

Invitation to Comment

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| Title | Appellate Procedure: Miscellaneous Appellate Division Rules and Form (adopt Cal. Rules of Court, rules 8.805 and 8.843; revise <i>Defendant’s Financial Statement on Eligibility for Appointment of Counsel and Reimbursement</i> (form MC-210)) |
| Summary | This proposal would add new rules for the superior court appellate division that address amendment of the rules of court and statutes and establish a procedure in appeals of limited civil cases for parties to request that original exhibits be transmitted to the superior court appellate division at the time of briefing. It would also revise the <i>Defendant’s Financial Statement on Eligibility for Appointment of Counsel and Reimbursement</i> (form MC-210) to reflect that the new appellate division rules designate this form for use in determining a defendant’s eligibility for receiving a reporter’s transcript or electronic recording at public expense. |
| Source | Appellate Advisory Committee Hon. Kathryn Doi Todd, Chair |
| Staff | Heather Anderson, Committee Counsel, 415-865-7691, heather.anderson@jud.ca.gov |
| Discussion | Last spring, the Appellate Advisory Committee circulated for public comment a proposal to adopt new rules relating to the superior court appellate division. These rules were recently adopted by the Judicial Council and will take effect on January 1, 2009. ¹ In the invitation to comment concerning these rules, the committee identified rules applicable in the Court of Appeal for which no equivalent provision had been proposed for the superior court appellate division rules. The committee specifically solicited input on whether new rules concerning any of these topics should be proposed for the appellate division. The committee received suggestions that the appellate division rules should include rules similar to rules 8.13 and 8.16, which address the amendment of the California Rules of Court and statutes, and rule 8.224, which establishes a procedure for parties in civil cases to request that original exhibits be sent to the Court of Appeal for its review at the time of briefing. This proposal would add new rules 8.805 and 8.843 addressing these subjects, to the appellate division rules. |

¹ A copy of these new rules for the superior court appellate division can be accessed at <http://www.courtinfo.ca.gov/rules/amendments/jan2009.pdf>.

During this same public comment process, the committee also received a suggestion that the title of the *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement* (form MC-210) should be revised. The new appellate division rules and forms relating to misdemeanor and infraction cases² designate form MC-210 as the form that defendants who were not represented by appointed counsel in the trial court must use to show the court that they are indigent and therefore potentially eligible to receive a reporter's transcript, an official electronic recording, or a transcript prepared from such an official electronic recording at public expense. This proposal would revise the title of this form to *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense*. In addition, this proposal would revise the form to add a box at the top that defendants could check to indicate that the form is being used for the purpose of determining eligibility for a record on appeal at public expense.

Attachments

² See rules 8.866, 8.868, 8.917, and 8.919.

Rules 8.805 and 8.843 of the California Rules of Court would be adopted and *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement* (form MC-210) would be revised, effective January 1, 2009, to read:

Title 8. Appellate Rules

Division 2. Rules Relating to the Superior Court Appellate Division

Chapter 1. General Rules Applicable to Appellate Division Proceedings

Rule 8.805. Amendments to rules and statutes

(a) Amendments to rules

Only the Judicial Council may amend these rules, except the rules in division 5, which may be amended only by the Supreme Court. An amendment by the Judicial Council must be published in the advance pamphlets of the Official Reports and takes effect on the date ordered by the Judicial Council.

(b) Amendments to statutes

In these rules, a reference to a statute includes any subsequent amendment to the statute.

Chapter 2. Appeals and Records in Limited Civil Cases

Article 2. Record in Civil Appeals

Rule 8.843. Transmitting exhibits

(a) Notice of designation

(1) If a party wants the appellate division to consider any original exhibits that were admitted in evidence, refused, or lodged but that were not copied in the clerk's transcript under rule 8.832 or included in the original file under rule 8.833, within 10 days after the last respondent's brief is filed or could be filed under rule 8.882 the party must serve and file a notice in the trial court designating such exhibits.

(2) Within 10 days after a notice under (1) is served, any other party wanting the appellate division to consider additional exhibits must serve and file a notice in the trial court designating such exhibits.

1
2 (3) A party filing a notice under (1) or (2) must serve a copy on the appellate
3 division.

4
5 **(b) Request by appellate division**

6
7 At any time the appellate division may direct the trial court or a party to send it an
8 exhibit.

9
10 **(c) Transmittal**

11
12 Unless the appellate division orders otherwise, within 20 days after notice under (a)
13 is filed or after the appellate division directs that an exhibit be sent:

14
15 (1) The trial court clerk must put any designated exhibits in the clerk's possession
16 into numerical or alphabetical order and send them to the appellate division
17 with two copies of a list of the exhibits sent. If the appellate division clerk
18 finds the list correct, the clerk must sign and return one copy to the trial court
19 clerk.

20
21 (2) Any party in possession of designated exhibits returned by the trial court must
22 put them into numerical or alphabetical order and send them to the appellate
23 division with two copies of a list of the exhibits sent. If the appellate division
24 clerk finds the list correct, the clerk must sign and return one copy to the party.

25
26 **(d) Return by appellate division**

27
28 On request, the appellate division may return an exhibit to the trial court or to the
29 party that sent it. When the remittitur issues, the appellate division must return all
30 exhibits to the trial court or to the party that sent them.

| | |
|---|--|
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____ STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME: | FOR COURT USE ONLY |
| PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: | |
| DEFENDANT'S FINANCIAL STATEMENT AND NOTICE TO DEFENDANT <i>(check all that apply)</i> <input type="checkbox"/> ELIGIBILITY FOR APPOINTMENT OF COUNSEL <input type="checkbox"/> REIMBURSEMENT FOR COST OF COURT-APPOINTED COUNSEL <input checked="" type="checkbox"/> ELIGIBILITY FOR RECORD ON APPEAL AT PUBLIC EXPENSE | CASE NUMBER: _____ |

1. a. Defendant's name: _____ d. Date of birth: _____
 b. Other names used: _____ e. Telephone number: _____
 f. Driver's license number: _____
 c. Address: _____
2. Defendant is is not married.
3. a. Spouse's name: _____ d. Date of birth: _____
 b. Other names used: _____ e. Telephone number: _____
 f. Driver's license number: _____
 c. Address: _____
4. Defendant's present employment:
 - a. Occupation:
 - b. Name of employer:
 - c. Address:
 - d. Gross pay per month: \$ _____ week: \$ _____ day: \$ _____
 - e. Take-home pay per month: \$ _____ week: \$ _____ day: \$ _____
 - f. Name of union: _____
 - g. Name of credit union: _____
5. *If you are not now working, state the name and address of your last employer and the last day you were employed.*
 - a. Name: _____
 - b. Address: _____
 - c. Last date of employment: _____
6. Spouse's present employment
 - a. Occupation:
 - b. Name of employer:
 - c. Address:
 - d. Gross pay per month: \$ _____ week: \$ _____ day: \$ _____
 - e. Take-home pay per month: \$ _____ week: \$ _____ day: \$ _____
 - f. Name of union: _____
 - g. Name of credit union: _____
7. *If spouse is not now working, state the name and address of spouse's last employer and the last day spouse was employed.*
 - a. Name: _____
 - b. Address: _____
 - c. Last date of employment: _____
8. Dependents

| Name | Address | Relationship | Age |
|------|---------|--------------|-----|
| | | | |

PEOPLE OF THE STATE OF CALIFORNIA v.
DEFENDANT:

CASE NUMBER:

OTHER MONTHLY INCOME

| | | | | | | | |
|----|---|----|-------|---------------|---|----|-------|
| 9. | <u>Defendant</u> | | | <u>Spouse</u> | | | |
| a. | Unemployment and disability | \$ | _____ | a. | Unemployment and disability | \$ | _____ |
| b. | Social Security | \$ | _____ | b. | Social Security | \$ | _____ |
| c. | Welfare, TANF | \$ | _____ | c. | Welfare, TANF | \$ | _____ |
| d. | Veteran's benefits | \$ | _____ | d. | Veteran's benefits | \$ | _____ |
| e. | Worker's compensation | \$ | _____ | e. | Worker's compensation | \$ | _____ |
| f. | Child support payments | \$ | _____ | f. | Child support payments | \$ | _____ |
| g. | Spousal support payments | \$ | _____ | g. | Spousal support payments | \$ | _____ |
| h. | All other income not elsewhere listed ... | \$ | _____ | h. | All other income not elsewhere listed ... | \$ | _____ |
| | Total: | \$ | _____ | | Total: | \$ | _____ |

EXPENSES

| | | | | | | | |
|-----|---|----|-------|----|--|----|-------|
| 10. | Monthly expenses being paid by defendant alone or by defendant and spouse | | | | | | |
| a. | Rent or house payments | \$ | _____ | f. | Clothing and laundry | \$ | _____ |
| b. | Car payments | \$ | _____ | g. | Food | \$ | _____ |
| c. | Transportation payments | \$ | _____ | h. | Support payments | \$ | _____ |
| d. | Medical and dental payments | \$ | _____ | i. | Insurance payments | \$ | _____ |
| e. | Loan payments | \$ | _____ | j. | Other payments (union, taxes, utilities) ... | \$ | _____ |
| | | | | | Total (a-j): | \$ | _____ |

| | | | |
|-----|---|------------------------|------------------------|
| 11. | Installment Payments, other than listed in item 10. | | |
| | <u>Name of Creditor</u> | <u>Monthly Payment</u> | <u>Balance Owed</u> |
| a. | _____ | \$ _____ | \$ _____ |
| b. | _____ | \$ _____ | \$ _____ |
| c. | _____ | \$ _____ | \$ _____ |
| d. | _____ | \$ _____ | \$ _____ |
| e. | _____ | \$ _____ | \$ _____ |
| | | Total: \$ _____ | Total: \$ _____ |

ASSETS

| | | | |
|-----|--|------------------------|---------------------------|
| 12. | What do you own? (State value): | | |
| a. | Cash | \$ | _____ |
| b. | House equity | \$ | _____ |
| c. | Cars, other vehicles and boat equity | \$ | _____ |
| | <i>(List make, year, and license number of each)</i> | | |
| d. | Checking, saving and credit union accounts | \$ | _____ |
| | <i>(List name and account number of each)</i> | | |
| e. | Other real estate equity | \$ | _____ |
| f. | Income tax refunds due | \$ | _____ |
| g. | Life insurance policies (ordinary life-face value) | \$ | _____ |
| | | | Length of ownership _____ |
| h. | Other personal property (jewelry, furniture, furs, stocks and bonds, etc.) | \$ | _____ |
| | | Total: \$ _____ | |

13. **ELIGIBILITY FOR APPOINTMENT OF COUNSEL AND NOTICE TO DEFENDANT:** If an attorney is appointed to represent you, the court will, at the conclusion of the criminal proceedings, after a hearing, make a determination of your ability to pay all or a portion of the cost of the attorney. If the court determines that you are at that time able to pay, the court will order you to pay all or part of such cost. Such an order will have the same force and effect as a judgment in a civil action and will be subject to execution.

Declaration of Defendant

Under the laws of the state of California, I declare under penalty of perjury that the foregoing is true and correct, and that I understand the notice contained in item 13.

Date:

(Signature of Defendant)

Item SPR08-07 Response Form

Title: **Appellate Procedure: Miscellaneous Appellate Division Rules and Form**
(adopt Cal. Rules of Court, rules 8.805 and 8.843; revise form MC-120)

- Agree** with proposed changes
- Agree** with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: _____

Name: _____ **Title:** _____

Organization: _____

- Commenting on behalf of an organization**

Address: _____

City, State, Zip: _____

To Submit Comments

Comments may be written on this form, prepared in a letter format, or submitted online. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments.

Internet: www.courtinfo.ca.gov/invitationstocomment

Email: invitations@jud.ca.gov

Mail: Ms. Camilla Kieliger
Judicial Council, 455 Golden Gate Avenue
San Francisco, CA 94102

Fax: (415) 865-7664, Attn: Camilla Kieliger

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| DEADLINE FOR COMMENT: 5:00 p.m., Friday, June 20, 2008 |
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*Circulation for comment does not imply endorsement by the Judicial Council
or the Rules and Projects Committee.
All comments will become part of the public record of the council's action.*