

**CHAPTER 8
CRIMINAL DIVISION**

CAPITAL CASES

APPENDIX 8.A

**CAPITAL CASE CHECKLIST AND
GUIDELINES FOR COUNSEL**

People of the State of California)
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 vs.) Case No.
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 _____)

The following general guidelines for counsel in capital cases are to be complied with, unless otherwise ordered by the court. Failure to comply with these guidelines may result in sanctions being imposed or compensation for appointed counsel being withheld.

The original of this checklist will be retained in the case file. Each counsel will receive a copy of the signed original.

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I. PRETRIAL

Initial When
Complete

A. Appearance Log

Primary counsel for each defendant and for the prosecution are to provide the court with a log of every court appearance within 30 days of the first appearance in the Superior Court. This must include all appearances and briefly describe the nature of each appearance.

Logged appearances must distinguish between Penal Code section 987.9 appearances and all other appearances. A separate log of Penal Code section 987.9 appearances must be maintained by the primary counsel for each defendant, sealed, and filed with the court at the same time that the final list of all Superior Court appearances is required to be filed with the court, but in no case later than 60 days after imposition of sentence.

In the event of any substitution of attorney at any stage of the case, the relieved attorney must provide a log of all appearances to substituting counsel within 5 days of being relieved. If prior counsel fails to provide the appearance log as required, substituting counsel must advise the court immediately.

B. Motions and Orders

Within 15 days of assignment to a trial department primary counsel for each defendant and the prosecuting attorney must jointly submit a list of all motions and issues that have been ruled on and all motions that have been filed but are awaiting resolution. This list must denote the court's rulings in all cases where rulings have been issued.

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C. Exhibits _____

Within 30 days of the first appearance in the Superior Court primary counsel for each defendant and the prosecuting attorney must provide the trial court with a list of all exhibits introduced by that party at any pretrial hearings, motions pursuant to Section 402 of the Evidence Code, or preliminary hearings.

D. Juror Questionnaires _____

In any case where the trial judge indicates that a jury questionnaire will be utilized, primary counsel for each defendant and the prosecuting attorney must meet at least 30 days prior to the trial date to exchange proposed questionnaires and to prepare a consolidated questionnaire for the trial court. The consolidated questionnaire must be submitted to the trial court at least 15 days prior to the trial date.

II. TRIAL _____

A. Transcripts

Court policy provides that counsel for each party are entitled to a copy of the daily transcript in capital cases. Counsel must bring any discrepancies or omissions to the court's attention within 10 days of the receipt of the transcript. This may be done orally, on the record, outside the presence of the jury, or in writing.

If there is no dispute concerning a discrepancy or omission in a transcript the court shall order the record corrected forthwith. If a dispute exists with respect to any such discrepancy or omission the court shall hold a hearing within 2 days of receiving oral or written notification from any counsel on the case. The trial court shall make findings and orders on any disputed matters within 5 days of such hearing.

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B. Juror Questionnaires _____

Counsel and all other persons involved in the representation of a party are NOT to disclose the content of any completed jury questionnaires to anyone without the prior approval of the court.

One blank original of any questionnaire used in the case will be retained and marked as a court exhibit. The original completed questionnaires must be marked as a court exhibit.

III. POST-SENTENCE _____

A. Post-Sentence Hearing

A post-sentence record certification hearing must be automatically set by the courtroom clerk within 60 days of the date of imposition of sentence. Trial counsel must be prepared to proceed with certification of the record on the appeal at this hearing. Any final corrections to the reporter's transcripts must be addressed at this hearing. Trial counsel must notify the trial court if all reporter's daily transcripts are not received within 5 days after sentence is imposed.

Trial counsel must make themselves available for further hearings to facilitate the certification of the record as directed by the trial court.

In order to expedite certification of the entire record on appeal in all capital cases, defendant's primary trial counsel, whether retained by the defendant or appointed by the court, must continue to represent the defendant until the entire record on the automatic appeal is certified in accordance with the mandate of Penal Code section 1240.1(e)(1).

A request for augmentation to or correction of the clerk's transcript must include, where feasible, the material that is proposed to be included in the clerk's transcript. Any such request must be made within 20 days of the receipt of the clerk's transcript.

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B. Appointed Counsel _____

Pursuant to Penal Code section 1240.1(e)(1), all trial counsel are to assist and cooperate with appellate counsel in the completion of the record certification process.

Trial counsel must maintain and preserve all files and records indefinitely, unless otherwise authorized by a court of competent jurisdiction, after notice to appellate counsel.

C. Final Lists

Within 60 days of the sentence date primary counsel for each defendant and the prosecuting attorney must provide the court with the following:

1. A list of all court appearances with a brief description of the nature of the appearance. This document must include a separate list, under seal, of all appearances pursuant to Section 987.9 of the Penal Code with a brief description of the request and ruling of the court. _____

2. A list of all motions filed by that party setting forth the court's ruling on each such motion. _____

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3. A complete list of all jury instructions submitted by that party, setting forth any that were withdrawn or refused. _____
4. A complete list of all exhibits marked by that party including those not admitted into evidence. Any exhibits or items that were referred to but not previously submitted must be included and marked as a court exhibit. _____

IV. RECEIPT FOR GUIDELINES

A copy of these guidelines have been received by counsel in the above entitled case:

_____ Signature	_____ Date	_____ Signature	_____ Date
_____ Name Printed		_____ Name Printed	
_____ Signature	_____ Date		
_____ Name Printed			