



# JUDICIAL COUNCIL OF CALIFORNIA

APPELLATE ADVISORY  
COMMITTEE

[www.courts.ca.gov/aac.htm](http://www.courts.ca.gov/aac.htm)  
[aac@jud.ca.gov](mailto:aac@jud.ca.gov)

## APPELLATE ADVISORY COMMITTEE OPEN MEETING AGENDA

Open to the Public (Cal. Rules of Court, rule 10.75(c)(1))  
THIS MEETING IS BEING CONDUCTED BY ELECTRONIC MEANS  
THIS MEETING IS BEING RECORDED

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**Date:** January 30, 2023  
**Time:** 3:00 PM - 4:30 PM  
**Public Link:** <https://jcc.granicus.com/player/event/2179> (Listen only)

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Meeting materials will be posted on the advisory body web page on the California Courts website at least three business days before the meeting.

Agenda items are numbered for identification purposes only and will not necessarily be considered in the indicated order.

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### I. OPEN MEETING (CAL. RULES OF COURT, RULE 10.75(C)(1))

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#### Call to Order and Roll Call

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### II. PUBLIC COMMENT (CAL. RULES OF COURT, RULE 10.75(K)(1))

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#### Written Comment

This meeting will be conducted by electronic means with a listen only conference line available for the public. As such, the public may submit comments for this meeting in writing. In accordance with California Rules of Court, rule 10.75(k)(1), written comments pertaining to any agenda item of a regularly noticed open meeting can be submitted up to one complete business day before the meeting. For this specific meeting, comments should be e-mailed to [aac@jud.ca.gov](mailto:aac@jud.ca.gov). Only written comments received by January 29, 2023, at 3:00 p.m. will be provided to advisory body members prior to the start of the meeting.

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### III. DISCUSSION AND POSSIBLE ACTION ITEMS (ITEMS 1-3)

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#### Item 1

##### Forms for requesting an extension of time (Action Required)

Review draft invitation to comment on proposal to revise these forms to make them more useful for litigants and the courts.

#### Item 2

##### Attachment of trial court order to a petition for review (Action Required)

Review draft invitation to comment on proposal to revise the rule regarding petitions for review to allow attachment of the entire trial court order following summary denial of a writ petition.

**Item 3**

**Form notice of appeal (Action Required)**

Review draft invitation to comment on proposal to revise form APP-002 to improve readability and add an item for an attorney to join the appeal when appropriate.

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**IV. ADJOURNMENT**

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**Adjourn**

# JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue • San Francisco, California 94102-3688

[www.courts.ca.gov/policyadmin-invitationstocomment.htm](http://www.courts.ca.gov/policyadmin-invitationstocomment.htm)

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## INVITATION TO COMMENT

### SPR23-\_\_

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<b>Title</b>	<b>Action Requested</b>
Appellate Procedure: Forms for Extension of Time	Review and submit comments by May 12, 2023
<b>Proposed Rules, Forms, Standards, or Statutes</b>	<b>Proposed Effective Date</b>
Revise forms APP-006, APP-106, CR-126, JV-816, JV-817	January 1, 2024
<b>Proposed by</b>	<b>Contact</b>
Appellate Advisory Committee Hon. Louis R. Mauro, Chair	Christy Simons, 415-865-7694 christy.simons@jud.ca.gov

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### Executive Summary and Origin

The Appellate Advisory Committee proposes revising the forms used to request an extension of time to file a brief in the Court of Appeal and the appellate division of the superior court. The revisions would add space for the applicant to indicate the work done to date on the appeal and would correct the item on one form regarding who must be served with the application. On the civil form for use in the Court of Appeal, an item indicating that the case has calendar preference would be added. The proposal originated with suggestions from an appellate project, a county bar association, and a member of the Judicial Council.

### Background

California Rules of Court, rules 8.212, 8.360, 8.412, 8.416, and 8.417, permit parties to apply to the Court of Appeal for an extension of time to file a brief in civil, criminal, and juvenile appeals. Extensions of time to file a brief in the appellate division are permitted by rule 8.882.

This proposal would revise five forms:

- *Application for Extension of Time to File Brief (Civil Case) (Appellate)*, form APP-006, is the optional form that may be used to request an extension of time in unlimited civil cases in the Court of Appeal.

*This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules Committee, or its Legislation Committee. It is circulated for comment purposes only.*

- *Application for Extension of Time to File Brief (Limited Civil Case)*, form APP-106, is the optional form that may be used to request an extension of time in limited civil cases in the appellate division.
- *Application for Extension of Time to File Brief (Criminal Case) (Appellate)*, form CR-126, is the optional form that may be used to request an extension of time in criminal cases.
- *Application for Extension of Time to File Brief (Juvenile Delinquency Case) (Appellate)*, form JV-816, is the optional form that may be used to request an extension of time in juvenile justice cases.
- *Application for Extension of Time to File Brief (Juvenile Dependency Case) (Appellate)*, form JV-817, is the optional form that may be used to request an extension of time in juvenile dependency cases.

## **The Proposal**

### **Proof of service**

The committee received several requests that the proof of service statement on form CR-126 be revised to match this statement on the other application for extension of time forms. Currently, item 11 on form CR-126 provides: “A proof of service of this application on all those entitled to receive a copy of the brief under rule 8.360(d)(1), (2), and (3) is attached (see rule 8.360(d).)” Under rule 8.360(d)(1), defendant’s appellate counsel must serve each brief on the People and the district attorney, and must send a copy of each brief to the defendant personally unless the defendant requests otherwise. Rule 8.360(d)(3) requires the People to serve their briefs on the appellate counsel for each defendant who is a party to the appeal and on the district appellate project. If the district attorney is representing the People, the district attorney’s brief must be served on the Attorney General.

However, the rule regarding extensions of time does not require service on “all those entitled to receive a copy of the brief.” Rather, it requires service on “all parties.” (See rule 8.60(c).) The forms for requesting an extension of time in civil, juvenile dependency, and juvenile justice appeals all require service on “all other parties,” not those entitled to receive a copy of the brief. Moreover, there appears to be no reason for this different service provision. The proposed revisions correct this item on the form, making it consistent with the other forms for requesting an extension of time to file a brief and relieving applicants of the burden of service on nonparties.

In addition, the proposal would revise the item requiring that a proof of service on all other parties be attached to the application on the forms used in the Court of Appeal. Forms APP-006, CR-126, JV-816, and JV-817 currently cite the rules permitting a reviewing court to order an extension of time to file a brief. The rule that requires proof of service of an extension request in the Court of Appeal (rule 8.60(c)) is better authority for this item.

### **Space to indicate work completed on the appeal**

The committee also received a suggestion that the forms include an item for the applicant to state the amount of work that has been completed on the appeal at the time of the request for an extension of time to file a brief. Providing this information would assist both the appellate projects in supervising the work of panel attorneys and the courts in considering these applications. The proposal includes adding this item to each of the five forms.

### **Calendar preference**

Adding an item to alert the court when a case has priority was also suggested. For civil cases in the Court of Appeal, rule 8.240 governs calendar preference: “A party seeking calendar preference must promptly serve and file a motion for preference in the reviewing court. As used in this rule, ‘calendar preference’ means an expedited appeal schedule, which may include expedited briefing and preference in setting the date of oral argument.” The Advisory Committee Comment to the rule explains:

Rule 8.240 requires a party claiming preference to file a motion for preference in the reviewing court. The motion requirement relieves the reviewing court of the burden of searching the record to determine if preference should be ordered. The requirement is not intended to bar the court from ordering preference without a motion when the ground is apparent on the face of the appeal, e.g., in appeals from judgments of dependency (Welf. & Inst. Code, § 395).

The rule is broad in scope: it includes motions for preference on the grounds (1) that a statute provides for preference in the reviewing court (e.g., Code Civ. Proc., §§ 44 [probate proceedings, contested elections, libel by public official], 45 [judgment freeing minor from parental custody]); (2) that the reviewing court should exercise its discretion to grant preference when a statute provides for trial preference (e.g., id., §§ 35 [certain election matters], 36 [party over 70 and in poor health; party with terminal illness; minor in wrongful death action]; see *Warren v. Schechter* (1997) 57 Cal.App.4th 1189, 1198-1199); and (3) that the reviewing court should exercise its discretion to grant preference on a nonstatutory ground (e.g., economic hardship).

Thus, the Court of Appeal may order calendar preference on motion of a party or without a motion when the ground is apparent on the face of the appeal. The committee proposes adding an item to form APP-006, the form that may be used to request an extension of time in unlimited civil cases, to allow the applicant to indicate whether the court has ordered calendar preference in the case. This information would assist courts in considering whether to grant an extension.

### **Other correction**

The proposal corrects a typographical error on form APP-106, item 4, to reflect the 15-day window for filing a brief upon receipt of a notice under rule 8.882(c).

## **Alternatives Considered**

The committee considered a suggestion to increase the amount of space on form CR-126 for the applicant to explain why an extension is needed. The committee declined to propose this change because the item provides for the attachment of a separate declaration if more space is needed. Adding more space would push the form onto 3 pages, which the committee decided was not desirable.

The committee also considered the alternative of removing the item on the forms stating that proof of service is attached. As noted by the organization that submitted the suggestion, this item may no longer be necessary because most of these forms are filed electronically. In these instances, a proof of service is generated by the electronic filing service provider and is not “attached.” The committee declined to propose this change at this time. There is no indication that parties or courts are confused by it, and the forms may still be filed in paper form by some applicants. The committee concluded it would be better practice to look at the appellate forms more broadly in a future rules cycle and decide whether changes to the proof of service provision should be made and, if so, to make the changes at one time.

The committee considered not making any changes but rejected this option because the proposed revisions would make the forms more accurate and would be helpful to both appellate projects supervising panel attorneys and courts considering these applications.

## **Fiscal and Operational Impacts**

The committee does not anticipate any fiscal or operational impacts on the courts as a result of the proposed revisions to forms. Applicants requesting an extension of time to file a brief would need to advise the court regarding the status of work completed on the appeal at the time of the request. Implementation requirements for courts would involve making judicial officers aware of the changes.

### **Request for Specific Comments**

In addition to comments on the proposal as a whole, the advisory committee [or other proponent] is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- Should the application forms in criminal, juvenile, and limited civil cases include an item regarding calendar preference?
- Should the item regarding calendar preference allow an applicant to indicate that the case is eligible for calendar preference, in addition to its having been ordered?

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

- Would the proposal provide cost savings? If so, please quantify.
- What would the implementation requirements be 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 systems, or modifying case management systems?
- Would 3 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?

### **Attachments and Links**

1. Forms APP-006, APP-106, CR-126, JV-816, and JV-817, at pages 6–15

<b>COURT OF APPEAL</b>	<b>APPELLATE DISTRICT, DIVISION</b>	COURT OF APPEAL CASE NUMBER:
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER:		SUPERIOR COURT CASE NUMBER:
NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):		
APPELLANT:  RESPONDENT:		
<b>APPLICATION FOR EXTENSION OF TIME TO FILE BRIEF (CIVIL CASE)</b>		
<b>Notice: Please read Judicial Council form APP-001 before completing this form.</b>		

1. I (name): \_\_\_\_\_ request that the time to file (check one):

- appellant's opening brief (AOB)
- respondent's brief (RB)
- combined respondent's brief (RB) and appellant's opening brief (AOB) (see rule 8.216)
- combined appellant's reply brief (ARB) and respondent's brief (RB) (see rule 8.216)
- appellant's reply brief (ARB)

now due on (date): \_\_\_\_\_ be extended to (date): \_\_\_\_\_

2. I  have  have not received a rule 8.220 notice.

3. I have received:

- no previous extensions to file this brief.
- the following previous extensions:  
 (number of extensions): \_\_\_\_\_ extensions by stipulation totaling (total number of days): \_\_\_\_\_  
 (number of extensions): \_\_\_\_\_ extensions from the court totaling (total number of days): \_\_\_\_\_

Did the court mark any previous extension "no further?"  Yes  No

4. I am unable to file a stipulation to an extension because

- the other party is unwilling to stipulate to an extension.
- other reason (please specify): \_\_\_\_\_

5. The last brief filed by any party was:  AOB  RB  RB and AOB  ARB and RB  
filed on (date): \_\_\_\_\_

6. The record in this case is:

	<u>Volumes (#)</u>	<u>Pages (#)</u>	<u>Date filed</u>
Appendix/Clerk's Transcript:	_____	_____	_____
Reporter's Transcript:	_____	_____	_____
Augmentation/Other:	_____	_____	_____

7.  The trial court has ordered the proceedings in this case stayed until this appeal is decided.



APPELLANT: RESPONDENT:	COURT OF APPEAL CASE NUMBER:
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8. The court has ordered calendar preferences in this case (Cal. Rules of Court, rule 8.240):

- Yes
- No

9. I have completed the following work on this appeal:

10. The reasons that I need an extension to file this brief are stated

- below
- on a separate declaration. You may use *Attached Declaration (Court of Appeal)* (form APP-031) for this purpose.  
*(Please specify; see Cal. Rules of Court, rule 8.63, for factors used in determining whether to grant extensions):*

11. For attorneys filing application on behalf of client, I certify that I have delivered a copy of this application to my client (Cal. Rules of Court, rule 8.60).

12. A proof of service of this application on all other parties is attached (see Cal. Rules of Court, rule 8.60(c)). You may use *Proof of Service (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E) for this purpose.

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date: \_\_\_\_\_

\_\_\_\_\_  
(TYPE OR PRINT NAME)



\_\_\_\_\_  
(SIGNATURE OF PARTY OR ATTORNEY)

Order on Application is  below  on a separate document

### ORDER

EXTENSION OF TIME IS:

- Granted to (date): \_\_\_\_\_
- Denied

Date: \_\_\_\_\_



\_\_\_\_\_  
(SIGNATURE OF PRESIDING JUSTICE)

Clerk stamps date here when form is filed.

**Instructions**

- This form is only for requesting an extension of time to file a brief in an appeal in a **limited civil case**.
- Before you fill out this form, read *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO) to know your rights and responsibilities. You can get form APP-101-INFO at any courthouse or county law library or online at [www.courtinfo.ca.gov/forms](http://www.courtinfo.ca.gov/forms).
- Fill out this form and make a copy of the completed form for your records and for each of the other parties.
- Serve a copy of the completed form on each of the other parties and keep proof of this service. You can get information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at [www.courtinfo.ca.gov/selfhelp/lowcost/getready.htm#serving](http://www.courtinfo.ca.gov/selfhelp/lowcost/getready.htm#serving).
- Take or mail the completed form and proof of service on the other parties to the appellate division clerk's office. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

You fill in the name and street address of the court that issued the judgment or order that is being appealed:

**Superior Court of California, County of**

You fill in the number and name of the trial court case in which the judgment or order is being appealed::

**Trial Court Case Number:****Trial Court Case Name:**

You fill in the appellate division case number:

**Appellate Division Case Number:****1 Your Information**

- a. Name of party requesting extension of time to file brief:

\_\_\_\_\_

- b. Party's contact information (
- skip this if the appellant has a lawyer for this appeal*
- ):

Street address: \_\_\_\_\_

Street

City

State

Zip

Mailing address (*if different*): \_\_\_\_\_

Street

City

State

Zip

Phone: \_\_\_\_\_

E-mail: \_\_\_\_\_

- c. Party's lawyer (
- skip this if the appellant does not have a lawyer for this appeal*
- ):

Name: \_\_\_\_\_

State Bar number: \_\_\_\_\_

Street address: \_\_\_\_\_

Street

City

State

Zip

Mailing address (*if different*): \_\_\_\_\_

Street

City

State

Zip

Phone: \_\_\_\_\_

E-mail: \_\_\_\_\_

Fax: \_\_\_\_\_



Case Name: \_\_\_\_\_

- 2 I am requesting an extension on the time to file:
  - Appellant’s opening brief, which is now due on (date): \_\_\_\_\_
  - Respondent’s brief, which is now due on (date): \_\_\_\_\_
  - Appellant’s reply brief, which is now due on (date): \_\_\_\_\_
- 3 I am requesting that the time to file the brief identified in 2 be extended to (date): \_\_\_\_\_
- 4 I  have  have not received a notice under rule 8.882(c) from the clerk that this brief must be filed within 15 days.
- 5 The time to file the brief: (check all that apply):
  - Has not been extended before
  - Has been extended before by the stipulation of the parties. The parties stipulated to (number of extensions) \_\_\_\_\_ totaling (number of days) \_\_\_\_\_
  - Has been extended before by the court. The court granted (number of extensions) \_\_\_\_\_ totaling (number of days) \_\_\_\_\_
- 6 I am not able to stipulate to an extension to file this brief because (check one):
  - The other party is not willing to stipulate to an extension.
  - Other reason (please describe the reason): \_\_\_\_\_  
\_\_\_\_\_
- 7 I have completed the following work on this appeal: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- 8 The reason I need an extension to file this brief is (describe the reason you need an extension; see rule 8.811(b), for the factors the court will consider in deciding whether there is good cause to grant an extension): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- 9 The last brief filed by any party in this case was:
  - The appellant’s opening brief, filed on (date): \_\_\_\_\_
  - The respondent’s brief, filed on (date): \_\_\_\_\_
- 10 If this extension is being requested by a lawyer on behalf of a client, the lawyer must complete this item.
  - I certify that I have delivered a copy of this application to my client (rule 8.810(e)). I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date: \_\_\_\_\_

\_\_\_\_\_  
Type or print your name

\_\_\_\_\_  
Signature of party or attorney

<b>COURT OF APPEAL</b>	<b>APPELLATE DISTRICT, DIVISION</b>	COURT OF APPEAL CASE NUMBER:	
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.:		SUPERIOR COURT CASE NUMBER:	
NAME:			
FIRM NAME:			
STREET ADDRESS:			
CITY:	STATE:		ZIP CODE:
TELEPHONE NO.:	FAX NO.:		
E-MAIL ADDRESS:			
ATTORNEY FOR ( <i>name</i> ):			
APPELLANT:			
RESPONDENT:			
<b>APPLICATION FOR EXTENSION OF TIME TO FILE BRIEF (CRIMINAL CASE)</b>			

1. I (*name*): \_\_\_\_\_ request that the time to file (*check one*)

- appellant's opening brief (AOB)
- respondent's brief (RB)
- combined respondent's brief (RB) and appellant's opening brief (AOB) (see rule 8.216)
- combined appellant's reply brief (ARB) and respondent's brief (RB) (see rule 8.216)
- appellant's reply brief (ARB)

now due on (*date*): \_\_\_\_\_ be extended to (*date*): \_\_\_\_\_

2. I  have  have not received a rule 8.360(c)(5) notice.

3. I have received

- no previous extensions to file this brief.
- the following previous extensions:

(*number of extensions*): \_\_\_\_\_ extensions from the court totaling (*total number of days*): \_\_\_\_\_

Did the court mark any previous extension "no further?"  Yes  No

4. The last brief filed by any party was:  AOB  RB  RB and AOB  ARB and RB  
filed on (*date*): \_\_\_\_\_

5. The record in this case is:

	<u>Volumes (#)</u>	<u>Pages (#)</u>	<u>Date filed</u>
Clerk's Transcript:	_____	_____	_____
Reporter's Transcript:	_____	_____	_____
Augmentation/Other:	_____	_____	_____

6. Defendant was convicted of (*specify*): \_\_\_\_\_

7. The conviction is based on a (*check one*):

- jury verdict
- plea of guilty or no contest

APPELLANT:  RESPONDENT	COURT OF APPEAL CASE NUMBER:
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8. The court imposed the following punishment:

9. The defendant  is  is not on bail pending appeal.

10. I have completed the following work on this appeal:

11. The reasons that I need an extension to file this brief are stated

below.

on a separate declaration. You may use *Attached Declaration (Court of Appeal)* (form APP-031) for this purpose.

(Please specify; see rule 8.63 for factors used in determining whether to grant extensions):

12. A proof of service of this application on all other parties is attached (see rule 8.60(c)). You may use *Proof of Service (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E) for this purpose.

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date: \_\_\_\_\_

\_\_\_\_\_  
(TYPE OR PRINT NAME)



\_\_\_\_\_  
(SIGNATURE OF PARTY OR ATTORNEY)

Order on Application is  below  on a separate document

### ORDER

EXTENSION OF TIME IS:

Granted to (date): \_\_\_\_\_

Denied

Date: \_\_\_\_\_

\_\_\_\_\_  
(SIGNATURE OF PRESIDING JUSTICE)

<b>COURT OF APPEAL</b>	<b>APPELLATE DISTRICT, DIVISION</b>	COURT OF APPEAL CASE NUMBER:
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.:		SUPERIOR COURT CASE NUMBER(S):
NAME:		
FIRM NAME:		
STREET ADDRESS:		
CITY: STATE: ZIP CODE:		
TELEPHONE NO.: FAX NO.:		
E-MAIL ADDRESS:		
ATTORNEY FOR (name):		
Case Name: In re _____, person(s), coming under the juvenile court law		
APPELLANT:		
RESPONDENT:		
<b>APPLICATION FOR EXTENSION OF TIME TO FILE BRIEF (JUVENILE DELINQUENCY CASE)</b>		

1. I (name): \_\_\_\_\_ request that the time to file (check one)

- appellant's opening brief (AOB)
- respondent's brief (RB)
- combined respondent's brief (RB) and appellant's opening brief (AOB) (see rule 8.216)
- combined appellant's reply brief (ARB) and respondent's brief (RB) (see rule 8.216)
- appellant's reply brief (ARB)

now due on (date): \_\_\_\_\_ be extended to (date): \_\_\_\_\_

2. I  have  have not received a rule 8.412(d)(1) notice.

3. I have received

- no previous extensions to file this brief.
- the following previous extensions:

(number of extensions): \_\_\_\_\_ extensions from the court totaling (total number of days): \_\_\_\_\_

Did the court mark any previous extension "no further?"  Yes  No

4. The last brief filed by any party was:  AOB  RB  RB and AOB  ARB and RB  
filed on (date): \_\_\_\_\_

5. The record in this case is:

	<u>Volumes (#)</u>	<u>Pages (#)</u>	<u>Date filed</u>
Clerk's Transcript:	_____	_____	_____
Reporter's Transcript:	_____	_____	_____
Augmentation/Other:	_____	_____	_____

6. The juvenile was adjudicated a ward of the court based on commission of the following offense(s):

7. The disposition followed (check one):

- a contested hearing
- an admission

APPELLANT: RESPONDENT:	COURT OF APPEAL CASE NUMBER:
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8. The court imposed the following disposition:

9. I have completed the following work on this appeal:

10. The reasons that I need an extension to file this brief are stated

below.

on a separate declaration. You may use *Attached Declaration (Court of Appeal)* (form APP-031) for this purpose. (Please specify; see Cal. Rules of Court, rule 8.63, for factors used in determining whether to grant extensions. Note that an exceptional showing of good cause is required in cases subject to rule 8.417.)

11. A proof of service of this application on all other parties is attached (see Cal. Rules of Court, rule 8.60(c)). You may use *Proof of Service (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E) for this purpose.

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date:

\_\_\_\_\_ \_\_\_\_\_  
 (TYPE OR PRINT NAME) (SIGNATURE OF PARTY OR ATTORNEY)

Order on Application is  below  on a separate document

**ORDER**

EXTENSION OF TIME IS:

Granted to (date): \_\_\_\_\_  
 Denied

Date: \_\_\_\_\_

\_\_\_\_\_  
 (SIGNATURE OF PRESIDING JUSTICE)

<b>COURT OF APPEAL</b>	<b>APPELLATE DISTRICT, DIVISION</b>	COURT OF APPEAL CASE NUMBER:	
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.:		SUPERIOR COURT CASE NUMBER(S):	
NAME:			
FIRM NAME:			
STREET ADDRESS:			
CITY:	STATE:		ZIP CODE:
TELEPHONE NO.:	FAX NO.:		
E-MAIL ADDRESS:			
ATTORNEY FOR ( <i>name</i> ):			
Case Name: In re _____, person(s), coming under the juvenile court law			
APPELLANT:			
RESPONDENT:			
<b>APPLICATION FOR EXTENSION OF TIME TO FILE BRIEF (JUVENILE DEPENDENCY CASE)</b>			

1. I (*name*): \_\_\_\_\_ request that the time to file (*check one*)

- appellant's opening brief (AOB)
- respondent's brief (RB)
- combined respondent's brief (RB) and appellant's opening brief (AOB) (see rule 8.216)
- combined appellant's reply brief (ARB) and respondent's brief (RB) (see rule 8.216)
- appellant's reply brief (ARB)

now due on (*date*): \_\_\_\_\_ be extended to (*date*): \_\_\_\_\_

2. I  have  have not received a rule 8.412(d)(1) notice.

3. I have received

- no previous extensions to file this brief.
- the following previous extensions:

(*number of extensions*): \_\_\_\_\_ extensions from the court totaling (*total number of days*): \_\_\_\_\_

Did the court mark any previous extension "no further?"  Yes  No

4. The last brief filed by any party was:  AOB  RB  RB and AOB  ARB and RB  
filed on (*date*): \_\_\_\_\_

5. The record in this case is:

	<u>Volumes (#)</u>	<u>Pages (#)</u>	<u>Date filed</u>
Clerk's Transcript:	_____	_____	_____
Reporter's Transcript:	_____	_____	_____
Augmentation/Other:	_____	_____	_____

6. The order appealed from was made under Welfare and Institutions Code (*check all that apply*):

- a.  section 360 (declaration of dependency)  Removal of custody from parent or guardian  Other orders  
 with review of section 300 jurisdictional findings
- b.  section 366.26  
 Termination of parental rights  Appointment of guardian  Planned permanent living arrangement



APPELLANT: RESPONDENT:	COURT OF APPEAL CASE NUMBER:
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- 6. c.  Section 366.28
- d.  Other appealable orders relating to dependency (*specify*):

7. I have completed the following work on this appeal:

8. The reasons that I need an extension to file this brief are stated:

- below.
- on a separate declaration. You may use *Attached Declaration (Court of Appeal)* (form APP-031) for this purpose.

(Please specify; see Cal. Rules of Court, rule 8.63, for factors used in determining whether to grant extensions. Note that an exceptional showing of good cause is required in cases subject to rule 8.416.)

9. A proof of service of this application on all other parties is attached (see Cal. Rules of Court, rule 8.60(c)). You may use *Proof of Service (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E) for this purpose.

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date: \_\_\_\_\_

\_\_\_\_\_

(TYPE OR PRINT NAME)

▶

\_\_\_\_\_

(SIGNATURE OF PARTY OR ATTORNEY)

Order on Application is  below  on a separate document

### ORDER

EXTENSION OF TIME IS:

- Granted to (*date*): \_\_\_\_\_
- Denied

Date: \_\_\_\_\_

\_\_\_\_\_

(SIGNATURE OF PRESIDING JUSTICE)



# Judicial Council of California

455 Golden Gate Avenue · San Francisco, California 94102-3688

Telephone 415-865-4200 · Fax 415-865-4205

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## M E M O R A N D U M

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**Date**

January 24, 2023

**Action Requested**

Please review for January 30 Subcommittee Meeting

**To**

Members of the Rules Subcommittee of the Appellate Advisory Committee

**Deadline**

January 30, 2023

**From**

Heather Anderson, Attorney, Legal Services

**Contact**

Heather Anderson

415-865-7803 phone

[heather.anderson@jud.ca.gov](mailto:heather.anderson@jud.ca.gov)

**Subject**

Draft Invitation to Comment Re: Attachment of Trial Court's Order to Petition for Review of Summary Denial of Writ Petition

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Item 10 on the committee's 2022-2023 annual agenda is a project to consider amending rule 8.504 to allow for attachment of the entire trial court order to a petition for review of a writ petition summarily denied by the Court of Appeal. The suggestion for this rule change was submitted by Appellate Advisory Committee member Kevin Green.

Attached for the subcommittee's review is a draft invitation to comment regarding this rule change for possible circulation in the spring cycle. The subcommittee's task is to analyze the attached proposal and:

- Approve the proposal as presented and recommend to the full committee that it seek approval from RUPRO to circulate the proposal for public comment;
- Modify the proposal and recommend to the full committee that it seek approval from RUPRO to circulate the modified proposal for public comment;
- Recommend to the full committee that it reject the proposal; or
- Ask staff or committee members for further information/analysis.

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[www.courts.ca.gov/policyadmin-invitationstocomment.htm](http://www.courts.ca.gov/policyadmin-invitationstocomment.htm)

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## INVITATION TO COMMENT

### SPR23-\_\_

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**Title**

Appellate Procedure: Attachment of Trial Court’s Order to Petition for Review of Summary Denial of Writ Petition

**Proposed Rules, Forms, Standards, or Statutes**

Amend Cal. Rules of Court, rule 8.504

**Proposed by**

Appellate Advisory Committee  
Hon. Louis R. Mauro, Chair

**Action Requested**

Review and submit comments by May 12, 2023

**Proposed Effective Date**

January 1, 2023

**Contact**

Christy Simons, 415-865-7694  
[christy.simons@jud.ca.gov](mailto:christy.simons@jud.ca.gov)

Heather Anderson, 415-865-7803  
[heather.anderson@jud.ca.gov](mailto:heather.anderson@jud.ca.gov)

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### Executive Summary and Origin

To facilitate review on the merits and streamline procedures, the Appellate Advisory Committee proposes amending the rule governing petitions for review in the Supreme Court to provide for attachment of the entire trial court order when petitioner seeks review of a Court of Appeal summary denial of a writ petition. Under the current rule, attachments to petitions for review may not exceed 10 pages. The proposal originated with a suggestion from a committee member.

### The Proposal

California Rules of Court, rules 8.500–8.552,<sup>1</sup> govern proceedings in the Supreme Court. Rule 8.504 governs the form and contents of petitions for review, answers, and replies, including attachments. If a petition seeks review of a Court of Appeal opinion or order, that opinion or order must be attached. (Rule 8.504(e)(1)(A).)<sup>2</sup> In addition, the rule permits attachment of “exhibits or orders of a trial court that are unusually significant,” and “copies of relevant regulations or rules, out-of-state statutes, or other similar citable materials that are not readily

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<sup>1</sup> All further rule references are to the California Rules of Court.

<sup>2</sup> The rule also provides for attaching an unpublished opinion that is required to be attached under rule 8.1115(c). (Rule 8.504(e)(1)(D).)

*This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules Committee, or its Legislation Committee. It is circulated for comment purposes only.*

accessible.” (Rule 8.504(e)(1)(B)–(C).) The permissible attachments must not exceed a combined total of 10 pages. (Rule 8.504(e)(2).)<sup>3</sup>

Under rule 8.504(a), except as otherwise provided, petitions for review must also comply with format provisions in rule 8.204, the rule addressing the contents and format of briefs in the Court of Appeal. As under rule 8.504, rule 8.204(d) provides that attachments to briefs are limited to 10 pages, but also provides that, “on application the presiding justice may permit additional pages of attachments for good cause.”

The Appellate Advisory Committee proposes amending rule 8.504 to provide for the attachment of the trial court order, regardless of its length, to a petition for review of a Court of Appeal order summarily denying a writ petition. When a Court of Appeal summarily denies a writ petition, it does not issue an opinion or address the merits of the trial court’s order. Rather, a summary denial is just that—a brief order indicating that the petition is denied. Currently, the rule requires a party seeking Supreme Court review of a summary denial to attach the Court of Appeal order and permits attachment of the trial court’s order only if it does not exceed 10 pages. However, the Supreme Court’s review of the matter would focus on the trial court’s reasoning and decision. Attachment of the complete trial court order would assist the Supreme Court in addressing the merits of the petition for review. It would also assist both the court and parties in expediting the matter, eliminating the need for an application or motion to allow attachment of a trial court order exceeding 10 pages.

Specifically, the committee proposes a new subdivision (b)(6):

If the petition seeks review of a Court of Appeal order summarily denying a writ petition, a copy of the underlying trial court order showing the date it was entered must be bound at the back of the original petition and each copy filed in the Supreme Court or, if the petition is not filed in paper form, attached.

This language mirrors the provisions of subdivisions (b)(4) and (5) providing for attachment of the Court of Appeal opinion or order that is the subject of the petition.

### **Alternatives Considered**

The committee considered whether the rule should require attachment of the trial court’s order or merely permit it. Based on the benefits of including the complete order, including facilitating the Supreme Court’s review and streamlining procedures for the court and litigants, the committee concluded that requiring attachment was the better option. Requiring attachment of the trial court order is consistent with the rule’s requirement that the opinion or order under review be attached.

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<sup>3</sup> The committee notes that, under rule 8.504(a), except as otherwise provided, petitions for review must also comply with format provisions in rule 8.204, the rule addressing the contents and format of briefs in the Court of Appeal. As under rule 8.504, rule 8.204(d) provides that attachments to briefs are limited to 10 pages, but also provides that, “on application the presiding justice may permit additional pages of attachments for good cause.”

Typically, that opinion or order contains the lower court’s analysis and reasoning; review of a summary denial instead focuses on the trial court’s order.

The committee also considered taking no action but concluded that there were clear benefits to amending the rule.

### **Fiscal and Operational Impacts**

Other than training for court staff to advise them of the rule change, the committee anticipates no fiscal or operational impacts.

#### **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?
- Should attachment of the trial court’s order be permitted rather than required?

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

- Would the proposal provide cost savings? If so, please quantify.
- What would the implementation requirements be 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 systems, or modifying case management systems?
- Would 3 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?

### **Attachments and Links**

1. Cal. Rules of Court, rule 8.504, at pages 4–6

1 Title 8. Appellate Rules

2  
3 Division 1. Rules Relating to the Supreme Court and Courts of Appeal

4  
5 Chapter 9. Proceedings in the Supreme Court

6  
7  
8 Rule 8.504. Form and contents of petition, answer, and reply

9  
10 (a) In general

11  
12 Except as provided in this rule, a petition for review, answer, and reply must  
13 comply with the relevant provisions of rule 8.204.

14  
15 (b) Contents of a petition

- 16  
17 (1) The body of the petition must begin with a concise, nonargumentative  
18 statement of the issues presented for review, framing them in terms of the  
19 facts of the case but without unnecessary detail.  
20  
21 (2) The petition must explain how the case presents a ground for review under  
22 rule 8.500(b).  
23  
24 (3) If a petition for rehearing could have been filed in the Court of Appeal, the  
25 petition for review must state whether it was filed and, if so, how the court  
26 ruled.  
27  
28 (4) If the petition seeks review of a Court of Appeal opinion, a copy of the  
29 opinion showing its filing date and a copy of any order modifying the opinion  
30 or directing its publication must be bound at the back of the original petition  
31 and each copy filed in the Supreme Court or, if the petition is not filed in  
32 paper form, attached.  
33  
34 (5) If the petition seeks review of a Court of Appeal order, a copy of the order  
35 showing the date it was entered must be bound at the back of the original  
36 petition and each copy filed in the Supreme Court or, if the petition is not  
37 filed in paper form, attached.

38  
39 (6) If the petition seeks review of a Court of Appeal order summarily denying a  
40 writ petition, a copy of the underlying trial court order showing the date it  
41 was entered must be bound at the back of the original petition and each copy  
42 filed in the Supreme Court or, if the petition is not filed in paper form,  
43 attached.

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~~(6)~~(7) The title of the case and designation of the parties on the cover of the petition must be identical to the title and designation in the Court of Appeal opinion or order that is the subject of the petition.

~~(7)~~(8) Rule 8.508 governs the form and content of a petition for review filed by the defendant in a criminal case for the sole purpose of exhausting state remedies before seeking federal habeas corpus review.

**(c) Contents of an answer**

An answer that raises additional issues for review must contain a concise, nonargumentative statement of those issues, framing them in terms of the facts of the case but without unnecessary detail.

**(d) Length**

- (1) If produced on a computer, a petition or answer must not exceed 8,400 words, including footnotes, and a reply must not exceed 4,200 words, including footnotes. Each petition, answer, or reply must include a certificate by appellate counsel or an unrepresented party stating the number of words in the document. The person certifying may rely on the word count of the computer program used to prepare the document.
- (2) If typewritten, a petition or answer must not exceed 30 pages and a reply must not exceed 15 pages.
- (3) The tables, the cover information required under rule 8.204(b)(10), the Court of Appeal opinion, a certificate under (1), any signature block, and any attachment under (e)(1) are excluded from the limits stated in (1) and (2).
- (4) On application and for good cause, the Chief Justice may permit a longer petition, answer, reply, or attachment.

**(e) Attachments and incorporation by reference**

- (1) No attachments are permitted except:
  - (A) An opinion or order required to be attached under (b)(4) ~~or (5) –(6)~~;
  - (B) Exhibits or orders of a trial court or Court of Appeal that the party considers unusually significant;

1 (C) Copies of relevant local, state, or federal regulations or rules, out-of-  
2 state statutes, or other similar citable materials that are not readily  
3 accessible; and  
4

5 (D) An opinion required to be attached under rule 8.1115(c).  
6

7 (2) The attachments under (1)(B)–(C) must not exceed a combined total of 10  
8 pages.  
9

10 (3) No incorporation by reference is permitted except a reference to a petition, an  
11 answer, or a reply filed by another party in the same case or filed in a case  
12 that raises the same or similar issues and in which a petition for review is  
13 pending or has been granted.  
14

15 **Advisory Committee Comment**  
16

17 **Subdivision (d).** Subdivision (d) states in terms of word counts rather than page counts the  
18 maximum permissible lengths of a petition for review, answer, or reply produced on a computer.  
19 This provision tracks a provision in rule 8.204(c) governing Court of Appeal briefs and is  
20 explained in the advisory committee comment to that provision. Subdivision (d)(3) specifies  
21 certain items that are not counted toward the maximum length of a petition, answer, or reply.  
22 Signature blocks, as referenced in this provision include not only the signatures, but also the  
23 printed names, titles, and affiliations of any attorneys filing or joining in the petition, answer, or  
24 reply, which may accompany the signature.  
25



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## INVITATION TO COMMENT

### SPR23-\_\_

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<b>Title</b>	<b>Action Requested</b>
Appellate Procedure: Notice of Appeal Form	Review and submit comments by May 12, 2023
<b>Proposed Rules, Forms, Standards, or Statutes</b>	<b>Proposed Effective Date</b>
Revise form APP-002	January 1, 2024
<b>Proposed by</b>	<b>Contact</b>
Appellate Advisory Committee Hon. Louis R. Mauro, Chair	Kendall W. Hannon, 415-865-7653 <a href="mailto:kendall.hannon@jud.ca.gov">kendall.hannon@jud.ca.gov</a>

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### Executive Summary and Origin

The Appellate Advisory Committee proposes amending *Notice of Appeal/Cross-Appeal (Unlimited Civil Case)* (form APP-002) to: (1) include an item by which an attorney can join the appeal to challenge an order directing payment of sanctions by the attorney, and (2) highlight the item requesting the date the order or judgment being appealed was entered so that it is not overlooked. This proposal originated in response to a recent Supreme Court decision and a suggestion by the Family Violence Appellate Project.

### Background

#### Recent Supreme Court Decision

In 2020, the Supreme Court in *K.J. v. Los Angeles Unified School District*<sup>1</sup> addressed whether a Court of Appeal has jurisdiction to review an order directing an attorney to pay sanctions when the notice of appeal only identifies the attorney's client as appellant. Relying on the rule of liberal construction of the notice of appeal,<sup>2</sup> the Supreme Court held that the Court of Appeal has appellate jurisdiction over the sanctions order, even if the attorney omitted himself or herself as an appellant on the notice of appeal, so long as it is "clear from the record that the omitted attorney intended to participate in the appeal and the respondent was not misled or prejudiced by the appeal."<sup>3</sup> The Court noted, however, that to avoid any unnecessary litigation on this question,

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<sup>1</sup> (2020) 5 Cal.5th 875.

<sup>2</sup> Cal. Rules of Court, rule 8.100(a)(2).

<sup>3</sup> *K.J. v. L.A. Unified School Dist.*, *supra*, 5 Cal.5th at p. 878.

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the “better practice is for the attorney to file a notice of appeal that expressly identifies himself or herself as an appealing party.”<sup>4</sup>

### **Date of entry of the order or judgment**

Under rule 8.104(a)(1), a notice of appeal must be filed on or before the earliest of: “(A) 60 days after the superior court clerk serves on the party filing the notice of appeal a document entitled ‘Notice of Entry’ of judgment or a file endorsed copy of the judgment, showing the date either was served; [¶] (B) 60 days after the party filing the notice of appeal serves or is served by a party with a document entitled ‘Notice of Entry’ of judgment or a filed-endorsed copy of the judgment, accompanied by proof of service; or [¶] (C) 180 days after entry of the judgment.” A timely filed notice of appeal is a jurisdictional prerequisite to an appeal.<sup>5</sup>

The current version of form APP-002 has a field for the appellant to enter the date the judgment or order being appealed was entered. The committee has received feedback from the Family Violence Appellate Project that a significant number of pro per litigants with whom they interact overlook this item on the form and do not fill it out, making it more difficult to determine if the appeal is timely.

## **The Proposal**

### **Addition of item for attorneys to indicate they are joining the appeal**

This proposal would revise form APP-002 to add item 1d, by which an attorney could indicate that the judgment or order being appealed directed the attorney to pay sanctions and that the attorney is joining the appeal. The committee believes this item would avoid the problem of an “omitted attorney” by expressly prompting the attorney to indicate whether he or she is joining the appeal. By encouraging the “better practice” of the attorney expressly identifying themselves as an appealing party, this item would help obviate the need for the Court of Appeal to divine the attorney’s intent from the record.

### **Reformatting of item regarding date of entry of judgment or order**

In its current form, item 1 of form APP-002 begins with a sentence which prompts the appellant to provide their name and the date on which the judgment or order being appealed was entered. The date field is at the end of this sentence and, as discussed above, some appellants may overlook this field.

To highlight the need to provide the date the judgment or order being appealed was entered (thus aiding the courts and parties in determining whether the appeal is timely), this proposal would reformat item 1 into subitems. In subitem a, appellants would provide their name. Subitem b asks for the date the order or judgment was entered. Subitem c is a list of statutes authorizing appeals from various orders and judgments with checkboxes for the appellant to indicate the type of order or judgment being appealed. Finally, item 1d, as discussed above, would permit attorneys

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<sup>4</sup> *Id.* at 860.

<sup>5</sup> *See, e.g., Silverbrand v. County of Los Angeles* (2009) 46 Cal.4th 106, 113.

to indicate that they are joining the appeal to challenge a judgment or order directing them to pay sanctions.

By having a separate subitem for the date of entry of the underlying judgment or order, the committee believes it will be more evident to appellants that this information must be provided.

### **Alternatives Considered**

The committee considered taking no action, but rejected this option as it concluded the proposed revisions to form APP-002 would aid both parties and the courts.

### **Fiscal and Operational Impacts**

The committee anticipates that fiscal and operational impacts of this proposal on courts will be minimal. Brief education of court staff and judicial officers on the revised form may be required.

#### **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?
- Should similar changes be made to other notice of appeal forms?

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

- Would the proposal provide cost savings? If so, please quantify.
- What would the implementation requirements be 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 systems, or modifying case management systems?
- Would 3 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?

### **Attachments and Links**

1. Form APP-002, at page 4

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	FOR COURT USE ONLY  <h1 style="margin:0;">DRAFT</h1> <h2 style="margin:0;">01.23.2023</h2> <h3 style="margin:0;">Not approved by Judicial Council</h3>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	
<input type="checkbox"/> <b>NOTICE OF APPEAL</b> <input type="checkbox"/> <b>CROSS-APPEAL</b> <b>(UNLIMITED CIVIL CASE)</b>	CASE NUMBER:

**Notice: Please read *Information on Appeal Procedures for Unlimited Civil Cases* (Judicial Council form APP-001) before completing this form. This form must be filed in the superior court, not in the Court of Appeal. A copy of this form must also be served on the other party or parties to this appeal. You may use an applicable Judicial Council form (such as APP-009 or APP-009E) for the proof of service. When this document has been completed and a copy served, the original may then be filed with the court with proof of service.**

1. NOTICE IS HEREBY GIVEN that:

- a. (Name): \_\_\_\_\_ appeals from a judgment or order in this case.
- b. The order or judgment was entered on (date): \_\_\_\_\_
- c. The appeal is from the following order or judgment:
  - Judgment after jury trial
  - Judgment after court trial
  - Default judgment
  - Judgment after an order granting a summary judgment motion
  - Judgment of dismissal under Code of Civil Procedure, §§ 581d, 583.250, 583.360, or 583.430
  - Judgment of dismissal after an order sustaining a demurrer
  - An order after judgment under Code of Civil Procedure, § 904.1(a)(2)
  - An order or judgment under Code of Civil Procedure, § 904.1(a)(3)–(13)
  - Other (describe and specify code section that authorizes this appeal): \_\_\_\_\_
- d.  The judgment or order being appealed directs payments of sanctions by an attorney for a party. The attorney (name): \_\_\_\_\_ joins the appeal.

2. For cross-appeals only:

- a. Date notice of appeal was filed in original appeal:
- b. Date superior court clerk mailed notice of original appeal:
- c. Court of Appeal case number (if known):

Date:

\_\_\_\_\_  
 (TYPE OR PRINT NAME) ▶ \_\_\_\_\_  
 (SIGNATURE OF PARTY OR ATTORNEY)