

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on April 24, 2009,
effective on July 1, 2009, and January 1, 2010.

Rules effective July 1, 2009:

Rule 1.31. Mandatory forms	3
Rule 2.260. Electronic service	3
Rule 3.50. Application of rules	4
Rule 3.51. Method of application and filing of papers	4
Rule 3.52. Eligibility	5
Rule 3.53. Verification of financial condition	5
Rule 3.54. Determination without regard to pleading or paper submitted — for filing	6
Rule 3.55. Effect of denial of application; time for payment of fees	6
Rule 3.52 3.56. Procedure for determining application	7
Rule 3.53 3.57. Application granted unless acted on by the court	8
Rule 3.58. Hearing on application	8
Rule 3.59. Changed circumstances	9
Rule 3.54 3.60. Confidentiality	10
Rule 3.55 3.61. Court fees and costs <u>included in all initial fee waivers waived by initial application</u>	11
Rule 3.56 3.62. Additional court fees and costs <u>that may be included in initial fee waiver waived</u>	11
Rule 3.57. <u>Amount of lien for waived fees and costs</u>	12
Rule 3.58 3.63. Posting notice	12
Rule 5.175. Bifurcation of issues	13
<u>Rule 8.26. Waiver of fees and costs</u>	13
Rule 8.100. Filing the appeal	15
Rule 8.122. Clerk’s transcript	18
Rule 8.128. Superior court file instead of clerk’s transcript	18
Rule 8.486. Petitions	19
<u>Rule 8.818. Waiver of fees and costs</u>	20
Rule 8.821. Notice of appeal	22
Rule 8.832. Clerk’s transcript	24
Rule 8.833. Trial court file instead of clerk’s transcript	24
Rule 8.860. Normal record on appeal	25
Rule 8.862. Preparation of clerk’s transcript	25
Rule 8.863. Trial court file instead of clerk’s transcript	26
Rule 8.869. Statement on appeal	26
Rule 8.916. Statement on appeal	27
Rule 8.1010. Record on transfer	27
Rule 8.1105. Publication of appellate opinions	28

Rules effective January 1, 2010:

Rule 3.865. Application and purpose	29
---	----

Rule 3.866. Definitions 30
Rule 3.867. Complaint coordinator..... 31
Rule 3.868. Complaint procedure required..... 32
Rule 3.869. General requirements for complaint procedures and complaint
proceedings 32
Rule 3.870. Permissible court actions on complaints 35
Rule 3.871. Confidentiality of complaint proceedings, information,
and records 35
Rule 3.872. Disqualification from subsequently serving as an adjudicator 38

1 **Rule 1.31. Mandatory forms**

2
3 **(a)–(d) ******

4
5 **(e) No alteration of forms**

6
7 Except as provided in rule 3.52(6), concerning court fee waiver orders, rule
8 5.504, concerning court orders in juvenile court proceedings, and rule
9 7.101.5, concerning court orders in proceedings under the Probate Code,
10 courts may not require the use of an altered mandatory Judicial Council form
11 in place of the Judicial Council form. However, a judicial officer may
12 modify a Judicial Council form order as necessary or appropriate to
13 adjudicate a particular case.

14
15 *(Subd (e) amended effective July 1, 2009; previously amended effective January 1, 2007,*
16 *and January 1, 2009.)*

17
18 **(f)–(g) ******

19
20 *Rule 1.31 amended effective July 1, 2009; adopted effective January 1, 2007; previously amended*
21 *effective January 1, 2007, and January 1, 2009.*

22
23
24 **Rule 2.260. Electronic service**

25
26 **(a)–(e) * * ***

27
28 **(f) Proof of service**

29
30 (1) Proof of electronic service may be by any of the methods provided in
31 Code of Civil Procedure section 1013(a), except that the proof of
32 service must state:

33
34 (A)–(B) * * *

35
36 (2)–(4) * * *

37
38 *(Subd (f) amended effective July 1, 2009; adopted as subd (c) effective January 1, 2003;*
39 *previously amended effective January 1, 2007, and January 1, 2009; previously relettered*
40 *effective January 1, 2008.)*

41
42 **(g) * * ***

1 *Rule 2.260 amended effective July 1, 2009; adopted as rule 2060 effective January 1, 2003;*
2 *previously amended and renumbered effective January 1, 2007, and January 1, 2009; previously*
3 *amended effective January 1, 2008.*

4
5
6 **Rule 3.50. Application of rules**

7
8 **(a) Application**

9
10 The rules in this division govern applications in the trial court for an order to
11 proceed in forma pauperis—that is, without paying initial waiver of court
12 fees and costs because of the applicant’s financial condition. As provided in
13 Government Code sections 68631 and following, any waiver may later be
14 ended, modified, or retroactively withdrawn if the court determines that the
15 applicant is not eligible for the waiver. As provided in Government Code
16 sections 68636 and 68637, the court may, at a later time, determine that the
17 previously waived fees and costs be paid.

18
19 *(Subd (a) amended and lettered effective July 1, 2009; adopted as unlettered subd effective*
20 *January 1, 2007.)*

21
22 **(b) Definitions**

23
24 For purpose of the rules in this division, “initial fee waiver” means the initial
25 waiver of court fees and costs that may be granted at any stage of the
26 proceedings and includes both the fees and costs specified in rule 3.55 and
27 any additional fees and costs specified in rule 3.56.

28
29 *(Subd (b) adopted effective July 1, 2009.)*

30
31 *Rule 3.50 amended effective July 1, 2009; adopted effective January 1, 2007.*

32
33
34 **Rule 3.51. Method of application and filing of papers**

35
36 **(a) ~~Mandatory application forms~~**

37
38 An application to ~~proceed in forma pauperis~~ for initial fee waiver under rule
39 3.55 must be made on *Application for Waiver of Court Fees and Costs*
40 *Request to Waive Court Fees* (form FW-001). An application for initial fee
41 waiver under rule ~~3.62~~ 3.56 must be made on *Application for Waiver of*
42 *Additional Court Fees and Costs Request to Waive Additional Court Fees*
43 *(Superior Court)* (form FW-002). The clerk must provide ~~either~~ the forms
44 and the *Information Sheet on Waiver of Superior Court Fees and Costs* (form

1 FW-001-INFO) without charge to any person who requests it any fee waiver
2 application or indicates that he or she is unable to pay any court fee or cost.

3
4 **(b) Other forms**

5
6 No applicant may be required to complete any form as part of his or her
7 application under this rule other than forms adopted by the Judicial Council,
8 except as authorized by Government Code section 68511.3(e)(1). Upon
9 receipt of an application, the clerk must immediately file the application and
10 any pleading or other paper presented by the applicant.

11
12 *Rule 3.51 amended effective July 1, 2009; adopted effective January 1, 2007; previously amended*
13 *effective January 1, 2007.*

14
15
16 **Rule 3.52. Eligibility**

17
18 **(a) Mandatory**

19
20 The court must grant an application to proceed in forma pauperis and must
21 waive payment of court fees and costs listed in rule 3.61, and must waive
22 payment of those additional court fees and costs listed in rule 3.62 that the
23 court finds necessary, if the applicant meets the standards of eligibility
24 established by Government Code section 68511.3(a)(6)(A) or (a)(6)(B).

25
26 **(b) Discretionary**

27
28 Except for an order required under (a), the court may make an order granting
29 an application to proceed in forma pauperis under Government Code section
30 68511.3 or otherwise. The order may waive payment of part or all of the fees
31 and costs and may provide that a lien exists on any money recovered by the
32 applicant for any waived fees and costs, which shall be deemed to be taxable
33 costs.

34
35 *Rule 3.52 repealed effective July 1, 2009; adopted effective January 1, 2007.*

36
37 **Rule 3.53 Verification of financial condition**

38
39 **(a) Reasonable efforts to verify financial condition**

40
41 The court may, authorize the clerk of the court, or a court financial officer, or
42 other appropriate county officer to make reasonable efforts to verify an
43 applicant's financial condition. The reasonable efforts to verify must not

1 include requiring all applicants to submit documentation to support the
2 information contained in their applications except as authorized by
3 Government Code section 68511.3(b)(1) and (e)(1).
4

5 **(b) Additional documentation**
6

7 Additional documentation of an applicant's financial condition may be
8 required only if the applicant failed to provide the information required by
9 the application form or if the court has good reason to doubt the truthfulness
10 of the factual allegations in the application. If the applicant is required to
11 submit additional documentation of his or her financial condition, the court
12 or person authorized under (a) must:

- 13
- 14 (1) Inform the applicant of the information in the application that is
15 insufficient or that the court believes may not be truthful;
16
 - 17 (2) Inform the applicant of the specific type or types of documentation the
18 applicant must submit;
19
 - 20 (3) Require the applicant to submit only documentation that the applicant
21 has in his or her possession or can obtain with reasonable efforts; and
22
 - 23 (4) Require the applicant to submit only enough documentation as is
24 necessary to clarify or prove the truthfulness of the factual allegations
25 in the application.
26

27 *Rule 3.53 repealed effective July 1, 2009; adopted effective January 1, 2007.*
28
29

30 **Rule 3.54. Determination without regard to pleading or paper submitted for**
31 **filing**
32

33 The court must determine an application to proceed in forma pauperis without
34 regard to the applicant's pleading or other paper filed, if any.
35

36 *Rule 3.54 repealed effective July 1, 2009; adopted effective January 1, 2007.*
37

38 **Rule 3.55. Effect of denial of application; time for payment of fees**
39

40 If an application is denied, any paper filed without payment of fees is ineffective
41 unless the fees are paid within 10 days after notice is given by the clerk under rule
42 3.56. If the fees are paid more than 10 days after that notice was given, the date the
43 applicant's pleading or other paper was originally presented to the clerk is the date

1 for determining whether the action or proceeding was commenced within the
2 period provided by law.

3
4 *Rule 3.55 repealed effective July 1, 2009; adopted effective January 1, 2007.*

5
6
7 **Rule 3.52 3.56. Procedure for determining application**

8
9 The procedure for determining an application is as follows:

- 10
11 (1) The trial court must consider and determine the application as required by
12 Government Code sections 68511.368634 and 68635.
13
- 14 (2) An order determining an application to ~~proceed in forma pauperis~~ for an
15 initial fee waiver must be made on *Order on Court Fee Waiver (Superior*
16 *Court) Application for Waiver of Court Fees and Costs* (form FW-003),
17 except as provided in (6) below.
18
- 19 (3) An order determining an application for an initial fee waiver after a hearing
20 in the trial court must be made on *Order on Court Fee Waiver After Hearing*
21 (*Superior Court*) (form FW-008).
22
- 23 (4) Any order granting a fee waiver must be accompanied by a blank *Notice of*
24 *Improved Financial Situation or Settlement* (form FW-010).
25
- 26 (5) Any order denying an application without a hearing on the ground that the
27 information on the application conclusively establishes that the applicant is
28 not eligible for a waiver must be accompanied by a blank *Request for*
29 *Hearing About Fee Waiver Order (Superior Court)* (form FW-006).
30
- 31 (6) Until January 1, 2013, a court with a computerized case management system
32 may produce electronically generated court fee waiver orders as long as:
33
- 34 (A) The document is substantively identical to the mandatory Judicial
35 Council form it is replacing;
36
- 37 (B) Any electronically generated form is identical in both language and
38 legally mandated elements, including all notices and advisements, to
39 the mandatory Judicial Council form it is replacing; and
40
- 41 (C) The order is an otherwise legally sufficient court order, as provided in
42 rule 1.31(g), concerning orders not on Judicial Council mandatory
43 forms.

- 1
2 (3) ~~An order denying an application to proceed in forma pauperis, in whole or in~~
3 ~~part, must include a statement of the reasons for the denial as required by~~
4 ~~Government Code section 68511.3.~~
5
6 (4) ~~The clerk must immediately mail or deliver a copy of the order to the~~
7 ~~attorney for the applicant or, if no attorney, to the applicant if the application~~
8 ~~is not granted in full and, if the application is denied, to each other party who~~
9 ~~has appeared in the action or proceeding.~~
10
11 (5) ~~The court may delegate to the clerk in writing the authority to grant~~
12 ~~applications to proceed in forma pauperis that meet the standards of~~
13 ~~eligibility in Government Code section 68511.3(a)(6)(A) or (a)(6)(B). The~~
14 ~~court may not delegate authority to deny an application.~~

15
16 *Rule 3.52 amended and renumbered effective July 1, 2009; adopted as rule 3.56 effective January*
17 *1, 2007; previously amended effective January 1, 2007.*
18

19
20 **Rule ~~3.53~~ 3.57. Application granted unless acted on by the court**

21
22 The application to proceed in forma pauperis for initial fee waiver is deemed
23 granted unless acted on by the court gives notice of action on the application
24 within five court days after it is filed. If the application is deemed granted under
25 this provision, the clerk must execute prepare and serve a Notice of Waiver of
26 Court Fees and Costs Notice: Waiver of Court Fees (Superior Court) (form FW-
27 005) five court days after the application is filed.
28

29 *Rule 3.53 amended and renumbered effective July 1, 2009; adopted as rule 3.57 effective January*
30 *1, 2007; previously amended effective January 1, 2007.*
31

32
33 **Rule ~~3.58~~. Hearing on application**

34
35 **(a) Notice of hearing**

36
37 ~~If the court determines that there is substantial evidentiary conflict~~
38 ~~concerning the applicant's eligibility to proceed in forma pauperis, the clerk~~
39 ~~must immediately give the applicant at least 10 days' written notice of a~~
40 ~~hearing.~~

41
42 **(b) Confidentiality of hearing**

1 ~~To ensure confidentiality of the applicant's financial information, the hearing~~
2 ~~must be held in private and the court must exclude all persons except court~~
3 ~~attachés, the applicant, those present with the applicant's consent, and any~~
4 ~~witness being examined.~~

5
6 *Rule 3.58 repealed effective July 1, 2009; adopted effective January 1, 2007; previously amended*
7 *effective January 1, 2008.*

8
9
10 **~~Rule 3.59. Changed circumstances~~**

11
12 **~~(a) Duty to notify court of changed circumstances~~**

13
14 ~~A person whose application to proceed in forma pauperis for an initial fee~~
15 ~~waiver has been granted must promptly notify the court of any changed~~
16 ~~financial circumstances affecting his or her ability to pay court fees and~~
17 ~~costs.~~

18
19 **~~(b) Reconsideration by court~~**

20
21 ~~The court may not reconsider a successful applicant's eligibility to proceed~~
22 ~~in forma pauperis before the final determination of the case except in~~
23 ~~connection with an application for waiver of additional court fees and costs~~
24 ~~under rule 3.62 or in accordance with Government Code section 68511.3(d).~~

25
26 **~~(c) Authorization to determine if condition has changed~~**

27
28 ~~The court may authorize the clerk of the court, the county financial officer,~~
29 ~~or another appropriate county officer to determine whether a successful~~
30 ~~applicant's financial condition has changed, enabling the applicant to pay all~~
31 ~~or a portion of the fees and costs that were waived, in the following manner:~~

- 32
33 ~~(1) The authorized officer must notify the applicant personally or in~~
34 ~~writing that the applicant must complete and file a new application to~~
35 ~~proceed in forma pauperis.~~
36
37 ~~(2) The notice under (1) must be accompanied by a blank application form.~~
38
39 ~~(3) No applicant may be required to submit a new completed application~~
40 ~~more frequently than once every four months.~~
41
42 ~~(4) The authorized clerk or county officer must review the new application.~~
43 ~~If the clerk or officer determines that the applicant's financial condition~~

1 has changed, the court may order the applicant to pay a sum in a
2 manner that the court believes is compatible with the applicant's
3 financial ability.
4

5 *Rule 3.59 repealed effective July 1, 2009; adopted effective January 1, 2007.*
6

7
8 **Rule 3.54 3.60. Confidentiality**

9
10 **(a) Confidential records**

11
12 No person may have access to an application to proceed in forma pauperis
13 for an initial fee waiver except the court and authorized court personnel,
14 ~~persons authorized to verify the information under rules 3.53 and 3.59(c) and~~
15 ~~under Government Code section 68511.3, and any persons~~ authorized by the
16 applicant, and any persons authorized by order of the court. No person may
17 reveal any information contained in the application except as authorized by
18 law or order of the court.

19
20 *(Subd (a) amended and lettered effective July 1, 2009; adopted as unlettered subd effective*
21 *January 1, 2007.)*
22

23 **(b) Request for access to confidential records**

24
25 Any person seeking access to an application or financial information
26 provided to the court by an applicant must make the request by noticed
27 motion, supported by a declaration showing good cause regarding why the
28 confidential information should be released.

29
30 *(Subd (b) adopted July 1, 2009.)*
31

32 **(c) Order**

33
34 An order granting access to an application or financial information may
35 include limitations on who may access the information and on the use of the
36 information after it has been released.

37
38 *(Subd (c) adopted July 1, 2009.)*
39

40 *Rule 3.54 amended and renumbered effective July 1, 2009; adopted as rule 3.60 effective January*
41 *1, 2007; previously amended effective January 1, 2008.*
42
43

1 **Rule ~~3.55~~ 3.61. Court fees and costs included in all initial fee waivers waived**
2 **by initial application**

3
4 Court fees and costs that must be waived upon granting an application to proceed
5 ~~in forma pauperis~~ for an initial fee waiver include:

- 6
7 (1) Clerk's fees for filing papers;
8
9 (2) Clerk's fees for reasonably necessary certification and copying;
10
11 (3) Clerk's fees for issuance of process and certificates;
12
13 (4) Clerk's fees for transmittal of papers;
14
15 (5) Court-appointed interpreter's fees for parties in small claims actions;
16
17 (6) Sheriff's and marshal's fees under article 7 of chapter 2 of part 3 of division
18 2 of title 3 of ~~division 2~~ of the Government Code (commencing with section
19 26720);
20
21 (7) Reporter's daily fees for attendance at hearings and trials held within 60 days
22 of the date of the order granting the application;
23
24 (8) The court fee for a telephone appearance under ~~Government Code section~~
25 68070.1(e) Code of Civil Procedure section 367.5; and
26
27 (9) Clerk's fees for preparing, copying, certifying, and transmitting the clerk's
28 transcript on appeal to the reviewing court and the party. A party proceeding
29 ~~in forma pauperis~~ under an initial fee waiver must specify with particularity
30 the documents to be included in the clerk's transcript on appeal.

31
32 *Rule 3.55 amended and renumbered effective July 1, 2009; adopted as rule 3.61 effective January*
33 *1, 2007; previously amended effective January 1, 2009.*

34
35
36 **Rule ~~3.56~~ 3.62. Additional court fees and costs that may be included in initial**
37 **fee waiver waived**

38
39 Necessary The court fees and costs that may be waived upon granting an
40 application for an initial fee waiver, either at the outset or upon later application,
41 include:

- 42
43 (1) Jury fees and expenses;

- 1
2 (2) Court-appointed interpreter’s fees for witnesses;
3
4 (3) Witness fees of peace officers whose attendance is reasonably necessary for
5 prosecution or defense of the case;
6
7 (4) Reporter’s fees for attendance at hearings and trials held more than 60 days
8 after the date of the order granting the application;
9
10 (5) Witness fees of court-appointed experts; and
11
12 (6) Other fees or expenses as itemized in the application.

13
14 *Rule 3.56 amended and renumbered effective July 1, 2009; adopted as rule 3.62 effective January*
15 *1, 2007.*

16
17
18 **Rule 3.57. Amount of lien for waived fees and costs**

19
20 To determine the amount of the court lien for waived fees and costs, any party to a
21 civil action in which an initial fee waiver has been granted may ask the clerk to
22 calculate the total amount of court fees and costs that have been waived as of the
23 date of the request.

24
25 *Rule 3.57 adopted effective July 1, 2009.*

26
27
28 **Rule 3.58 3.63. Posting notice**

29
30 Each trial court must post in a conspicuous place near the filing window or counter
31 a notice, 8½ by 11 inches or larger, advising litigants in English and Spanish that
32 they may ask the court to waive court fees and costs. The notice must be
33 substantially as follows:

34
35 “NOTICE: If you are unable to pay fees and costs, you may ask the court to permit
36 you to proceed without paying them. Ask the clerk for the *Information Sheet on*
37 *Waiver of Superior Court Fees and Costs* or *Information Sheet on Waiver of Court*
38 *Fees and Costs for Appeal or Writ Proceedings* and the ~~*Application for Waiver of*~~
39 ~~*Request to Waive Court Fees and Costs.*~~”

40
41 *Rule 3.58 amended and renumbered effective July 1, 2009; adopted as rule 3.63 effective January*
42 *1, 2007.*

1 **Rule 5.175. Bifurcation of issues**

2
3 (a) * * *

4
5 (b) **Notice by clerk**

6
7 The clerk must mail copies of the order deciding the bifurcated issue and any
8 statement of decision under rule ~~232.5~~ 3.1591 to the parties within 10 days of
9 their filing and must file a certificate of mailing.

10
11 *(Subd (b) amended effective July 1, 2009; adopted as part of subd (a) effective July 1,*
12 *1989; previously amended effective January 1, 1994; previously amended and lettered*
13 *effective January 1, 2003.)*

14
15 (c) * * *

16
17 *Rule 5.175 amended effective July 1, 2009; adopted as rule 1269 effective July 1, 1989;*
18 *previously amended effective January 1, 1994; previously amended and renumbered effective*
19 *January 1, 2003.*

20
21
22 **Rule 8.26. Waiver of fees and costs**

23
24 (a) **Application form**

25
26 An application for initial waiver of court fees and costs in the Supreme Court
27 or Court of Appeal must be made on *Request to Waive Court Fees* (form
28 FW-001). The clerk must provide *Request to Waive Court Fees* (form FW-
29 001) and the *Information Sheet on Waiver of Fees and Costs (Supreme*
30 *Court, Court of Appeal, or Appellate Division)* (form APP-015/FW-015-
31 INFO) without charge to any person who requests any fee waiver application
32 or states that he or she is unable to pay any court fee or cost.

33
34 (b) **Filing the application**

35
36 (1) *Appeals*

37
38 The appellant should submit any application for initial waiver of court
39 fees and costs for an appeal with the notice of appeal in the superior
40 court that issued the judgment or order being appealed. The respondent
41 should submit any application for initial waiver of the court fees and
42 costs for an appeal at the time the fees are to be paid to the court.

43
44 (2) *Writ Proceedings*

1
2 The petitioner should submit the application for waiver of the court fees
3 and costs for a writ proceeding with the writ petition.

4
5 (3) *Petitions for Review*

6
7 The petitioner should submit the application for waiver of the court fees
8 and costs for a petition for review in the Supreme Court with the
9 petition.

10
11 **(c) Procedure for determining application**

12
13 The application must be considered and determined as required by
14 Government Code section 68634.5. An order from the Supreme Court or
15 Court of Appeal determining the application for initial fee waiver or setting a
16 hearing on the application in the Supreme Court or Court of Appeal may be
17 made on *Order on Court Fee Waiver (Court of Appeal or Supreme Court)*
18 (form APP-016/FW-016.)

19
20 **(d) Application granted unless acted on by the court**

21
22 The application for initial fee waiver is deemed granted unless the court
23 gives notice of action on the application within five court days after the
24 application is filed.

25
26 **(e) Court fees and costs waived**

27
28 Court fees and costs that must be waived on granting an application for
29 initial waiver of court fees and costs in the Supreme Court or Court of
30 Appeal include:

31
32 (1) The fee for filing the notice of appeal under Government Code section
33 68926;

34
35 (2) The fee for filing an original proceeding required under Government
36 Code section 68926;

37
38 (3) The fee for filing a petition for review required by Government Code
39 section 68927; and

40
41 (4) Any court fee for telephonic oral argument.
42

1 **(f) Denial of the application**

2
3 If an application is denied, the applicant must pay the court fees and costs or
4 submit the new application or additional information requested by the court
5 within 10 days after the clerk gives notice of the denial.

6
7 **(g) Confidential Records**

8
9 (1) No person may have access to an application for an initial fee waiver
10 submitted to the court except the court and authorized court personnel,
11 any persons authorized by the applicant, and any persons authorized by
12 order of the court. No person may reveal any information contained in
13 the application except as authorized by law or order of the court. An
14 order granting access to an application or financial information may
15 include limitations on who may access the information and on the use
16 of the information after it has been released.

17
18 (2) Any person seeking access to an application or financial information
19 provided to the court by an applicant must make the request by motion,
20 supported by a declaration showing good cause as to why the
21 confidential information should be released.

22
23 *Rule 8.26 adopted effective July 1, 2009.*

24
25 **Advisory Committee Comment**

26
27 **Subdivision (a).** The waiver of court fees and costs is called an “initial” waiver because, under
28 Government Code section 68630 and following, any such waiver may later be modified,
29 terminated, or retroactively withdrawn if the court determines that the applicant was not or is no
30 longer eligible for a waiver. The court may, at a later time, order that the previously waived fees
31 be paid.

32
33 **Subdivision (b)(1).** If an applicant is requesting waiver of both Court of Appeal fees, such as the
34 fee for filing the notice of appeal, and superior court fees, such as the fee for preparing,
35 certifying, copying, and transmitting the clerk’s transcript, the clerk of the superior court may ask
36 the applicant to provide two signed copies of *Request to Waive Court Fees* (form FW-001).

37
38 **Subdivision (e).** The parties in an appeal may also ask the superior court to waive the deposit
39 required under Government Code section 68926.1 and the fees under rule 8.122 for preparing,
40 certifying, copying, and transmitting the clerk’s transcript to the reviewing court and to the
41 requesting party.

42
43
44 **Rule 8.100. Filing the appeal**

1 (a) * * *

2
3 (b) **Fee and deposit**

- 4
5 (1) Unless otherwise provided by law, the notice of appeal must be
6 accompanied by a \$655 filing fee under Government Code sections
7 68926 and 68926.1(b), an application for a waiver of court fees and
8 costs on appeal under rules ~~3.50–3.63~~ 8.26, or an order granting such
9 an application. The fee should be paid by check or money order
10 payable to “Clerk, Court of Appeal”; if the fee is paid in cash, the clerk
11 must give a receipt.
12
13 (2) The appellant must also deposit \$100 with the superior court clerk
14 under Government Code section 68926.1, unless otherwise provided by
15 law or the superior court waives the deposit ~~under rules 3.50–3.63~~.
16
17 (3) The clerk must file the notice of appeal even if the appellant does not
18 present the filing fee, the deposit, or an application for, or order
19 granting, a waiver ~~under rules 3.50–3.63~~ of fees and costs.

20
21 *(Subd (b) amended effective July 1, 2009; previously amended effective August 17, 2003,*
22 *and January 1, 2007.)*

23
24 (c) **Failure to pay filing fee**

- 25
26 (1) The reviewing court clerk must promptly notify the appellant in writing
27 if:
28
29 (A) The reviewing court receives a notice of appeal without the filing
30 fee required by (b)(1), a certificate of cash payment under (e)(5),
31 or an application for, or order granting, a fee waiver under rules
32 ~~3.50–3.63~~ 8.26;
33
34 (B) * * *
35
36 (C) An application for a waiver under rules ~~3.50–3.63~~ 8.26 is denied.
37
38 (2) A clerk’s notice under (1)(A) or (B) must state that the court may
39 dismiss the appeal unless, within 15 days after the notice is sent, the
40 appellant either:
41
42 (A) * * *

1 (B) Files an application for a waiver under rules ~~3.50–3.63~~ 8.26 if the
2 appellant has not previously filed such an application.

3
4 (3) * * *

5
6 *(Subd (c) amended effective July 1, 2009; previously amended effective January 1, 2007,*
7 *and January 1, 2008.)*

8
9 **(d) Failure to pay deposit**

10
11 (1) If the appellant fails to pay the deposit to the superior court required
12 under (b)(2), the superior court clerk must promptly notify the appellant
13 in writing that the reviewing court may dismiss the appeal unless,
14 within 15 days after the notice is sent, the appellant either:

15
16 (A) * * *

17
18 (B) Files an application in the superior court for a waiver ~~under rules~~
19 3.50–3.63 of fees and costs if the appellant has not previously
20 filed such an application or an order granting such an application.

21
22 (2)–(3) * * *

23
24 *(Subd (d) amended effective July 1, 2009; adopted effective January 1, 2008.)*

25
26 **(e)–(g) * * ***

27
28 *Rule 8.100 amended effective July 1, 2009; repealed and adopted as rule 1 effective January 1,*
29 *2002; previously amended effective January 1, 2003, August 17, 2003, and January 1, 2008;*
30 *previously amended and renumbered effective January 1, 2007.*

31
32 **Advisory Committee Comment**

33
34 **Subdivision (a).** * * *

35
36 **Subdivision (b).** * * *

37
38 **Subdivision (c)(2).** This subdivision addresses the content of a clerk’s notice that a check for the
39 filing fee has been dishonored or that the reviewing court has received a notice of appeal without
40 the filing fee, a certificate of cash payment, or an application for, or order granting, a fee waiver.
41 Rule 8.26(f) addresses what an appellant must do when a fee waiver application is denied.

42
43 **Subdivision (e).** * * *

1 **Rule 8.122. Clerk’s transcript**

2
3 (a)–(b) * * *

4
5 (c) **Deposit for cost of transcript**

6
7 (1)–(2) * * *

8
9 (3) Within 10 days after the clerk sends a notice under (1), the appellant
10 and any party wanting to purchase a copy of the clerk’s transcript must
11 deposit the estimated cost with the clerk, unless otherwise provided by
12 law or the party submits an application for, or an order granting, a
13 waiver of the cost ~~under rules 3.50–3.63.~~

14
15 *(Subd (c) amended effective July 1, 2009; previously amended effective January 1, 2007,*
16 *and January 1, 2008.)*

17
18 (d) * * *

19
20 *Rule 8.122 amended effective July 1, 2009; repealed and adopted as rule 5 effective January 1,*
21 *2002; previously amended effective January 1, 2003, and January 1, 2005; previously amended*
22 *and renumbered as rule 8.120 effective January 1, 2007, and as rule 8.122 effective January 1,*
23 *2008.*

24
25 **Advisory Committee Comment**

26
27 **Subdivision (a).** * * *

28
29 **Subdivision (b).** * * *

30
31 **Subdivision (c).** Under subdivision (c)(2), a clerk who sends a notice under subdivision (c)(1)
32 must include a certificate stating the date on which the clerk sent it. This provision is intended to
33 establish the date when the 10-day period for depositing the cost of the clerk’s transcript under
34 this rule begins to run.

35
36 The Superior Court will make the determination on any application to waive the fees for
37 preparing, certifying, copying, and transmitting the clerk’s transcript.

38
39
40 **Rule 8.128. Superior court file instead of clerk’s transcript**

41
42 (a) * * *

43
44 (b) **Cost estimate; preparation of file; transmittal**

1 (1) Within 10 days after a stipulation under (a) is filed, the superior court
2 clerk must mail the appellant an estimate of the cost to prepare the file,
3 including the cost of sending the index under (3). The appellant must
4 deposit the cost or file an application for, or an order granting, a waiver
5 of the cost within 10 days after the clerk mails the estimate.

6
7 (2) Within 10 days after the appellant deposits the cost or the court files an
8 order waiving that cost, the superior court clerk must put the superior
9 court file in chronological order, number the pages, and attach a
10 chronological index and a list of all attorneys of record, the parties they
11 represent, and any unrepresented parties.

12
13 (3) * * *

14
15 (4) * * *

16
17 *(Subd (b) amended effective July 1, 2009.)*

18
19 *Rule 8.128 amended effective July 1, 2009; repealed and adopted as rule 5.2 effective January 1,*
20 *2002; previously amended and renumbered effective January 1, 2007; previously amended*
21 *effective January 1, 2008.*

22
23
24 **Advisory Committee Comment**

25
26 **Subdivision (b).** The Superior Court will make the determination on any application to waive the
27 fees for preparing and transmitting the trial court file.

28
29
30 **Rule 8.486. Petitions**

31
32 (a) * * *

33
34 (b) **Contents of supporting documents**

35
36 (1)–(2) * * *

37
38 (3) If a transcript under (1)(D) is unavailable, the record must include a
39 declaration by counsel or, if the petitioner is unrepresented, the
40 petitioner:

41
42 (A) Explaining why the transcript is unavailable and fairly
43 summarizing the proceedings, including the petitioner's parties'
44 arguments and any statement by the court supporting its ruling.

1 This declaration may omit a full summary of the proceedings if
2 part of the relief sought is an order to prepare a transcript for use
3 by an indigent criminal defendant in support of the petition and if
4 the declaration demonstrates the petitioner's need for and
5 entitlement to the transcript; or
6

7 (B) * * *

8
9 (4) * * *

10
11 *(Subd (b) amended effective July 1, 2009; adopted as subd (c) effective January 1, 2005;*
12 *previously amended effective January 1, 2006, July 1, 2006, January 1, 2007; previously*
13 *amended and relettered effective January 1, 2009.)*
14

15 (c)–(e) * * *

16
17 *Rule 8.486 amended effective July 1, 2009; repealed and adopted as rule 56 effective January 1,*
18 *2005; previously amended and renumbered as rule 8.490 effective January 1, 2007, and as rule*
19 *8.486 effective January 1, 2009; previously amended effective July 1, 2005, January 1, 2006, July*
20 *1, 2006, and January 1, 2008.*
21
22

23 **Rule 8.818. Waiver of fees and costs**

24 (a) **Applications for waiver of fees and costs**

25 (1) Appeals

26
27
28
29 (A) If the trial court previously issued an order granting a party's
30 request to waive court fees and costs in a case, and that fee waiver
31 is still in effect, all of the court fees for an appeal to the appellate
32 division in that case that are listed in (d) are waived by that order,
33 and the party is not required to file a new application for waiver
34 of court fees and costs for an appeal to the appellate division in
35 that case.
36

37 (B) If the trial court did not previously issue an order granting a
38 party's request to waive court fees and costs in a case or an order
39 that was previously issued is no longer in effect, an application
40 for initial waiver of court fees and costs for an appeal must be
41 made on *Request to Waive Court Fees* (form FW-001). The
42 appellant should file the application with the notice of appeal in
43 the trial court that issued the judgment or order being appealed.

1 The respondent should file any application at the time the fees are
2 to be paid to the court.

3
4 (2) Writ Proceedings

5
6 To request the waiver of fees and costs in a writ proceeding, the
7 petitioner must complete *Request to Waive Court Fees* (form FW-001).
8 The petitioner should file the application with the writ petition.

9
10 (3) Forms

11
12 The clerk must provide *Request to Waive Court Fees* (form FW-001)
13 and *Information Sheet on Waiver of Fees and Costs (Supreme Court,*
14 *Court of Appeal, Appellate Division)* (form APP-015/FW-015-INFO)
15 without charge to any person who requests any fee waiver application
16 or states that he or she is unable to pay any court fee or cost.

17
18 **(b) Procedure for determining application**

19
20 The application must be considered and determined as required by
21 Government Code section 68634.5. An order determining the application for
22 initial fee waiver or setting a hearing on the application may be made on
23 *Order on Court Fee Waiver (Superior Court)* (form FW-003).

24
25 **(c) Application granted unless acted on by the court**

26
27 The application for initial fee waiver is deemed granted unless the court
28 gives notice of action on the application within five court days after the
29 application is filed.

30
31 **(d) Court fees and costs waived**

32
33 Court fees and costs that must be waived upon granting an application for
34 initial waiver of court fees and costs include:

- 35
36 (1) The fee for filing the notice of appeal;
37
38 (2) The clerk's fees for preparing and certifying the clerk's transcript on
39 appeal and for copying and transmitting a copy of this transcript to the
40 applicant;
41
42 (3) The fee for preparing a transcript of an official electronic recording
43 under rule 8.835 or a copy of such an electronic recording; and

1 70621, an application for a waiver of court fees and costs on appeal
2 under ~~rules 3.50–3.63~~ rule 8.818, or an order granting ~~such an~~
3 application for a waiver of court fees and costs. The filing fee is
4 nonrefundable.

- 5
6 (2) The clerk must file the notice of appeal even if the appellant does not
7 present the filing fee or an application for, or order granting, a waiver
8 ~~under rules 3.50–3.63~~ of court fees and costs.

9
10 *(Subd (b) amended effective July 1, 2009.)*

11
12 **(c) Failure to pay filing fee**

- 13
14 (1) The clerk must promptly notify the appellant in writing if:
15
16 (A) The court receives a notice of appeal without the filing fee
17 required by (b) or an application for, or order granting, a fee
18 waiver ~~under rules 3.50–3.63~~ of court fees and costs;
19
20 (B) * * *
21
22 (C) An application for a waiver under ~~rules 3.50–3.63~~ rule 8.818 is
23 denied.

- 24
25 (2) A clerk’s notice under (1)(A) or (B) must state that the court may
26 dismiss the appeal unless, within 15 days after the notice is sent, the
27 appellant either:

- 28
29 (A) * * *
30
31 (B) Files an application for a waiver under ~~rules 3.50–3.63~~ rule 8.818
32 if the appellant has not previously filed such an application or an
33 order granting such an application.

- 34
35 (3) * * *

36
37 *(Subd (c) amended effective July 1, 2009.)*

38
39 **(d)–(e) * * ***

40
41 *Rule 8.821 amended effective July 1, 2009; adopted effective January 1, 2009.*

42
43 **Advisory Committee Comment**

1
2 **Subdivision (a).** * * *

3
4 **Subdivision (b).** * * *

5
6 **Subdivision (c)(2).** This subdivision addresses the content of a clerk’s notice that a check for the
7 filing fee has been dishonored or that the reviewing court has received a notice of appeal without
8 the filing fee, a certificate of cash payment, or an application for, or order granting, a fee waiver.
9 Rule 8.818(e) addresses what an appellant must do when a fee waiver application is denied.

10
11
12 **Rule 8.832. Clerk’s transcript**

13
14 **(a)–(b)** * * *

15
16 **(c) Deposit for cost of clerk’s transcript**

17
18 (1)–(2) * * *

19
20 (3) Within 10 days after the clerk sends a notice under (1), the appellant
21 and any party wanting to purchase a copy of the clerk’s transcript must
22 deposit the estimated cost with the clerk, unless otherwise provided by
23 law or the party submits an application for a waiver of the cost under
24 rule 8.818; or an order granting; a waiver of ~~the this~~ cost under rules
25 3.50–3.63.

26
27 *(Subd (c) amended effective July 1, 2009.)*

28
29 **(d)** * * *

30
31 *Rule 8.832 amended effective July 1, 2009; adopted effective January 1, 2009.*

32
33
34 **Rule 8.833. Trial court file instead of clerk’s transcript**

35
36 **(a)** * * *

37
38 **(b) Cost estimate; preparation of file; transmittal**

39
40 (1) * * *

41
42 (2) Within 10 days after the clerk mails the estimate under (1), the
43 appellant must deposit the estimated cost with the clerk, unless
44 otherwise provided by law or the party submits an application for a

1 waiver of the cost under rule 8.818, or an order granting, a waiver of
2 the this cost ~~under rules 3.50–3.63.~~

3
4 (3)–(5) * * *

5
6 *(Subd (b) amended effective July 1, 2009.)*

7
8 *Rule 8.833 amended effective July 1, 2009; adopted effective January 1, 2009.*

9
10
11 **Rule 8.860. Normal record on appeal**

12
13 (a) * * *

14
15 (b) **Stipulation for limited record**

16
17 If, before the record is certified, the appellant ~~or counsel for the appellant and~~
18 ~~the People and the respondent~~ stipulate in writing that any part of the record
19 is not required for proper determination of the appeal and file that stipulation
20 in the trial court, that part of the record must not be prepared or sent to the
21 appellate division.

22
23 *(Subd (b) amended effective July 1, 2009.)*

24
25 *Rule 8.860 amended effective July 1, 2009; adopted effective January 1, 2009.*

26
27
28 **Rule 8.862. Preparation of clerk’s transcript**

29
30 (a)–(b) * * *

31
32 (c) **When preparation must be completed**

33
34 Within 20 days after the notice of appeal is filed, the clerk must complete
35 preparation of an original clerk’s transcript for the appellate division, one
36 copy for the appellant, and one copy for the ~~prosecuting attorney~~ respondent.
37 If there is more than one appellant, the clerk must prepare an extra copy for
38 each additional appellant who is represented by separate counsel or self-
39 represented.

40
41 *(Subd (c) amended effective July 1, 2009.)*

42
43 (d) * * *

1 *Rule 8.862 amended effective July 1, 2009; adopted effective January 1, 2009.*

2
3
4 **Rule 8.863. Trial court file instead of clerk’s transcript**

5
6 **(a)–(b) * * ***

7
8 **(c) Copies**

9
10 The clerk must send a copy of the index to the appellant and the ~~prosecuting~~
11 ~~attorney~~ respondent for use in paginating their copies of the file to conform
12 to the index. If there is more than one appellant, the clerk must prepare an
13 extra copy of the index for each additional appellant who is represented by
14 separate counsel or self-represented.

15
16 *(Subd (c) amended effective July 1, 2009.)*

17
18 *Rule 8.863 amended effective July 1, 2009; adopted effective January 1, 2009.*

19
20
21 **Rule 8.869. Statement on appeal**

22
23 **(a)–(b) * * ***

24
25 **(c) Contents of the proposed statement on appeal**

26
27 A proposed statement prepared by the appellant must contain:

28
29 (1) A condensed narrative of the oral proceedings that the appellant
30 believes necessary for the appeal and a summary of the trial court’s
31 holding and the sentence imposed on the ~~appellant~~ defendant. Subject
32 to the court’s approval, the appellant may present some or all of the
33 evidence by question and answer; and

34
35 (2) * * *

36
37 *(Subd (c) amended effective July 1, 2009.)*

38
39 **(d)–(g) * * ***

40
41 *Rule 8.869 amended effective July 1, 2009; adopted effective January 1, 2009.*

1 **Rule 8.916. Statement on appeal**

2
3 (a)–(b) * * *

4
5 (c) **Contents of the proposed statement on appeal**

6
7 A proposed statement prepared by the appellant must contain:

8
9 (1) A condensed narrative of the oral proceedings that the appellant
10 believes necessary for the appeal and a summary of the trial court’s
11 holding and the sentence imposed on the ~~appellant~~ defendant. Subject
12 to the court's approval, the appellant may present some or all of the
13 evidence by question and answer; and

14
15 (2) * * *

16
17 *(Subd (c) amended effective July 1, 2009.)*

18
19 (d)–(g) * * *

20
21 *Rule 8.916 amended effective July 1, 2009; adopted effective January 1, 2009.*

22
23
24 **Rule 8.1010. Record on transfer**

25
26 (a) **Contents**

27
28 The record on transfer must contain:

29
30 (1) The original record on appeal prepared under rules ~~8.753–8.761 in a~~
31 ~~limited civil case or under rules 8.783–8.785 in a criminal case~~ 8.830–
32 8.843, 8.860–8.873, or 8.910–8.923;

33
34 (2)–(3) * * *

35
36 *(Subd (a) amended effective July 1, 2009; previously amended effective January 1, 2007.)*

37
38 (b) **Clerks’ duties**

39
40 (1) The superior court clerk must promptly send the record on transfer to
41 the Court of Appeal and notify the parties that the record was sent
42 when:

1 (A) * * *

2
3 (B) The superior court clerk sends a copy of an appellate division
4 opinion certified for publication to the Court of Appeal under rule
5 ~~8.707~~ 8.887;

6
7 (C)–(D) * * *

8
9 (2) * * *

10
11 *(Subd (b) amended effective July 1, 2009; previously amended effective January 1, 2007.)*

12
13 *Rule 8.1010 amended effective July 1, 2009; repealed and adopted as rule 65 effective January 1,*
14 *2003; previously amended and renumbered effective January 1, 2007.*

15
16
17 **Rule 8.1105. Publication of appellate opinions**

18
19 (a)–(e) * * *

20
21 (f) **Editing**

22
23 (1) Computer versions of all opinions of the Supreme Court and Courts of
24 Appeal must be provided to the Reporter of Decisions on the day of
25 filing. Opinions of superior court appellate divisions certified for
26 publication must be provided as prescribed in rule ~~8.707~~ 8.887.

27
28 (2) * * *

29
30 *(Subd (f) amended effective July 1, 2009; adopted as subd (e) effective January 1, 2005;*
31 *previously amended effective January 1, 2007; previously relettered effective April 1,*
32 *2007.)*

33
34 *Rule 8.1105 amended effective July 1, 2009; repealed and adopted as rule 976 effective January*
35 *1, 2005; previously amended and renumbered effective January 1, 2007; previously amended*
36 *effective April 1, 2007, and July 23, 2008.*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

Title 3. Civil Rules
Division 8. Alternative Dispute Resolution
Chapter 3. General Rules Relating to Mediation of Civil Cases

22
23
24
25
26
27
28
29
30
31

Article 3. Requirements for Addressing Complaints About Court-Program Mediators

32
33
34
35

Rule 3.865. Application and purpose

Rule 3.866. Definitions

Rule 3.867. Complaint coordinator

Rule 3.868. Complaint procedure required

Rule 3.869. General requirements for complaint procedures and complaint proceedings

Rule 3.870. Permissible court actions on complaints

Rule 3.871. Confidentiality of complaint proceedings, information, and records

Rule 3.872. Disqualification from subsequently serving as an adjudicator

36
37
38
39
40
41
42
43
44
45

Rule 3.865. Application and purpose

The rules in this article apply to each superior court that makes a list of mediators available to litigants in general civil cases or that recommends, selects, appoints, or compensates a mediator to mediate any general civil case pending in that court. These rules are intended to promote the resolution of complaints that mediators in court-connected mediation programs for civil cases may have violated a provision of the rules of conduct for such mediators in article 2. They are intended to help courts promptly resolve any such complaints in a manner that is respectful and fair to the complainant and the mediator and consistent with the California mediation confidentiality statutes.

Rule 3.865 adopted effective July 1, 2009, effective date extended to January 1, 2010.

Advisory Committee Comment

As used in this article, complaint means a written communication presented to a court's complaint coordinator indicating that a mediator may have violated a provision of the rules of conduct for mediators in article 2.

Complaints about mediators are relatively rare. To ensure the quality of court mediation panels and public confidence in the mediation process and the courts, it is, nevertheless, important to ensure that any complaints that do arise are resolved through procedures that are consistent with California mediation confidentiality statutes (Evid. Code, §§ 703.5 and 1115 et seq.), as well as fair and respectful to the interested parties.

1 The requirements and procedures in this article do not abrogate or limit a court’s inherent or other
2 authority, in its sole and absolute discretion, to determine who may be included on or removed
3 from a court list of mediators; to approve or revoke a mediator’s eligibility to be recommended,
4 selected, appointed, or compensated by the court; or to follow other procedures or take other
5 actions to ensure the quality of mediators who serve in the court’s mediation program in contexts
6 other than when addressing a complaint. The failure to follow a requirement or procedure in this
7 article will not invalidate any action taken by the court in addressing a complaint.
8
9

10 **Rule 3.866. Definitions**

11
12 As used in this article, unless the context or subject matter requires otherwise:
13

- 14 (1) “The rules of conduct” means rules 3.850–3.860 of the California Rules of
15 Court in article 2.
16
- 17 (2) “Court-program mediator” means a person subject to the rules of conduct
18 under rule 3.851.
19
- 20 (3) “Inquiry” means an unwritten communication presented to the court’s
21 complaint coordinator indicating that a mediator may have violated a
22 provision of the rules of conduct.
23
- 24 (4) “Complaint” means a written communication presented to the court’s
25 complaint coordinator indicating that a mediator may have violated a
26 provision of the rules of conduct.
27
- 28 (5) “Complainant” means the person who makes or presents a complaint.
29
- 30 (6) “Complaint coordinator” means the person designated by the presiding judge
31 under rule 3.867(a) to receive complaints and inquiries about the conduct of
32 mediators.
33
- 34 (7) “Complaint committee” means a committee designated or appointed to
35 investigate and make recommendations concerning complaints under rule
36 3.869(d)(2).
37
- 38 (8) “Complaint procedure” means a procedure for presenting, receiving,
39 reviewing, responding to, investigating, and acting on any inquiry or
40 complaint.
41
- 42 (9) “Complaint proceeding” means all of the proceedings that take place as part
43 of a complaint procedure concerning a specific inquiry or complaint.
44

1 (10) “Mediation communication” means any statement that is made or any
2 writing that is prepared for the purpose of, in the course of, or pursuant to a
3 mediation or a mediation consultation, as defined in Evidence Code section
4 1115, and includes any communications, negotiations, and settlement
5 discussions between participants in the course of a mediation or a mediation
6 consultation.

7
8 *Rule 3.866 adopted effective July 1, 2009, effective date extended to January 1, 2010.*

9
10 **Advisory Committee Comment**

11
12 **Paragraph (2).** Under rule 3.851, the rules of conduct apply when a mediator, or a firm with
13 which a mediator is affiliated, has agreed to be included on a superior court’s list or panel of
14 mediators for general civil cases and is notified by the court or the parties that he or she has been
15 selected to mediate a case within that court’s mediation program or when a mediator has agreed
16 to mediate a general civil case after being notified that he or she was recommended, selected, or
17 appointed by a court, or will be compensated by a court, to mediate a case within a court’s
18 mediation program.

19
20 **Paragraphs (3) and (4).** The distinction between “inquiries” and “complaints” is significant
21 because some provisions of this article apply only to complaints (i.e., written communications
22 presented to the court’s complaint coordinator indicating that a mediator may have violated a
23 provision of the rules of conduct) and not to inquiries.

24
25
26 **Rule 3.867. Complaint coordinator**

27
28 **(a) Designation of the complaint coordinator**

29
30 The presiding judge must designate a person who is knowledgeable about
31 mediation to serve as the complaint coordinator.

32
33 *(Subd (a) amended and lettered effective July 1, 2009, effective date extended to January 1,*
34 *2010; adopted as unlettered subd effective January 1, 2006.)*

35
36 **(b) Identification of the complaint coordinator**

37
38 The court must make the complaint coordinator’s identity and contact
39 information readily accessible to litigants and the public.

40
41 *(Subd (b) adopted effective July 1, 2009, effective date extended to January 1, 2010.)*

42
43 *Rule 3.867 amended and renumbered effective July 1, 2009, effective date extended to January 1,*
44 *2010; adopted as rule 1622.1 effective January 1, 2006; previously amended and renumbered as*
45 *rule 3.866 effective January 1, 2007.*

1
2 **Advisory Committee Comment**
3

4 The alternative dispute resolution program administrator appointed under rule 10.783(a) may also
5 be appointed as the complaint coordinator if that person is knowledgeable about mediation.
6

7
8 **Rule 3.868. Complaint procedure required**
9

10 Each court to which this article applies under rule 3.865 must establish a
11 complaint procedure by local rule of court that is consistent with this article.
12

13 *(Subd amended and unlettered effective July 1, 2009, effective date extended to January 1,*
14 *2010; adopted as subd (a) effective January 1, 2003; previously amended effective January*
15 *1, 2006, and January 1, 2007.)*
16

17 *Rule 3.868 amended and renumbered effective July 1, 2009, effective date extended to January 1,*
18 *2010; adopted as rule 1622 effective January 1, 2003; previously amended effective January 1,*
19 *2006; previously amended and renumbered as rule 3.865 effective January 1, 2007.*
20

21
22 **Rule 3.869. General requirements for complaint procedures and complaint**
23 **proceedings**
24

25 **(a) Submission and referral of inquiries and complaints to the complaint**
26 **coordinator**
27

28 All inquiries and complaints should be submitted or referred to the complaint
29 coordinator.
30

31 **(b) Acknowledgment of complaint**
32

33 The complaint coordinator must send the complainant a written
34 acknowledgment that the court has received the complaint.
35

36 **(c) Preliminary review and disposition of complaints**
37

38 The complaint coordinator must conduct a preliminary review of all
39 complaints to determine whether the complaint can be informally resolved or
40 closed, or whether the complaint warrants investigation.
41

42 **(d) Procedure for complaints not resolved through the preliminary review**
43

44 The following procedures are required only if a complaint is not resolved or
45 closed through the preliminary review.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43

(1) *Mediator's notice and opportunity to respond*

The mediator must be given notice of the complaint and an opportunity to respond.

(2) *Investigation and recommendation*

(A) Except as provided in (B), the complaint must be investigated and a recommendation concerning court action on the complaint must be made by either an individual who has experience as a mediator and who is familiar with the rules of conduct stated in article 2 or a complaint committee that has at least one such individual as a member.

(B) A court with eight or fewer authorized judges may waive the requirement in (A) for participation by an individual who has experience as a mediator in conducting the investigation and making the recommendation if the court cannot find a suitable qualified individual to perform the functions described in (A) or for other grounds of hardship.

(3) *Final decision*

The final decision on the complaint must be made by the presiding judge or his or her designee, who must not be the complaint coordinator or an individual who investigated the complaint before its submission for final decision.

(e) Notice of final action

(1) The court must send the complainant notice of the final action taken by the court on the complaint.

(2) If the complaint was not closed during the preliminary review, the court must send notice of the final action to the mediator.

(f) Promptness

The court must process complaints promptly at all stages.

(g) Records of complaints

1 The court should maintain sufficient information about each complaint and
2 its disposition to identify any history or patterns of complaints submitted
3 under these rules.

4
5 *Rule 3.869 adopted effective July 1, 2009, effective date extended to January 1, 2010.*

6
7 **Advisory Committee Comment**

8
9 The Administrative Office of the Courts has developed model local rules that satisfy the
10 requirements of this rule. These model local rules were developed with input from judicial
11 officers, court administrators, alternative dispute resolution (ADR) program administrators, court-
12 program mediators, and public commentators and are designed so that they can be readily adapted
13 to the circumstances of individual courts and specific complaints. Courts are encouraged to adopt
14 rules that follow the model rules, to the extent feasible. Courts can obtain copies of these model
15 rules from civil ADR program staff at the Administrative Office of the Courts.

16
17 **Subdivision (a).** Coordination of inquiries and complaints by a person knowledgeable about
18 mediation is important to help ensure that the requirements of this article are followed and that
19 mediation confidentiality is preserved.

20
21 **Subdivision (c).** Courts are encouraged to resolve inquiries and complaints about mediators using
22 the simplest, least formal procedures that are appropriate under the circumstances, provided that
23 they meet the requirements stated in this article.

24
25 Most complaints can be appropriately resolved during the preliminary review stage of the
26 complaint process, through informal discussions between or among the complaint coordinator,
27 the complainant, and the mediator. Although complaint coordinators are not required to
28 communicate with the mediator during the preliminary review, they are encouraged to consider
29 doing so. For example, some complaints may arise from a misunderstanding of the mediator's
30 role or from behavior that would not violate the standards of conduct. These types of complaints
31 might appropriately be addressed by providing the complainant with additional information or by
32 informing the mediator that certain behavior was upsetting to a mediation participant.

33
34 The circumstances under which a complaint coordinator might informally resolve or close a
35 complaint include, for example, when (1) the complaint is withdrawn; (2) no violation of the rules
36 of conduct appears to have occurred; (3) the alleged violation of the rules of conduct is very
37 minor and the mediator has provided an acceptable explanation or response; and (4) the
38 complainant, the mediator, and the complaint coordinator have agreed on a resolution. In
39 determining whether to close a complaint, the complaint coordinator might also consider whether
40 there are or have been other complaints about the mediator.

41
42 **Subdivision (d).** At the investigation and recommendation stage, all courts are encouraged to
43 consider using a complaint committee comprised of members with a variety of backgrounds,
44 including at least one person with experience as a mediator, to investigate and make
45 recommendations concerning those rare complaints that are not resolved during the preliminary
46 review.

47
48 Courts are also encouraged to have a judicial officer who is knowledgeable about mediation, or a
49 committee that includes another person who is knowledgeable about mediation, make the final
50 decision on complaints that are not resolved through the preliminary review.

1
2
3 **Rule 3.870. Permissible court actions on complaints**
4

5 After an investigation has been conducted, the presiding judge or his or her
6 designee may do one or more of the following:

- 7
8 (1) Direct that no action be taken on the complaint;
9
10 (2) Counsel, admonish, or reprimand the mediator;
11
12 (3) Impose additional training requirements as a condition of the mediator
13 remaining on the court’s panel or list;
14
15 (4) Suspend the mediator from the court’s panel or list or otherwise temporarily
16 prohibit the mediator from receiving future mediation referrals from the
17 court; or
18
19 (5) Remove the mediator from the court’s panel or list or otherwise prohibit the
20 mediator from receiving future mediation referrals from the court.
21

22 *Rule 3.870 adopted effective July 1, 2009, effective date extended to January 1, 2010.*
23

24 **Advisory Committee Comment**
25

26 This rule does not abrogate or limit any existing legal right or duty of the court to take other
27 actions, including interim suspension of a mediator pending final action by the court on a
28 complaint.
29

30
31 **Rule 3.871. Confidentiality of complaint proceedings, information, and**
32 **records**
33

34 **(a) Intent**
35

36 This rule is intended to:
37

- 38 (1) Preserve the confidentiality of mediation communications as required
39 by Evidence Code sections 1115–1128;
40
41 (2) Promote cooperation in the reporting, investigation, and resolution of
42 complaints about court-program mediators; and
43

1 (3) Protect mediators against damage to their reputations that might result
2 from the disclosure of unfounded complaints against them.

3
4 *(Subd (a) amended effective July 1, 2009, effective date extended to January 1, 2010;*
5 *previously amended effective January 1, 2007.)*
6

7 **(b) Preserving the confidentiality of mediation communications**
8

9 All complaint procedures and complaint proceedings must be designed and
10 conducted in a manner that preserves the confidentiality of mediation
11 communications, including but not limited to the confidentiality of any
12 communications between the mediator and individual mediation participants
13 or subgroups of mediation participants.

14
15 *(Subd (b) amended effective July 1, 2009, effective date extended to January 1, 2010.)*
16

17 **(c) Confidentiality of complaint proceedings**
18

19 All complaint proceedings must occur in private and must be kept
20 confidential. No information or records concerning the receipt, investigation,
21 or resolution of an inquiry or a complaint may be open to the public or
22 disclosed outside the course of the complaint proceeding except as provided
23 in (d) or as otherwise required by law.

24
25 *(Subd (c) amended effective July 1, 2009, effective date extended to January 1, 2010;*
26 *previously amended effective January 1, 2007.)*
27

28 **(d) Authorized disclosures**
29

30 After the decision on a complaint, the presiding judge, or a person whom the
31 presiding judge designates to do so, may authorize the public disclosure of
32 information or records concerning the complaint proceeding that do not
33 reveal any mediation communications. The disclosures that may be
34 authorized under this subdivision include the name of a mediator against
35 whom action has been taken under rule 3.870, the action taken, and the
36 general basis on which the action was taken. In determining whether to
37 authorize the disclosure of information or records under this subdivision, the
38 presiding judge or the designee should consider the purposes of the
39 confidentiality of complaint proceedings stated in (a)(2) and (a)(3).

40
41 *(Subd (d) amended effective July 1, 2009, effective date extended to January 1, 2010;*
42 *previously amended effective January 1, 2007.)*
43

1 (e) **Disclosures required by law**

2
3 In determining whether the disclosure of information or records concerning a
4 complaint proceeding is required by law, courts should consider the purposes
5 of the confidentiality of complaint proceedings stated in (a). If it appears that
6 the disclosure of information or records concerning a complaint proceeding
7 that would reveal mediation communications is required by law, before the
8 information or records are disclosed, notice should be given to any person
9 whose mediation communications may thereby be revealed.

10
11 *(Subd (e) amended effective July 1, 2009, effective date extended to January 1, 2010;*
12 *previously amended effective January 1, 2007.)*

13
14 *Rule 3.871 amended and renumbered effective July 1, 2009, effective date extended to January 1,*
15 *2010; adopted as rule 1622.2 effective January 1, 2006; previously amended and renumbered as*
16 *rule 3.867 effective January 1, 2007.*

17
18 **Advisory Committee Comment**

19
20 Under rule 3.866(9), the complaint proceedings covered by this rule include proceedings to
21 address inquiries as well as complaints (i.e., to unwritten as well as written communications
22 indicating that a mediator may have violated a provision of the rules of conduct).

23
24 **Subdivision (a).** See Evidence Code sections 1115 and 1119 concerning the scope and types of
25 mediation communications protected by mediation confidentiality. Rule 3.871 is intended to
26 supplement the confidentiality of mediation communications established by the Evidence Code
27 by ensuring that disclosure of information or records about a complaint proceeding does not
28 reveal confidential mediation communications. Rule 3.871 is not intended to supersede or
29 abrogate the confidentiality of mediation communications established by the Evidence Code.

30
31 **Subdivision (b).** Private meetings, or “caucuses,” between a mediator and subgroups of
32 participants are common in court-connected mediations, and it is frequently understood that these
33 communications will not be disclosed to other participants in the mediation. (See Cal. Rules of
34 Court, rule 3.854(c).) It is important to protect the confidentiality of these communications in
35 complaint proceedings so that one participant in the mediation does not learn what another
36 participant discussed in confidence with the mediator without the consent of the participants in
37 the caucus communication.

38
39 **Subdivisions (c)–(e).** The provisions of (c)–(e) that authorize the disclosure of information and
40 records related to complaint proceedings do not create any new exceptions to mediation
41 confidentiality. Although public disclosure of information and records about complaint
42 proceedings that do not reveal mediation communications may be authorized under (d),
43 information and records that *would* reveal mediation communications may be publicly disclosed
44 only as required by law (e.g., in response to a subpoena or court order) and consistent with the
45 statutes and case law governing mediation confidentiality. A person who is knowledgeable about
46 California’s mediation confidentiality laws should determine whether the disclosure of mediation
47 communications is required by law.

1 Evidence Code sections 915 and 1040 establish procedures and criteria for deciding whether
2 information acquired in confidence by a public employee in the course of his or her duty is
3 subject to disclosure. These sections may be applicable or helpful in determining whether the
4 disclosure of information or records acquired by judicial officers, court staff, and other persons in
5 the course of a complaint proceeding is required by law or should be authorized in the discretion
6 of the presiding judge.

7
8
9 **Rule 3.872. Disqualification from subsequently serving as an adjudicator**

10
11 A person who has participated in a complaint proceeding or otherwise received
12 information about the substance of a complaint, other than information that is
13 publicly disclosed under rule 3.871(d), must not subsequently hear or determine
14 any contested issue of law, fact, or procedure concerning the dispute that was the
15 subject of the underlying mediation or any other dispute that arises from the
16 mediation as a judge, an arbitrator, a referee, or a juror, or in any other
17 adjudicative capacity, in any court action or proceeding.

18
19 *Rule 3.872 amended and renumbered effective July 1, 2009, effective date extended to January 1,*
20 *2010; adopted as rule 1622.3 effective January 1, 2006; previously amended and renumbered as*
21 *rule 3.868 effective January 1, 2007.*

22
23 **Advisory Committee Comment**

24
25 Persons who participated in a complaint proceeding are prohibited from subsequently
26 adjudicating the dispute that was the subject of the underlying mediation or any other dispute that
27 arises from the mediation because they may have learned of confidential mediation
28 communications that were disclosed in the complaint proceeding or may have been influenced by
29 what transpired in that proceeding. Because the information that can be disclosed publicly under
30 rule 3.871(d) is limited and excludes mediation communications, it is unnecessary to disqualify
31 persons who received only publicly disclosed information from subsequently adjudicating the
32 dispute.