

Rules of Court Amendments Effective January 1, 2004

New Rule	Former Rule	Topic	Substantive and Notable Changes
25(b)(2)	n/a	Answer to Pet. Rehg. (COA)	A party may not file an answer to a petition for rehearing unless it is called for by the court. Answer due 8 days after order, unless order states otherwise. Petition “normally will not be granted unless the court has requested an answer.”
25(b)(4)	n/a	Rehearing/Relief from Default	“Before the decision is final and for good cause, the presiding justice may relieve a party from a failure to file a timely petition or answer.”
28(a)(3)	28.1(d)	Reply to Answer to Pet. Rev	Answer to a petition no longer limited to addressing additional issues raised in answer.
28.1(b)(6)	n/a	Form of Exhaustion Petitions	New Rule 33.3 (see below) governs form and content of exhaustion petition.
28.1(d), (e)	28.1(e), (f)	Pet. Rev (Length/Attachments)	Re-letters rules governing length of pet. for rev or answer, attachments & incorp. by reference.
28.2(d)	28.2(c)	Grant & Hold	Re-letters and makes non-substantive changes to rule governing grant and hold.
29.5(b)	n/a	Answer to Pet. Rehg. (S.Ct.)	Answer to pet for rehearing in supreme court is due 8 days after petition is filed.
30(a)	31(a) & (b)	Notice of Appeal	None substantive. Makes clear that a “felony case” appealable to Court of Appeal is defined as one in which offense was <i>charged</i> as a felony, regardless of outcome. (New Rule 30(a)(2).)
30(b)	31(d)	Certificate Appeals	<ul style="list-style-type: none"> * Extends rule to cover appeals following admission of a probation violation, as already stated in Pen. Code § 1237.5. * Under new Rule 30(b)(1) defendant must file both an noa and a CPC statement. * Under new Rule 30(b)(3), a “certificate” appeal is inoperative (and must be so marked by the superior court clerk) if there is no statement or if the judge denies the CPC. Clerk must given notice to defendant and send copy of statement to appellate project. * New Rule 30(b)(5) states a rule of caselaw that “If the defendant’s notice of appeal contains a statement under (4) [i.e. 1538.5 or sentencing appeal], the reviewing court will not consider any issue affecting the validity of the plea unless the defendant also complies with (1) [i.e. includes a certificate statement].”

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30(c)	31(a) & (c)	Notification of the Appeal	<p>* Under new rule, superior court clerk, not appellant’s attorney, must mail copy of noa notice of filing to each court reporter and any court reporter supervisor.</p> <p>* Under new rule 30(c)(1), in case of “certificate appeal,” superior court clerk “must not” mail the notification to court reporters and reviewing court “unless the superior court files a certificate under [rule 30](b)(2).”</p> <p>* under new rule 30(c)(2), notification by superior court must include date of 30(b)(2) certificate and, under 30(b)(3), copy of certificate must be included with notification.</p>
30.1	31	Time to Appeal	<p>* New rule 30.1(c) requires clerk to send copy of late noa to appellate project.</p> <p>* New rule 30.1(d) is former rule 31(e) and is not intended to limit a defendant’s appeal rights under the caselaw of constructive filing.</p>
30.2	32	Stay of Execution & Release Pending Appeal	<p>* Adds: court may stay order granting probation pending appeal. (Rule 30.2(a)(1).)</p> <p>* Requires service of motion on DA and AG. (Rule 30.2(c).)</p> <p>* Court may grant release pending decision on the bail motion itself. (Rule 30.2(d).)</p>
30.3	38	Abandonment	Terminology change: under new rule appellant may voluntarily “abandon” the appeal; under old rule, appellant could voluntarily “dismiss” the appeal.
31	33(a), 34, & 35(f)	Normal Record	<p>(1) Former rule 33(a)(2) provided that oral communications between the court and the jury after the giving of the instructions were included in the normal reporter’s transcript only in an appeal by the defendant; revised rule 31(c)(5) extends that provision generally to an appeal by either party.</p> <p>(2) 31(e) (Exhibits) incorporates new rule 18 (eff. Jan. 1, 2002, replacing former Rule 10(d).</p>
31.1	33(b)	Application in superior court for addition to normal record	Mostly terminology changes. One substantive change affecting superior court clerks: subdivision (c)(3) of revised rule 31.1 deletes the requirement of immediate notification, to court reporters upon the filing of a request for additional record. Instead, subdivision (d)(3) directs the clerk to notify the reporter when and if additions to the transcript are needed.

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31.2	33.5	Sealed Records	<p>* Under New rule 31.2(a)(3), defendant's copy of Marsden RT now goes directly to appellate defense counsel (instead of to COA first). Under new rule 31.2(a)(3)(B), if counsel has not yet been appointed, trial court clerk must transmit Marsden RT to appellate project (as is the current practice), instead of retaining it until counsel is appointed (which was the former rule).</p> <p>* Former rule 33.5(b)(2) authorized adding confidential "written materials" to the record; revised rule 31.2(b)(1)(B) substitutes "any item," in order to include nonwritten materials.</p> <p>* Parties to receive index of confidential materials sent only to COA. (Rule 31.2(b)(5).)</p>
31.3	33.6	Juror identifying Information	No changes.
32(a)	34.5	Record Preparation. (jury trial)	No change. Record preparation begins immediately after jury verdicts, unless trial judge finds appeal unlikely.
32(b)	31(d)	Record Prep. (certificate appeal)	No change. In case of certificate appeal (new rule 30(b)(1)), record preparation begins upon filing of CPC.
32(c)	35(a)	Record Prep. (CT)	Deletes 2-copy limit for CT; each appealing defendant gets own copy. Rule 32(c)(4).
32(d)	35(b)	Record Prep. (RT)	<p>* provision of 35(b) detailing method for superior court clerk to serve notice of noa to court reporters deleted as micromanagement.</p> <p>* each appealing defendant gets own copy of RT. Rules 32(c)(4) and (d)(2).</p>
32(e)	35	Record Prep. (EOTs)	<p>* Superior Court may not extend time for record preparation.</p> <p>* COA may grant EOT's totaling no more than 60 days.</p>
32(f)	35(c) & (e)	Record Prep.	Deletes obsolete provision requiring DA to forward any copy of record it had received back to clerk for forwarding to AG.
32.1(a)	33(d) & 35(e)	Aug. Record (Subseq. Orders)	No substantive change.
32.1(b)	35(e)	Aug/Corr. Record (omissions)	No substantive change. Rule 35(e) requests are now Rule 32.1(b) requests.
32.1(c)	33(d)	Aug./Corr. Rec./No Counsel Yet	If counsel is not yet retained or appointed, augmentation goes to appellate project.

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32.1(d)	n/a	Aug. Record	Rule 12 applies to criminal appeals. Record may be augmented at any time.
32.2	36(a)	Agreed Statement	No change.
32.3	36(b)	Settled Statement	* Expands authority to request record settlement to any party, not just appellant. * deletes former requirements that application be “verified” and include a “certificate” of the clerk showing that a reporter’s transcript cannot be obtained.
33(a)	37(c)	Briefs (Content and Form)	No substantive change. Form of criminal briefs are governed by Rules 13 and 14, except as provided in this rule.
33(b)	37(d)	Briefs (length)	(1) A computer-produced brief may not exceed 25,500 words, including footnotes, but excluding tables, the word-count certificate, and any attachment permitted by rule 14(d). (2) Brief must include a certificate, signed by counsel, stating the number of words in the brief. (3) Same limit applies to AOB, respondent’s brief, reply brief, or petition for rehearing.
33(c)	37(a)	Briefs (time to file)	No substantive change.
33(d)	37(a)	Briefs (service)	Only substantive change: “For each appealing defendant, the People must serve two copies of their briefs on the defendant’s appellate counsel and one copy on the district appellate project.”
33(e)	n/a	Briefs (cross-appeals)	New rule filling gap: where both defense and prosecution appeal, defense files first brief, unless otherwise ordered by COA.
33(f)	n/a	Briefs (amicus)	Amicus briefs are governed by rule 13(c).
33.1	n/a	Hearing/Decision (COA)	Rules 21-27 govern criminal appeals in court of appeal.
33.2	n/a	Hearing/Decision (SCt)	Rules 28-29.9 govern criminal appeals in supreme court.

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33.3	n/a	Exhaustion Pet.	<p>New rule governing petitions for review filed for the sole purpose of exhausting state remedies.</p> <p>* “Petition for Review to Exhaust State Remedies” must appear on the cover of petition.</p> <p>* Petition need not comply with 28.1(b)(1) (questions presented) & (2) (explanation of how case presents a ground for review under 28(b)).</p> <p>* Petition must include: “(A) a statement that the case presents no grounds for review under rule 28(b) and the petition is filed solely to exhaust state remedies for federal habeas corpus purposes; (B) a brief statement of the underlying proceedings, including the nature of the conviction and the punishment imposed; and (C) a brief statement of the factual and legal bases of the claim.” (New Rule 33.3(b)(3).)</p> <p>* Petition need not be served on superior court. (New Rule 33.3(c).)</p> <p>* Cross-ref to Rule 44(b)(1)(E): Original and 8 copies only.</p>
34-34.2, 35-35.3, 36-36.3		Capital Appeals	This chart does not summarize the amendments to rules governing capital appeals.
39.1(d)		Dependency Briefs	If COA appoints counsel for any party, child welfare department must serve two copies of its brief on appointed counsel, and one copy on appellate project.
44(b)(1)(A)	44(b)(1)(i)	Copies (pet. for rev., ans., reply)	13 copies (no change)
44(b)(1)(B)	44(b)(1)(ii)	Copies (S.Ct. Merits Briefs)	13 copies (former rule required 14)
44(b)(1)(C)	44(b)(1)(i)	Copies (S.Ct. orig. pet.)	10 copies (former rule required 13)
44(b)(1)(D)	44(b)(1)(iii)	Copies (S.Ct. motion or opp)	8 copies (no change)
44(b)(1)(E)	n/a	Copies (Exhaustion pet. for rev., Ans. Reply)	8 copies (new rule)
44(b)(1)(F)	44(b)(1)(iv)	Copies (S.Ct. Other documents)	1 copy (no change)
44(b)(2)(A-D)	44(b)(2)(I-iv)	Copies (COA)	renumbering; no change

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44.5	n/a	Service on AG	Service on AG required if brief/pet “(1) Questions the constitutionality of a state statute; or (2) Is filed on behalf of state, county or officer AG may represent. Identification on cover of pleading required.” <i>Inapplicable to Dependency cases per 39.1(d).</i>
56.5(c)(4)	n/a	Habeas Petitions/Attachments	Supporting docs must comply with Rule 56(d), which includes formatting requirements, including pagination, tabs, etc.
4.551(a)(3)	n/a	Habeas Petitions (superior court)	If court fails to rule on petition within 60 days, petitioner may file notice & request for ruling. If notice is complete & court has failed to rule, presiding judge must “calendar the matter for a decision ... within 30 days of the filing of the notice.” (Under old rule, if court failed to rule within 30 days of filing, OSC was deemed to have issued.)
1423(b)		Juv. Records/Confidentiality	Adds: “Counsel who are entitled to inspect juvenile records include any trial court or appellate attorney representing a party in the juvenile court proceeding.”