

AMENDMENTS TO THE CALIFORNIA RULES OF COURT
Adopted by the Judicial Council on October 28, 2011,
effective on October 28, 2011

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Division 6. Postconviction, Postrelease, and Writs

Title 4, Criminal Rules—Division 6, Postconviction, Postrelease, and Writs; amended effective October 28, 2011.

Chapter 2. Postrelease

Title 4, Criminal Rules—Division 6, Postconviction, Postrelease, and Writs—Chapter 2, Postrelease; adopted effective October 28, 2011.

Rule 4.540. Revocation of postrelease community supervision

(a) Application

This rule applies to petitions for revocation of postrelease community supervision under Penal Code section 3455.

(b) Definitions

As used in this chapter:

- (1) “Supervised person” means any person subject to community supervision under Penal Code section 3451.
- (2) “Court” includes any hearing officer appointed by a superior court and authorized to conduct revocation proceedings under Government Code section 71622.5.
- (3) “Supervising agency” means the county agency designated as the supervising agency by the board of supervisors under Penal Code section 3451.

(c) Petition for revocation

- (1) Petitions for revocation must be filed by the supervising agency at the location designated by the superior court in the county in which the person is supervised.
- (2) The supervising agency may file a petition for revocation only after all of the following have occurred:
 - (A) The supervising agency has established probable cause to believe the supervised person has violated a term or condition of community supervision;

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(B) The supervising agency has determined, following application of its assessment processes, that intermediate sanctions without court intervention as authorized by Penal Code section 3454(b) are not appropriate responses to the alleged violation; and

(C) The supervising agency has informed the supervised person that he or she is entitled to the assistance of counsel and, if he or she desires but is unable to employ counsel, the supervising agency has referred the matter to the public defender or other person or agency designated by the county to represent supervised persons.

(3) Petitions for revocation must be made on *Petition for Revocation of Community Supervision* (form CR-300) and must include a written report from the supervising agency that includes the declaration and information required under rule 4.541.

(4) Upon filing the petition, the supervising agency must provide copies of the petition and written report to the prosecutor and the supervised person's counsel or, if unrepresented, to the supervised person.

(d) Probable cause review

(1) The court must review whether probable cause exists to support a revocation within five court days of the filing of the petition. To conduct the review, the minimum information the court may rely upon is the information contained in the petition and written report of the supervising agency. If the court determines that probable cause exists to support a revocation, the court must indicate the determination on *Petition for Revocation of Community Supervision* (form CR-300) and preliminarily revoke supervision.

(2) If the court determines that no probable cause exists to support the revocation, the court must dismiss the petition, vacate any scheduled hearings, and return the person to community supervision on the same terms and conditions. If the court dismisses the petition, the supervising agency must notify the prosecutor, supervised person, and supervised person's counsel, if any, of the dismissal.

(e) Notice of hearing

The supervising agency must provide notice of the date, time, and place of any hearing related to the petition to revoke to the supervised person, the supervised person's counsel, if any, the prosecutor, and any victims.

1 **(f) Waiver**

2

3 At any time before a formal hearing on the petition, the supervised person may
4 waive, in writing, his or her right to counsel, admit a violation, waive a hearing,
5 and accept a proposed modification of supervision.

6

7 **(g) Formal hearing**

8

9 (1) The hearing on the petition for revocation must occur within a reasonable
10 time after the filing of the petition.

11

12 (2) Revocation determinations must be based on a preponderance of the evidence
13 admitted at the hearing. The statutory and decisional law that governs the
14 admissibility of evidence at probation violation proceedings applies.

15

16 **(h) Orders After Hearing**

17

18 (1) If the court finds that the supervised person has not violated a term or
19 condition of supervision, the court must dismiss the petition and return the
20 supervised person to community supervision on the same terms and
21 conditions.

22

23 (2) If the court finds that the supervised person has violated a term or condition
24 of supervision, the court may:

25

26 (A) Return the supervised person to supervision with modifications of
27 conditions, if appropriate, including a period of incarceration in county
28 jail;

29

30 (B) Revoke supervision and order the supervised person to confinement in
31 county jail; or

32

33 (C) Refer the supervised person to a reentry court under Penal Code section
34 3015 or any other evidence-based program in the court's discretion.

35

36 (3) Any confinement ordered by the court under (h)(2)(A) or (B) must not
37 exceed a period of 180 days in county jail.

38

39 **(i) Findings**

40

41 If the court revokes community supervision, the court must summarize in writing
42 the evidence relied on and the reasons for the revocation. A transcript of the

1 hearing that contains the court’s oral statement of the reasons and evidence relied
2 on may serve as a substitute for written findings.

3
4 *Rule 4.540 adopted effective October 28, 2011.*

5
6 **Advisory Committee Comment**

7
8 Before the enactment of criminal justice realignment legislation (Assem. Bill 109 (Committee on
9 Budget), Stats. 2011, ch. 15; AB 117 (Committee on Budget), Stats. 2011, ch. 39; ABX1 17
10 (Blumenfield), Stats. 2011, ch. 12), parole revocation procedures conducted by the California
11 Department of Corrections and Rehabilitation were subject to federal court injunction. (See
12 *Valdivia v. Schwarzenegger* (E.D.Cal., Dec. 2, 2010, Civ. No. S-94-0671 LLK/GGH).) The terms
13 and procedures required by the injunction represent a negotiated settlement between the parties
14 and are not “necessary or required by the constitution.” (*Valdivia v. Schwarzenegger* (9th Cir.
15 2010) 599 F.3d 984, 995, cert. denied sub nom. *Brown v. Valdivia* (2011) 131 S.Ct. 1626
16 [vacating a district court order denying the state’s motion to modify the injunction to conform to
17 recently enacted Penal Code section 3044 because “[t]here is no indication anywhere in the
18 record that these particular procedures are necessary for the assurance of the due process rights of
19 parolees”].) The due process standards applicable to postrelease community supervision
20 revocation proceedings have been established by constitutional case law (see, e.g., *Morrissey v.*
21 *Brewer* (1972) 408 U.S. 471, 489; *People v. Vickers* (1972) 8 Cal.3d 451, 457–458), not the terms
22 and procedures negotiated by the parties to the federal injunction and related orders.

23
24 The Criminal Law Advisory Committee acknowledges that the practices related to the scheduling
25 of court appearances vary from county to county. Nothing in this rule is intended to prohibit
26 courts from scheduling court appearances according to local needs and customs, including
27 requiring court appearances before formal evidentiary hearings on the petition to revoke. When
28 filing a petition, petitioners should consult local rules and court staff regarding specific
29 requirements for scheduling court appearances related to revocation petitions.

30
31 **Subdivision (c).** Penal Code section 3455 does not prescribe a deadline for filing the petition. It is
32 incumbent on courts and supervising agencies to ensure timely filing of petitions, particularly
33 when the supervised person is detained solely for a violation.

34
35 **Subdivision (c)(2)(A).** Detained supervised persons are generally entitled to certain due process
36 rights during revocation proceedings, including a preliminary probable cause determination. (See,
37 e.g., *Morrissey, supra*, 408 U.S. at 489; *Vickers, supra*, 8 Cal.3d at 457–458.) Under the criminal
38 justice realignment legislation, supervising agencies are authorized to conduct certain violation
39 proceedings without court involvement. (Pen. Code, § 3454(b) [authorizing supervising agencies
40 “to determine and order appropriate responses to alleged violations,” including flash
41 incarceration].) A supervising agency may only file a petition to revoke supervision with the
42 court after it has determined, following application of its “assessment processes,” that
43 intermediate sanctions are not appropriate responses to a violation. (Pen. Code, § 3455(a).)

1 Supervising agencies are also authorized to determine whether the supervised person should
2 remain in custody pending a revocation hearing and may order the person confined pending a
3 hearing. (Pen. Code, § 3455(b).) To promote supervising agency compliance with the due process
4 rights of supervised persons during any proceedings conducted before the filing of the petition,
5 this subdivision requires the supervising agency to conduct a preliminary probable cause
6 determination before the petition is filed with the court. Courts must independently review the
7 supervising agency’s probable cause determination under subdivision (d).

8
9 **Subdivision (c)(2)(C).** This subdivision is designed to ensure that indigent supervised persons
10 who desire counsel are represented as early in the revocation proceedings as possible. Nothing in
11 this subdivision is intended to infringe on court authority to appoint counsel or allow a supervised
12 person to waive the right to counsel.

13
14 **Subdivision (d).** This subdivision requires courts to review the supervising agency’s probable
15 cause determination required under subdivision (c)(2)(A). Courts may determine the most
16 appropriate manner to review the supervising agency’s probable cause determination. Nothing in
17 this subdivision is intended to prevent courts from conducting formal hearings to review probable
18 cause.

19
20 **Subdivision (e).** Victims are separately entitled to notice as required under article I, section 28 of
21 the California Constitution.

22
23 **Subdivision (f).** This subdivision is based on Penal Code section 3455(a): “At any point during
24 the process initiated pursuant to this section, a person may waive, in writing, his or her right to
25 counsel, admit the violation of his or her postrelease supervision, waive a court hearing, and
26 accept the proposed modification of his or her postrelease supervision.”

27
28 **Subdivision (g).** This subdivision is based on Penal Code section 3455(b): “The revocation
29 hearing shall be held within a reasonable time after the filing of the revocation petition.” When
30 deciding a reasonable time for hearing, courts should consider whether the supervised person is
31 detained. (See, e.g., *Morrissey, supra*, 408 U.S. at 488 [a hearing within two months of arrest may
32 be appropriate under certain circumstances].)

33
34
35 **Rule 4.541. Supervising agency reports**

36
37 **(a) Declaration**

38
39 A petition for revocation of community supervision under Penal Code section 3455
40 must include a declaration signed under penalty of perjury that confirms that the
41 requirements prescribed by rule 4.540(c)(2) have been satisfied.
42

1 **(b) Minimum contents**

2
3 Except as provided in (c), a petition for revocation of community supervision under
4 Penal Code section 3455 must include a written report that contains at least the
5 following information:

- 6
7 (1) Information about the supervised person, including:
8
9 (A) Personal identifying information, including name and date of birth;
10
11 (B) Custody status and the date and circumstances of arrest;
12
13 (C) Any pending cases and case numbers;
14
15 (D) The history and background of the supervised person, including a
16 summary of the supervised person's record of prior criminal conduct;
17 and
18
19 (E) Any available information requested by the court regarding the
20 supervised person's risk of recidivism, including any validated risk-
21 needs assessments;
22
23 (2) All relevant terms and conditions of supervision and the circumstances of the
24 alleged violations, including a summary of any statement made by the
25 supervised person, and any victim information, including statements and type
26 and amount of loss;
27
28 (3) A summary of all previous violations and sanctions, including flash
29 incarceration, and the reasons that the supervising agency has determined that
30 intermediate sanctions without court intervention as authorized by Penal
31 Code section 3454(b) are not appropriate responses to the alleged violations;
32 and
33
34 (4) Any recommendations.

35
36 **(c) Subsequent reports**

37
38 If the supervising agency submitted a written report with an earlier revocation
39 petition, a written report attached to a subsequent petition need only update the
40 information required by (b). A subsequent report must include a copy of the
41 original written report if the original report is not contained in the court file.
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43 *Rule 4.541 adopted effective October 28, 2011.*

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Advisory Committee Comment

Subdivision (b). This subdivision prescribes minimum contents for supervising agency reports required under Penal Code section 3455 and rule 4.540(c)(3). Courts may require additional contents in light of local customs and needs.

Subdivision (b)(1)(D). The history and background of the supervised person may include the supervised person’s social history, including family, education, employment, income, military, medical, psychological, and substance abuse information.

Subdivision (b)(1)(E). Penal Code section 3451(a) requires community supervision to be consistent with evidence-based practices, including supervision policies, procedures, programs, and practices demonstrated by scientific research to reduce recidivism among supervised persons. “Evidence-based practices” refers to “supervision policies, procedures, programs, and practices demonstrated by scientific research to reduce recidivism among individuals under probation, parole, or postrelease supervision.” (Pen. Code, § 3450(b)(9).)

Chapter 3. Habeas Corpus

Title 4, Criminal Rules—Division 6, Postconviction, Postrelease, and Writs—Chapter 3, Habeas Corpus; renumbered effective October 28, 2011; adopted as Chapter 2.

Title 8. Appellate Rules

Division 1. Rules Relating to the Supreme Court and Courts of Appeal

Chapter 1. General Provisions

Article 2. Service, Filing, Filing Fees, Form, and Number of Documents

Title 8, Appellate Rules—Division 1, Rules Relating to the Supreme Court and Courts of Appeal—Chapter 1, General Provisions—Article 2, Service, Filing Fees, Form, and Number of Documents; amended effective October 28, 2011.

Rule 8.25. Service, ~~and filing,~~ and filing fees

(a)–(b) ***

(c) Filing fees

1 (1) Unless otherwise provided by law, any document for which a filing fee is
2 required under Government Code sections 68926 or 68927 must be
3 accompanied at the time of filing by the required fee or an application for a
4 waiver of court fees under rule 8.26.

5
6 (2) Documents for which a filing fee may be required under Government Code
7 sections 68926 or 68927 include:

8
9 (A) A notice of appeal in a civil case. For purposes of this rule, “notice of
10 appeal” includes a notice of cross-appeal;

11
12 (B) A petition for a writ within the original civil jurisdiction of the
13 Supreme Court or Court of Appeal;

14
15 (C) A petition for review in a civil case in the Supreme Court;

16
17 (D) The following where the document is the first document filed in the
18 Court of Appeal or Supreme Court by a party other than the appellant
19 or petitioner in a civil case. For purposes of this rule, a “party other
20 than the appellant” does not include a respondent who files a notice of
21 cross-appeal.

22
23 (i) An application or an opposition or other response to an
24 application;

25
26 (ii) A motion or an opposition or other response to a motion;

27
28 (iii) A respondent’s brief;

29
30 (iv) A preliminary opposition to a petition for a writ, excluding a
31 preliminary opposition requested by the court unless the court has
32 notified the parties that it is considering issuing a peremptory writ
33 in the first instance;

34
35 (v) A return (by demurrer, verified answer, or both) after the court
36 issues an alternative writ or order to show cause;

37
38 (vi) Any answer to a petition for review in the Supreme Court; and

39
40 (vii) Any brief filed in the Supreme Court after the court grants
41 review.
42

1 (3) If a document other than the notice of appeal or a petition for a writ is not
2 accompanied by the filing fee or an application for a waiver of court fees
3 under rule 8.26, the clerk must file the document and must promptly notify
4 the filing party in writing that the court may strike the document unless,
5 within the stated time of not less than 5 court days after the notice is sent, the
6 filing party either:

7
8 (A) Pays the filing fee; or

9
10 (B) Files an application for a waiver under rule 8.26 if the party has not
11 previously filed such an application.

12
13 (4) If the party fails to take the action specified in a notice given under (2), the
14 reviewing court may strike the document, but may vacate the striking of the
15 document for good cause.

16
17 *(Subd (c) adopted effective October 28, 2011.)*

18
19 *Rule 8.25 amended effective October 28, 2011; adopted as rule 40.1 effective January 1, 2005;*
20 *previously amended and renumbered effective January 1, 2007; previously amended effective*
21 *January 1, 2009, July 1, 2010, and January 1, 2011.*

22
23 **Advisory Committee Comment**

24
25 **Subdivision (a).** * * *

26
27 **Subdivision (b).** * * *

28
29 **Subdivision (c).** Government Code section 68926 establishes fees in civil cases for filing a notice
30 of appeal, filing a petition for a writ within the original civil jurisdiction of the Supreme Court or
31 a Court of Appeal, and for a party other than appellant or petitioner filing its first document in
32 such an appeal or writ proceeding in the Supreme Court or a Court of Appeal. Government Code
33 section 68927 establishes fees for filing a petition for review in a civil case in the Supreme Court
34 and for a party other than the petitioner filing its first document in a civil case in the Supreme
35 Court. These statutes provide that fees may not be charged in appeals from, petitions for writs
36 involving, or petitions for review from decisions in juvenile cases or proceedings to declare a
37 minor free from parental custody or control, or proceedings under the Lanterman-Petris-Short Act
38 (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code).

39
40 **Subdivision (c)(2)(A) and (D).** Under rule 8.100(f), “notice of appeal” includes a notice of a
41 cross-appeal and a respondent who files a notice of cross-appeal in a civil appeal is considered an
42 appellant and is required to pay the fee for filing a notice of appeal under Government Code
43 section 68926.

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A person who files an application to file an amicus brief is not a “party” and therefore is not subject to the fees applicable to a party other than the appellant or petitioner.

Subdivision (c)(3). Rule 8.100 establishes the procedures applicable when an appellant in a civil appeal fails to pay the fee for filing a notice of appeal or the deposit for the clerk’s transcript that must also be paid at that time.

Rule 8.26. Waiver of fees and costs

(a) ***

(b) Filing the application

(1) Appeals

(A) The appellant should submit any application for initial waiver of court fees and costs for an appeal with the notice of appeal in the superior court that issued the judgment or order being appealed. For purposes of this rule, a respondent who files a notice of cross-appeal is an “appellant.”

(B) ~~The respondent~~ A party other than the appellant should submit any application for initial waiver of the court fees and costs for an appeal at the time the fees are to be paid to the court.

(2) Writ proceedings

(A) The petitioner should submit the application for waiver of the court fees and costs for a writ proceeding with the writ petition.

(B) A party other than the petitioner should submit any application for initial waiver of the court fees and costs at the time the fees for filing its first document in the writ proceeding are to be paid to the reviewing court.

(3) Petitions for review

(A) The petitioner should submit the application for waiver of the court fees and costs for a petition for review in the Supreme Court with the petition.

1 (B) A party other than the petitioner should submit any application for
2 initial waiver of the court fees and costs at the time the fees for filing its
3 first document in the proceeding are to be paid to the Supreme Court.
4

5 *(Subd (b) amended effective October 28, 2011.)*
6

7 **(c)–(d) *****
8

9 **(e) Court fees and costs waived**
10

11 Court fees and costs that must be waived on granting an application for initial
12 waiver of court fees and costs in the Supreme Court or Court of Appeal include:
13

14 (1) The fee for filing the notice of appeal and the fee required for a party other
15 than the appellant filing its first document under Government Code section
16 68926;
17

18 (2) The fee for filing an original proceeding and the fee required for a party other
19 than the petitioner filing its first document ~~required~~ under Government Code
20 section 68926;
21

22 (3) The fee for filing a petition for review and the fee required for a party other
23 than the petitioner filing its first document under ~~required by~~ Government
24 Code section 68927; and
25

26 (4) ***
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28 *(Subd (e) amended effective October 28, 2011.)*
29

30 **(f)–(g) *****
31

32 *Rule 8.26 amended effective October 28, 2011; adopted effective July 1, 2009.*
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34

35 **Rule 8.50. Applications**
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37 **(a)–(d) *****
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39 **Advisory Committee Comment**
40

41 Rule 8.50 addresses applications generally. Rules 8.60, 8.63, and 8.68 address applications to
42 extend or shorten time.
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1 Subdivision (a). A party other than the appellant or petitioner who files an application or
2 opposition to an application may be required to pay a filing fee under Government Code sections
3 68926 or 68927 if the application or opposition is the first document filed in the appeal or writ
4 proceeding in the reviewing court by that party. See rule 8.25(c).
5

6 **Subdivision (b)¶** : An exceptional showing of good cause is required in applications in certain
7 juvenile proceedings under rules 8.416, 8.450, 8.452, and 8.454.
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10 **Rule 8.54. Motions**

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12 **(a)–(c) *****
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14 **Advisory Committee Comment**
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16 Subdivision (a). A party other than the appellant or petitioner who files a motion or opposition to
17 a motion may be required to pay a filing fee under Government Code sections 68926 or 68927 if
18 the motion or opposition is the first document filed in the appeal or writ proceeding in the
19 reviewing court by that party. See rule 8.25(c).
20

21 **Subdivision (c). * * ***
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23

24 **Rule 8.200. Briefs by parties and amici curiae**

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26 **(a)–(c) *****
27

28 **Advisory Committee Comment**
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31 Subdivision (a)(2). A respondent, other than a respondent who has filed a notice of cross-appeal,
32 who files a respondent’s brief may be required to pay a filing fee under Government Code
33 sections 68926 if the respondent’s brief is the first document filed in the appellate proceeding in
34 the Court of Appeal by that party. See rule 8.25(c).
35

36 **Subdivision (b). * * ***
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38 **Subdivision (c)(1). * * ***
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41 **Rule 8.487. Opposition and Attorney General amicus briefs**
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1 (a)–(c) ***

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Advisory Committee Comment

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5 A party other than the petitioner who files a preliminary opposition under (a) or a return or
6 opposition under (b) may be required to pay a filing fee under Government Code section 68926 if
7 the preliminary opposition, return, or opposition is the first document filed in the writ proceeding
8 in the reviewing court by that party. See rule 8.25(c).

9

10 **Subdivision (a).** * * *

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12 **Subdivision (b).** * * *

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15 **Rule 8.496. Review of Public Utilities Commission cases**

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17 (a)–(c) ***

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Advisory Committee Comment

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21 Subdivision (b). A party other than the petitioner who files an answer may be required to pay a
22 filing fee under Government Code section 68926 if the answer is the first document filed in the
23 writ proceeding in the reviewing court by that party. See rule 8.25(c).

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26 **Rule 8.498. Review of Agricultural Labor Relations Board and Public Employment**
27 **Relations Board cases**

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29 (a)–(d) ***

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Advisory Committee Comment

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33 A party other than the petitioner who files an answer or brief may be required to pay a filing fee
34 under Government Code section 68926 if the answer or brief is the first document filed in the writ
35 proceeding in the reviewing court by that party. See rule 8.25(c).

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38 **Rule 8.500. Petition for review**

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40 (a)–(g) ***

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Advisory Committee Comment

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