LIST OF AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council of California

Effective April 18, 2003, and July 1, 2003

Rule 6.46. Trial Court Presiding Judges Advisory Committee

(a) [Area of ~~F~~focus] The Trial Court Presiding Judges Advisory Committee contributes to the statewide administration of justice by monitoring areas of significance to the justice system and making recommendations to the Judicial Council on policy issues affecting the trial courts.

(Subd (a) amended effective April 18, 2003; previously amended effective September 1, 2000.)

(b) [Additional ~~D~~duties] In addition to the duties specified in rule 6.34, the committee ~~shall~~ may:

(1) Recommend methods and policies within its area of focus to improve trial court presiding judges' access to and participation in council decisionmaking, increase communication between the council and the trial courts, and provide for training programs for judicial and court support staff;

(2) Respond and provide input to the Judicial Council, appropriate advisory committees, or the Administrative Office of the Courts on pending policy proposals and offer new recommendations on policy initiatives in the areas of legislation, rules, forms, standards, studies, and recommendations concerning court administration; and

~~(3) Suggest methods and policies to increase communications between the council and the trial courts;~~

~~(4) Make recommendations concerning judicial and court support staff training programs; and~~

~~(5)~~(3) Provide for liaison between the trial courts and the Judicial Council, its advisory committees, task forces, and working groups, and the Administrative Office of the Courts.

(Subd (b) amended effective April 18, 2003; previously amended effective September 1, 2000.)

(c) [Membership] The committee consists of the ~~following members:~~

~~(1) The~~ presiding judge of each county.~~; or~~

~~(2) If the county is not unified,~~

~~(A) The presiding judge who has been selected under the county's coordination plan, or~~

~~(B) If there is no countywide presiding judge under the coordination plan, a representative from the county selected by the Chief Justice.~~

(Subd (c) amended effective April 18, 2003; previously amended effective September 1, 2000.)

(d) [Executive Committee] The advisory committee may establish an Executive Committee that, in addition to other powers provided by the advisory committee, may act on behalf of the full advisory committee between its meetings.~~shall:~~

~~(1) Establish the annual schedule for the meetings;~~

~~(2) Designate committee members to provide input to the Judicial Council on policy matters, when appropriate;~~

~~(3) Approve subcommittee appointments made by the chair;~~

~~(4) Solicit nominations for the chair of the advisory committee;~~

~~(5) Oversee the development of the committee work plan; and~~

~~(6) Approve the minutes of advisory committee meetings.~~

(Subd (d) amended effective April 18, 2003; adopted effective September 1, 2000.)

~~**(e) [Executive Committee membership]** The Executive Committee shall consist of all presiding judges from counties with 48 or more judges and the following members elected by the membership selected from any given category for staggered one- or two-year terms:~~

~~(1) Two presiding judges from counties with 2 to 5 judges;~~

~~(2) Three presiding judges from counties with 6 to 15 judges; and~~

~~(3) Four presiding judges from counties with 16 to 47 judges.~~

(e) [Subcommittee membership] The committee has standing subcommittees on rules and legislation. The chair may create other subcommittees as he or she deems appropriate. The chair must strive for representation of courts of all sizes on subcommittees.

(Subd (e) repealed and adopted effective April 18, 2003.)

(f) [Chair] Following its last scheduled committee meeting of the year, the advisory committee ~~shall~~ must annually submit to the Chief Justice three nominations for the chair of the advisory committee ~~as selected by the Executive Committee and approved by the full committee~~. The Chief Justice will select a chair from among the names suggested. The chair of the advisory committee serves as chair of ~~the~~ any Executive Committee established under subdivision (d) and as an advisory member of the Judicial Council.

(Subd (f) amended effective April 18, 2003; adopted as subd (d) effective January 1, 1999 previously relettered and amended effective September 1, 2000.)

~~**(g) [Duties of chair]** The chair of the advisory committee shall set the agenda for the meetings, establish subcommittees as may be determined, and appoint members to subcommittees, subject to the consent of the Executive Committee.~~

(Subd (g) repealed effective April 18, 2003; adopted effective September 1, 2000.)

~~**(h) [Subcommittees and liaisons]** The chair shall establish the following subcommittees and liaison positions and other subcommittees as the chair deems appropriate. The advisory committee may delegate to a subcommittee the authority to act on behalf of the full committee.~~

~~(1) A Legislation Subcommittee shall be established to do the following:~~

~~(A) Recommend to the full committee legislative proposals for council sponsorship; and~~

~~(B) Respond and provide input to the committee on legislative issues to be forwarded to the council's Policy Coordination and Liaison Committee.~~

~~(2) A Rules Subcommittee shall be established to do the following:~~

~~(A) Recommend to the committee new rules or amendments and reorganization or repeal of existing rules, standards, and forms to be~~

~~forwarded to the Judicial Council's Rules and Projects Committee in accordance with its published schedule; and~~

~~(B) Respond and provide input to the committee on rules and rule changes circulated for comment to be forwarded to the council's Rules and Projects Committee.~~

~~(3) The chair shall appoint liaisons to Judicial Council advisory committees, task forces, and working groups to foster information sharing on judicial administration issues.~~

(Subd (h) repealed effective April 18, 2003; adopted effective September 1, 2000.)

~~(i) [Presiding Judges Advisory Committee meetings]~~ ~~The Executive Committee may convene meetings of the advisory committee up to three times a calendar year. One meeting shall be held at the beginning of the calendar year or in conjunction with the California Judicial Administration Conference, and one may be held in the fall after the conclusion of the regular legislative session. The third meeting may be called at the discretion of the Executive Committee. The purposes of the meetings are to:~~

~~(1) Exchange information and best practices;~~

~~(2) Provide input to the Judicial Council and Administrative Office of the Courts on relevant issues; and~~

~~(3) Participate in educational programs or briefings.~~

(Subd (i) repealed effective April 18, 2003; adopted as subd (e) effective January 1, 1999; previously relettered and amended effective September 1, 2000.)

~~(j) [Assistant presiding judges]~~ ~~The assistant presiding judge may attend a meeting and vote on behalf of the presiding judge if the presiding judge does not attend.~~

(Subd (j) repealed effective April 18, 2003; adopted effective September 1, 2000.)

Rule 6.46 amended effective April 18, 2003; adopted effective January 1, 1999; previously amended effective September 1, 2000.

Rule 64. Transfer

(a) ***

(b) Petition to transfer

(1) If the appellate division denies an application for certification and does not certify its opinion for publication, a party may serve and file in the Court of Appeal a petition to transfer the case to that court.

(2) The petition must be served and filed within eight days after the appellate division judgment is final in that court and must show delivery of a copy to the appellate division.

(3) The petition must explain why transfer is necessary to secure uniformity of opinion or to settle an important question of law.

(4) Within seven days after the petition is filed, any other party may serve and file an answer.

(5) The petition and any answer must comply as nearly as possible with rule ~~28(e)~~ 28.1.

(Subd (b) amended effective July 1, 2003.)

(c)–(f) ***

Rule 64 amended effective July 1, 2003; repealed and adopted effective January 1, 2003.

~~**Rule 41.5. Requests for judicial notice**~~

~~**(a) [Motion required]** In a cause pending before the Supreme Court or a Court of Appeal, a request that the court take judicial notice under Evidence Code section 459 shall be made by a motion under rule 41 filed separately from a brief or other paper.~~

~~**(b) [Proposed order]** The motion shall include a proposed order.~~

~~**(c) [Copy of matter to be noticed]** Unless the matter to be judicially noticed already appears in the record on appeal, a copy of the matter shall be filed and~~

~~served with the motion, or the motion shall explain why it is not practicable to do so.~~

Rule 41.5 repealed effective July 1, 2003; adopted effective January 1, 2002. The repealed rule related to request for judicial notice.

Rule 201.8. Case cover sheet required

(a) * * *

(b) [List of cover sheets]

(1) *Civil Case Cover Sheet* (form ~~982.2(b)(1)~~ CM-010)~~= required~~ must be filed in each civil action or proceeding, except those filed in small claims court or filed under the Probate Code, Family Law Code, or Welfare and Institutions Code.

(2) * * *

(Subd (b) amended effective July 1, 2003; previously amended effective July 1, 2002.)

(c) * * *

Rule 201.8 amended effective July 1, 2003; adopted as rule 982.2 effective July 1, 1996; previously amended January 1, 2000 and January 1, 2002; previously renumbered and amended effective July 1, 2002.

TITLE FOUR. Rules for Criminal Cases in the Superior Court

DIVISION III. Sentencing

Rule 4.300. Commitments to nonpenal institutions

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Advisory Committee Comment (2003)

Youth Authority commitments cannot exceed the maximum possible incarceration in an adult institution for the same crime. *People v. Olivas* (1976) 17 Cal.3d 236. ~~A commitment as an MDSO may not exceed the maximum term of imprisonment for the offenses of which the defendant was convicted. Welfare and Institutions Code section 6316.1 added effective July 1, 1977 (Stats. 1977, ch. 164).~~

Under the indeterminate sentencing law, the receiving institution knew, as a matter of law from the record of the conviction, the maximum potential period of imprisonment for the crime of which the defendant was convicted.

Under the Uniform Determinate Sentencing Act, the court's discretion as to length of term leaves doubt as to the maximum term when only the record of convictions is present.

DIVISION IV. Sentencing—Determinate Sentencing Law

Rule 4.403. Applicability

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 pursuant to chapter 4.5 (commencing with ~~§~~ section 1170) of Title 7 of Part 2 of the Penal Code.

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

Advisory Committee Comment (2003)

The sentencing rules do not apply to offenses carrying a life term or other indeterminate sentences for which sentence is imposed under ~~new~~ 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 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:

(a)–(d) ***

(e) "Mitigation" or "circumstances in mitigation" means facts which justify the imposition of the lower of three authorized prison terms or facts which justify the court in ~~declining to impose~~ striking the additional punishment for an enhancement when the court has discretion ~~not to impose it~~ to do so.

(Subd (e) amended effective July 1, 2003; adopted July 1, 1977; previously amended effective July 28, 1977, and January 1, 1991.)

(f)–(j) ***

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

Advisory Committee Comment (2003)

"Base term" is ~~used in section 1170.1(f) to describe~~ 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.)

"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), ~~1170.1(a) (consecutive 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), ~~and~~ 1170.1(e) ~~and (g)~~ (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" is distinguished from confinement in other types of facilities.

"Charged" and "found." Statutes require that the facts giving rise to ~~most~~ all enhancements be charged and found. See the comment to the definition of ~~"enhancement." But the enhancement arising from consecutive sentences results from the sentencing judge's decision to impose them, and not from a charge or finding~~section 1170.1(e).

Rule 4.406. Reasons

(a) ***

(b) [When reasons required] Sentence choices that generally require a statement of a reason include:

(1) ~~g~~Granting probation~~;~~.

(2) ~~i~~Imposing a prison sentence and thereby denying probation~~;~~.

(3) ~~d~~Declining to commit to the Youth Authority an eligible juvenile found amenable for treatment~~;~~.

(4) ~~s~~Selecting a term other than the middle statutory term for either an offense or an enhancement~~;~~.

(5) ~~i~~Imposing consecutive sentences~~;~~.

(6) ~~i~~Imposing full consecutive sentences under section 667.6(c) rather than consecutive terms under section 1170.1(a), when the court has that choice~~;~~.

(7) ~~s~~Striking ~~or staying~~ the punishment for an enhancement~~;~~.

~~(8) imposing both weapons and injury enhancements on a single count under section 1170.1(e);~~

~~(9)~~(8) ~~w~~Waiving a restitution fine~~;~~.

~~(10)~~(9) ~~n~~Not committing an eligible defendant to the California Rehabilitation Center~~; and~~.

~~(11)~~(10) ~~s~~Striking an enhancement or prior conviction allegation under ~~Penal Code~~ section 1385(a).

(Subd (b) amended effective July 1, 2003; previously amended effective January 1, 2001.)

Rule 4.406 amended effective July 1, 2003; adopted as rule 406 effective January 1, 1991; renumbered and amended effective January 1, 2001.

~~1990~~ Advisory Committee Comment

This rule is not intended to expand the statutory requirements for giving reasons, and is not an independent interpretation of the statutory requirements.

Rule 4.410. General objectives in sentencing

(a) General objectives of sentencing include:

(~~a~~1) Protecting society.

(~~b~~2) Punishing the defendant.

(~~c~~3) Encouraging the defendant to lead a law abiding life in the future and deterring him or her from future offenses.

(~~d~~4) Deterring others from criminal conduct by demonstrating its consequences.

(~~e~~5) Preventing the defendant from committing new crimes by isolating him or her for the period of incarceration.

(~~f~~6) Securing restitution for the victims of crime.

(~~g~~7) Achieving uniformity in sentencing.

(Subd (a) amended effective July 1, 2003.)

(b) Because in some instances these objectives may suggest inconsistent dispositions, the sentencing judge ~~shall~~ must consider which objectives are of primary importance in the particular case. The sentencing judge should be guided by statutory statements of policy, the criteria in these rules, and the facts and circumstances of the case.

(Subd (b) relettered as part of subd (a) amended effective July 1, 2003; new subd (b) adopted as part of unlettered subdivision effective July 1, 1997.)

(Subd (c) relettered as part of subd. (a) effective July 1, 2003.)

(Subd (d) relettered as part of subd. (a) effective July 1, 2003.)

(Subd (e) relettered as part of subd (a) effective July 1, 2003.)

(Subd (f) relettered as part of subd (a) effective July 1, 2003.)

(Subd (g) relettered as part of subd (a) effective July 1, 2003.)

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

Advisory Committee Comment (2003)

Statutory expressions of policy include:

Welfare and Institutions Code, section 1820 et seq., which provides ~~a subsidy to counties based on their reduction in prison commitments;~~ partnership funding for county juvenile ranches, camps, or forestry camps.

Section 1203~~(a)~~(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 to the seriousness of the offense, and the use of imprisonment as punishment~~;~~.

~~Sections 1203.06, 1203.07, 1203.11, 12311 and Health and Safety Code, section 11370,~~ Other statutory provisions which prohibit the grant of probation in particular cases.

Rule 4.411. Presentence investigations and reports

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Advisory Committee Comment ~~(revised to conform to 1990 amendments)~~ (2003)

Section 1203 requires a presentence report in every felony case in which the defendant is eligible for probation. Because such a probation investigation and report are valuable to the judge and to the jail and prison authorities, waivers of the report and requests for immediate sentencing are discouraged, even when the defendant and counsel have agreed to a prison sentence.

Notwithstanding a defendant's statutory ineligibility for probation, a presentence investigation and report should be ordered to assist the court in deciding the appropriate sentence and to facilitate compliance with section 1203c.

This rule does not prohibit pre-conviction, pre-plea reports as authorized by ~~Code of Civil Procedure~~ section ~~131.3~~1203.7.

Subdivision (c) is based on case law that generally requires a supplemental report if the defendant is to be resentenced a significant time after the original sentencing, as, for example, after a remand by an appellate court, or after the apprehension of a defendant who failed to appear at sentencing. The rule is not intended to expand on the requirements of those cases.

The rule does not require a new investigation and report if a recent report is available and can be incorporated by reference and there is no indication of changed circumstances. This is particularly true if a report is needed only for the Department of Corrections because the defendant has waived a report and agreed to a prison sentence. If a full report was prepared in another case in the same or another jurisdiction within the preceding six months, during which time the defendant was in custody, and that report is available to the Department of Corrections, it is unlikely that a new investigation is needed.

Rule 4.411.5. Probation officer's presentence investigation report

(a) [Contents] A probation officer's presentence investigation report in a felony case shall include at least the following:

(1)–(5) *******

(6) Any relevant facts concerning the defendant's social history, including but not limited to those categories enumerated in ~~Penal Code~~ 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.

(7)–(11) *******

(Subd (a) amended effective July 1, 2003; adopted effective July 1, 1981; previously amended effective January 1, 1991.)

(b)–(c) ***

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

Rule 4.412. Reasons. Agreement to punishment as reason and as abandonment of certain claims

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Advisory Committee Comment (2003)

~~See former rule 440.~~

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Rule 4.413. Probation eligibility when probation is limited

(a) ***

(b) [Probation in unusual cases] If the defendant comes under a statutory provision prohibiting probation "except in unusual cases where the interests of justice would best be served," or a substantially equivalent provision, the court should apply the criteria in subdivision (c) to evaluate whether the statutory limitation on probation is overcome; and if it is, the court should then apply the criteria in rule 4.414 to decide whether to grant probation.

(Subd (b) amended effective July 1, 2003; adopted effective January 1, 1991.)

(c) ***

Rule 4.413 amended effective July 1, 2003; adopted as rule 413 effective January 1, 1991; previously renumbered effective January 1, 2001.

Rule 4.414. Criteria affecting probation

Criteria affecting the decision to grant or deny probation include:

(a) ***

(b) Facts relating to the defendant, including:

(1) Prior record of criminal conduct~~;~~, whether as an adult or a juvenile, including the recency and frequency of prior crimes; and whether the prior record indicates a pattern of regular or increasingly serious criminal conduct.

(2)–(8) *******

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

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

Advisory Committee Comment (2003)

The sentencing judge's discretion to grant probation is unaffected by the Uniform Determinate Sentencing Act (~~S~~section 1170(a)(~~2~~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 criteri~~on~~a ~~(d)~~(b)(3) and (b)(4), ~~("willingness and ability")~~ it is appropriate to consider the defendant's expressions of willingness to comply and their apparent sincerity, and whether the defendant's home and work environment and primary associates will be supportive of ~~his~~the defendant's efforts to comply with the terms of probation, among other factors.

Rule 4.420. Selection of base term of imprisonment

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Advisory Committee Comment ~~[Revised in 1990]~~ (2003)

As amended by Assembly Bill No. 476 (Stats. 1977, ch. 165), the determinate sentencing law authorizes the court to select any of the three possible prison terms even though neither party has requested a deviation from the middle term by formal motion or informal argument. Section 1170(b) retains the requirement, however, that the middle term be selected unless there are circumstances in aggravation or mitigation of the crime, and requires that the court set forth on the record the facts and reasons for imposing the upper or lower term.

Thus, the sentencing judge has authority to impose the upper or lower term on his or her own initiative, if circumstances justifying that choice appear upon an evaluation of the record as a whole.

The legislative intent is that, if imprisonment is the sentence choice, the middle term is to constitute the average or usual term. The rule clarifies this intent by specifying that the presence of circumstances justifying the upper or lower term must be established by a preponderance of the evidence, and that those circumstances must outweigh offsetting circumstances. Proof by a preponderance of the evidence is the standard in the absence of a statute or a decisional law to the contrary (Evid. Code, § 115), and appears appropriate here, since there is no requirement that sentencing decisions be based on the same quantum of proof as is required to establish guilt. See *Williams v. New York* (1949) 337 U.S. 241.

Determining whether circumstances in aggravation or mitigation preponderate is a qualitative, rather than a quantitative, process. It cannot be determined by simply counting identified circumstances of each kind.

Present law prohibits dual punishment for the same act (or fact) but permits the same act or fact to be considered in denying probation and in selecting the upper prison term. *People v. Edwards* (1976) 18 Cal.3d 796 (prior felony conviction, an element of the offense, also brought defendant within former section 1203(d)(2) limitation on probation to person with prior felony convictions), citing *People v. Perry* (1974) 42 Cal.App.3d 451, 460, and other cases.

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

Note that under ~~section 1170(b) and~~ rule ~~405~~4.425(b), ~~(definitions), the additional term resulting from ordering sentences to be served consecutively is an "enhancement." Section 1170(b) therefore prohibits using the same fact as the reason for imposing consecutive sentences and as the reason for imposing the upper term. *People v. Avalos* (1984) 37 Cal.3d 316, 233. Subdivision (c) applies to that case as well as to enhancements arising from facts charged and found~~ a fact used to impose the upper term cannot be used to impose a consecutive sentence.

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 set forth 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 pursuant to 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

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Advisory Committee Comment (2003)

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

The list of circumstances in aggravation includes some facts which, 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 ~~49 L.Ed.2d 859, 883~~.)

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 1170.7, 1170.71, 1170.75, 1170.8, and 1170.85.

Rule 4.423. Circumstances in mitigation

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~~**Note**~~
~~Stats. 1992, ch. 1137 provides:~~

~~SECTION 1. The Legislature recommends that the Judicial Council revise Rule 423 of the California Rules of Court before June 1, 1993, to add language related to circumstances in mitigation, as follows:~~

~~Facts relating to the crime and to the defendant, including the fact that there is evidence, that did not amount to a defense, that the defendant suffered from repeated or continuous physical, sexual, or psychological abuse committed by the victim and the crime was an offense against the defendant's spouse, any person with whom the defendant was intimately cohabitating, or any person who was the mother or father of the defendant's child.~~

Advisory Committee Comment <u>(2003)</u>

See comment to rule <u>4.</u>421.

This rule applies both to mitigation for purposes of motions under section 1170(b) and to circumstances in mitigation justifying the court in striking ~~or specifically not ordering~~ the additional punishment provided ~~as~~ <u>for</u> an enhancement.

Some listed circumstances can never apply to certain enhancements; for example, "the amounts taken were deliberately small" can never apply to an excessive taking under section 12022.6, and "no harm was done" can never apply to ~~intentional~~ infliction of great bodily injury under section 12022.7. In any case, only the facts present may be considered for their possible effect in mitigation.

See also rule <u>4.</u>409; only relevant criteria need be considered.

Since only the fact of restitution is considered relevant to mitigation, no reference to the defendant's financial ability is needed. The omission of a comparable factor from rule 4.421 as a circumstance in aggravation is deliberate.

Rule 4.426. Violent sex crimes

(a) ***

(b) [Same victim, same occasion; other crimes] If the defendant has been convicted of multiple crimes, including at least one violent sex crime, as defined in section 667.6, or if there have been multiple violent sex crimes against a single victim on the same occasion and the sentencing court has decided to impose consecutive sentences, the sentencing judge shall then determine whether to impose a full, separate, and consecutive sentence under section 667.6(c) for the violent sex crime or crimes in lieu of including the violent sex crimes in the computation of the principal and subordinate terms under section 1170.1(a). A decision to impose a fully consecutive sentence under section 667.6(c) is an additional sentence choice which requires a statement of reasons separate from those given for consecutive sentences, but which may repeat the same reasons. The sentencing judge is to be guided by the criteria listed in rule 4.425, which incorporates rules 4.421 and 4.423, as well as any other reasonably related criteria as provided in rule 4.408.

(Subd (b) amended effective July 1, 2003.)

Rule 4.426 amended effective July 1, 2003; adopted as rule 426 effective January 1, 1991; previously renumbered effective January 1, 2001.

Advisory Committee Comment (2003)

Section 667.6(d) requires a full, separate, and consecutive term for each of the enumerated violent sex crimes that involve separate victims, or the same victim on separate occasions. Therefore, if there were separate victims or the court found that there were separate occasions, no other reasons are required.

If there have been multiple convictions involving at least one of the enumerated violent sex crimes, the court may impose a full, separate, and consecutive term for each violent sex crime under section 667.6(c). (See *People v. Coleman* (1989) 48 Cal.3d 112, 161.) A fully consecutive sentence under section 667.6(c) is ~~an enhancement~~ a sentence choice, which requires a statement of reasons. ~~(See *People v. Price* (1984) 151 Cal.App.3d 803, 815-816.)~~ The court may not use the same fact to impose a sentence pursuant to section 667.6(c) that was used to impose an upper term. (See ~~§ 1170(b);~~ rule ~~441(c)~~ 4.425(b).) If the court selects the upper term, imposes consecutive sentences, and utilizes section 667.6(c), the record must reflect three sentencing choices with three separate statements of reasons, but the same reason may be used for sentencing under section 667.6(c) and to impose consecutive sentences. (See *People v. Belmontes* (1983) 34 Cal.3d 335, 347–349.)

Rule 4.428. Criteria affecting imposition of enhancements

(a) [Imposing or not imposing enhancement] No reason need be given for imposing a term for an enhancement that was charged and found true.

If the judge has statutory discretion to strike the additional term for an enhancement in the furtherance of justice under section 1385(c) or based on circumstances in mitigation, the court may consider and apply any of the circumstances in mitigation enumerated in these rules or, pursuant to rule 4.408, any other reasonable circumstances in mitigation or in the furtherance of justice that are present.

The judge should not strike the allegation of the enhancement.

(Subd (a) amended effective July 1, 2003; adopted effective January 1, 1991.)

(b) [Choice from among three possible terms] When the defendant is subject to an enhancement that was charged and found true for which three possible terms are specified by statute, the middle term shall be imposed unless there are circumstances in aggravation or mitigation or unless, under statutory discretion, the judge strikes the additional term for the enhancement.

The upper term may be imposed for an enhancement based on any of the circumstances in aggravation enumerated in these rules or, under rule 4.408, any other reasonable circumstances in aggravation that are present. The lower term may be imposed based upon any of the circumstances in mitigation enumerated in these rules or, under rule 4.408, any other reasonable circumstances in mitigation that are present.

(Subd (b) amended effective July 1, 2003; adopted effective January 1, 1991; previously amended effective January 1, 1998.)

Rule 4.428 amended effective July 1, 2003; adopted as rule 428 effective January 1, 1991; previously amended effective January 1, 1998; previously renumbered effective January 1, 2001.

Advisory Committee Comment (2003)

Subdivision (b) is intended to apply ~~whether or not the statute expressly makes the middle term the presumptive term for the enhancement~~ to all enhancements punishable by three possible terms (section 1170.1(d)).

~~Case law requires a statement of reasons when multiple enhancements are imposed under section 1170.1(e).~~

Rule 4.431. Proceedings at sentencing to be reported

****

Advisory Committee Comment (2003)

Reporters' transcripts of the sentencing proceedings are required on appeal (rule 33(a)(2)), and when the defendant is sentenced to prison (~~§~~ section 1203.01).

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

(a)–(b) ***

(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 shall:

(1)–(3) *******

(4) Determine any issues raised by statutory prohibitions on the dual use of facts and statutory limitations on enhancements, as required in rules ~~441~~4.420(c) and 4.447.

(5) *******

(Subd (c) amended effective July 1, 2003; adopted effective July 1, 1977; previously amended effective July 28, 1977.)

(d) ***

(e) When a sentence of imprisonment is imposed under subdivision (c) or under rule 4.435, the sentencing judge shall inform the defendant, pursuant to 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.

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

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

Advisory Committee Comment (2003)

This rule summarizes the questions which 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 ~~for probation~~, unless the defendant is statutorily ineligible for probation~~pursuant to sections 1203.06, 1203.07, 1203.11, 12311 or Health and Safety Code section 11370~~.

~~Pursuant to the last sentence in section 1170(b), under~~ 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 upon violation of probation (section 1170(b)). If there was a trial, however, ~~he~~the judge must make findings as to circumstances justifying the upper or lower term 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 upon revocation of probation

(a) ***

(b) Upon revocation and termination of probation pursuant to section 1203.2, when the sentencing judge determines that the defendant shall be committed to prison:

(1) If the imposition of sentence was previously suspended, the judge shall impose judgment and sentence after considering any findings previously made and hearing and determining the matters enumerated in rule 4.433(c).

The length of the sentence shall be based on circumstances existing at the time probation was granted, and subsequent events may not be considered in selecting the base term nor in deciding whether to strike ~~or specifically not order~~ the additional punishment for enhancements charged and found.

(2) ***

(Subd (b) amended effective July 1, 2003.)

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

Rule 4.437. Statements in aggravation and mitigation

****

Advisory Committee Comment (2003)

Section 1170(b) ~~as amended by Assembly Bill No. 476 (Stats. 1977, ch. 165)~~ states in part:

"At least four days prior to the time set for imposition of ~~sentence~~judgment, either party or the victim, or the family of the victim if the victim is deceased, may submit a statement in aggravation or mitigation to dispute facts in the record or the probation officer's report, or to present additional facts."

This provision means that the statement is a document giving notice of intention to dispute facts in the record or the probation officer's report, or to present additional facts. The statement itself cannot be the medium for presenting new facts, or for rebutting facts already presented by competent evidence, because the statement is a unilateral presentation by one party or counsel which will not necessarily have any indicia of reliability. To allow its factual assertions to be considered in the absence of corroborating evidence would, therefore, constitute a denial of due process of law in violation of the United States (Amendment 14) and California (Art. 1, §7) Constitutions.

"[I]t is now clear that the sentencing process, as well as the trial itself, must satisfy the requirements of the Due Process Clause. Even though the defendant has no substantive right to a particular sentence within the range authorized by statute, the sentencing is a critical stage of the criminal proceeding at which he is entitled to the effective assistance of counsel . . . . The defendant has a legitimate interest in the character of the procedure which leads to the imposition of sentence . . . ." *Gardner v. State of Florida* (1977) 430 U.S. 349, 358.

The use of probation officers' reports is permissible because ~~they~~the officers are trained objective investigators. *Williams v. New York* (1949) 337 U.S. 241. Compare sections 1203 and 1204. *People v. Peterson* (1973) 9 Cal.3d 717, 727, expressly approved the holding of *United States v. Weston* (9th Cir. 1971) 448 F.2d 626 that due process is offended by sentencing on the basis of unsubstantiated allegations which were denied by the defendant. Cf., *In re Hancock* (1977) 67 Cal.App.3d 943, 949.

The requirement that the statement include notice of intention to rely on new evidence will enhance fairness to both sides by avoiding surprise and helping to assure that the time limit on pronouncing sentence is met.

Rule 4.447. Limitations on enhancements

No finding of an enhancement shall be stricken or dismissed because imposition of the term is either prohibited by law or exceeds ~~limitations on the overall aggregate term, such as limits on subordinate terms, or~~ limitations on the imposition of multiple enhancements. The sentencing judge shall impose sentence for the

aggregate term of imprisonment computed without reference to those prohibitions and limitations, and shall thereupon stay execution of so much of the term as is prohibited or exceeds the applicable limit. The stay shall become permanent upon the defendant's service of the portion of the sentence not stayed.

Rule 4.447 amended effective July 1, 2003; adopted as rule 447 effective July 1, 1977; previously amended effective July 28, 1977, and January 1, 1991; amended and renumbered effective January 1, 2001.

Advisory Committee Comment (2003)

~~When consecutive terms are imposed, section 1170.1(a) prohibits applying enhancements to the "subordinate terms" for crimes which are not listed in section 667.5(c), but directs inclusion of one-third of the enhancement under section 12022, 12022.5 or 12022.7 in the "subordinate terms" for crimes listed in section 667.5(c).~~

~~Section 1170.1(d) permits imposing both a 12022.7 and either a 12022 or a 12022.5 enhancement to a count for actual or attempted robbery, rape or burglary. In other cases, it permits application of only the greatest one enhancement under sections 12022, 12022.5 and 12022.7 to a single offense, even though more than one might have been charged and found.~~

~~Section 1170.1(a) limits the aggregate of enhancements for consecutive terms for crimes not listed in section 667.5(c) to five years.~~

~~Section 1170.1(f) limits the aggregate prison term (base term plus enhancements), to double the base term, with specified exceptions.~~

Statutory restrictions may prohibit or limit the imposition of an enhancement in certain situations. (See, for example, sections 186.22(b)(1), 667(a)(2), 667.61(f), 1170.1(f) and (g), 12022.53(e)(2) and (f), and Vehicle Code section 23558.)

Present practice of staying execution is followed to avoid violating a statutory prohibition or exceeding ~~the~~a statutory ~~maximum~~limitation, while preserving the possibility of imposition of the stayed portion should a reversal on appeal reduce the unstayed portion of the sentence. See *People v. Niles* (1964) 227 Cal.App.2d 749, 756.

Only the portion of a sentence or component thereof that exceeds a ~~maximum~~limitation is prohibited, and this rule provides a procedure for that situation.

Rule 4.451. Sentence consecutive to indeterminate term or to term in other jurisdiction

(a) When a defendant is sentenced under section 1170 and the sentence is to run consecutively to a sentence imposed under section 1168(b) in the same or another proceeding, the judgment shall specify the determinate term imposed under section 1170 computed without reference to the indeterminate sentence,

shall order that the determinate term shall be served consecutive to the sentence under section 1168(b), and shall identify the proceedings in which the indeterminate sentence was imposed. The term under section 1168(b), and the date of its completion or parole date, and the sequence in which the sentences are deemed served, will be determined by correctional authorities as provided by law.

(Subd (a) amended effective July 1, 2003; adopted effective July 1, 1977; previously amended effective January 1, 1979.)

(b) ***

Rule 4.451 amended effective July 1, 2003; adopted as rule 451 effective July 1, 1977; previously amended effective January 1, 1979; renumbered effective January 1, 2001.

Advisory Committee Comment (2003)

The provisions of section 1170.1(a), ~~limiting consecutive terms to a "subordinate term" consisting of one-third of the middle term for the additional crimes (in some cases plus one-third the enhancements)~~which use a one-third formula to calculate subordinate consecutive terms, can logically be applied only when all the sentences ~~were~~are imposed under section 1170. Indeterminate sentences are imposed under section 1168(b) ~~will continue to be imposed for some years, considering probation violators~~. Since the duration of the indeterminate term cannot be known to the court, subdivision (a) sets forth the only feasible mode of sentencing. (See *People v. Felix* (2000) 22 Cal.4th 651, 654–657; *People v. McGahuey* (1981) 121 Cal.App.3d 524, 530–532.)

On the authority to sentence consecutively to the sentence of another jurisdiction and the effect of such a sentence, see *In re Helpman* (1968) 267 Cal.App.2d 307 and cases cited at note 3, *id*. at 310. The mode of sentencing required by subdivision (b) is necessary to avoid the illogical conclusion that the total of the consecutive sentences will depend on whether the other jurisdiction or California is the first to pronounce judgment.

Rule 4.452. Determinate sentence consecutive to prior determinate sentence

If a determinate sentence is imposed pursuant to 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 shall 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 shall not be changed by the judge in the current case. Such decisions include the

decision that other than the middle term was justified by circumstances in mitigation or aggravation, 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 July 1, 2003; adopted as rule 452 effective January 1, 1991; previously renumbered effective January 1, 2001.

Rule 4.453. Commitments to nonpenal institutions

****

Advisory Committee Comment (2003)

Youth Authority commitments cannot exceed the maximum possible incarceration in an adult institution for the same crime. *People v. Olivas* (1976) 17 Cal.3d 236. ~~A commitment as an MDSO may not exceed the maximum term of imprisonment for the offenses of which the defendant was convicted. Welfare and Institutions Code section 6316.1 added effective July 1, 1977 (Stats. 1977, ch. 164).~~

Under the indeterminate sentencing law, the receiving institution knew, as a matter of law from the record of the conviction, the maximum potential period of imprisonment for the crime of which the defendant was convicted.

Under the Uniform Determinate Sentencing Act, the court's discretion as to length of term leaves doubt as to the maximum term when only the record of convictions is present.

Rule 4.472. Determination of presentence custody time credit

At the time of sentencing, the court shall cause to be recorded on the judgment or commitment the total time in custody to be credited upon the sentence under ~~Penal Code~~ sections 2900.5, 2933.1(c), and 2933.2(c). Upon referral of the defendant to the probation officer for an investigation and report under ~~Penal Code~~ section 1203~~(a)~~(b) or 1203~~(f)~~(g), or upon setting a date for sentencing in the absence of a referral, the court shall 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 prior to 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 shall be heard at the time of sentencing.

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

Rule 4.480. Judge's statement under ~~Penal Code~~ section 1203.01

A sentencing judge's statement of his or her views under ~~Penal Code~~ section 1203.01 respecting a person sentenced to the Department of Corrections 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 in its programming and institutional assignment and to the Board of Prison Terms with reference to term fixing and parole release of persons sentenced indeterminately, and parole waiver of persons sentenced determinately. It may amplify any reasons for the sentence which may bear on a possible suggestion by the Director of Corrections or the Board of Prison Terms 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 which led to a prison sentence rather than local incarceration, and any other significant information which 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 case summary which is prepared during the time the offender is being processed at the Reception-Guidance Center of the Department of Corrections.

Rule 4.480 amended effective July 1, 2003; adopted as Sec. 12 effective January 1, 1973; previously amended effective July 1, 1978; previously renumbered and amended effective January 1, 2001.

Rule 5.126. Alternate date of valuation

(a) [Notice of motion] An *Application for Separate Trial* (form FL-3~~2~~15) must be used to provide the notice required by Family Code section 2552(b).

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

(b) [Declaration accompanying notice] Form FL-3~~2~~15 must be accompanied by a declaration stating the following:

(1)–(3) ***

(Subd (b) amended effective July 1, 2003; previously amended effective January 1, 2003.)

Rule 5.126 amended effective July 1, 2003; adopted as rule 1242.5 effective July 1, 1995; previously amended and renumbered effective January 1, 2003.

Rule 5.158. Determination on joinder

(a)–(b) ***

(c) [Procedure upon joinder] If the court orders that a person be joined as a party to the proceeding under subdivision (a) of rule 5.~~2~~2154, the court must direct that a summons be issued on form FL-375 and that the claimant be served with a copy of form FL-371, the pleading attached thereto, the order of joinder, and the summons. The claimant has 30 days after service within which to file an appropriate response.

(Subd (c) amended effective July 1, 2003; adopted as subd (b) effective November 23, 1970; previously amended and relettered effective January 1, 2003.)

Rule 5.158 amended effective July 1, 2003; adopted as rule 1254 effective November 23, 1970; previously amended effective July 1, 1975; previously amended and renumbered effective January 1, 2003.

Rule 5.170. Nondisclosure of attorney assistance in preparation of court documents

(a) [Nondisclosure] In a family law proceeding, an attorney who contracts with a client to draft or assist in drafting legal documents, but not to make an appearance in the case, is not required to disclose within the text of the document that he or she was involved in preparing the documents.

(b) [Attorney fees] If a litigant seeks a court order for attorney fees incurred as a result of document preparation, the litigant must disclose to the court information required for a proper determination of attorney fees—including the name of the attorney who assisted in the preparation of the documents, the time involved or other basis for billing, the tasks performed, and the amount billed.

(c) [Applicability] This rule does not apply to an attorney who has made a general appearance or has contracted with his or her client to make an appearance on any issue that is the subject of the pleadings.

Rule 5.170 adopted effective July 1, 2003.

Rule 5.171. Application to be relieved as counsel upon completion of limited scope representation

(a) [Applicability of this rule] Notwithstanding rule 376, an attorney who has completed the tasks specified in the *Notice of Limited Scope Representation* (form FL-950) may use the procedure in this rule to request that the attorney be relieved as counsel in cases in which the attorney has appeared before the court as attorney of record and the client has not signed a *Substitution of Attorney—Civil* (form MC-050).

(b) [Notice] An application to be relieved as counsel upon completion of limited scope representation under Code of Civil Procedure section 284(2) must be directed to the client and made on the *Application to Be Relieved as Counsel Upon Completion of Limited Scope Representation* (form FL-955).

(c) [Service] The application must be filed with the court and served on the client and on all other parties and counsel who are of record in the case. The client must also be served with form FL-956, *Objection to Application to Be Relieved as Counsel Upon Completion of Limited Scope Representation*.

(d) [No objection] If no objection is filed within 15 days from the date that the *Application to Be Relieved as Counsel Upon Completion of Limited Scope Representation* (form FL-955) is served upon the client, the attorney making the application must file an updated form FL-955 indicating the lack of objection, along with a proposed *Order on Application to Be Relieved as Counsel Upon Completion of Limited Scope Representation* (form FL-958). The clerk will then forward the file with the proposed order for judicial signature.

(e) [Objection] If an objection is filed within 15 days, the clerk must set a hearing date on the *Objection to Application to Be Relieved as Counsel Upon Completion of Limited Scope Representation* (form FL-956). The hearing must be scheduled no later than 25 days from the date the objection is filed. The clerk must send the notice of the hearing to the parties and counsel.

(f) [Service of the order] After the order is signed, a copy of the signed order must be served by the attorney who has filed the *Application to Be Relieved as Counsel Upon Completion of Limited Scope Representation* (form FL-955) on the client and on all parties who have appeared in the case. The court may delay the effective date of the order relieving counsel until proof of service of a copy of the signed order on the client has been filed with the court.

Rule 5.171 adopted effective July 1, 2003.

Rule 5.220. Court-ordered child custody evaluations

(a)–(d) * * *

(e) [Scope of evaluations] All evaluations must include:

(1) A written explanation of the process that clearly describes the:

(A) Purpose of the evaluation;

(B) Procedures used and the time required to gather and assess information and, if psychological tests will be used, the role of the results in confirming or questioning other information or previous conclusions;

(C) Scope and distribution of the evaluation report;

(D) Limitations on the confidentiality of the process; and

(E) Cost and payment responsibility for the evaluation.

(2) Data collection and analysis that are consistent with the requirements of Family Code section 3118; that allow the evaluator to observe and consider each party in comparable ways and to substantiate (from multiple sources when possible) interpretations and conclusions regarding each child's developmental needs; the quality of attachment to each parent and that parent's social environment; and reactions to the separation, divorce, or parental conflict. This process may include but is not limited to:

(A) Reviewing pertinent documents related to custody, including local police records;

(B) Observing parent-child interaction (unless contraindicated to protect the best interest of the child);

(C) Interviewing parents conjointly, individually, or both conjointly and individually (unless contraindicated in cases involving domestic violence), to assess:

(i) Capacity for setting age-appropriate limits and for understanding and responding to the child's needs;

(ii) History of involvement in caring for the child;

(iii) Methods for working toward resolution of the child custody conflict;

(iv) History of child abuse, domestic violence, substance abuse, and psychiatric illness; and

(v) Psychological and social functioning;

(D) Conducting age-appropriate interviews and observation with the children, both parents, stepparents, step- and half-siblings conjointly, separately, or both conjointly and separately, unless contraindicated to protect the best interest of the child;

(E) Collecting relevant corroborating information or documents as permitted by law; and

(F) Consulting with other experts to develop information that is beyond the evaluator's scope of practice or area of expertise.

(3) A written or oral presentation of findings that is consistent with Family Code section 3111, Family Code section 3118, or Evidence Code section 730. In any presentation of findings, the evaluator must:

(A) Summarize the data-gathering procedures, information sources, and time spent, and present all relevant information, including information that does not support the conclusions reached;

(B) Describe any limitations in the evaluation that result from unobtainable information, failure of a party to cooperate, or the circumstances of particular interviews;

(C) Only make a custody or visitation recommendation for a party who has been evaluated. This requirement does not preclude the evaluator from making an interim recommendation that is in the best interest of the child; and

(D) Provide clear, detailed recommendations that are consistent with the health, safety, welfare, and best interest of the child if making any recommendations to the court regarding a parenting plan.

(Subd (e) amended effective July 1, 2003; previously amended effective January 1, 2003.)

(f)–(i) * * *

Rule 5.220 amended effective July 1, 2003; adopted as rule 1257.3 effective January 1, 1999; previously amended effective July 1, 1999; previously amended and renumbered effective January 1, 2003.

Rule 5.400. Contact-after-adoption agreement

(a) ***

(b) [Contact after adoption agreement (Fam. Code, § 8714.7)] An adoptive parent or parents, a birth relative or relatives, including a birth parent or parents of a child who is the subject of an adoption petition, and the child may enter into a written agreement permitting postadoption contact between the child and birth relatives. No prospective adoptive parent or birth relative may be required by court order to enter into a contact-after-adoption agreement.

(Subd (b) amended effective July 1, 2003; previously amended effective July 1, 2001, and January 1, 2003.)

(c) ***

(d) [Terms of agreement (Fam. Code, § 8714.7)] The terms of the agreement are limited to the following, although they need not include all permitted terms:

(1)–(8) ***

(9) The terms of any contact-after-adoption agreement entered into under a petition filed under Family Code section 8714 must be limited to the sharing of information about the child unless the child has an existing relationship with the birth relative.

Subd (d) amended effective July 1, 2003; previously amended effective July 1, 2001, and January 1, 2003.)

(e) [Child a party (Fam. Code, § 8714.7)] The child who is the subject of the adoption petition is a party to the agreement whether or not specified as such.

(1) ***

(2) If the child has been found by a juvenile court to be described by section 300 of the Welfare and Institutions Code, an attorney must be appointed to represent the child for purposes of participation in and consent to any contact-after-adoption agreement, regardless of the age of the child. If the child has been represented by an attorney in the dependency proceedings, that attorney must be appointed for the additional responsibilities of this rule. The attorney is required to represent the child only until the adoption is decreed and dependency terminated.

(Subd (e) amended effective July 1, 2003; previously amended effective July 1, 2001, and January 1, 2003.)

(f) ***

(g) [Report to the court (Fam. Code, § 8715)] The department or agency participating as a party or joining in the petition for adoption must submit a report to the court. The report must include a criminal record check and descriptions of all social service referrals. If a contact-after- adoption agreement has been submitted, the report must include a summary of the agreement and a recommendation as to whether it is in the best interest of the child.

(Subd (g) amended effective July 1, 2003; previously amended effective July 1, 2001, and January 1, 2003.)

(h) [Enforcement of the agreement (Fam. Code, § 8714.7)] The court that grants the petition for adoption and approves the contact-after-adoption agreement must retain jurisdiction over the agreement.

(1) Any petition for enforcement of an agreement must be filed on Judicial Council form ~~*Petition for Enforcement, Modification, or Termination of Postadoption Contact Agreement*~~ *Request to: Enforce, Change, End Contact After Adoption Agreement* (ADOPT-315). The form must not be accepted for filing unless completed in full, with documentary evidence attached of participation in, or attempts to participate in, mediation or other dispute resolution.

(2)–(4) ***

(Subd (h) amended effective July 1, 2003; previously amended effective July 1, 2001, and January 1, 2003.)

(i) [Modification or termination of agreement (Fam. Code, § 8714.7)] The agreement may be modified or terminated by the court. Any petition for modification or termination of an agreement must be filed on Judicial Council form ~~*Petition for Enforcement, Modification, or Termination of Postadoption Contact Agreement*~~ *Request to: Enforce, Change, End Contact After Adoption Agreement* (ADOPT-315). The form must not be accepted for filing unless completed in full, with documentary evidence attached of participation in, or attempts to participate in, mediation or other appropriate dispute resolution.

(1) The agreement may be terminated or modified only if:

(A) All parties, including the child of 12 years or older, have signed the petition or have indicated on the Judicial Council form ~~*Response to Petition for Enforcement, Modification, or Termination of Postadoption Contact Agreement*~~ *Answer to Request to: Enforce, Change, End Contact After Adoption Agreement* (ADOPT-320) their consent or have executed a modified agreement filed with the petition; or

(B) ***

(2) ***

(3) The court may order modification or termination without a hearing if all parties, including the child of 12 years or older, have signed the petition or have indicated on the Judicial Council form ~~*Response to Petition for Enforcement, Modification, or Termination of Postadoption Contact Agreement*~~ *Answer to Request to: Enforce, Change, End Contact After Adoption Agreement* (ADOPT-320) their consent or have executed a modified agreement filed with the petition.

(Subd (i) amended effective July 1, 2003; previously amended effective July 1, 2001, and January 1, 2003.)

(j) [Costs and fees (Fam. Code, § 8714.7)] The fee for filing a ~~*Petition for Enforcement, Modification, or Termination of Contact After Adoption Agreement*~~ *Request to: Enforce, Change, End Contact After Adoption Agreement* (ADOPT-315) must not exceed the fee assessed for the filing of an adoption petition. Costs and fees for mediation or other appropriate dispute resolution must be assumed by each party, with the exception of the child. All costs and fees of litigation, including any court-ordered investigation or evaluation, must be charged to the petitioner unless the court finds that a party

other than the child has failed, without good cause, to comply with the approved agreement; all costs and fees must then be charged to that party.

(Subd (j) amended effective July 1, 2003; previously amended effective July 1, 2001, and January 1, 2003.)

(k) ***

Rule 5.400 amended effective July 1, 2003; adopted as rule 1180 effective July 1, 1998; amended effective July 1, 2001; previously amended and renumbered effective January 1, 2003.

Rule 2077. Electronic access to court calendars, indexes, and registers of actions

(a) [Intent] The intent of this rule is to specify information to be included in and excluded from the court calendars, indexes, and registers of actions to which public access is available by electronic means under rule 2073 (b). To the extent it is feasible to do so, the court must maintain court calendars, indexes, and registers of actions available to the public by electronic means in accordance with this rule.

(b) [Minimum contents for electronically accessible court calendars, indexes, and register of actions]

(1) The electronic court calendar must include:

(A) Date of court calendar;

(B) Time of calendared event;

(C) Court department number;

(D) Case number; and

(E) Case title (unless made confidential by law.)

(2) The electronic index must include:

(A) Case title (unless made confidential by law);

(B) Party names (unless made confidential by law);

(C) Party type;

(D) Date on which the case was filed; and

(E) Case number.

(3) The register of actions must be a summary of every proceeding in a case, in compliance with Government Code section 69845, and must include:

(A) Date case commenced;

(B) Case number;

(C) Case type;

(D) Case title (unless made confidential by law);

(E) Party names (unless made confidential by law);

(F) Party type;

(G) Date of each activity; and

(H) Description of each activity.

(c) [Information that must be excluded from court calendars, indexes, and registers of action] The following information must be excluded from a court's electronic calendar, index, and register of actions:

(1) Social security number;

(2) Any financial information);

(3) Arrest warrant information;

(4) Search warrant information;

(5) Victim information;

(6) Witness information;

(7) Ethnicity;

(8) Age;

(9) Gender;

(10) Government-issued identification card numbers (i.e., military);

(11) Driver's license number; and

(12) Date of birth.

Rule 2077 adopted effective July 1, 2003.