

Judicial Council of California • Administrative Office of the Courts

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INVITATION TO COMMENT

SPR15-05

Title	Action Requested
Appellate Procedure: Contents of Normal Record in Felony Appeals	Review and submit comments by June 17, 2015
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rule 8.320	January 1, 2016
Proposed by	Contact
Appellate Advisory Committee Hon. Raymond J. Ikola, Chair	Heather Anderson, 415-865-7691 heather.anderson@jud.ca.gov

Executive Summary and Origin

To save time and costs for courts associated with making and considering requests to augment the record and with preparing and transmitting supplemental reporter's transcripts to the reviewing court, this proposal would add opening statements to the normal record in certain felony appeals—those in which a defendant appeals from a judgment of conviction other than a conviction obtained by plea or admission. This proposal originated from a suggestion submitted by the director of one of the appellate projects that assist the Courts of Appeal with appointed counsel in felony appeals.

Background

Rule 8.320 addresses the contents of the normal record in felony appeals. Subdivision (c) of this rule lists the oral proceedings that must be included in the reporter's transcript in appeals in which a defendant is appealing from a judgment of conviction or the People are appealing from an order granting a new trial. Currently, subdivision (c)(3) specifically excludes any opening statement from such transcripts. Rule 8.324 permits either the People or the defendant to apply to the superior court for inclusion of opening statements, among other things, in the record.

In the experience of members of the advisory committee, transcripts of opening statements are routinely needed when a defendant appeals from a judgment of conviction other than a conviction obtained by plea or admission. Often, during the trial, attorneys will refer back to the opening statement. To understand these references, appellate counsel need to have a transcript of the opening statement.

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

The Second Appellate District has adopted a local rule that provides for automatic augmentation of the record to include reporter's transcripts of opening statements in these cases. In other Court of Appeal districts, the California Rules of Court provide mechanisms to request the inclusion of additional items, such as opening statements, in the record on appeal, either through an application to the superior court under rule 8.324, as mentioned above, or through a motion to augment under rule 8.340. However, it takes additional time and resources for counsel to prepare and for the courts to consider such applications and motions. For those defendants in felony cases who are represented by appointed counsel, the time spent by counsel on such requests or motions constitutes an additional cost for the Court of Appeal. Furthermore, if the superior court or Court of Appeal routinely grant these applications or motions, it does not save trial courts any record preparation costs not to have included the opening statement in the original reporter's transcript. In fact, it may actually cost trial courts more to separately prepare and transmit to the reviewing court supplemental reporter's transcripts at a later time.

The Proposal

This proposal would amend rule 8.320 to require that opening statements be included in reporter's transcripts as part of the normal record in appeals by defendants in felony cases from a judgment of conviction other than a conviction obtained by plea or admission. This amendment is intended to reduce court costs associated with preparing and considering applications to include additional items in the record and motions to augment and with preparing and transmitting supplemental reporter's transcripts to the reviewing court.

The committee is also proposing a nonsubstantive change to subdivision (c)(3) of rule 8.320. Currently, subdivision (c)(9)(B) provides that, in defendant's appeals, closing arguments are to be included in the normal record on appeal. By implication, this means that closing arguments are not to be included in the record when the appeal is filed by the People. To make this clearer, the committee is proposing that closing statements be added to the items that subdivision (c)(3) specifies are not included in the reporter's transcript in appeals by the People.

Alternatives Considered

The committee considered proposing amendments to rule 8.324 to eliminate the reference to the defendant requesting inclusion of opening statements in the record. However, because the proposed amendment to rule 8.320 would only require inclusion of opening statements in the normal record in a portion of defendants' appeals, the committee decided not to propose a change to rule 8.324.

The committee considered proposing amendments to rules 8.865 and 8.918, which address the normal record in misdemeanor and infraction cases, to also include opening statements. However, the committee decided not to propose such amendments at this time, but to refer this issue to its Appellate Division Subcommittee for future consideration.

The committee also considered not proposing any changes to rule 8.320. But given the conclusion that adding opening statements to the normal record would save court resources, the committee concluded that it would be appropriate to propose this amendment at this time.

Implementation Requirements, Costs, and Operational Impacts

This proposal will require changes in current procedures relating to what material is included in the reporter's transcripts in criminal cases. This is likely to require some additional training for court reporters. However, as indicated above, the intent of this proposal is to reduce overall costs and increase efficiency by:

- Reducing Court of Appeal expenses for appointed counsel in felony cases associated with preparing applications to the trial court to include opening statements in the reporter's transcript and with preparing motions to augment;
- Reducing costs for the trial courts and Courts of Appeal in considering these applications and motions; and
- Reducing trial court costs associated with preparing and transmitting supplemental reporter's transcripts to the reviewing court.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- Is the opening statement that would be added to the normal record on appeal under this proposal routinely needed in the substantial majority of the appeals filed by defendants from a judgment of conviction other than a conviction obtained by plea or admission? (While automatically including this statement in the record will reduce costs if routinely needed for appellate review in these cases, it may increase costs if the statement is not needed.)

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Will the proposal provide cost savings? If so please quantify.
- What are the implementation requirements for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management system, or modifying case management system.
- Would 2 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Rule 8.320 of the California Rules of Court would be amended, effective January 1, 2016, to read:

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Rule 8.320. Normal record; exhibits

(a) If the defendant appeals from a judgment of conviction, or if the People appeal from an order granting a new trial, the record must contain a clerk’s transcript and a reporter’s transcript, which together constitute the normal record.

(b) * * *

(c) Reporter’s transcript

The reporter’s transcript must contain:

(1)–(2) * * *

(3) The oral proceedings at trial, but excluding the voir dire examination of jurors, ~~and~~ any opening statement, and the closing arguments;

(4)–(8) * * *

(9) And, if the appellant is the defendant:

(A) * * *

(B) The closing arguments and, in an appeal from a judgment of conviction other than a conviction obtained by plea or admission, any opening statement; and

(C) * * *

(d)–(f) * * *