)–(h) * * *

(i) Appeal

If the court order made after a hearing on an intent to remove a child is appealed, the appeal must be ~~made~~ brought as a petition for writ review under rules 8.454 and 8.456.

(Subd (i) amended effective January 1, 2017; previously amended effective January 1, 2007.)

Rule 5.727 amended effective January 1, 2017; adopted as rule 1463.3 effective July 1, 2006; previously amended and renumbered effective January 1, 2007; previously amended effective January 1, 2008, July 1, 2010, and January 1, 2011.

Rule 5.728. Emergency removal (§ 366.26(n))

(a) Application of rule

This rule applies, after termination of parental rights or, in the case of tribal customary adoption, modification of parental rights, to the removal by the Department of Social Services (DSS) or a licensed adoption agency of a dependent child from the home of a prospective adoptive parent ~~under rule 5.726(b)~~ or ~~from~~ a caregiver who may meet the criteria for designation as a prospective adoptive parent ~~under rule 5.726(b)~~ in section 366.26(n)(1) when the DSS or the licensed adoption agency has determined a removal must occur immediately due to a risk of physical or emotional harm. This rule does not apply if the child~~'s removal is carried out~~ is removed at the request of the caregiver.

(Subd (a) amended effective January 1, 2017; previously amended effective January 1, 2007, and July 1, 2010.)

(b) Participants to be noticed

After removing a child from the home of a prospective adoptive parent ~~under rule 5.726(b)~~, or from the home of a caregiver who may meet the criteria of a prospective adoptive parent ~~under rule 5.726(b)~~ in section 366.26(n)(1), because of ~~immediate~~ risk of physical or emotional harm, the agency must notify the following participants of the emergency removal:

(1) * * *

(2) The ~~current~~ caregiver, ~~if that caregiver either~~ who is a ~~designated~~ prospective adoptive parent or who, on the date of service of the notice, ~~meets~~ may meet the criteria in ~~rule 5.726(b)~~ section 366.26(n)(1);

(3)–(7) * * *

(Subd (b) amended effective January 1, 2017; previously amended effective January 1, 2007.)

(c) Form and service of notice

Notice of Emergency Removal (form JV-324) must be used to provide notice of an emergency removal, as described below.

(1)–(3) * * *

(4) Whenever possible, the agency, at the time of the removal, must give a blank copy of ~~the form~~ *Request for Prospective Adoptive Parent Designation* (form JV-321) and a blank copy of *Objection to Removal* (form JV-325) to the caregiver and, if the child is 10 years of age or older, to the child.

(5) Notice to the court must be served by filing ~~of the form~~ *Notice of Emergency Removal* (form JV-324) and *Proof of Notice* (form JV-326) with the court. ~~The proof of notice included on the form must be completed when the form is filed with the court.~~

(6) *Proof of Notice* (form JV-326) must be filed with the court before the hearing on the proposed removal.

(Subd (c) amended effective January 1, 2017; previously amended effective January 1, 2007, and January 1, 2008.)

(d) Objection to emergency removal

Each participant who receives notice under (b) may object to the removal of the child and may request a hearing.

(1) * * *

(2) The court must ~~order~~ set a hearing as follows:

(A) The hearing must be set as soon as possible and not later than five court days after the ~~objection~~ petition objecting to removal is filed with the court.

(B) If the court for good cause ~~is unable to~~ cannot set the matter for hearing within five court days after the petition objecting to removal is filed, the court must set the matter for hearing as soon as possible.

(C) The matter may be set for hearing more than five court days after the ~~objection~~ petition objecting to removal is filed if this delay is necessary to allow participation by the child's identified Indian tribe or the child's Indian custodian.

(Subd (d) amended effective January 1, 2017; previously amended effective January 1, 2007, and January 1, 2008.)

(e) Notice of ~~emergency removal~~ hearing on emergency removal

After the court has ordered a hearing on an emergency removal, notice of the hearing must be as follows:

~~(1) Notice must be either by personal service or by telephone. Notice by personal service must include a copy of *Notice of Emergency Removal* (form JV-324). Telephone notice must include the reasons for and against the removal, as indicated on forms JV-324 and JV-325.~~

~~(2)~~(1) The clerk must provide notice of the hearing to the agency and the participants listed in (b) above, if the court, ~~the~~ caregiver, or ~~the~~ child requested the hearing.

~~(3)~~(2) * * *

(3) Notice must be by personal service or by telephone. Notice by personal service must include a copy of the completed *Notice of Emergency Removal*

(form JV-324). Telephone notice must include the reasons for and against the removal, as indicated on forms JV-324 and JV-325.

(4) ~~Proof of notice on~~ *Proof of Notice* (form JV-326) must be filed with the court before the hearing on the emergency removal.

(Subd (e) amended effective January 1, 2017; previously amended effective January 1, 2007, and January 1, 2008.)

(f)–(g) * * *

Rule 5.728 amended effective January 1, 2017; adopted as rule 1463.5 effective July 1, 2006; previously amended and renumbered effective January 1, 2007; previously amended effective January 1, 2008, and July 1, 2010.

Rule 5.730. Adoption (§§ 366.24, 366.26(e), Fam. Code, § 8600 et seq.)

* * *

Rule 5.730 amended effective January 1, 2017; adopted as rule 1464 effective July 1, 1995; previously amended and renumbered effective January 1, 2007; previously amended effective January 1, 1996, January 1, 1999, January 1, 2004, and July 1, 2010.

Rule 5.735. Legal guardianship

(a)–(b) * * *

~~**(c) Conduct of hearing**~~

~~(1) Before appointing a guardian, the court must read and consider the social study report specified in section 366.26 and note its consideration in the minutes of the court.~~

~~(2) The preparer of the social study report may be called in and examined by any party to the proceedings.~~

~~(d)~~(c) Findings and orders

(1) If the court finds that legal guardianship is the appropriate permanent plan, the court must appoint the guardian and order the clerk to issue letters of guardianship, which will not be subject to the confidentiality protections ~~of juvenile court documents as~~ described in section 827.

(2) The court ~~may~~ must issue orders regarding visitation of the child by a parent or ~~other relative~~ former guardian, unless the court finds that visitation would be detrimental to the physical or emotional well-being of the child.

(3) The court may issue orders regarding visitation of the child by a relative.

~~(3)~~(4) On appointment of a guardian under section 366.26, the court may terminate dependency.

(Subd (c) amended and relettered effective January 1, 2017; adopted as subd (d); previously amended effective July 1, 1999, and January 1, 2006.)

~~(e)~~(d) Notification of appeal rights

The court must advise all parties of their appeal rights as provided in rule ~~5.585~~ 5.590.

(Subd (d) amended and relettered effective January 1, 2017; adopted as subd (e); previously amended effective January 1, 2006, and January 1, 2007.)

Rule 5.735 amended effective January 1, 2017; adopted as rule 1464 effective January 1, 1991; renumbered as rule 1465 effective July 1, 1995; previously amended effective July 1, 1999, and January 1, 2006; previously amended and renumbered as rule 5.735 effective January 1, 2007.

Rule 5.740. Hearings subsequent to a permanent plan (§§ 366.26, 366.3, 16501.1)

(a) Review hearings—adoption and guardianship

Following an order for termination of parental rights or, in the case of tribal customary adoption, modification of parental rights, or a plan for the establishment of a guardianship under section 366.26, the court must retain jurisdiction and conduct review hearings at least every 6 months to ensure the expeditious completion of the adoption or guardianship.

(1) * * *

(2) The court or administrative review panel must consider the case plan and make the findings and determinations concerning the child in rule 5.708(e).

~~(2)~~(3) * * *

~~(3)~~(4) * * *

~~(4)~~(5) * * *

(6) If the child is not placed for adoption, the court or administrative review panel must find as follows:

(A) Whether the agency has made diligent efforts to locate an appropriate relative. If the court or administrative review panel finds the agency has not made diligent efforts to locate an appropriate relative, the court or administrative review panel must order the agency to do so.

(B) Whether each relative whose name has been submitted to the agency as a possible caregiver has been evaluated as an appropriate placement resource. If the court or administrative review panel finds the agency has not evaluated each relative whose name has been submitted as a possible caregiver, the court or administrative review panel must order the agency to do so.

(Subd (a) amended effective January 1, 2017; repealed and adopted effective January 1, 1991; previously amended effective January 1, 1992, January 1, 1993, July 1, 1999, January 1, 2005, January 1, 2006, January 1, 2007, July 1, 2010, and January 1, 2015.)

(b) Review hearings—relative care or foster care

Following the establishment of a plan other than those provided for in (a), review hearings must be conducted at least every 6 months by the court or by a local administrative review panel.

(1) At the review hearing, the court or administrative review panel must consider the report of the petitioner, the report of any CASA volunteer, the case plan submitted for this hearing, and any report submitted by the child's caregiver under section 366.21(d); inquire about the progress being made to provide a permanent home for the child; consider the safety of the child; and enter findings ~~regarding each item listed in~~ as required by section 366.3(e).

(2) The court or administrative review panel must consider the case plan submitted for this hearing and ~~must find as follows:~~ make the findings and determinations concerning the child in rule 5.708(e).

~~(A) The child was actively involved in the development of his or her own case plan and plan for permanent placement as age and developmentally appropriate; or~~

~~(B) The child was not actively involved in the development of his or her own case plan and plan for permanent placement as age and developmentally appropriate. If the court or administrative review panel makes such a finding, the court must order the agency to actively involve the child in the development of his or her own case plan and plan for permanent placement, unless the court finds that the child is unable, unavailable, or unwilling to participate.~~

~~(3) For a child 12 years of age or older and in a permanent placement, the court must consider the case plan and must find as follows:~~

~~(A) The child was given the opportunity to review the case plan, sign it, and receive a copy; or~~

~~(B) The child was not given the opportunity to review the case plan, sign it, and receive a copy. If the court makes such a finding, the court must order the agency to give the child the opportunity to review the case plan, sign it, and receive a copy.~~

(3) If the child is not placed for adoption, the court or administrative review panel must find as follows:

(A) Whether the agency has made diligent efforts to locate an appropriate relative. If the court or administrative review panel finds the agency has not made diligent efforts to locate an appropriate relative, the court or administrative review panel must order the agency to do so.

(B) Whether each relative whose name has been submitted to the agency as a possible caregiver has been evaluated as an appropriate placement resource. If the court or administrative review panel finds the agency has not evaluated each relative whose name has been submitted as a possible caregiver, the court or administrative review panel must order the agency to do so.

(4) * * *

(5) If circumstances have changed since the permanent plan was ordered, the court may order a new permanent plan under section 366.26 at any subsequent hearing, or any party may seek a new permanent plan by a motion filed under section 388 and rule 5.570.

(6)–(7) * * *

~~(8) At a review held 12 months after an original or subsequent order for the child to remain in foster care, the court must consider all permanency planning options, including whether the child should be returned to a parent or guardian, placed for adoption, or appointed a legal guardian. If the court orders that the child remain in foster care, it must identify the foster care setting by name and identify a specific permanency goal for the child. The court may order that the name and address of the foster home remain confidential.~~

~~(9) At a review held 12 months after an original or subsequent order for the child to remain in foster care, the court must order a hearing under section 366.26 unless the court finds by clear and convincing evidence that there is a compelling reason for determining that a section 366.26 hearing is not in the child's best interest because the child is being returned to the home of the parent, the child is not a proper subject for adoption, or there is no one available to assume guardianship.~~

~~(10) If the court makes the findings in (9), the court may order that the child remain in foster care.~~

(Subd (b) amended effective January 1, 2017; repealed and adopted effective January 1, 1991; previously amended effective January 1, 1992, January 1, 1994, January 1, 1998, January 1, 1999, July 1, 1999, January 1, 2005, January 1, 2006, and January 1, 2007.)

(c) Hearing on petition to terminate guardianship or modify guardianship orders

A petition to terminate a guardianship established by the juvenile court, to appoint a successor guardian, or to modify or supplement orders concerning ~~the~~ a guardianship must be filed in the juvenile court. The procedures described in rule 5.570 must be followed, and *Request to Change Court Order* (form JV-180) must be used.

(1) * * *

(2) Not less than 15 court days before the hearing date, the ~~petitioner must serve~~ clerk must cause notice of the hearing ~~on~~ to be given to the department of social services; the guardian; the child, if 10 years or older; parents whose parental rights have not been terminated; the court that established the guardianship, if in another county; and counsel of record for those entitled to notice.

(3)–(5) * * *

(Subd (c) amended effective January 1, 2017; previously amended effective January 1, 1993, July 1, 1994, July 1, 1999, and January 1, 2007.)

Rule 5.740 amended effective January 1, 2017; adopted as rule 1465 effective January 1, 1991; previously renumbered as rule 1466 effective July 1, 1995; previously amended and renumbered effective January 1, 2007; previously amended effective January 1, 1992, January 1, 1993, January 1, 1994, July 1, 1994, January 1, 1998, January 1, 1999, July 1, 1999, July 1, 2002, January 1, 2005, January 1, 2006, July 1, 2010, January 1, 2012, and January 1, 2015.

Article 2. Service, Filing, Filing Fees, Form, and ~~Number of Documents~~ Privacy

Rule 8.41. Protection of privacy in documents and records

The provisions on protection of privacy in rule 1.201 apply to documents and records under these rules.

Rule 8.41 adopted effective January 1, 2017.

Rule 8.45. General provisions

(a)–(d) * * *

Advisory Committee Comment

Subdivision (a). * * *

Subdivision (b)(5). * * *

Subdivisions (c) and (d). The requirements in this rule for format and transmission of and access to sealed and confidential records apply only unless otherwise provided by law. Special requirements that govern transmission of and/or access to particular types of records may supersede the requirements in this rule. For example, rules 8.619(g) and 8.622(e) require copies of reporters' transcripts in capital cases to be sent to the Habeas Corpus Resource Center and the California Appellate Project in San Francisco, and under rules 8.336~~(d)~~(g)(2) and 8.409(e)(2), in non-capital felony appeals, if the defendant—or in juvenile appeals, if the appellant or the respondent—is not represented by appellate counsel when the clerk's and reporter's transcripts are certified as correct, the clerk must send that counsel's copy of the transcripts to the district appellate project.

Subdivision (c)(1)(C). * * *

Subdivision (c)(2). * * *

Subdivision (c)(3). * * *

Subdivision (d). * * *

Subdivision (d)(1) and (2). Because the term "party" includes any attorney of record for that party, under rule 8.10(3), when a party who had access to a record in the trial court or other proceedings under review or who participated in an in-camera hearing—such as a *Marsden* hearing in a criminal or juvenile proceeding—is represented by appellate counsel, the confidential record or transcript must be transmitted to that party's appellate counsel. Under rules 8.336(g)(2) and 8.409(e)(2), in non-capital felony appeals, if the defendant—or in juvenile appeals, if the appellant or the respondent—is not represented by appellate counsel when the clerk's and reporter's transcripts are certified as correct, the clerk must send the copy of the transcripts that would go to appellate counsel, including confidential records such as transcripts of *Marsden* hearings, to the district appellate project.

Subdivision (d)(4). * * *

Rule 8.70. ~~Purpose, a~~Application, construction, and definitions

~~(a) Purpose~~

~~The purpose of the rules in this article is to facilitate the implementation and testing of e-filing projects in the Supreme Court and the Courts of Appeal.~~

~~(b)~~(a) Application

Notwithstanding any other rules to the contrary, the rules in this article govern filing and service by electronic means in the Supreme Court and ~~any~~ the Courts of Appeal ~~that elects to implement an e-filing project~~.

(Subd (a) amended and relettered effective January 1, 2017; adopted as subd (b); previously amended effective January 1, 2012.)

~~(c)~~(b) * * *

(Subd (b) relettered effective January 1, 2017; adopted as subd (c).)

~~(d)~~(c) Definitions

As used in this article, unless the context otherwise requires:

(1) "The court" means the Supreme Court or ~~any~~ a Court of Appeal ~~that elects to implement an e-filing project~~.

(2) ~~A document may be in paper or electronic form.~~ A "document" is:

(A) * * *

(B) Any document transmitted by a trial court to the reviewing court, including a notice or a clerk's or reporter's transcript; ~~or~~

(C) Any writing prepared by the reviewing court, including an opinion, an order, or a notice.

(D) A document may be in paper or electronic form.

(3)–(9) * * *

(Subd (c) amended and relettered effective January 1, 2017; adopted as subd (d) effective January 1, 2011; previously amended effective January 1, 2012.)

Rule 8.70 amended effective January 1, 2017; adopted effective July 1, 2010; previously amended effective January 1, 2011, and January 1, 2012.

~~Rule 8.71. Electronic service~~

~~(a) Authorization for electronic service~~

~~(1) A document may be electronically served under these rules:~~

~~(A) If electronic service is provided for by law or court order; or~~

~~(B) If the recipient agrees to accept electronic services as provided by these rules and the document is otherwise authorized to be served by mail, express mail, overnight delivery, or fax transmission.~~

~~(2) A party indicates that the party agrees to accept electronic service by:~~

~~(A) Serving a notice on all parties that the party accepts electronic service and filing the notice with the court. The notice must include the electronic service address at which the party agrees to accept service; or~~

~~(B) Electronically filing any document with the court. The act of electronic filing is evidence that the party agrees to accept service at the electronic service address that the party has furnished to the court under rule 8.76(a)(4).~~

(3) A party that has consented to electronic service under (2) and has used an electronic filing service provider to serve and file documents in a case consents to service on that electronic filing service provider as the designated agent for service for the party in the case, until such time as the party designates a different agent for service.

(4) A document may be electronically served on a nonparty if the nonparty consents to electronic service or electronic service is otherwise provided for by law or court order.

(b) Maintenance of electronic service lists

When the court orders or permits electronic filing in a case, it must maintain and make available electronically to the parties an electronic service list that contains the parties' current electronic service addresses, as provided by the parties that have filed electronically in the case.

(c) Service by the parties

Notwithstanding (b), parties are responsible for electronic service on all other parties in the case. A party may serve documents electronically directly, by an agent, or through a designated electronic filing service provider.

(d) Change of electronic service address

(1) A party whose electronic service address changes while the appeal or original proceeding is pending must promptly file a notice of change of address electronically with the court and must serve this notice electronically on all other parties.

(2) A party's election to contract with an electronic filing service provider to electronically file and serve documents or to receive electronic service of documents on the party's behalf does not relieve the party of its duties under (1).

(3) An electronic service address is presumed valid for a party if the party files electronic documents with the court from that address and has not filed and served notice that the address is no longer valid.

(e) Reliability and integrity of documents served by electronic notification

A party that serves a document by means of electronic notification must:

~~(1) Ensure that the documents served can be viewed and downloaded using the hyperlink provided;~~

~~(2) Preserve the document served without any change, alteration, or modification from the time the document is posted until the time the hyperlink is terminated; and~~

~~(3) Maintain the hyperlink until the case is final.~~

~~(f) Proof of service~~

~~(1) Proof of electronic service may be by any of the methods provided in Code of Civil Procedure section 1013a, except that the proof of service must state:~~

~~(A) The electronic service address of the person making the service, in addition to that person's residence or business address;~~

~~(B) The date and time of the electronic service, instead of the date and place of deposit in the mail;~~

~~(C) The name and electronic service address of the person served, in place of that person's name and address as shown on the envelope; and~~

~~(D) That the document was served electronically, in place of the statement that the envelope was sealed and deposited in the mail with postage fully prepaid.~~

~~(2) Proof of electronic service may be in electronic form and may be filed electronically with the court.~~

~~(3) The party filing the proof of electronic service must maintain the printed form of the document bearing the declarant's original signature and must make the document available for inspection and copying on the request of the court or any party to the action or proceeding in which it is filed, in the manner provided in rule 8.77(c).~~

~~(g) Electronic service by or on court~~

~~(1) The court may electronically serve any notice, order, opinion, or other document issued by the court in the same manner that parties may serve documents by electronic service.~~

~~(2) A document may be electronically served on a court if the court consents to electronic service or electronic service is otherwise provided for by law or court order. A court indicates that it agrees to accept electronic service by:~~

~~(A) Serving a notice on all parties that the court accepts electronic service. The notice must include the electronic service address at which the court agrees to accept service; or~~

~~(B) Adopting a local rule stating that the court accepts electronic service. The rule must indicate where to obtain the electronic service address at which the court agrees to accept service.~~

Rule 8.71 repealed effective January 1, 2017; adopted as rule 8.80 effective July 1, 2010; previously amended and renumbered as rule 8.71 effective January 1, 2011; previously amended effective January 1, 2016.

Rule 8.71. Electronic filing

(a) Mandatory electronic filing

Except as otherwise provided by these rules, the local rules of the reviewing court, or court order, all parties are required to file all documents electronically in the reviewing court.

(b) Self-represented parties

(1) Self-represented parties are exempt from the requirement to file documents electronically.

(2) A self-represented party may agree to file documents electronically. By electronically filing any document with the court, a self-represented party agrees to file documents electronically.

(3) In cases involving both represented and self-represented parties, represented parties are required to file documents electronically; however, in these cases, each self-represented party may file documents in paper form.

(c) Trial courts

Trial courts are exempt from the requirement to file documents electronically, but are permitted to file documents electronically.

(d) Excuse for undue hardship or significant prejudice

A party must be excused from the requirement to file documents electronically if the party shows undue hardship or significant prejudice. A court must have a process for parties, including represented parties, to apply for relief and a procedure for parties excused from filing documents electronically to file them in paper form.

(e) Applications for fee waivers

The court may permit electronic filing of an application for waiver of court fees and costs in any proceeding in which the court accepts electronic filings.

(f) Effect of document filed electronically

(1) A document that the court, a party, or a trial court files electronically under the rules in this article has the same legal effect as a document in paper form.

(2) Filing a document electronically does not alter any filing deadline.

(g) Paper documents

When it is not feasible for a party to convert a document to electronic form by scanning, imaging, or another means, the court may allow that party to file the document in paper form.

Rule 8.71 adopted effective January 1, 2017.

~~**Rule 8.72. Documents that may be filed electronically**~~

~~**(a) In general**~~

~~The court may permit electronic filing of a document by a party or trial court in any appeal or original proceeding unless the rules in this article or other legal authority expressly prohibit electronic filing.~~

~~**(b) Application for waiver of court fees and costs**~~

~~The court may permit electronic filing of an application for waiver of court fees and costs in any proceeding in which the court accepts electronic filings.~~

~~**(c) Orders, opinions, and notices**~~

~~The court may electronically file any notice, order, opinion, or other document prepared by the court.~~

~~(d) Effect of document filed electronically~~

~~(1) A document that the court, a party, or a trial court files electronically under the rules in this article has the same legal effect as a document in paper form.~~

~~(2) Filing a document electronically does not alter any filing deadline.~~

Rule 8.72 repealed effective January 1, 2017; adopted effective July 1, 2010.

~~Rule 8.73. Court order requiring electronic service or filing~~

~~(a) Court order~~

~~(1) The court may, on the motion of any party or on its own motion, provided that the order would not cause undue hardship or significant prejudice to any party, order all parties to:~~

~~(A) Serve all documents electronically, except when personal service is required by statute or rule;~~

~~(B) File all documents electronically; or~~

~~(C) Serve and file all documents electronically, except when personal service is required by statute or rule.~~

~~(2) The court will not:~~

~~(A) Order a self-represented party to electronically serve or file documents;~~

~~(B) Order a party to electronically serve or file documents if the party would be required to pay a fee to an electronic filing service provider to file or serve the documents and the party objects to paying this fee in its opposition to the motion under (1); or~~

~~(C) Order a trial court to electronically serve or file documents.~~

~~(3) If the reviewing court proposes to make an order under (1) on its own motion, the court must mail notice to the parties. Any party may serve and file an opposition within 10 days after the notice is mailed or as the court specifies.~~

~~**(b) Additional provisions of order**~~

~~The court's order may also provide that documents previously filed in paper form may be resubmitted in electronic form.~~

~~**(c) Filing in paper form**~~

~~When it is not feasible for a party to convert a document to electronic form by scanning, imaging, or another means, the court may allow that party to serve, file, or serve and file the document in paper form.~~

Rule 8.73 repealed effective January 1, 2017; adopted effective July 1, 2010; previously amended effective January 1, 2011.

Rule ~~8.74~~ 8.72. Responsibilities of court

(a) Publication of electronic filing requirements

~~When the court permits electronic filing it~~The court will publish, in both electronic and print formats, the court's electronic filing requirements.

(Subd (a) amended effective January 1, 2017.)

(b) * * *

Rule 8.72 amended and renumbered effective January 1, 2017; adopted as rule 8.74 effective July 1, 2010.

Rule ~~8.75~~ 8.73. Contracts with electronic filing service providers

(a) * * *

(b) Provisions of contract

The court's contract with an electronic filing service provider may allow the provider to charge electronic filers a reasonable fee in addition to the court's filing fee. Whenever possible, the contract should require that the electronic filing service provider agree to waive a fee that normally would be charged to a party when the court orders that the fee be waived for that party. The contract may also allow the electronic filing service provider to make other reasonable requirements for use of the electronic filing system.

(Subd (b) amended effective January 1, 2017.)

(c) * * *

(d) Confirmation of receipt and filing of document

(1) * * *

(2) The electronic filing service provider must send its confirmation to the filer's electronic service address and must indicate the date and time of receipt, in accordance with rule 8.7<u>7</u> ~~9(a)~~.

(3) After reviewing the documents, the court must <u>arrange to</u> promptly transmit ~~to the electronic filing service provider and the electronic filer the court's~~ confirmation of filing or notice of rejection ~~of filing,~~ <u>to the electronic filer</u> in accordance with rule 8.7<u>7</u> ~~9~~.

(Subd (d) amended effective January 1, 2017; previously amended effective January 1, 2011.)

(e) * * *

Rule 8.73 amended and renumbered effective January 1, 2017; adopted as rule 8.75 effective July 1, 2010; previously amended effective January 1, 2011.

Rule ~~8.76~~ <u>8.74</u>. Responsibilities of electronic filer

(a) * * *

(b) Format of documents to be filed electronically

<u>(1)</u> A document that is filed electronically with the court must be in a format specified by the court unless it cannot be created in that format.

<u>(2)</u> The format adopted by a court must meet the following <u>minimum</u> requirements:

<u>(A) The format must be text-searchable while maintaining original document formatting.</u>

~~(1)~~<u>(B)</u> The software for creating and reading documents must be in the public domain or generally available at a reasonable cost.

~~(2)~~(C) The printing of documents must not result in the loss of document text, format, or appearance.

(3) The page numbering of a document filed electronically must begin with the first page or cover page as page 1 and use only Arabic numerals (e.g., 1, 2, 3). The page number may be suppressed and need not appear on the cover page.

(4) If a document is filed electronically under the rules in this article and cannot be formatted to be consistent with a formatting rule elsewhere in the California Rules of Court, the rules in this article prevail.

(Subd (b) amended effective January 1, 2017.)

Rule 8.74 amended and renumbered effective January 1, 2017; adopted as rule 8.76 effective July 1, 2010; previously amended effective January 1, 2011.

Rule ~~8.77~~ 8.75. Requirements for signatures on documents

(a)–(e) * * *

Rule 8.75 renumbered effective January 1, 2017; adopted as rule 8.77 effective July 1, 2010; previously amended effective January 1, 2014.

Rule ~~8.78~~ 8.76. Payment of filing fees

(a)–(b) * * *

Rule 8.76 renumbered effective January 1, 2017; adopted as rule 8.78 effective July 1, 2010; previously amended effective January 1, 2011.

Advisory Committee Comment

Subdivision (b). A fee charged by an electronic filing service provider under rule ~~8.75(b)~~ 8.73(b) is not a court fee that can be waived under Government Code section 68634.5 and rule 8.26.

Rule ~~8.79~~ 8.77. Actions by court on receipt of electronic filing

(a) Confirmation of receipt and filing of document

(1) *Confirmation of receipt*

When the court receives an electronically submitted document, the court must

arrange to promptly send the electronic filer confirmation of the court's receipt of the document, indicating the date and time of receipt. A document is considered received at the date and time the confirmation of receipt is created.

(2) *Confirmation of filing*

If the document received by the court under (1) complies with filing requirements, the court must arrange to promptly send the electronic filer confirmation that the document has been filed. The filing confirmation must indicate the date and time of filing and is proof that the document was filed on the date and at the time specified. The filing confirmation must also specify:

(A) Any transaction number associated with the filing; and

(B) The titles of the documents as filed by the court.~~; and~~

~~(C) The fees assessed for the filing.~~

(3) *Transmission of confirmations*

The court must arrange to send receipt and filing confirmation to the electronic filer at the electronic service address that the filer furnished to the court under rule 8.7~~6~~4(a)(4). The court or the electronic filing service provider must maintain a record of all receipt and filing confirmations.

(4) *Filer responsible for verification*

In the absence of ~~the court's~~ confirmation of receipt and filing, there is no presumption that the court received and filed the document. The electronic filer is responsible for verifying that the court received and filed any document that the electronic filer submitted to the court electronically.

(Subd (a) amended effective January 1, 2017; previously amended effective January 1, 2011.)

(b) Notice of rejection of document for filing

If the clerk does not file a document because it does not comply with applicable filing requirements, the court must arrange to promptly send notice of the rejection of the document for filing to the electronic filer. The notice must state the reasons that the document was rejected for filing.

(Subd (b) amended effective January 1, 2017.)

(c) * * *

(d) Delayed delivery

~~If a technical problem with a court's electronic filing system prevents the court from accepting an electronic filing on a particular court day, and the electronic filer demonstrates that he or she attempted to electronically file the document on that day, the court must deem the document as filed on that day.~~

If a filer fails to meet a filing deadline imposed by court order, rule, or statute because of a failure at any point in the electronic transmission and receipt of a document, the filer may file the document on paper or electronically as soon thereafter as practicable and accompany the filing with a motion to accept the document as timely filed. For good cause shown, the court may enter an order permitting the document to be filed nunc pro tunc to the date the filer originally sought to transmit the document electronically.

(Subd (d) amended effective January 1, 2017.)

(e) * * *

Rule 8.77 amended effective January 1, 2017; adopted as rule 8.79 effective July 1, 2010; previously amended effective January 1, 2011, and January 1, 2012.

Rule ~~8.71~~ 8.78. Electronic service

(a) Authorization for electronic service; exceptions

(1) * * *

(2) A party indicates that the party agrees to accept electronic service by:

(A) * * *

(B) Electronically filing any document with the court. The act of electronic filing ~~is evidence that the party~~ shall be deemed to show that the party agrees to accept service at the electronic service address that the party has furnished to the court under rule 8.7~~6~~4(a)(4), unless the party serves a notice on all parties and files the notice with the court that the party does not accept electronic service and chooses instead to be served paper copies at an address specified in the notice.

~~(3) A party that has consented to electronic service under (2) and has used an electronic filing service provider to serve and file documents in a case consents to service on that electronic filing service provider as the designated agent for service for the party in the case, until such time as the party designates a different agent for service.~~

~~(4)~~(3) A document may be electronically served on a nonparty if the nonparty consents to electronic service or electronic service is otherwise provided for by law or court order. All provisions of this rule that apply or relate to a party also apply to any nonparty who has agreed to or is otherwise required by law or court order to accept electronic service or to electronically serve documents.

(Subd (a) amended effective January 1, 2017; previously amended effective January 1, 2011, and January 1, 2016.)

(b) Maintenance of electronic service lists

When the court orders or permits electronic ~~filing~~ service in a case, it must maintain and make available electronically to the parties an electronic service list that contains the parties' current electronic service addresses as provided by the parties that have ~~filed electronically~~ been ordered to or have consented to electronic service in the case.

(Subd (b) amended effective January 1, 2017; previously amended effective January 1, 2011.)

(c) * * *

(d) Change of electronic service address

(1)–(2) * * *

~~(3) An electronic service address is presumed valid for a party if the party files electronic documents with the court from that address and has not filed and served notice that the address is no longer valid.~~

(Subd (d) amended effective January 1, 2017; previously amended effective January 1, 2011.)

(e) * * *

(f) Proof of service

(1) Proof of electronic service may be by any of the methods provided in Code of Civil Procedure section 1013a, ~~except that the proof of service must state~~ with the following exceptions:

(A) The proof of electronic service does not need to state that the person making the service is not a party to the case.

(B) The proof of electronic service must state:

(i) The electronic service address of the person making the service, in addition to that person's residence or business address;

~~(B)~~ (ii) The date ~~and time~~ of the electronic service, instead of the date and place of deposit in the mail;

~~(C)~~ (iii) The name and electronic service address of the person served, in place of that person's name and address as shown on the envelope; and

~~(D)~~ (iv) That the document was served electronically, in place of the statement that the envelope was sealed and deposited in the mail with postage fully prepaid.

(2) * * *

(3) The party filing the proof of electronic service must maintain the printed form of the document bearing the declarant's original signature and must make the document available for inspection and copying on the request of the court or any party to the action or proceeding in which it is filed, in the manner provided in rule 8.~~77(c)~~75.

(Subd (f) amended effective January 1, 2017; previously amended effective January 1, 2011.)

(g) * * *

Rule 8.78 amended and renumbered effective January 1, 2017; adopted as rule 8.80 effective July 1, 2010; previously amended and renumbered as rule 8.71 effective January 1, 2011; previously amended effective January 1, 2016.

Rule ~~8.73~~ 8.79. Court order requiring electronic service ~~or filing~~

(a) Court order

(1) The court may, on the motion of any party or on its own motion, provided that the order would not cause undue hardship or significant prejudice to any party, order some or all parties to do either or both of the following:

(A) Serve all documents electronically, except when personal service is required by statute or rule; or

(B) ~~File all~~ Accept electronic service of documents. ~~electronically; or~~

~~(C) Serve and file all documents electronically, except when personal service is required by statute or rule.~~

(2) The court will not:

(A) Order a self-represented party to electronically serve ~~or file~~ or accept electronic service of documents; or

(B) ~~Order a party to electronically serve or file documents if the party would be required to pay a fee to an electronic filing service provider to file or serve the documents and the party objects to paying this fee in its opposition to the motion under (1); or~~

~~(C)~~ Order a trial court to electronically serve ~~or file~~ documents.

(3) * * *

(Subd (a) amended effective January 1, 2017; previously amended effective January 1, 2011.)

~~**(b) Additional provisions of order**~~

~~The court's order may also provide that documents previously filed in paper form may be resubmitted in electronic form.~~

~~(c)~~(b) ~~Filing~~ Serving in paper form

When it is not feasible for a party to convert a document to electronic form by scanning, imaging, or another means, the court may allow that party to serve~~, file, or serve and file~~ the document in paper form.

(Subd (b) amended and relettered effective January 1, 2017; adopted as subd (c).)

Rule 8.79 amended effective January 1, 2017; adopted as rule 8.73 effective July 1, 2010; previously amended effective January 1, 2011.

Article 7. Privacy

Rule 8.90. Privacy in opinions

(a) Application

(1) This rule provides guidance on the use of names in appellate court opinions.

(2) Reference to juveniles in juvenile court proceedings is governed by rule 8.401(a).

(3) Where other laws establish specific privacy-protection requirements that differ from the provisions in this rule, those specific requirements supersede the provisions in this rule.

(b) Persons protected

To protect personal privacy interests, in all opinions, the reviewing court should consider referring to the following people by first name and last initial or, if the first name is unusual or other circumstances would defeat the objective of anonymity, by initials only:

(1) Children in all proceedings under the Family Code and protected persons in domestic violence–prevention proceedings;

(2) Wards in guardianship proceedings and conservatees in conservatorship proceedings;

(3) Patients in mental health proceedings;

(4) Victims in criminal proceedings;

(5) Protected persons in civil harassment proceedings under Code of Civil Procedure section 527.6;

(6) Protected persons in workplace violence–prevention proceedings under Code of Civil Procedure section 527.8;

(7) Protected persons in private postsecondary school violence–prevention proceedings under Code of Civil Procedure section 527.85;

(8) Protected persons in elder or dependent adult abuse–prevention proceedings under Welfare and Institutions Code section 15657.03;

(9) Minors or persons with disabilities in proceedings to compromise the claims of a minor or a person with a disability;

(10) Persons in other circumstances in which personal privacy interests support not using the person's name; and

(11) Persons in other circumstances in which use of that person's full name would defeat the objective of anonymity for a person identified in (1)–(10).

Rule 8.90 adopted effective January 1, 2017.

Advisory Committee Comment

Subdivision (b)(1)–(9) lists people in proceedings under rule 8.83 for which remote electronic access to records—except dockets or registers of actions, calendars, opinions, and certain Supreme Court records—may not be provided. If the court maintains these records in electronic form, electronic access must be provided at the courthouse only, to the extent it is feasible to do so. (Cal. Rules of Court, rule 8.83(c).) Subdivision (b)(1)–(9) recognizes the privacy considerations of certain persons subject to the proceedings listed in rule 8.83(c). Subdivision (b)(10) recognizes people in circumstances other than the listed proceedings, such as witnesses, in which the court should consider referring to a person by first name and last initial, or, if the first name is unusual or other circumstances would defeat the objective of protecting personal privacy interests, by initials. Subdivision (b)(11) recognizes people in circumstances other than the listed proceedings, such as relatives, in which the court should consider referring to a person by first name and last initial or by initials if the use of that person's full name would identify another person whose personal privacy interests support remaining anonymous.

Rule 8.104. Time to appeal

(a)–(b) * * *

(c) What constitutes entry

For purposes of this rule:

(1)–(4) * * *

(5) An order signed electronically has the same effect as an order signed on paper.

(Subd (c) amended effective January 1, 2017; adopted as subd (c); previously amended effective January 1, 2007; previously relettered as subd (d) effective January 1, 2005, and as subd (c) effective January 1, 2011.)

(d)–(e) * * *

Rule 8.104 amended effective January 1, 2017; repealed and adopted as rule 2 effective January 1, 2002; previously amended and renumbered as rule 8.104 effective January 1, 2007; previously amended effective January 1, 2005, January 1, 2010, January 1, 2011, July 1, 2011, July 1, 2012, July 1, 2014, and January 1, 2016.

Rule 8.124. Appendixes

(a)–(c) * * *

(d) Form of appendix

(1) An appendix must comply with the requirements of rule 8.144~~(b)–(d)~~ (a)–(c) for a clerk's transcript.

(2)–(3) * * *

(Subd (d) amended effective January 1, 2017; adopted as subd (c); relettered as subd (d) effective January 1, 2005; previously amended effective January 1, 2007, and January 1, 2016.)

(e)–(g) * * *

Rule 8.124 amended effective January 1, 2017; repealed and adopted as rule 5.1 effective January 1, 2002; previously amended and renumbered as rule 8.124 effective January 1, 2007; previously amended effective January 1, 2005, January 1, 2008, January 1, 2010, and January 1, 2016.

Rule 8.130. Reporter's transcript

(a)–(e) * * *

(f) Filing the transcript; copies; payment

(1)–(3) * * *

(4) On request, and unless the superior court orders otherwise, the reporter must provide the Court of Appeal or any party with a copy of the reporter's transcript in computer-readable format. Each computer-readable copy must comply with the ~~format, labeling, content, and numbering requirements of Code of Civil Procedure section 271(b)~~ requirements of rule 8.144(a)(4).

(Subd (f) amended effective January 1, 2017; previously amended effective January 1, 2007, July 1, 2008, January 1, 2014, and January 1, 2016.)

(g)–(h) * * *

Rule 8.130 amended effective January 1, 2017; repealed and adopted as rule 4 effective January 1, 2002; previously amended and renumbered as rule 8.130 effective January 1, 2007; previously amended effective January 1, 2005, January 1, 2008, July 1, 2008, January 1, 2010, January 1, 2014, and January 1, 2016.

Rule 8.144. Form of the record

(a) Paper and format

(1)–(3) * * *

(4) A computer-readable copy of a reporter's transcript must be in a text-searchable format approved by the reviewing court while maintaining original document formatting.

~~(4)~~(5) * * *

(Subd (a) amended effective January 1, 2017; previously amended effective January 1, 2007, January 1, 2014, and January 1, 2016.)

(b)–(f) * * *

Rule 8.144 amended effective January 1, 2017; repealed and adopted as rule 9 effective January 1, 2002; previously amended and renumbered as rule 8.144 effective January 1, 2007; previously amended effective January 1, 2008, January 1, 2014, and January 1, 2016.

Advisory Committee Comment

Subdivisions (a) and (b). Subdivision (a)(4) is adopted under Code of Civil Procedure section 271(b), which allows the Judicial Council to adopt format requirements for computer-readable copies of a reporter's transcript. Subdivisions (a)~~(4)~~ (5) and (b) refer to special requirements

concerning sealed and confidential records established by rules 8.45–8.47. Rule 8.45(c)(2) and (3) establish special requirements regarding references to sealed and confidential records in the alphabetical and chronological indexes to clerk's and reporter's transcripts.

Rule 8.150. Filing the record

(a)–(b) * * *

Advisory Committee Comment

Subdivision (a). Under rule 8.71(c), the superior court clerk may send the record to the reviewing court in electronic form.

Rule 8.200. Briefs by parties and amici curiae

(a) Parties' briefs

(1)–(3) * * *

(4) No other brief may be filed except with the permission of the presiding justice, unless it qualifies under (b) or (c)~~(6)~~(7).

(5) * * *

(Subd (a) amended effective January 1, 2017; previously amended effective January 1, 2003.)

(b)–(c) * * *

Rule 8.200 amended effective January 1, 2017; repealed and adopted as rule 13 effective January 1, 2002; previously amended and renumbered effective January 1, 2007; previously amended effective January 1, 2003, January 1, 2008, and January 1, 2009.

Rule 8.204. Contents and form of briefs

(a) * * *

(b) Form

(1)–(6) * * *

(7) The pages must be consecutively numbered. ~~The tables and the body of the brief may have different numbering systems.~~ The page numbering must begin

with the cover page as page 1 and use only Arabic numerals (e.g., 1, 2, 3). The page number may be suppressed and need not appear on the cover page.

(8) If filed in paper form, the brief must be ~~bound on the left margin~~ filed unbound unless otherwise provided by local rule or court order. ~~If the brief is stapled, the bound edge and staples must be covered with tape.~~

(9)–(11) * * *

(Subd (b) amended effective January 1, 2017; previously amended effective January 1, 2004, July 1, 2004, January 1, 2006, January 1, 2007, January 1, 2013, January 1, 2014, and January 1, 2016.)

(c)–(e) * * *

Rule 8.204 amended effective January 1, 2017; repealed and adopted as rule 14 effective January 1, 2002; previously amended and renumbered as rule 8.204 effective January 1, 2007; previously amended effective January 1, 2004, July 1, 2004, January 1, 2006, January 1, 2011, January 1, 2013, January 1, 2014, and January 1, 2016.

Rule 8.336. Preparing, certifying, and sending the record

(a)–(c) * * *

(d) Reporter's transcript

(1) * * *

(2) The reporter must prepare an original and the same number of copies of the reporter's transcript as (c) requires of the clerk's transcript, and must certify each as correct. On request, and unless the trial court orders otherwise, the reporter must provide the Court of Appeal and any party with a copy of the reporter's transcript in computer-readable format. Each computer-readable copy must comply with the ~~format, labeling, content, and numbering requirements of Code of Civil Procedure section 271(b)~~ requirements of rule 8.144(a)(4).

(3)–(5) * * *

(Subd (d) amended effective January 1, 2017; previously amended effective January 1, 2007, January 1, 2014, and January 1, 2016.)

(e)–(h) * * *

Rule 8.336 amended effective January 1, 2017; repealed and adopted as rule 32 effective January 1, 2004; previously amended and renumbered as rule 8.336 effective January 1, 2007; previously amended effective January 1, 2010, January 1, 2014, and January 1, 2016.

Advisory Committee Comment

Subdivision (a). * * *

Subdivision (d). * * *

Subdivision (f). * * *

Subdivision (g). Under rule 8.71(c), the superior court clerk may send the record to the reviewing court in electronic form.

Rule 8.400. Application

The rules in this chapter govern:

(1) Appeals from judgments or appealable orders in:

(A) * * *

(B) Actions to free a child from parental custody and control under Family Code section 7800 et seq. and Probate Code section 1516.5; ~~and~~

(2) Appeals of orders requiring or dispensing with an alleged father's consent for the adoption of a child under Family Code section 7662 et seq.; and

~~(2)~~(3) Writ petitions under Welfare and Institutions Code sections 366.26 and 366.28.

Rule 8.400 amended effective January 1, 2017; adopted as rule 37 effective January 1, 2005; previously amended and renumbered effective January 1, 2007; previously amended effective January 1, 2006, January 1, 2008, and July 1, 2010.

Rule 8.407. Record on appeal

(a) Normal record: clerk's transcript

The clerk's transcript must contain:

(1)–(10) * * *

(11) Any opinion or dispositive order of a reviewing court in the same case; and~~;~~

(12) * * *

(Subd (a) amended effective January 1, 2017; previously amended effective January 1, 2007, and July 1, 2010.)

(b) Normal record: reporter's transcript

The reporter's transcript must contain any oral opinion of the court and:

~~(1) Except as provided in (2), the oral proceedings at any hearing that resulted in the order or judgment being appealed;~~

~~(2)~~(1) In appeals from disposition~~al~~ orders, the oral proceedings at hearings on:

(A) Jurisdiction; ~~and~~

(B) Disposition; ~~and~~

~~(B)~~(C) Any motion by the appellant that was denied in whole or in part; and

(D) In cases under Welfare and Institutions Code section 300 et seq., hearings:

(i) On detention; and

(ii) At which a parent of the child made his or her initial appearance.

(2) In appeals from an order terminating parental rights under Welfare and Institutions Code section 300 et seq., the oral proceedings at all section 366.26 hearings.

(3) ~~Any oral opinion of the court~~ In all other appeals, the oral proceedings at any hearing that resulted in the order or judgment being appealed.

(Subd (b) amended effective January 1, 2017; previously amended effective January 1, 2007.)

(c)–(e) * * *

Rule 8.407 amended effective January 1, 2017; adopted as rule 37.1 effective January 1, 2005; previously amended and renumbered as rule 8.404 effective January 1, 2007, and as rule 8.407 effective July 1, 2010; previously amended effective January 1, 2014.

Advisory Committee Comment

Rules 8.45–8.47 address the appropriate handling of sealed or confidential records that must be included in the record on appeal. Examples of confidential records include records of proceedings closed to inspection by court order under *People v. Marsden* (1970) 2 Cal.3d 118 and in-camera proceedings on a confidential informant.

Subdivision (a)(4). Examples of the documents that must be included in the clerk's transcript under this provision include all documents filed with the court relating to the Indian Child Welfare Act, including but not limited to all inquiries regarding a child under the Indian Child Welfare Act (*Indian Child Inquiry Attachment* [form ICWA-010(A)]), any *Parental Notification of Indian Status* (form ICWA-020), any *Notice of Child Custody Proceeding for Indian Child* (form ICWA-030) sent, any signed return receipts for the mailing of form ICWA-030, and any responses received to form ICWA-030.

Subdivision (b). Subdivision (b)(1) provides that only the reporter's transcript of a hearing that resulted in the order being appealed must be included in the normal record. This provision is intended to achieve consistent record requirements in all appeals of cases under Welfare and Institutions Code section 300, 601, or 602 and to reduce the delays and expense caused by transcribing proceedings not necessary to the appeal.

Subdivision (b)~~(2)~~(1)(A) recognizes that findings made in a jurisdictional hearing are not separately appealable and can be challenged only in an appeal from the ensuing disposition~~al~~ order. The rule therefore specifically provides that a reporter's transcript of jurisdictional proceedings must be included in the normal record on appeal from a disposition~~al~~ order.

Subdivision (b)~~(2)(B)~~(1)(C) specifies that the oral proceedings on any motion by the appellant that was denied in whole or in part must be included in the normal record on appeal from a disposition order. Rulings on such motions usually have some impact on either the jurisdictional findings or the subsequent disposition order. Routine inclusion of these proceedings in the record will promote expeditious resolution of appeals of cases under Welfare and Institutions Code section 300, 601, or 602.

Rule 8.409. Preparing and sending the record

(a)–(b) * * *

(c) Preparing and certifying the transcripts

Within 20 days after the notice of appeal is filed:

(1) * * *

(2) The reporter must prepare, certify as correct, and deliver to the clerk an original of the reporter's transcript and the same number of copies as (1) requires of the clerk's transcript. On request, and unless the trial court orders otherwise, the reporter must provide the Court of Appeal and any party with a copy of the reporter's transcript in computer-readable format. Each computer-readable copy must comply with the ~~format, labeling, content, and numbering requirements of Code of Civil Procedure section 271(b)~~ requirements of rule 8.144(a)(4).

(Subd (c) amended effective January 1, 2017; adopted as subd (b); previously amended and relettered as subd (c) effective January 1, 2014; previously amended effective January 1, 2007, and January 1, 2015.)

(d)–(e) * * *

Rule 8.409 amended effective January 1, 2017; adopted as rule 37.2 effective January 1, 2005; previously amended and renumbered as rule 8.408 effective January 1, 2007, and as rule 8.409 effective July 1, 2010; previously amended effective January 1, 2013, January 1, 2014, and January 1, 2015.

Advisory Committee Comment

Subdivisions (a)–(c)(2) * * *

Subdivision (e). Under rule 8.71(c), the superior court clerk may send the record to the reviewing court in electronic form. Subsection (1)(B) clarifies that when a child's Indian tribe has intervened in the proceedings, the tribe is a party who must receive a copy of the appellate record. The statutes that require notices to be sent to a tribe by registered or certified mail return receipt requested and generally be addressed to the tribal chairperson (25 U.S.C. § 1912(a), 25 C.F.R. § 23.11, and Welf. & Inst. Code, § 224.2) do not apply to the sending of the appellate record.

Rule 8.416. Appeals from all terminations of parental rights; dependency appeals in Orange, Imperial, and San Diego Counties and in other counties by local rule

(a)–(b) * * *

(c) Preparing, certifying, and sending the record

(1) Within 20 days after the notice of appeal is filed:

(A) * * *

(B) The reporter must prepare, certify as correct, and deliver to the clerk an original of the reporter's transcript and the same number of copies as (A) requires of the clerk's transcript. On request, and unless the trial court orders otherwise, the reporter must provide the Court of Appeal and any party with a copy of the reporter's transcript in computer-readable format. Each computer-readable copy must comply with the ~~format, labeling, content, and numbering requirements of Code of Civil Procedure section 271(b)~~ requirements of rule 8.144(a)(4).

(2)–(3) * * *

(Subd (c) amended effective January 1, 2017; previously amended effective January 1, 2007, July 1, 2010, and January 1, 2015.)

(d)–(h) * * *

Rule 8.416 amended effective January 1, 2017; adopted as rule 37.4 effective January 1, 2005; previously amended and renumbered effective January 1, 2007; previously amended effective July 1, 2010, and January 1, 2015.

Advisory Committee Comment

Subdivision (c). Under rule 8.71(c), the superior court clerk may send the record to the reviewing court in electronic form.

Subdivision (g)–(h) * * *

Rule 8.450. Notice of intent to file writ petition to review order setting hearing under Welfare and Institutions Code section 366.26

(a)–(f) * * *

(g) Sending the notice of intent

(1) When the notice of intent is filed, the superior court clerk must immediately ~~mail~~ send a copy of the notice to:

(A)–(J) * * *

(2) The clerk must promptly send by first-class mail, e-mail, or fax a copy of the notice of intent and a list of those to whom the notice of intent was sent to:

(A) * * *

(B) The petitioner if the clerk ~~mailed~~ sent the notice of intent to the Indian custodian, tribe of the child, or the Bureau of Indian Affairs.

(3) * * *

(Subd (g) relettered effective January 1, 2017; adopted as subd (f); previously amended effective January 1, 2006, July 1, 2006, January 1, 2007, July 1, 2010, and January 1, 2013.)

(h)–(j) * * *

Rule 8.450 amended effective January 1, 2017; adopted as rule 38 effective January 1, 2005; previously amended and renumbered effective January 1, 2007; previously amended effective January 1, 2006, July 1, 2006, January 1, 2008, January 1, 2009, July 1, 2010, and January 1, 2013.

Advisory Committee Comment

Subdivision (d)–(f)(1) * * *

Subdivision (i). Under rule 8.71(c), the superior court clerk may send the record to the reviewing court in electronic form.

Rule 8.452. Writ petition to review order setting hearing under Welfare and Institutions Code section 366.26

(a)–(g) * * *

(h) Decision

(1)–(2) * * *

(3) If the writ or order stays or prohibits proceedings set to occur within 7 days or requires action within 7 days—or in any other urgent situation—the reviewing court clerk must make a reasonable effort to notify the clerk of the

respondent court by telephone or e-mail. The clerk of the respondent court must then notify the judge or officer most directly concerned.

(4) The reviewing court clerk need not give telephonic or e-mail notice of the summary denial of a writ, unless a stay previously issued will be dissolved.

(Subd (h) relettered effective January 1, 2017; adopted as subd (h) effective January 1, 2005; relettered as subd (i) effective January 1, 2006; previously amended effective January 1, 2007, and July 1, 2010.)

(i) * * *

Rule 8.452 amended effective January 1, 2017; adopted as rule 38.1 effective January 1, 2005; previously amended and renumbered effective January 1, 2007; previously amended effective January 1, 2006, and July 1, 2010.

Rule 8.454. Notice of intent to file writ petition under Welfare and Institutions Code section 366.28 to review order designating specific placement of a dependent child after termination of parental rights

(a)–(f) * * *

(g) Sending the notice of intent

(1) When the notice of intent is filed, the superior court clerk must immediately ~~mail~~ send a copy of the notice to:

(A)–(I) * * *

(2) The clerk must promptly send by first-class mail, e-mail, or fax a copy of the notice of intent and a list of those to whom the notice of intent was sent to:

(A) * * *

(B) The petitioner if the clerk ~~mailed~~ sent a copy of the notice of intent to the Indian custodian, tribe of the child, or the Bureau of Indian Affairs.

(3) * * *

(Subd (g) amended effective January 1, 2017; adopted as subd (f) effective January 1, 2005; previously relettered effective January 1, 2006; previously amended effective January 1, 2007, and July 1, 2010.)

(h)–(j) * * *

Rule 8.454 amended effective January 1, 2017; adopted as rule 38.2 effective January 1, 2005; previously amended and renumbered effective January 1, 2007; previously amended effective January 1, 2006, July 1, 2006, January 1, 2008, January 1, 2009, July 1, 2010, and July 1, 2013.

Advisory Committee Comment

Subdivision (f)(2). * * *

Subdivision (i). Under rule 8.71(c), the superior court clerk may send the record to the reviewing court in electronic form.

Rule 8.456. Writ petition under Welfare and Institutions Code section 366.28 to review order designating or denying specific placement of a dependent child after termination of parental rights

(a)–(g) * * *

(h) Decision

(1)–(2) * * *

(3) If the writ or order stays or requires action within 7 days—or in any other urgent situation—the reviewing court clerk must make a reasonable effort to notify the clerk of the respondent court by telephone or e-mail. The clerk of the respondent court must then notify the judge or officer most directly concerned.

(4) The reviewing court clerk need not give telephonic or e-mail notice of the summary denial of a writ, unless a stay previously issued and will be dissolved.

(5) * * *

(Subd (h) amended effective January 1, 2017; adopted as subd (h) effective January 1, 2005; previously relettered as subd (i) effective January 1, 2006; previously amended effective January 1, 2007; previously amended and relettered as subd (h) effective July 1, 2010.)

(i) * * *

Rule 8.456 amended effective January 1, 2017; adopted as rule 38.3 effective January 1, 2005; previously amended and renumbered effective January 1, 2007; previously amended effective January 1, 2006, February 24, 2006, and July 1, 2010.

Rule 8.480. Appeal from order establishing conservatorship

(a)–(e) * * *

Advisory Committee Comment

Subdivision (a). Under rule 8.71(c), the superior court clerk may send the record to the reviewing court in electronic form.

Rule 8.482. Appeal from judgment authorizing conservator to consent to sterilization of conservatee

(a)–(i) * * *

Advisory Committee Comment

Subdivision (a). Under rule 8.71(c), the superior court clerk may send the record to the reviewing court in electronic form.

Rule 8.487. Opposition and ~~Attorney General~~ amicus curiae briefs

(a)–(c) * * *

(d) Attorney General's amicus curiae brief

(1) * * *

(2) The Attorney General must serve and file the brief within 14 days after the return is filed or, if no return is filed, within 14 days after the date it was due. For good cause, the Chief Justice or presiding justice may allow later filing.

(3) The brief must provide the information required by rule 8.200(c)(2) and comply with rule 8.200(c)~~(4)~~(5).

(4) * * *

(Subd (d) amended effective January 1, 2017; adopted as subd (c); previously relettered as subd (d) effective January 1, 2014.)

(e) Other amicus curiae briefs

(1) This subdivision governs amicus curiae briefs when the court issues an alternative writ or order to show cause.

(2) Any person or entity may serve and file an application for permission of the Chief Justice or presiding justice to file an amicus curiae brief.

(3) The application must be filed no later than 14 days after the return is filed or, if no return is filed, within 14 days after the date it was due. For good cause, the Chief Justice or presiding justice may allow later filing.

(4) The proposed brief must be served on all parties. It must accompany the application and may be combined with it.

(5) The proposed brief must provide the information required by rule 8.200(c)(2) and (3) and comply with rule 8.200(c)(5).

(6) If the court grants the application, any party may file either an answer to the individual amicus curiae brief or a consolidated answer to multiple amicus curiae briefs filed in the case. If the court does not specify a due date, the answer must be filed within 14 days after either the court rules on the last timely filed application to file an amicus curiae brief or the time for filing applications to file an amicus curiae brief expires, whichever is later. The answer must be served on all parties and the amicus curiae.

(Subd (e) adopted effective January 1, 2017.)

Rule 8.487 amended effective January 1, 2017; adopted effective January 1, 2009; previously amended effective January 1, 2014.

Advisory Committee Comment

* * *

Subdivisions (d) and (e). These provisions do not alter the court's authority to request or permit the filing of amicus briefs or amicus letters in writ proceedings in circumstances not covered by these subdivisions, such as before the court has determined whether to issue an alternative writ or order to show cause or when it notifies the parties that it is considering issuing a peremptory writ in the first instance.

Rule 8.489. Notice to trial court

(a) * * *

(b) Notice by telephone

(1) If the writ or order stays or prohibits proceedings set to occur within 7 days or requires action within 7 days—or in any other urgent situation—the reviewing court clerk must make a reasonable effort to notify the clerk of the respondent court by telephone or e-mail. The clerk of the respondent court must then notify the judge or officer most directly concerned.

(2) The clerk need not give telephonic or e-mail notice of the summary denial of a writ, whether or not a stay previously issued.

(Subd (b) amended effective January 1, 2017.)

Rule 8.489 amended effective January 1, 2017; adopted effective January 1, 2009.

Rule 8.613. Preparing and certifying the record of preliminary proceedings

(a)–(h) * * *

(i) Computer-readable copies

(1) * * *

(2) Each computer-readable copy must ~~comply with the format, labeling, content, and numbering requirements of Code of Civil Procedure section 271(b)~~ comply with the requirements of rule 8.144(a)(4) and any additional requirements prescribed by the Supreme Court, and must be further labeled to show the date it was made.

(3)–(5) * * *

(Subd (i) amended effective January 1, 2017; previously amended effective January 1, 2007.)

(j)–(*l*) * * *

Rule 8.613 amended effective January 1, 2017; adopted as rule 34.2 effective January 1, 2004; previously amended and renumbered as rule 8.613 effective January 1, 2007.

Rule 8.619. Certifying the trial record for completeness

(a)–(d) * * *

(e) Computer-readable copies

(1) * * *

(2) Each computer-readable copy must ~~comply with the format, labeling, content, and numbering requirements of Code of Civil Procedure section 271(b)~~ comply with the requirements of rule 8.144(a)(4) and any additional requirements prescribed by the Supreme Court, and must be further labeled to show the date it was made.

(3)–(5) * * *

(Subd (e) amended effective January 1, 2017.)

(f)–(h) * * *

Rule 8.619 amended effective January 1, 2017; adopted as rule 35.1 effective January 1, 2004; previously amended and renumbered as rule 8.619 effective January 1, 2007.

Rule 8.625. Certifying the record in pre-1997 trials

(a) * * *

(b) Sending the transcripts to counsel for review

(1) * * *

(2) The copies of the reporter's transcript sent to the California Appellate Project and the Habeas Corpus Resource Center must be computer-readable copies complying with ~~the format, labeling, content, and numbering requirements of Code of Civil Procedure section 271(b)~~ the requirements of rule 8.144(a)(4) and any additional requirements prescribed by the Supreme Court, and must be further labeled to show the date it was made.

(3) * * *

(Subd (b) amended effective January 1, 2017.)

(c)–(e) * * *

Rule 8.625 amended effective January 1, 2017; adopted as rule 35.3 effective January 1, 2004; previously amended and renumbered as rule 8.625 effective January 1, 2007.

Rule 8.834. Reporter's transcript

(a)–(c) * * *

(d) Filing the reporter's transcript; copies; payment

(1)–(3) * * *

(4) On request, and unless the trial court orders otherwise, the reporter must provide the reviewing court or any party with a copy of the reporter's transcript in computer-readable format. Each computer-readable copy must ~~comply with the format, labeling, content, and numbering requirements of Code of Civil Procedure section 271(b)~~ comply with the requirements of rule 8.144(a)(4).

(Subd (d) amended effective January 1, 2017; previously amended effective March 1, 2014.)

(e)–(f) * * *

Rule 8.834 amended effective January 1, 2017; adopted effective January 1, 2009; previously amended effective March 1, 2014, and January 1, 2016.

Rule 8.866. Preparation of reporter's transcript

(a)–(c) * * *

(d) When preparation must be completed

(1) The reporter must deliver the original and all copies to the trial court clerk as soon as they are certified but no later than 20 days after the reporter is required to begin preparing the transcript under (a). Only the presiding judge of the appellate division or his or her designee may extend the time to prepare the reporter's transcript (see rule 8.810).

(2) On request, and unless the trial court orders otherwise, the reporter must provide the reviewing court or any party with a copy of the reporter's transcript in computer-readable format. Each computer-readable copy must comply with the requirements of rule 8.144(a)(4).

(Subd (d) amended effective January 1, 2017; previously amended effective March 1, 2014.)

(e)–(f) * * *

Rule 8.866 amended effective January 1, 2017; adopted effective January 1, 2009; previously amended effective March 1, 2014, and January 1, 2016.

Rule 8.919. Preparation of reporter's transcript

(a)–(c) * * *

(d) When preparation must be completed

(1) The reporter must deliver the original and all copies to the trial court clerk as soon as they are certified but no later than 20 days after the reporter is required to begin preparing the transcript under (a). Only the presiding judge of the appellate division or his or her designee may extend the time to prepare the reporter's transcript (see rule 8.810).

(2) On request, and unless the trial court orders otherwise, the reporter must provide the reviewing court or any party with a copy of the reporter's transcript in computer-readable format. Each computer-readable copy must comply with the requirements of rule 8.144(a)(4).

(Subd (d) amended effective January 1, 2017; previously amended effective March 1, 2014.)

(e)–(f) * * *

Rule 8.919 amended effective January 1, 2017; adopted effective January 1, 2009; previously amended effective March 1, 2014, and January 1, 2016.

Rule 8.1007. Transmitting record to Court of Appeal

(a)–(b) * * *

Advisory Committee Comment

Under rule 8.71(c), the superior court clerk may send the record to the reviewing court in electronic form.

Rule 10.742. Use of attorneys as court-appointed temporary judges

(a)–(b) * * *

~~(c) Record and report of uses~~

~~Each trial court that uses attorneys as temporary judges must record and report to the Administrative Office of the Courts on a quarterly basis information concerning its use of them. The report must state:~~

~~(1) The number of attorneys used as temporary judges by that court each month;~~

~~(2) The number and types of cases, and the amount of time, on which the temporary judges were used each month; and~~

~~(3) Whether any of the appointments of temporary judges were made under the exception in rule 2.810(d) and, if so, the number of and reasons for these appointments.~~

Rule 10.742 amended effective January 1, 2017; adopted as rule 6.742 effective July 1, 2006; previously amended and renumbered as rule 10.742 effective January 1, 2007; previously amended effective January 1, 2016.

Advisory Committee Comment

Subdivisions (a)–(b). * * *

~~Subdivision (c).~~ ~~Regular recording and reporting of information concerning each court's use of temporary judges assists the courts in monitoring and managing their use of temporary judges. This information is also important for establishing the need for additional judicial positions.~~

Rule 10.1028. Preservation and destruction of Court of Appeal records

(a)–(c) * * *

(d) Time to keep other records

(1) * * *

(2) In a criminal case in which the court affirms a judgment of conviction, the clerk must keep the original reporter's transcript or a true and correct electronic copy of the transcript for 20 years after the decision becomes final.

(Subd (d) amended effective January 1, 2017; adopted as subd (c); previously relettered as subd (d) effective January 1, 2013.)

Rule 10.1028 amended effective January 1, 2017; adopted as rule 70 effective January 1, 2005; previously renumbered effective January 1, 2007; previously amended effective January 1, 2013.

Advisory Committee Comment

Subdivision (d). Subdivision (d) permits the Court of Appeal to keep an electronic copy of the reporter's transcript in lieu of keeping the original. Although subdivision (a) allows the Court of Appeal to maintain its records in any format that satisfies the otherwise applicable standards for maintenance of court records, including electronic formats, the original of a reporter's transcript is required to be on paper under Code of Civil Procedure section 271(a). Subdivision (d) therefore specifies that an electronic copy may be kept, to clarify that the paper original need not be kept by the court.