

AMENDMENT TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on October 1, 2021, effective January 1, 2022

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22		

1 **Rule 2.251. Electronic service**

2
3 **(a) Authorization for electronic service**

4
5 When a document may be served by mail, express mail, overnight delivery, or fax
6 transmission, the document may be served electronically under Code of Civil
7 Procedure section 1010.6, Penal Code section 690.5, and the rules in this chapter.
8 For purposes of electronic service made pursuant to Penal Code section 690.5,
9 express consent to electronic service is required.[]=

10
11 *(Subd (a) amended effective January 1, 2022; previously amended effective January 1,*
12 *2007, January 1, 2008, January 1, 2011 and July 1, 2013.)*

13
14 **(b) * * ***

15
16 **(c) Electronic service required by local rule or court order**

17
18 (1) A court may require parties to serve documents electronically in specified
19 civil actions by local rule or court order, as provided in Code of Civil
20 Procedure section 1010.6 and the rules in this chapter.

21
22 (2) A court may require other persons to serve documents electronically in
23 specified civil actions by local rule, as provided in Code of Civil Procedure
24 section 1010.6 and the rules in this chapter.

25
26 (3)–(4) * * *

27
28 *(Subd (c) amended effective January 1, 2022; adopted effective July 1, 2013; previously*
29 *amended effective January 1, 2018.)*

30
31 **(d)–(j) * * ***

32
33 **(k) Electronic service by or on court**

34
35 (1) The court may electronically serve documents as provided in Code of Civil
36 Procedure section 1010.6, Penal Code section 690.5, and the rules in this
37 chapter.

38
39 (2) A document may be electronically served on a court if the court consents to
40 electronic service or electronic service is otherwise provided for by law or
41 court order. A court indicates that it agrees to accept electronic service by:
42

- 1 (A) Serving a notice on all parties and other persons in the case that the
2 court accepts electronic service. The notice must include the electronic
3 service address at which the court agrees to accept service; or
4
- 5 (B) Adopting a local rule stating that the court accepts electronic service.
6 The rule must indicate where to obtain the electronic service address at
7 which the court agrees to accept service.
8

9 *Subd (k) amended effective January 1, 2022; adopted as subd (e); previously amended*
10 *effective January 1, 2007, and January 1, 2016; previously relettered as subd (g) effective*
11 *January 1, 2008, as subd (h) effective January 1, 2011, and as subd (j) effective July 1,*
12 *2013; previously amended and relettered as subd (k) effective January 1, 2018.)*
13

14 *Rule 2.251 amended effective January 1, 2022; adopted as rule 2060 effective January 1, 2003;*
15 *previously amended and renumbered as rule 2.260 effective January 1, 2007, and as rule 2.251*
16 *effective January 1, 2011; previously amended effective January 1, 2008, January 1, 2009, July 1,*
17 *2009, January 1, 2010, July 1, 2013, January 1, 2016, January 1, 2017, January 1, 2018,*
18 *January 1, 2019, and January 1, 2020.*
19

20 **Advisory Committee Comment**

21

22 **Subdivision (b)(1)(B).** The rule does not prescribe specific language for a provision of a term of
23 service when the filer consents to electronic service, but does require that any such provision be
24 clear. *Consent to Electronic Service and Notice of Electronic Service Address* (form EFS-005-
25 CV) provides an example of language for consenting to electronic service.
26

27 **Subdivision (c).** The subdivision is applicable only to civil actions as defined in rule 1.6. Penal
28 Code section 690.5 excludes mandatory electronic service in criminal cases.
29

30 **Subdivisions (c)–(d).** Court-ordered electronic service is not subject to the provisions in Code of
31 Civil Procedure section 1010.6 requiring that, where mandatory electronic filing and service are
32 established by local rule, the court and the parties must have access to more than one electronic
33 filing service provider.
34

35 **Rule 2.252. General rules on electronic filing of documents**

36

37 **(a) In general**

38

39 A court may provide for electronic filing of documents in actions and proceedings
40 as provided under Code of Civil Procedure section 1010.6, Penal Code section
41 690.5, and the rules in this chapter.
42

1 *(Subd (a) amended effective January 1, 2022; previously amended effective January 1,*
2 *2007, and July 1, 2013.)*

3

4 **(b)–(h) * * ***

5

6 *Rule 2.252 amended effective January 1, 2022; adopted as rule 2052 effective January 1, 2003;*
7 *previously amended and renumbered effective January 1, 2007; previously amended effective*
8 *January 1, 2011, July 1, 2013, and January 1, 2018.*

9

10

11 **Rule 2.253. Permissive electronic filing, mandatory electronic filing, and electronic**
12 **filing by court order**

13

14 **(a) Permissive electronic filing by local rule**

15

16 A court may permit parties by local rule to file documents electronically in any
17 types of cases, subject to the conditions in Code of Civil Procedure section 1010.6,
18 Penal Code section 690.5, and the rules in this chapter.

19

20 *(Subd (a) amended effective January 1, 2022; adopted effective July 1, 2013; previously*
21 *amended effective January 1, 2018.)*

22

23 **(b)–(c) * * ***

24

25 *Rule 2.253 amended effective January 1, 2022; adopted as rule 2053 effective January 1, 2003;*
26 *previously amended and renumbered effective January 1, 2007; previously amended effective*
27 *January 1, 2008, January 1, 2011, July 1, 2013, and January 1, 2018.*

28

29

30 **Rule 2.255. Contracts with electronic filing service providers and electronic filing**
31 **managers**

32

33 **(a)–(g) * * ***

34

35 **(h) Fees for electronic filing services not chargeable in some criminal actions**

36

37 (1) Electronic filing service providers and electronic filing managers may not
38 charge a service fee when an electronic filer files a document in a criminal
39 action when the electronic filer is a prosecutor, an indigent defendant, or
40 court appointed counsel for an indigent defendant.

41

42 (2) For purposes of this subdivision, “indigent defendant” means a defendant
43 who the court has determined is not financially able to employ counsel

1 pursuant to Penal Code section 987. Pending the court’s determination,
2 “indigent defendant” also means a defendant the public defender is
3 representing pursuant to Government Code section 27707.
4

5 *(Subd (h) was adopted effective January 1, 2022.)*
6

7 *Rule 2.255 amended effective January 1, 2022; adopted as rule 2055 effective January 1, 2003;*
8 *previously amended and renumbered effective January 1, 2007; previously amended effective*
9 *January 1, 2011, January 1, 2018, and January 1, 2019, January 1, 2020, and January 1, 2021.*
10

11
12 **Rule 2.258. Payment of filing fees in civil actions**

13
14 **(a) Use of credit cards and other methods**

15
16 A court may permit the use of credit cards, debit cards, electronic fund transfers, or
17 debit accounts for the payment of civil filing fees associated with electronic filing,
18 as provided in Government Code section 6159, rule 10.820, and other applicable
19 law. A court may also authorize other methods of payment.
20

21 *(Subd (a) amended effective January 1, 2022; previously amended effective January 1,*
22 *2007.)*
23

24 **(b) * * ***
25

26 *Rule 2.258 amended effective January 1, 2022; adopted as rule 2058 effective January 1, 2003;*
27 *previously amended and renumbered effective January 1, 2007; previously amended effective*
28 *January 1, 2010, and July 1, 2013.*
29

30
31 **Rule 2.259. Actions by court on receipt of electronic filing**

32
33 **(a)–(d) * * ***
34

35 **(e) Issuance of electronic summons**

36
37 (1) The court may issue an electronic summons in the following circumstances:
38

39 (A) On the electronic filing of a complaint, a petition, or another document
40 that must be served with a summons in a civil action, the court may
41 transmit a summons electronically to the electronic filer in accordance
42 with this subdivision and Code of Civil Procedure section 1010.6.
43

1 (B) On the electronic filing of an accusatory pleading against a corporation,
2 the court may transmit a summons electronically to the prosecutor in
3 accordance with this subdivision and Penal Code sections 690.5, 1390,
4 and 1391.

5
6 (C) When a summons is issued in lieu of an arrest warrant, the court may
7 transmit the summons electronically to the prosecutor or person
8 authorized to serve the summons in accordance with this subdivision
9 and Penal Code sections 690.5, 813, and 816a.

10
11 (2) The electronically transmitted summons must contain an image of the court's
12 seal and the assigned case number.

13
14 (3) Personal service of the printed form of a summons transmitted electronically
15 to the electronic filer has the same legal effect as personal service of a copy
16 of an original summons.

17
18 *(Subd (e) amended effective January 1, 2022; adopted as subd (f); previously amended*
19 *effective January 1, 2007; previously amended and relettered as subd (e) effective January*
20 *1, 2018.)*

21
22 *Rule 2.259 amended effective January 1, 2022; adopted as rule 2059 effective January 1, 2003;*
23 *previously amended and renumbered effective January 1, 2007; previously amended effective*
24 *January 1, 2008, January 1, 2011, July 1, 2013, and January 1, 2018.*

25
26
27 **Rule 3.1010. Oral depositions by telephone, videoconference, or other remote**
28 **electronic means**

29
30 **(a) Taking depositions**

31
32 Any party may take an oral deposition by telephone, videoconference, or other
33 remote electronic means, provided:

34
35 (1) Notice is served with the notice of deposition or the subpoena;

36
37 (2) That party makes all arrangements for any other party to participate in the
38 deposition in an equivalent manner. However, each party so appearing must
39 pay all expenses incurred by it or properly allocated to it;

40
41 (3) Any party or attorney of record may be ~~personally~~ physically present at the
42 deposition at the location of the deponent ~~without giving prior written~~ notice
43 of such appearance served by personal delivery, email, or fax, at least five

1 court days before the deposition, and subject to Code of Civil Procedure
2 section 2025.420. An attorney for the deponent may be physically present
3 with the deponent without notice.
4

5 *(Subd (a) amended effective January 1, 2022.)*
6

7 **(b) Appearing and participating in depositions**
8

9 Any party, other than the deponent, or attorney of record may appear and
10 participate in an oral deposition by telephone, videoconference, or other remote
11 electronic means, provided:
12

- 13 (1) Written notice of such appearance is served by personal delivery, email, or
14 fax at least ~~three~~ five court days before the deposition;
15
16 (2) The party so appearing makes all arrangements and pays all expenses
17 incurred for the appearance.
18

19 *(Subd (b) amended effective January 1, 2022; previously amended effective January 1,*
20 *2007, and January 1, 2016.)*
21

22 **(c) ~~Party d~~Deponent's appearance**
23

24 A ~~party~~ deponent must appear as required by statute or as agreed to by the parties
25 and deponent at his or her deposition in person and be in the presence of the
26 deposition officer.
27

28 *(Subd (c) amended effective January 1, 2022.)*
29

30 **~~(d) Nonparty deponent's appearance~~**
31

32 ~~A nonparty deponent may appear at his or her deposition by telephone,~~
33 ~~videoconference, or other remote electronic means with court approval upon a~~
34 ~~finding of good cause and no prejudice to any party. The deponent must be sworn~~
35 ~~in the presence of the deposition officer or by any other means stipulated to by the~~
36 ~~parties or ordered by the court. Any party may be personally present at the~~
37 ~~deposition.~~
38

39 **~~(e) (d)~~ Court orders**
40

41 On motion by any person, the court in a specific action may make such other orders
42 as it deems appropriate.
43

1 (Subd (d) relettered effective January 1, 2022; adopted as Subd (e) effective 2003;
2 previously amended effective January 1, 2007.)

3
4 Rule 3.1010 amended effective January 1, 2022; adopted as rule 333 effective January 1,
5 2003; previously amended and renumbered as rule 3.1010 effective January 1, 2007;
6 previously amended effective January 1, 2016.

7
8
9 **Rule 5.850. Sealing of records by probation in diversion cases (§ 786.5)**

10
11 **(a) Applicability**

12
13 This rule states the procedures to seal the records of persons who are subject to
14 section 786.5.

15
16 **(b) Determination of satisfactory completion**

17
18 Within 60 days of the completion of a program of diversion or supervision under a
19 referral by the probation officer or the prosecutor instead of filing a petition to
20 adjudge the person a ward of the juvenile court, including a program of informal
21 supervision under section 654, the probation department must determine whether
22 the participant satisfactorily completed a program subject to this rule.

23
24 (Subd (b) adopted effective January 1, 2022.)

25
26 **(c) Review of unsatisfactory completion of program by the juvenile court**

27
28 If the probation department determines that the program has not been completed
29 satisfactorily, it must notify the person in writing of the reason or reasons for not
30 sealing the record and provide the person with a copy of the *Petition to Review*
31 *Denial of Sealing of Records After Diversion Program* (form JV-598) or similar
32 local form to allow the person to seek court review of the probation department's
33 determination within 60 days of making that determination, as well as a copy of
34 *How to Ask the Court to Seal Your Records* (form JV-595-INFO) or other
35 information on how to petition the court directly to seal arrest and other related
36 records. A person who receives notice from the probation department that the
37 program has not been satisfactorily completed and that the records have not been
38 sealed may seek review of that determination by the court by submitting a petition
39 to the probation department on the *Petition to Review Denial of Sealing of Records*
40 *After Diversion Program* (form JV-598) or similar local form, and the probation
41 department must file that petition with the court for a hearing to review whether the
42 satisfactory completion requirement has been met and the records are eligible for
43 sealing by the probation department. The petition must be provided to the probation

1 department within 60 days of the date the notice from the probation department was
2 sent, and must include a copy of that notice. The probation department must file the
3 petition with the juvenile court in the county that issued the notice within 30 days
4 of receiving it. The clerk of the court must set the matter for hearing and notify the
5 petitioner and the probation department of the date, time, and location of the
6 hearing. The court must appoint counsel to represent the youth before or at the
7 hearing unless the court finds that the youth has made an intelligent waiver of the
8 right to counsel under section 634 or is already represented. If the court finds after
9 the hearing that the petitioner is eligible to have the records sealed under section
10 786.5, it must order the probation department to promptly comply with the sealing
11 and notice requirements of this rule.

12
13 *(Subd (c) adopted effective January 1, 2022.)*

14
15 **~~(b)~~(d) Sealing of records**

16
17 Upon satisfactory completion of a program of diversion or supervision subject to
18 this rule, under a referral by the probation officer or the prosecutor instead of filing
19 a petition to adjudge the person a ward of the juvenile court, including a program of
20 informal supervision under section 654, the probation department must seal the
21 arrest and other records in its custody relating to the arrest or referral and
22 participation in the program. The probation department must notify the arresting
23 law enforcement agency to seal the records relating to the arrest and referral, and
24 the arresting law enforcement agency must seal the records in its custody relating to
25 the arrest, no later than 60 days from the date of the notification. Upon sealing, the
26 law enforcement agency must notify the probation department that the records have
27 been sealed. The probation department must also notify the public or private
28 agency operating the diversion program to which the person has been referred to
29 seal any records in its custody relating to the arrest or referral and participation in
30 the program, and the operator of the program must do so ~~promptly~~ no later than 60
31 days from the date of the notification by the probation department. Upon sealing,
32 the public or private agency must notify the probation department that the records
33 have been sealed.

34
35 *(Subd (d) amended and relettered effective January 1, 2022; adopted as subd (b) effective*
36 *2018.)*

37
38 **~~(e)~~(e) Notice to participant**

39
40 ~~Within 60 days of the satisfactory completion of a program subject to this rule,~~
41 Within 30 days from receipt of the notification by the arresting law enforcement
42 agency that the records have been sealed, the probation department must notify the
43 person in writing that his or her the records have been sealed. If the probation

1 department determines that the program has not been completed satisfactorily, it
2 must notify the person in writing of the reason or reasons for not sealing the record
3 and provide the person with a copy of the *Petition to Review Denial of Sealing of*
4 *Records After Diversion Program* (form JV 598) or similar local form to allow the
5 person to seek court review of the probation department's determination within 60
6 days of making that determination.

7
8 *(Subd (e) amended and relettered effective January 1, 2022; adopted as subd (c) effective*
9 *January 1, 2018.)*

10
11 **(d) — Review of unsatisfactory completion of program by the juvenile court**

12
13 A person who receives notice from the probation department that he or she has not
14 satisfactorily completed the program and that his or her records have not been
15 sealed may seek review of that determination by the court by submitting a petition
16 to the probation department on the *Petition to Review Denial of Sealing of Records*
17 *After Diversion Program* (form JV 598) or similar local form, and the probation
18 department must file that petition with the court for a hearing to review whether he
19 or she has met the satisfactory completion requirement and is eligible for record
20 sealing by the probation department. The petition must be provided to the probation
21 department within 60 days of the date the notice from the probation department was
22 sent, and must include a copy of that notice. The probation department must file the
23 petition with the juvenile court in the county that issued the notice within 30 days
24 of receiving it. The clerk of the court must set the matter for hearing and notify the
25 petitioner and the probation department of the date, time, and location of the
26 hearing. The court must appoint counsel to represent the child before or at the
27 hearing unless the court finds that the child has made an intelligent waiver of the
28 right to counsel under section 634 or is already represented. If the court finds after
29 the hearing that the petitioner is eligible to have the records sealed under section
30 786.5, it must order the probation department to promptly comply with the sealing
31 and notice requirements of this rule.

32
33 *Rule 5.850 amended effective January 1, 2022; adopted effective September 1, 2018.*

34
35 **Rule 7.51. Service of notice of hearing**

36
37 **(a)–(e) * * ***

38
39 **(f) Notice when Indian Child Welfare Act may apply**

40
41 If the court or the petitioner knows or has reason to know, as described in section
42 224.2(d) of the Welfare and Institutions Code, that an Indian child is the subject of an

1 a guardianship or specified conservatorship proceeding, notice must be given as
2 prescribed in rule 7.1015(e).

3
4 *(Subd (f) adopted effective January 1, 2022.)*

5
6 *Rule 7.51 amended effective January 1, 2022; adopted January 1, 2003; previously amended*
7 *effective January 1, 2004.)*

8
9
10 **Rule 7.1003. Confidential guardianship status report form ~~form~~ (Prob. Code, § 1513.2)**

11
12 **(a)–(b) * * ***

13
14 **(c) Access to status report**

15
16 (1) Except as provided in paragraph 2, the clerk must make a status report
17 submitted under Probate Code section 1513.2 available only to persons
18 served in the guardianship proceedings or their attorneys.

19
20 (2) If the ward is an Indian child and the child’s tribe has intervened in the
21 proceeding, the clerk must also make the status report available to the
22 representative designated by the child’s tribe.

23
24 (3) Paragraphs (1) and (2) are not intended to preclude an interested person or an
25 Indian child’s tribe that has not intervened from filing a petition for a court
26 order directing the clerk to make the status report available to that person or
27 tribe.

28
29 *(Subd (c) adopted effective January 1, 2022.)*

30
31 *Rule 7.1003 amended effective January 1, 2022; adopted effective January 1, 2004; previously*
32 *amended effective January 1, 2007.*

33
34
35 **Rule 7.1013. Change of ward’s residence**

36
37 **(a) Pre-move notice of change of personal residence required**

38
39 Unless an emergency requires a shorter period of notice, the guardian of the person
40 must mail copies of a notice of an intended change of the ward’s personal residence
41 to the persons listed below at least 15 days before the date of the proposed change;
42 and file the original notice with proof of mailing with the court. Copies of the
43 notice must be mailed to:

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(1)–(2) * * *

(3) The ward’s parents and any former Indian custodian;

(4) * * *

(5) A guardian of the ward’s estate; ~~and~~

(6) Any person who was nominated as guardian of the ward ~~under Probate Code sections 1500 or 1501~~ but was not appointed guardian in the proceeding; and

(7) The ward’s tribe, if the ward is an Indian child and the ward’s tribe has intervened in the proceeding.

(Subd (a) amended effective January 1, 2022.)

(b) * * *

(c) Post-move notice of a change of residence required

The guardian of the person of a minor must file a notice of a change of the ward’s residence with the court within 30 days of the date of any change. Unless waived by the court for good cause to prevent harm to the ward, the guardian, the guardian’s attorney, or an employee of the guardian’s attorney must also mail a copy of the notice to the persons listed below and file a proof of mailing with the original notice. Unless waived, copies of the notice must be mailed to:

(1) * * *

(2) The ward’s parents and any former Indian custodian;

(3) * * *

(4) A guardian of the ward’s estate; ~~and~~

(5) Any person who was nominated as guardian of the ward ~~under Probate Code sections 1500 or 1501~~ but was not appointed guardian in the proceeding; and

(6) The ward’s tribe, if the ward is an Indian child and the ward’s tribe has intervened in the proceeding.

(Subd (c) amended effective January 1, 2022.)

1
2 **(d)–(g) * * ***

3
4 *Rule 7.1013 amended effective January 1, 2022; adopted effective January 1, 2008; previously*
5 *amended effective July 1, 2016.*

6
7
8 **Rule 7.1015. ~~Indian Child Welfare Act in g~~Guardianship and certain**
9 **conservatorship proceedings involving Indian children (Prob. Code, §§ 1449,**
10 **1459, 1459.5, 1460.2, 1511(b), (i); Welf. & Inst. Code, §§ 224–224.6; 25 U.S.C.**
11 **§§ 1901–1963; 25 C.F.R. §§ 23.1–23.144)**

12
13 **(a) Definitions**

14
15 As used in this rule, unless the context or subject matter otherwise requires:

16
17 (1) “Act” means the federal Indian Child Welfare Act (25 United States Code
18 sections U.S.C. §§ 1901–1963).

19
20 (2) “Petitioner” ~~means and~~ refers to:

21
22 (A) A petitioner for the appointment of a guardian of the person of a minor
23 child; or

24
25 (B) A petitioner for the appointment of a conservator of the person of a
26 formerly married minor child whose marriage has been dissolved.

27
28 *(Subd (a) amended effective January 1, 2022.)*

29
30 **(b) Applicability of this rule and rules 5.480 through 5.487~~8~~**

31
32 (1) This rule applies to the following proceedings under division 4 of the Probate
33 Code ~~when the proposed ward or conservatee is an Indian child, within the~~
34 ~~meaning of the act:~~

35
36 (A) A guardianship of the person or of the person and estate, including a
37 temporary guardianship, in which the proposed guardian of the person
38 is not the proposed ward’s ~~natural~~ biological parent or Indian custodian
39 ~~within the meaning of the act;~~

40
41 (B) A conservatorship or limited conservatorship of the person or of the
42 person and estate, including a temporary conservatorship, of a formerly
43 married minor whose marriage has been dissolved in which the

1 proposed conservator of the person is not ~~a natural~~ the proposed
2 conservatee's biological parent or Indian custodian ~~of the minor~~ and is
3 seeking physical custody of the proposed conservatee.
4

- 5 (2) Unless the context requires otherwise, ~~requires~~, rules 5.480 through 5.4878
6 apply to the proceedings listed in (1).
7
- 8 (3) When applied to the proceedings listed in (1), references in rules 5.480
9 through 5.4878 to social workers, probation officers, county probation
10 departments, or county social welfare departments are references to the
11 petitioner or petitioners for the appointment of a guardian or conservator of
12 the person ~~of an Indian child~~ and to ~~an Indian child's~~ the appointed temporary
13 or general guardian or conservator of the person.
14
- 15 (4) If the court appoints a ~~temporary or general~~ guardian or conservator of the
16 person of ~~the a~~ child ~~involved~~ in a proceeding listed in (1), the duties and
17 responsibilities of a petitioner under the Act and this rule ~~are transferred to~~
18 ~~and~~ become the duties and responsibilities of the appointed guardian or
19 conservator. The petitioner must cooperate with and provide any information
20 the petitioner ~~has~~ knows or possesses concerning the child to the appointed
21 guardian or conservator.
22

23 *(Subd (b) amended effective January 1, 2022.)*
24

25 **(e) — Notice**
26

27 ~~If, at any time after the filing of a petition for appointment of a guardian or~~
28 ~~conservator for a minor child, the court or petitioner knows or has reason to know,~~
29 ~~within the meaning of Probate Code sections 1449 and 1459.5 and Welfare and~~
30 ~~Institutions Code section 224.3(b), that an Indian child is involved, the petitioner~~
31 ~~and the court must notify the child's parents or legal guardian and Indian custodian,~~
32 ~~and the Indian child's tribe, of the pending proceeding and the right of the tribe to~~
33 ~~intervene, as follows:~~
34

- 35 ~~(1) — Notice to the Indian child's parents, Indian custodian, and Indian tribe of the~~
36 ~~commencement of a guardianship or conservatorship must be given by~~
37 ~~-serving copies of the completed *Notice of Child Custody Proceeding for*~~
38 ~~*Indian Child* (form ICWA-030), the petition for appointment of a guardian or~~
39 ~~conservator, and all attachments, by certified or registered mail, fully prepaid~~
40 ~~with return receipt requested.~~
41
- 42 ~~(2) — The petitioner and his or her attorney, if any, must complete the *Notice* and~~
43 ~~the petitioner must date and sign the declaration. If there is more than one~~

1 petitioner, the statements about the child's ancestors and background
2 provided in the *Notice of Child Custody Proceeding for Indian Child* (form
3 ICWA-030) must be based on all information known to each petitioner, and
4 all petitioners must sign the declaration.

5
6 ~~(3) When the petitioner is represented by an attorney in the proceeding, the~~
7 ~~attorney must serve copies of the *Notice of Child Custody Proceeding for*~~
8 ~~*Indian Child* (form ICWA-030) in the manner described in (1) and sign the~~
9 ~~declaration of mailing on the *Notice*.~~

10
11 ~~(4) When the guardianship or conservatorship petitioner or petitioners are not~~
12 ~~represented by an attorney in the proceeding, the clerk of the court must serve~~
13 ~~the *Notice* in the manner described in (1) and sign the certificate of mailing~~
14 ~~on the *Notice*.~~

15
16 ~~(5) The original of all *Notices of Child Custody Proceeding for Indian Child*~~
17 ~~(form ICWA-030) served under the act, and all return receipts and responses~~
18 ~~received, must be filed with the court before the hearing.~~

19
20 ~~(6) Notice to an Indian child's tribe must be sent to the tribal chairperson unless~~
21 ~~the tribe has designated another agent for service.~~

22
23 ~~(7) Notice must be served on all tribes of which the child may be a member or~~
24 ~~eligible for membership. If there are more tribes or bands to be served than~~
25 ~~can be listed on the last page of the *Notice*, the additional tribes or bands may~~
26 ~~be listed on an *Attachment to Notice of Child Custody Proceeding for Indian*~~
27 ~~*Child* (form ICWA-030(A)).~~

28
29 ~~(8) Notice under the act must be served whenever there is any reason to know~~
30 ~~that the child is or may be an Indian child and for every hearing after the first~~
31 ~~hearing unless and until it is determined that the act does not apply to the~~
32 ~~proceeding.~~

33
34 ~~(9) If, after a reasonable time following the service of notice under the act but~~
35 ~~in no event less than 60 days no determinative response to the *Notice of*~~
36 ~~*Child Custody Proceeding for Indian Child* (form ICWA-030) is received,~~
37 ~~the court may determine that the act does not apply to the proceeding unless~~
38 ~~further evidence of its applicability is later received.~~

39
40 ~~(10) If an Indian child's tribe intervenes in the proceeding, service of the *Notice of*~~
41 ~~*Child Custody Proceeding for Indian Child* (form ICWA-030) is no longer~~
42 ~~required and subsequent notices to the tribe may be sent to all parties in the~~
43 ~~form and in the manner required under the Probate Code and these rules. All~~

1 other provisions of the act, this rule, and rules 5.480 through 5.487 continue
2 to apply.

3
4 ~~(11) Notice under the act must be served in addition to all notices otherwise~~
5 ~~required for the particular proceeding under the provisions of the Probate~~
6 ~~Code.~~

7
8 **(d)(c) Duty of Inquiry**

9
10 (1) The court, a the court investigator or county officer appointed to conduct an
11 investigation under Probate Code section 1513 or 1826, and each petitioner,
12 have an affirmative and continuing duty to inquire whether ~~the~~ each child
13 ~~involved in~~ who is the subject of a matters proceeding identified in (b)(1) is
14 or may be an Indian child.

15
16 (2) Before filing ~~his or her~~ a petition for appointment of a guardian or
17 conservator of the person, the petitioner must ask the child ~~involved in~~ who is
18 the subject of the proceeding, if the child is old enough, ~~and~~ the parents, any
19 ~~other legal Indian custodian or previously appointed guardian of the person,~~
20 ~~and any Indian custodian,~~ available extended family members, as defined in
21 25 U.S.C. § 1903(2), or other persons having an interest in the child whether
22 the child is or may be an Indian child, ~~and must complete items 4e and 8 of~~
23 ~~the Guardianship Petition – Child Information Attachment (form GC-~~
24 ~~210(CA)) Indian Child Inquiry Attachment (form ICWA-010(A)),~~ and attach
25 it that form to ~~his or her~~ the petition.

26
27 (3) At the first personal appearance by a parent or previously appointed legal
28 guardian at a hearing in a guardianship or conservatorship, the court must if
29 requested by petitioner, or may on its own motion, order the parent or legal
30 guardian to complete a Parental Notification of Indian Status (form ICWA-
31 020) and deliver the completed form to the petitioner. At the beginning of
32 any proceeding identified in (b)(1) and at any hearing in such a proceeding
33 that may result in the appointment of a guardian or conservator, the court
34 must:

35
36 (A) Ask each participant present whether the participant knows or has
37 reason to know that the child is an Indian child;

38
39 (B) Instruct the parties to inform the court if they subsequently receive
40 information that provides reason to know that the child is an Indian
41 child; and
42

1 (C) Order the parent, Indian custodian, or existing guardian, if available, to
2 complete *Parental Notification of Indian Status* (form ICWA-020).

3
4 (4) If the parent, Indian custodian, or guardian ~~does not personally appear at a~~
5 ~~hearing in~~ is not available at the beginning of a proceeding identified in
6 (b)(1), the court ~~may~~ must order the petitioner to use reasonable diligence to
7 find and ~~ask~~ inform the parent, Indian custodian, or ~~legal~~ guardian ~~that the~~
8 court has ordered that person to complete and deliver to ~~the~~ petitioner a
9 *Parental Notification of Indian Status* (form ICWA-020).

10
11 (5) If the court or county investigator, the petitioner, ~~appointed guardian or~~
12 ~~conservator~~, or the attorney for a the petitioner or ~~appointed guardian or~~
13 ~~conservator~~, knows or has reason to know or believe that an Indian child is
14 involved in the subject of the proceeding; ~~but has not conclusively~~
15 determined that the child is an Indian child, ~~he or she~~ that person must, as
16 soon as practicable, ~~make~~ conduct further inquiry ~~as soon as practicable~~ by:

17
18 (A) Interviewing the parents, Indian custodian, and “extended family
19 members” to gather the information listed in ~~Probate Code section~~
20 ~~1460.2(b)(5) that is required to complete the *Notice of Child Custody*~~
21 ~~*Proceeding for Indian Child* (form ICWA-030) Welfare and~~
22 Institutions Code section 224.3(a)(5);

23
24 (B) ~~Contacting the U.S. Department of the Interior, federal~~ Bureau of
25 Indian Affairs and the California Department of Social Services for
26 assistance in identifying the names and contact information of the tribes
27 of which the child may be a member or eligible for membership; ~~and~~

28
29 (C) Contacting the tribes and any other persons who reasonably can be
30 expected to have information regarding the child’s tribal membership
31 status or eligibility for membership. These contacts must at a minimum
32 use the methods and share the information listed in Welfare and
33 Institutions Code section 224.2(e)(2)(C); and

34
35 (D) Filing with the court documentation of that further inquiry, including,
36 at a minimum:

37
38 (i) The names of all persons contacted and interviewed or attempted
39 to be interviewed under subparagraph (A), the dates of those
40 contacts and interviews, and any information gathered from
41 them; and

1 (ii) The dates and methods of contact with the agencies listed in
2 subparagraph (B) and the tribes and persons in subparagraph (C)
3 and any information gathered as a result of those contacts.
4

5 (6) If the court knows or has reason to know or believe that an Indian child is
6 involved in the proceeding, but does not have sufficient evidence to
7 determine that the child is an Indian child, and the further inquiry conducted
8 in (5) has not been conducted, the court ~~may direct any~~ must order one or
9 more of the persons named in (5) to conduct the inquiry and submit the
10 documentation described in that paragraph.
11

12 (7) The circumstances that may provide reason to believe the child may be an
13 Indian child are those set forth in Welfare and Institutions Code section
14 224.2(e)(1). The circumstances that may provide reason to know the child is
15 an Indian child ~~include the following:~~ are those set forth in Welfare and
16 Institutions Code section 224.2(d) and rule 5.481(b).
17

18 (A) ~~The child or person having an interest in the child, including an Indian~~
19 ~~tribe, an Indian organization, an officer of the court, a public or private~~
20 ~~agency, or a member of the child's extended family, informs or~~
21 ~~otherwise provides information suggesting that the child is an Indian~~
22 ~~child to the court or to any person listed in (5);~~
23

24 (B) ~~The residence or domicile of the child, the child's parents, or an Indian~~
25 ~~eustodian is in a predominantly Indian community; or~~
26

27 (C) ~~The child or the child's family has received services or benefits from a~~
28 ~~tribe or services that are available to Indians from tribes or the federal~~
29 ~~government, such as the U.S. Department of Health and Human~~
30 ~~Services, Indian Health Service, or Tribal Temporary Assistance to~~
31 ~~Needy Families benefits.~~
32

33 *(Subd (c) amended and relettered effective January 1, 2022; adopted as subd (d) effective*
34 *January 1, 2008; previously amended effective July 1, 2012.)*
35

36 **(d) Temporary guardianships and conservatorships of an Indian child**
37

38 In addition to the applicable requirements in Probate Code sections 2250–2257 and
39 California Rules of Court, rules 7.1012 and 7.1062, the following requirements
40 apply to temporary guardianship and conservatorship proceedings if the court
41 knows or has reason to know that the proposed ward is an Indian child:
42

- 1 (1) Before appointing a temporary guardian or conservator of the person for an
2 Indian child over the objection of a parent, tribe, or Indian custodian, the
3 court must:
4
- 5 (A) Advise the parent or Indian custodian that if they cannot afford counsel,
6 the court will appoint counsel for them under section 1912(b) of the
7 Indian Child Welfare Act; and
8
- 9 (B) Find, in addition to facts in the petition establishing good cause for the
10 appointment and any other showing the court may require under
11 Probate Code section 2250(b), that the appointment is necessary to
12 prevent imminent physical damage or harm to the child.
13
- 14 (2) At a hearing under Probate Code section 2250(f) or on a petition, including
15 an ex parte petition, to terminate a temporary guardianship or conservatorship
16 of an Indian child, the court must determine whether the temporary
17 guardianship or conservatorship is still necessary to prevent imminent
18 physical damage or harm to the child. If the court determines that the
19 temporary guardianship or conservatorship is no longer necessary, the court
20 must terminate the temporary guardianship or conservatorship and, if a parent
21 or Indian custodian is available, order the child returned to the physical
22 custody of the parent or Indian custodian.
23
- 24 (3) Before extending a temporary guardianship or conservatorship of an Indian
25 child, under Probate Code section 2257(b), more than 30 days from the date
26 of its establishment, the court must, in addition to finding good cause for the
27 extension, determine that:
28
- 29 (A) Terminating the temporary guardianship or conservatorship would
30 subject the child to imminent physical damage or harm;
31
- 32 (B) The court has been unable to transfer the proceeding to the jurisdiction
33 of the appropriate Indian tribe; and
34
- 35 (C) It has not been possible to hold a hearing on the petition to appoint a
36 guardian that complies with the substantive requirements of the Act for
37 a foster care placement proceeding.
38

39 *(Subd (d) adopted effective January 1, 2022.)*
40

41 ~~(e)~~(e) Notice
42

1 If, at any time after the filing of a petition for appointment of a guardian or
2 conservator for a minor child, the court or petitioner knows or has reason to know,
3 within the meaning of ~~Probate Code sections 1449 and 1459.5 and Welfare and~~
4 ~~Institutions Code section 224.3(b), 224.2(d) and rule 5.481(b)~~, that an Indian child
5 is ~~involved~~ the subject of the proceeding, the petitioner and the court must ~~notify~~
6 give notice of the proceeding and the right of the child's tribe to intervene in the
7 manner prescribed by Welfare and Institutions Code section 224.3(a) and rule
8 5.481(c) to the child's parents, the child's Indian custodian or legal previously
9 appointed guardian of the person, and Indian custodian, if any, and the Indian
10 child's tribe, of the pending proceeding and the right of the tribe to intervene, as
11 follows: or, if the child's tribe has not been determined, all tribes of which the child
12 may be a member or eligible for membership.

13
14 *(Subd (e) amended and relettered effective January 1, 2022; adopted as Subd (c) effective*
15 *January 1, 2008.)*

16
17 *Rule 7.1015 amended effective January 1, 2022; adopted effective January 1, 2008; previously*
18 *amended effective July 1, 2012.*

19
20 **Rule 8.70. Application, construction, and definitions**

21
22 **(a)–(b) * * ***

23
24 **(c) Definitions**

25
26 As used in this article, unless the context otherwise requires:

27
28 (1) “The court” means the Supreme Court or a Court of Appeal.

29
30 (2) A “document” is:

31
32 (A) ~~any filing writing~~ submitted to the reviewing court by a party or other
33 person, including a brief, a petition, an appendix, or a motion;

34
35 (B) ~~Any A document is also any writing~~ transmitted by a trial court to the
36 reviewing court, including a notice or a clerk's or reporter's transcript;
37 and

38
39 (C) any writing prepared by the reviewing court, including an opinion, an
40 order, or a notice.

41
42 (D) A document may be in paper or electronic form.

- 1 (3) “Electronic service” is service of a document on a party or other person by
2 either electronic transmission or electronic notification. Electronic service
3 may be performed directly by a party or other person, by an agent of a party
4 or other person including the party’s or other person’s attorney, through an
5 electronic filing service provider, or by a court.
6
- 7 (4) “Electronic transmission” means the ~~transmission~~ sending of a document by
8 electronic means to the electronic service address at or through which a party
9 or other person has authorized electronic service.
10
- 11 (5) “Electronic notification” means the notification of a party or other person that
12 a document is served by sending an electronic message to the electronic
13 service address at or through which the party or other person has authorized
14 electronic service, specifying the exact name of the document served and
15 providing a hyperlink at which the served document can be viewed and
16 downloaded.
17
- 18 (6) “Electronic service address” ~~of a party~~ means the electronic address at or
19 through which ~~the~~ a party or other person has authorized electronic service.
20
- 21 (7) An “electronic filer” is a ~~party~~ person filing a document in electronic form
22 directly with the court, by an agent, or through an electronic filing service
23 provider.
24
- 25 (8) “Electronic filing” is the electronic transmission to a court of a document in
26 electronic form for filing. Electronic filing refers to the activity of filing by
27 the electronic filer and does not include the court’s actions upon receipt of the
28 document for filing, including processing and review of the document and its
29 entry into the court’s records.
30
- 31 (9) An “electronic filing service provider” is a person or entity that receives an
32 electronic ~~filing~~ document from a party or other person for retransmission to
33 the court or for electronic service on other parties, or both. In ~~submission of~~
34 submitting electronic filings, the electronic filing service provider does so on
35 behalf of the electronic filer and not as an agent of the court.
36
- 37 (10) An “electronic signature” is an electronic sound, symbol, or process attached
38 to or logically associated with an electronic record and executed or adopted
39 by a person with the intent to sign a document or record created, generated,
40 sent, communicated, received, or stored by electronic means.
41
- 42 (11) A “secure electronic signature” is a type of electronic signature that is unique
43 to the person using it, capable of verification, under the sole control of the

1 person using it, and linked to data in such a manner that if the data are
2 changed, the electronic signature is invalidated.

3
4 *(Subd (c) amended effective January 1, 2022; adopted as subd (d) effective January 1,*
5 *2011; previously amended effective January 1, 2012; previously amended and relettered*
6 *effective January 1, 2017)*

7
8 *Rule 8.70 amended effective January 1, 2022; adopted effective July 1, 2010; previously amended*
9 *effective January 1, 2011, January 1, 2012, and January 1, 2017.*

10 11 **Advisory Committee Comment**

12
13 **Subdivision (c)(3).** The definition of “electronic service” has been amended to provide that a
14 party may effectuate service not only by the electronic transmission of a document, but also by
15 providing electronic notification of where a document served electronically may be located and
16 downloaded. This amendment is intended to ~~modify the rules on electronic service to~~ expressly
17 authorize electronic notification as a ~~legally effective~~ an alternative means of service ~~to electronic~~
18 ~~transmission~~. This ~~rules~~ amendment is consistent with the amendment of Code of Civil Procedure
19 section 1010.6, effective January 1, 2011, to authorize service by electronic notification. (See
20 Stats. 2010, ch. 156 (Sen. Bill 1274).) The amendments change the law on electronic service as
21 understood by the appellate court in *Insyst, Ltd. v. Applied Materials, Inc.* (2009) 170
22 Cal.App.4th 1129, which interpreted the rules as authorizing only electronic transmission as ~~the~~
23 ~~only~~ an effective means of electronic service.

24
25 **Subdivision (c)(10).** The definition of electronic signature is based on the definition in the
26 Uniform Electronic Transactions Act, Civil Code section 1633.2.

27
28 **Subdivision (c)(11).** The definition of secure electronic signature is based on the first four
29 requirements of a “digital signature” set forth in Government Code section 16.5(a), specifically
30 the requirements stated in section 16.5(a)(1)–(4). The section 16.5(a)(5) requirement of
31 conformance to regulations adopted by the Secretary of State does not apply to secure electronic
32 signatures.

33 34 **Rule 8.75. Requirements for signatures on documents**

35 36 **(a) Documents signed under penalty of perjury**

37
38 ~~If~~ When a document ~~to be filed electronically~~ must be signed under penalty of
39 perjury, ~~the following procedure applies~~ document is deemed to have been signed
40 by the declarant if filed electronically, provided that either of the following
41 conditions is satisfied:

- 1 (1) ~~The document is deemed signed by the declarant if, before filing, the~~
2 ~~declarant has signed a printed form of the document. The declarant has~~
3 ~~signed the document using an electronic signature (or a secure electronic~~
4 ~~signature if the declarant is not the electronic filer) and declares under~~
5 ~~penalty of perjury under the laws of the State of California that the~~
6 ~~information submitted is true and correct; or~~
7
8 (2) The declarant, before filing, has physically signed a printed form of the
9 document. By electronically filing the document, the electronic filer certifies
10 that (1) has been complied with and that the original signed document is
11 available for inspection and copying at the request of the court or any other
12 party. In the event this second method of submitting documents electronically
13 under penalty of perjury is used, the following conditions apply:
14
15 ~~(3)~~(A) At any time after the electronic version of the document is filed,
16 any other party may serve a demand for production of the original
17 signed document. The demand must be served on all other parties but
18 need not be filed with the court.
19
20 ~~(4)~~(B) Within five days of service of the demand under ~~(3)~~(A), the party
21 or other person on whom the demand is made must make the original
22 signed document available for inspection and copying by all other
23 parties.
24
25 ~~(5)~~(C) At any time after the electronic version of the document is filed,
26 the court may order the ~~filing party~~ electronic filer to produce the
27 original signed document ~~in court~~ for inspection and copying by the
28 court. The order must specify the date, time, and place for the
29 production and must be served on all parties.
30

31 *(Subd (a) amended effective January 1, 2022; previously amended effective January 1,*
32 *2014.)*
33

34 **(b) Documents not signed under penalty of perjury**
35

- 36 (1) If a document does not require a signature under penalty of perjury, the
37 document is deemed signed by the party ~~if the document is filed~~
38 ~~electronically~~ electronic filer.
39

40 *(Subd (b) amended effective January 1, 2022.)*
41

42 **~~(e) Documents requiring signatures of multiple parties~~**
43

1 (2) When a document to be filed electronically, such as a stipulation, requires the
2 signatures of multiple ~~parties persons~~, the following procedure applies the
3 document is deemed to have been signed by those persons if filed
4 electronically, provided that either of the following procedures is satisfied:
5

6 (1)(A) ~~The party filing the document must obtain the signatures of all~~
7 ~~parties either in the form of an original signature on a printed form of~~
8 ~~the document or in the form of a copy of the signed signature page of~~
9 ~~the document. By electronically filing the document, the electronic filer~~
10 ~~indicates that all parties have signed the document and that the filer has~~
11 ~~the signatures of all parties in a form permitted by this rule in his or her~~
12 ~~possession. The parties or other persons have signed the document~~
13 using a secure electronic signature; or
14

15 (2)(B) ~~The party filing the document must maintain the original signed~~
16 ~~document and any copies of signed signature pages and must make~~
17 ~~them available for inspection and copying as provided in (a)(2). The~~
18 ~~court and any other party may demand production of the original signed~~
19 ~~document and any copies of signed signature pages in the manner~~
20 ~~provided in (a)(3)–(5). The electronic filer has obtained all the~~
21 signatures either in the form of an original signature on a printed form
22 of the document or in the form of a copy of the signed signature page of
23 the document. The electronic filer must maintain the original signed
24 document and any copies of signed signature pages and must make
25 them available for inspection and copying as provided in (a)(2)(B). The
26 court and any party may demand production of the original signed
27 document and any copies of the signed signature pages as provided in
28 (a)(2)(A)–(C). By electronically filing the document, the electronic filer
29 indicates that all persons whose signatures appear on it have signed the
30 document and that the filer has possession of the signatures of all those
31 persons in a form permitted by this rule.
32
33

34 **(d) Digital signature**
35

36 ~~A party is not required to use a digital signature on an electronically filed~~
37 ~~document.~~
38

39 **(e)(c) Judicial signatures**
40

41 If a document requires a signature by a court or a judicial officer, the document
42 may be electronically signed in any manner permitted by law.
43

1 (Subd (c) amended and relettered effective January 1, 2022; adopted as Subd (e) effective
2 July 1, 2010.)
3

4 Rule 8.75 amended effective January 1, 2022; adopted as rule 8.77 effective July 1, 2010;
5 previously amended effective January 1, 2014; previously renumbered effective January 1, 2017.
6

7 **Advisory Committee Comment**
8

9 The requirements for electronic signatures that are compliant with the rule do not impair the
10 power of the courts to resolve disputes about the validity of a signature.
11
12

13 **Rule 8.304. Filing the appeal; certificate of probable cause**
14

15 (a) * * *

16
17 (b) **Appeal from a judgment of conviction after plea of guilty or nolo contendere**
18 **or after admission of probation violation**
19

20 (1) Appeal requiring a certificate of probable cause
21

22 ~~(1)(A)~~ Except as provided in (4), To appeal from a superior court
23 judgment after a plea of guilty or nolo contendere or after an admission
24 of probation violation on grounds that affect the validity of the plea or
25 admission, the defendant must file in that superior court—with the
26 notice of appeal required by (a)—the written statement required by
27 Penal Code section 1237.5 for issuance of a certificate of probable
28 cause.
29

30 ~~(2)(B)~~ Within 20 days after the defendant files a written statement under
31 ~~(1)~~ Penal Code section 1237.5, the superior court must sign and file
32 either a certificate of probable cause or an order denying the certificate.
33

34 (2) Appeal not requiring a certificate of probable cause
35

36 To appeal from a superior court judgment after a plea of guilty or nolo
37 contendere or after an admission of probation violation on grounds that do
38 not affect the validity of the plea or admission, the defendant need not file the
39 written statement required by Penal Code section 1237.5 for issuance of a
40 certificate of probable cause. No certificate of probable cause is required for
41 an appeal based on or from:
42

1 ~~(3) If the defendant does not file the statement required by (1) or if the superior~~
2 ~~court denies a certificate of probable cause, the superior court clerk must~~
3 ~~mark the notice of appeal “Inoperative,” notify the defendant, and send a~~
4 ~~copy of the marked notice of appeal to the district appellate project.~~

5
6 ~~(4) The defendant need not comply with (1) if the notice of appeal states that the~~
7 ~~appeal is based on:~~

8
9 (A) The denial of a motion to suppress evidence under Penal Code section
10 1538.5;

11
12 (B) ~~Grounds that arose after entry of the plea and do not affect the plea’s~~
13 ~~validity. The sentence or other matters occurring after the plea or~~
14 ~~admission that do not affect the validity of the plea or admission; or~~

15
16 (C) An appealable order for which, by law, no certificate of probable cause
17 is required.

18
19 (3) Appeal without a certificate of probable cause

20
21 If the defendant does not file the written statement required by Penal Code
22 section 1237.5 or the superior court denies a certificate of probable cause, the
23 appeal will be limited to issues that do not require a certificate of probable
24 cause.

25
26 ~~(5) If the defendant’s notice of appeal contains a statement under (4), the~~
27 ~~reviewing court will not consider any issue affecting the validity of the plea~~
28 ~~unless the defendant also complies with (1).~~

29
30 *(Subd (b) amended effective January 1, 2022; previously amended effective January 1,*
31 *2007, and July 1, 2007.)*

32
33 **(c) Notification of the appeal**

34
35 (1) When a notice of appeal is filed, the superior court clerk must promptly send
36 a notification of the filing to the attorney of record for each party, any
37 unrepresented defendant, the district appellate project, the reviewing court
38 clerk, each court reporter, and any primary reporter or reporting supervisor. ~~If~~
39 ~~the defendant also files a statement under (b)(1), the clerk must not send the~~
40 ~~notification unless the superior court files a certificate under (b)(2). The~~
41 ~~notification must specify whether the defendant filed a statement under~~
42 ~~(b)(1)(A) and, if so, whether the superior court filed a certificate or an order~~
43 ~~denying a certificate under (b)(1)(B).~~

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(2) The notification must show the date it was sent, the number and title of the case, and the dates that the notice of appeal and any certificate or order denying a certificate under ~~(b)(2)~~ (b)(1)(B) were filed. If the information is available, the notification must also include:

(A)–(C) * * *

(3) The notification to the reviewing court clerk must also include a copy of the notice of appeal, any certificate filed under (b)(1), and the sequential list of reporters made under rule 2.950.

(4)–(6) * * *

(Subd (c) amended effective January 1, 2022; previously amended effective January 1, 2007, and January 1, 2016.)

Rule 8.304 amended effective January 1, 2022; repealed and adopted as rule 30 effective January 1, 2004; previously amended and renumbered as rule 8.304 effective January 1, 2007; previously amended effective July 1, 2007; previously amended effective January 1, 2016.

Advisory Committee Comment

Subdivision (a). Penal Code section 1235(b) provides that an appeal from a judgment or appealable order in a “felony case” is taken to the Court of Appeal, and Penal Code section 691(f) defines “felony case” to mean “a criminal action in which a felony is charged. —.” Rule 8.304(a)(2) makes it clear that a “felony case” is an action in which a felony is charged *regardless of the outcome of the action*. Thus the question whether to file a notice of appeal under this rule or under the rules governing appeals to the appellate division of the superior court (rule 8.800 et seq.) is answered simply by examining the accusatory pleading: if that document charged the defendant with at least one count of felony (as defined in ~~Penal Pen.~~ Pen. Code, section § 17(a)), the Court of Appeal has appellate jurisdiction and the appeal must be taken under this rule *even if the prosecution did not result in a punishment of imprisonment in a state prison*.

It is settled case law that an appeal is taken to the Court of Appeal not only when the defendant is charged with and convicted of a felony, but also when the defendant is charged with both a felony and a misdemeanor (Pen. Code, § 691(f)) but is convicted of only the misdemeanor (e.g., *People v. Brown* (1970) 10 Cal.App.3d 169); when the defendant is charged with a felony but is convicted of only a lesser offense (Pen. Code, § 1159; e.g., *People v. Spreckels* (1954) 125 Cal.App.2d 507); and when the defendant is charged with an offense filed as a felony but punishable as either a felony or a misdemeanor, and the offense is thereafter deemed a

1 misdemeanor under Penal Code section 17(b) (e.g., *People v. Douglas* (1999) 20 Cal.4th 85;
2 *People v. Clark* (1971) 17 Cal.App.3d 890).

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4 Trial court unification did not change this rule: after as before unification, “Appeals in felony
5 cases lie to the [C]ourt of [A]ppeal, regardless of whether the appeal is from the superior court,
6 the municipal court, or the action of a magistrate. Cf. Cal. Const. art. VI, § 11(a) [except in death
7 penalty cases, Courts of Appeal have appellate jurisdiction when superior courts have original
8 jurisdiction ‘in causes of a type within the appellate jurisdiction of the [C]ourts of [A]ppeal on
9 June 30, 1995—.’]” (“*Recommendation on Trial Court Unification: Revision of Codes*” (July
10 1998) 28 Cal. Law Revision Com. Rep. (1998) pp. 455–456.)

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12 **Subdivision (b).** ~~Under (b)(1), the defendant is required to file both a notice of appeal and the~~
13 ~~statement required by Penal Code section 1237.5(a) for issuance of a certificate of probable~~
14 ~~cause. Requiring a notice of appeal in all cases simplifies the rule, permits compliance with the~~
15 ~~signature requirement of rule 8.304(a)(3), ensures that the defendant’s intent to appeal will not be~~
16 ~~misunderstood, and makes the provision consistent with the rule in civil appeals and with current~~
17 ~~practice as exemplified in the Judicial Council form governing criminal appeals.~~

18
19 ~~Because of the drastic consequences of failure to file the statement required for issuance of a~~
20 ~~certificate of probable cause in an appeal after a plea of guilty or nolo contendere or after an~~
21 ~~admission of probation violation, (b)(5) alerts appellants to a relevant rule of case law, i.e., that,~~
22 ~~although such an appeal may be maintained without a certificate of probable cause if the notice of~~
23 ~~appeal states the appeal is based on the denial of a motion to suppress evidence or on grounds~~
24 ~~arising after entry of the plea and not affecting its validity, no issue challenging the validity of the~~
25 ~~plea is cognizable on that appeal without a certificate of probable cause. (*People v. Mendez*~~
26 ~~(1999) 19 Cal.4th 1084, 1104.) Subdivision (b)(1) reiterates the requirement stated in Penal Code~~
27 ~~section 1237.5(a) that to challenge the validity of a plea or the admission of a probation violation~~
28 ~~on appeal under Penal Code section 1237(a), the defendant must file both a notice of appeal and~~
29 ~~the written statement required by section 1237.5(a) for the issuance of a certificate of probable~~
30 ~~cause. (See *People v. Mendez* (1999) 19 Cal.4th 1084, 1098 [probable cause certificate~~
31 ~~requirement is to be applied strictly].)~~

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33 Subdivision (b)(2) identifies exceptions to the certificate-of-probable-cause requirement,
34 including an appeal that challenges the denial of a motion to suppress evidence under Penal Code
35 section 1538.5 (see *People v. Stamps* (2020) 9 Cal.5th 685, 694) and an appeal that does not
36 challenge the validity of the plea or the admission of a probation violation (see, e.g., *id.* at pp.
37 694–698 [appeal based on a postplea change in the law]; *People v. Arriaga* (2014) 58 Cal.4th
38 950, 958–960 [appeal from the denial of a motion to vacate a conviction based on inadequate
39 advisement of potential immigration consequences under Penal Code section 1016.5]; and *People*
40 *v. French* (2008) 43 Cal.4th 36, 45–46 [appeal that challenges a postplea sentencing issue that
41 was not resolved by, and as a part of, the negotiated disposition]).

1 Subdivision (b)(2)(C) clarifies that no certificate of probable cause is required for an appeal from
2 an order that, by law, is appealable without a certificate. (See, e.g., Pen. Code, § 1473.7.)

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4 Subdivision (b)(3) makes clear that if a defendant raises on appeal an issue that requires a
5 certificate of probable cause, but the defendant does not file the written statement required by
6 Penal Code section 1237.5 or the superior court denies the certificate, then the appeal is limited to
7 issues, such as those identified in subdivision (b)(2), that do not require a certificate of probable
8 cause. (See *Mendez, supra* 19 Cal.4th at pp. 1088–1089.)

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