



Judicial Council of California · Administrative Office of the Courts

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 25, 2013

Title	Agenda Item Type
Appellate Procedure: Appellate Division Rules and Forms	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Adopt Cal. Rules of Court, rules 8.874 and 8.924; amend rules 8.810, 8.822, 8.823, 8.834 ¹ , 8.835, 8.837, 8.851, 8.864, 8.865, 8.866, 8.867, 8.868, 8.869, 8.882, 8.887, 8.915, 8.916, 8.917, 8.918, 8.919, and 8.927; and revise forms APP-101-INFO, APP-102, APP-103, APP-104, APP-105, APP-110, CR-131-INFO, CR-132, CR-133, CR-134, CR-135, CR-136, CR-141-INFO, CR-142, CR-143, and CR-144	March 1, 2014
	Date of Report
	September 19, 2013
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Recommended by	
Appellate Advisory Committee	
Hon. Raymond J. Ikola, Chair	

Executive Summary

To provide cost savings and efficiencies for trial courts and for litigants, the Appellate Advisory Committee recommends amending the rules and revising the forms for the superior court appellate division proceedings to, among other things: (1) set a time frame for the court to decide whether to grant applications for appointment of counsel for indigent defendants in misdemeanor

¹ Please note that in a separate report relating to the reporter's transcripts in civil appeals, the Appellate Advisory Committee and the Court Executives Advisory Committee are recommending other changes to rule 8.834.

appeals; (2) provide for more limited records in certain types of misdemeanor appeals; (3) clarify the trial court's authority to adopt local rules establishing procedures to determine whether a full verbatim transcript is necessary in misdemeanor and infraction appeals; (4) expand the options when an appellant in a misdemeanor or infraction case learns of the cost for a record of the oral proceedings or that he or she must pay this cost; (5) add a rule to address defaults in procurement of the record in misdemeanor and infraction appeals; (6) provide that only the appellate division can grant an extension of the time to prepare a verbatim transcript in an appeal to the appellate division; and (7) specifically permit the trial court judge to order the appellant to incorporate corrections or modifications into a statement on appeal.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective March 1, 2014:

1. Adopt new rules 8.874 and 8.924 to establish the consequences when a party in a misdemeanor or infraction appeal fails to take the steps necessary to procure the record.
2. Amend rule 8.810 to:
 - Provide that the trial court cannot extend the time for a court reporter to prepare a transcript;
 - Clarify that a person seeking an extension of time to prepare a reporter's transcript or a transcript of an official electronic recording must comply with the requirements for filing an application to extend time; and
 - Consolidate and clarify the provisions relating to the declaration of facts establishing good cause for an extension of time.
3. Amend rules 8.822 and 8.823 to replace references to the trial court clerk *mailing* the judgment or order or notice of its entry with references to the clerk *servicing* these documents.
4. Amend rules 8.834, 8.866, and 8.919 to provide that only the presiding judge of the appellate division or his or her designee may extend the time to prepare a reporter's transcript in an appeal of a limited civil, misdemeanor, or infraction case.
5. Further amend rules 8.834, 8.866, and 8.919 and amend rules 8.835, 8.868, and 8.917 to:
 - Require that when all or part of the designated record was not recorded in the form requested by the appellant or cannot be transcribed, the clerk's notice informing the appellant of this must indicate whether the record was recorded in another form;
 - Clarify the alternative record options available to the appellant in these circumstances; and
 - Specify how the appellant must exercise the available options.

6. Amend rules 8.837, 8.869, and 8.916 to:
 - Clarify what the appellant must include in the condensed narrative portion of a proposed statement on appeal;
 - Replace the requirement that the proposed statement on appeal “include as much of the evidence or proceeding as necessary to support the stated grounds” for the appeal with a requirement that the condensed narrative portion of the statement “include a concise factual summary of the testimony of each witness and other evidence that is relevant to the points” that the appellant indicates he or she is raising on appeal;
 - Specifically permit the trial judge to order that the appellant either submit a new proposed statement if the initial one does not contain required material or prepare a statement that incorporates necessary corrections or modifications identified by the judge; and
 - Replace the current provision addressing failure to timely file a proposed statement with cross references to rules 8.842, 8.874 and 8.924 which generally address failure to take actions necessary to procure the record on appeal.

7. Amend rule 8.851 to:
 - Require the trial court to send any application for appointment of appellate counsel filed in that court to the appellate division within 15 court days after the application is filed; and
 - Require that appellate division grant or deny an application for appointment of appellate counsel within 30 days after the application is filed.

8. Amend rules 8.864 and 8.915 to:
 - Replace the current provisions establishing the sanctions when an appellant in a misdemeanor or infraction appeal fails to file a record election with a cross-reference to proposed new rules 8.874 and 8.924 which generally address failure to take actions necessary to procure the record on appeal; and
 - Delete provisions addressing situations in the record that were not recorded in the form elected by the appellant or cannot be transcribed, as this would be addressed by new provisions in the rules relating to reporter’s transcripts and official electronic recordings.

9. Amend rules 8.865 and 8.918 to specifically provide that a court may adopt a local rule establishing procedures for determining:
 - Whether items ordinarily required to be included in a reporter’s transcript are not required for proper determination of an appeal; or
 - Whether a form of the record other than a reporter’s transcript will be sufficient for proper determination of the appeal.

10. Amend rules 8.866 and 8.917 and further amend rules 8.868 and 8.919 to provide options in addition to using a statement on appeal when nonindigent appellants learn the cost of a reporter's transcript, official electronic recording, or a transcript prepared from such a recording.
11. Further amend rules 8.868 and 8.917 to include a new provision clarifying that the rules regarding the content of reporter's transcripts generally govern the contents of a transcript of an official electronic recording.
12. Amend rule 8.867 to provide for a limited record in:
 - Pretrial appeals of orders under Penal Code section 1538.5; and
 - Appeals from the final judgment that challenge only the conditions of probation.
13. Amend rules 8.882 and 8.927 to specify the potential consequences if the People fail to file a respondent's brief in a misdemeanor or infraction appeal.
14. Amend rule 8.887 to require that appellate division decisions that are certified for publication be sent to the Reporter of Decisions as soon as they are certified.
15. Revise the information sheets on appeals in limited civil, misdemeanor, and infraction cases (forms APP-101-INFO, CR-131-INFO, and CR-141-INFO), notice of appeal forms (forms APP-102, CR-132, and CR-142), record election forms (forms APP-103, APP-110, CR-134, and CR-142), proposed statement on appeal forms (forms APP-104, CR-135, and CR-143), and forms for orders concerning proposed statements on appeal (forms APP-105, CR-136, and CR-143) to:
 - Reflect the proposed changes to the appellate division rules;
 - Update references to the California Courts website; and
 - Make other nonsubstantive and clarifying changes.
16. Further revise the record election forms for misdemeanor and infraction appeals (forms CR-134 and CR-142) to include a space where the parties can indicate that they have stipulated to the use of a limited record.
17. Revise *Request for Court-Appointed Lawyer in Misdemeanor Appeal* (form CR-133) to add a note to CR-133 alerting defendants of the possibility that the appellate division may order a defendant to pay all or part of that cost of counsel on appeal if the appellate division finds the defendant able to pay that cost.

The text of the proposed rules and forms is attached at pages 21–145.

Previous Council Action

The Judicial Council adopted the first set of Rules for the Appellate Departments of the Superior Court in 1932. In 1936, the Judicial Council adopted Rules on Appeal from Municipal Courts and Inferior Courts in Criminal Cases. Effective September 15, 1945, the Judicial Council adopted a new set of Rules for the Appellate Departments, supplanting the 1932 rules, and a set of Rules on Appeals from Municipal Courts in Civil Cases. Although there were changes to these rules in the intervening years, they were not comprehensively revised again until January 1, 2009, when the Judicial Council adopted a new set of rules and forms for the superior court appellate division.²

Rationale for Recommendation

Background

As noted above, the Judicial Council adopted a new set of appellate division rules and forms effective January 1, 2009. When the new appellate division rules and forms were originally circulated for public comment, some suggestions were received that were beyond the scope of that proposal. The Appellate Advisory Committee indicated that it would consider these suggestions at a later time. In the almost five years since the adoption of these rules and forms, the committee has also received a number of additional suggestions for amending the rules or revising the forms from superior court judges, trial court administrators and staff attorneys, a county bar association, an attorney in a public defender's office, and other attorneys. The proponents' view was that many of these suggested changes were urgently needed to address identified problems or to reduce costs.

In the fall of 2012, the Appellate Advisory Committee formed the Appellate Division Rules Working Group to review all of the accumulated suggestions relating to the appellate division rules and forms. The working group was chaired by Justice Ronald Robie, who chaired the working group that developed the proposed rules and forms that took effect in 2009, and included several individuals who served on that earlier working group.³ It also included several judges who serve in the superior court appellate division, superior court staff attorneys and clerks who support the appellate division, and attorneys who practice in the appellate division. Many of these are individuals who had submitted suggestions concerning the rules and forms.

The working group reviewed all of the suggestions received concerning the appellate division rules and forms since their adoption. The working group identified those suggestions that it believed should be pursued, focusing primarily on those that, in the working group's view, would provide significant cost savings and efficiencies for trial courts and for litigants or would remedy problems causing significant cost or inconvenience to the courts or the public. The working group developed and recommended to the full Appellate Advisory Committee a

² The February 8, 2008 report to the Judicial Council recommending adoption of these new rules and forms is available at: www.courts.ca.gov/documents/022208item7.pdf.

³ A roster of the working group is attached to this report at page 20.

proposal for modifying some of the appellate division rules and forms in response to these suggestions. After being reviewed and approved by the full Appellate Advisory Committee, this proposal was circulated for public comment. The proposal has now been revised and refined in light of the public comments received, and the revised proposal is recommended for adoption by the working group and the full Appellate Advisory Committee.

The committee acknowledges that this is a lengthy proposal. It contains many changes to this set of rules and forms. This is, in part, a result of waiting for five years to consider the accumulated suggestions relating to these rules and forms. It also reflects the committee's conclusion that it would be preferable to consider a consolidated proposal addressing these rules and forms, rather than breaking this down into multiple smaller proposals separately addressing specific topic areas within these rules and forms.

However, the proposal length also stems, in large part, from the structure of the appellate division rules and forms. To make the rules easier for litigants—particularly self-represented litigants—to understand and use, there are separate chapters within the appellate division rules addressing appeals in limited civil, misdemeanor, and infraction cases. Often this means that there are three separate rules addressing the same topic, such as reporters' transcripts or statements on appeal. Similarly, there are separate forms for appeals in limited civil, misdemeanor, and infraction cases. Implementing changes to the rules and forms therefore typically means changing three sets of rules and three sets of forms. This makes the proposal long, but, as the discussion below makes clear, many of the proposed changes are the same across the different sets of rules and forms.

Appointment of counsel in misdemeanor appeals

Rule 8.851 addresses appointment of counsel for indigent defendants in misdemeanor appeals. This rule does not currently establish a time frame for the appointment of counsel. It is the committee's understanding that there is sometimes delay in the appointment of counsel. This results in delaying the resolution of the appeal. To ensure that counsel is timely appointed for eligible defendants in misdemeanor appeals and thus to reduce delay in these appeals, this proposal would:

- Require that the trial court send any application for appointment of appellate counsel that it receives to the appellate division within 15 court days after the application is filed; and
- Require that the appellate division grant or deny a defendant's application for appointment of counsel within 30 days after the application is filed.

Rule 8.851 currently includes a provision allowing the appellate division to order a defendant to pay all or part of that cost of counsel on appeal if the appellate division finds the defendant able to pay that cost. The Judicial Council form for seeking appointment of counsel, *Request for Court-Appointed Lawyer in Misdemeanor Appeal* (form CR-133), does not currently alert defendants of this possibility. This proposal would add a note to CR-133 to alert defendants of this possibility.

Records on appeal in misdemeanor and infraction cases

The appellate division rules that took effect in January 2009 made significant changes to the prior rules governing records on appeal in misdemeanor and infraction cases. Among other things, the rules now allow appellants to elect the form of the record of the oral proceedings that they would like to use (such as a reporter's transcript, transcript from an official electronic recording, or a statement on appeal) and clarify that defendants who are not indigent must pay the cost of this record. The rules also identify what must ordinarily be included in a clerk's transcript and reporter's transcript in such proceedings. In addition, the current rules include a variety of provisions that were intended to provide flexibility to courts in recognition of both local variances in what forms of the record may be available in misdemeanor and infraction cases and case law regarding the state's authority to determine the appropriate content and form of the record of the oral proceedings provided at public expense.

Records for indigent defendants

Reporter's transcripts—Rules 8.865 and 8.918, relating, respectively, to the contents of reporter's transcripts in misdemeanor and infraction appeals, specifically provide that the trial court may order that items normally included in the reporter's transcript are not necessary for the proper determination of a particular appeal. This provision is intended to recognize decisions of both the United States Supreme Court and the California Supreme Court holding that while an indigent appellant in a criminal case is constitutionally entitled, at public expense, to a record of sufficient completeness to permit proper consideration of the issues on appeal, it does not necessarily mean that a full verbatim transcript is needed in all cases (see *Mayer v. City of Chicago* (1971) 404 U.S. 189 and *March v. Municipal Court* (1972) 7 Cal.3d 422).⁴ In some

⁴ The *Mayer* and *March* cases both involved situations in which an indigent defendant convicted of a misdemeanor or other minor offense requested a reporter's transcript at public expense to use for an appeal and that request was denied. These decisions make clear that the constitutionally required "record of sufficient completeness" does not necessarily mean a complete verbatim transcript (*Mayer v. Chicago*, supra, 404 U.S. at page 194, 92 S.Ct. at page 414 and *March v. Municipal Court*, supra, 7 Cal.3d at page 428). Quoting *Draper v. Washington* (1963) 372 U.S. 487, 83 S.Ct. 774, the Court in *Mayer* indicated that:

Alternative methods of reporting trial proceedings are permissible if they place before the appellate court an equivalent report of the events at trial from which the appellant's contentions arise. A statement of facts agreed to by both sides, a full narrative statement based perhaps on the trial judge's minutes taken during trial or on the court reporter's untranscribed notes, or a bystander's bill of exceptions might all be adequate substitutes, equally as good as a transcript. Moreover, part or all of the stenographic transcript in certain cases will not be germane to consideration of the appeal, and a State will not be required to expend its funds unnecessarily in such circumstances. If, for instance, the points urged relate only to the validity of the statute or the sufficiency of the indictment upon which conviction was predicated, the transcript is irrelevant and need not be provided. If the assignments of error go only to rulings on evidence or to its sufficiency, the transcript provided might well be limited to the portions relevant to such issues. Even as to this kind of issue, however, it is unnecessary to afford a record of the proceedings pertaining to an alleged failure of proof on a point which is irrelevant as a matter of law to the elements of the crime for which the defendant has been convicted. In the examples given, the fact that an appellant with funds may choose to waste his money by unnecessarily including in the record all of the transcript does not mean that the State must waste its funds by providing what is unnecessary for adequate appellate review.

The *Mayer* and *March* cases also held, however, that "the State must provide a full verbatim record where that is necessary to assure the indigent [defendant] as effective an appeal as would be available to the defendant with

cases, a partial transcript or a settled statement may provide an acceptable alternative to a full transcript. The minimum record that is constitutionally required depends on what issues are being raised on appeal.⁵

In addition, rules 8.866 and 8.819, relating to preparation of reporter's transcripts in misdemeanor and infraction appeals, provide for immediate preparation of reporter's transcripts when either the state or an indigent defendant appeals "unless the court has a local rule providing otherwise." The quoted provision is intended to recognize that a court may establish a local procedure for determining in these cases, where the record will be provided at public expense, whether or not a full reporter's transcript is necessary or whether a settled statement or partial transcript would be sufficient for an appeal in the particular case. The court's authority to do this is also explained in the information sheets concerning misdemeanor and infraction appeals (CR-131-INFO and CR-141-INFO).

Although the intent of these rules was to provide flexibility to courts to adopt local procedures and to make orders regarding the appropriate content and form of the record in these appeals, the committee has received a number of comments suggesting that the rules are not sufficiently clear in this regard. The committee therefore recommends amending rules 8.865 and 8.918, relating to the contents of reporter's transcripts in misdemeanor and infraction appeals, respectively, to clarify courts' authority to adopt local rules establishing procedures, consistent with case law, for determining in cases where the record will be provided at public expense:

- Whether any of the items ordinarily required to be included in a reporter's transcript is not required for proper determination of the appeal; or
- Whether a form of the record other than a reporter's transcript will be sufficient for proper determination of the appeal.

Proposed new advisory committee comments accompanying these rules would note that *Mayer v. Chicago* and *March v. Municipal Court*, *supra*, make clear that the constitutionally required "record of sufficient completeness" does not necessarily mean a complete verbatim transcript; the record that is necessary depends on the grounds for the appeal in the particular case. These

resources to pay his own way" (*Mayer v. Chicago*, *supra*, 404 U.S. at 195, 92 S.Ct. at 415 and *March v. Municipal Court*, *supra*, 7 Cal.3d at 428).

⁵ The *Mayer* and *March* cases held that "where the grounds of appeal ... make out a colorable need for a complete transcript, the burden is on the State to show that only a portion of the transcript or an alternative form of the record will suffice for an effective appeal on the grounds" (*Mayer v. Chicago*, *supra*, 404 U.S. at 195, 92 S.Ct. at 415 and *March v. Municipal Court*, *supra*, 7 Cal.3d at 428). In *Mayer*, the court found that the defendant's grounds of appeal—that the evidence was insufficient for conviction and that misconduct of the prosecutor denied him a fair trial—made the requisite showing of "colorable need." Similarly, in *March*, the court found that the defendant's claims that "the evidence was insufficient to support the verdict and that certain misconduct, prejudicial to the defendants, occurred during the trial" made the requisite showing of colorable need, shifting the burden to the county to show that only a portion of the transcript or an alternative such as a settled statement would be sufficient for an effective appeal (*March v. Municipal Court*, *supra*, 7 Cal.3d at page 429).

advisory committee comments would also provide examples of local procedures used by some courts.

These proposed amendments would not alter the existing local flexibility in the area of record preparation for indigent appellants in misdemeanor and infraction appeals. The proposed amendments make clear that courts may adopt local procedures if they so choose, but courts are not required to do so.

Transcripts of official electronic recordings—Under existing statutory authority,⁶ trial court proceedings in misdemeanor and infraction cases may be officially electronically recorded. The preparation of the appellate record of the oral proceedings in such cases is governed by different rules than for reporter’s transcripts: rules 8.868 and 8.917. Currently, these rules do not address either the normal contents of transcripts prepared from such official electronic recordings or the court’s authority to order a more limited transcript or another form of the record in appropriate circumstances.

To fill this gap, this proposal would amend rules 8.868 and 8.917 to include a new provision regarding the contents of transcripts prepared from such recordings. This new provision would clarify that, except in appeals when either the parties have stipulated or the trial court has ordered that any of these items is not required for proper determination of the appeal, the rules regarding the content of reporter’s transcripts govern the contents of a transcript of an official electronic recording. This provision would allow courts to apply to transcripts prepared from official electronic recordings any local procedure for determining whether any of the items ordinarily required to be included in a reporter’s transcript is not required for proper determination of the appeal or whether another form of the record will be sufficient for proper determination of the appeal.

Record options and defaults when defendants are not indigent. As noted above, the appellate division rules that took effect in 2009 clarified that defendants in misdemeanor and infraction cases who are not indigent must pay the cost of preparing a reporter’s transcript, an official electronic recording, or a transcript prepared from an official electronic recording for an appeal. The appellants in these misdemeanor and infraction cases are thus in a similar position as appellants in limited civil cases, who must also pay the cost of preparing such records.

Defendants in misdemeanor and infraction cases who appeal may be unaware when they elect to use these forms of the record how much these records will cost or that they will be required to pay this cost. Rules 8.866, 8.868, 8.917, and 8.919, which address preparation of reporter’s transcripts and records when the trial court proceedings have been officially electronically recorded, therefore currently allow such appellants to elect to use a statement on appeal when they learn the cost of a reporter’s transcript, an official electronic recording, or a transcript prepared from an official electronic recording. Still, some defendants fail to make the required

⁶ Government Code section 69957.

deposit for a reporter's transcript, an official electronic recording, or a transcript prepared from an official electronic recording. Currently, the rules do not establish a procedure to address such defaults. Suggestions received by the committee indicate that this has created confusion and problems for some courts.

In contrast, under rule 8.842, appellants in civil appeals have a broader array of options when they learn the cost of a reporter's transcript, including filing a waiver of the deposit signed by the court reporter, depositing previously purchased transcripts, or electing to proceed without a record of the oral proceedings. In addition, rule 8.842 also specifically addresses what happens if an appellant defaults in the procurement of the record in a limited civil appeal.

The committee concluded that the number of defaults in the procurement of the record in misdemeanor and infraction cases could be reduced by incorporating into the rules for misdemeanor or infraction cases in which the appellant is paying for the record of the oral proceedings procedures similar to those applicable in limited civil appeals. This would reduce the time and expense for courts—in the form of work done by judicial officers, clerks, and appointed counsel—associated with defaults and efforts to cure defaults in these cases. In addition, it would reduce delay and support resolution of these matters on the merits, rather than on the basis of procedural defaults. The committee is therefore recommending the following:

- Amending rules 8.866 and 8.919, which address preparation of reporter's transcripts, and rules 8.868 and 8.917, which address records when the trial court proceedings have been officially electronically recorded, to provide additional options when nonindigent appellants learn the cost of a reporter's transcript, official electronic recording, or a transcript prepared from such a recording. Similar amendments would also provide appellants who sought a record at public expense with additional options when they are informed that the court has concluded they are not indigent.
- Adopting new rules 8.874 and 8.924 to establish the consequences when a party in a misdemeanor or infraction appeal fails to take the steps necessary to procure the record. Like rule 8.842 relating to failures to procure the record in limited civil cases, these rules would require notice to the defaulting party, would permit the appellate division to impose different consequences for appellants and respondents, and would note the authority of the court to reverse the consequences in appropriate circumstances. Also, like rule 8.882 relating to briefs in limited civil and misdemeanor appeals, the proposed rule for misdemeanor appeals would establish different consequences in cases in which the defaulting party was represented by appointed counsel on appeal. Note that while many of the potential defaults covered by these new rules would relate to payment for a record by a nonindigent defendant, these rules would also apply to defaults in the procurement of the record by indigent defendants and the People, such as failing to timely file a record election or failing to timely serve and file a proposed statement on appeal. Establishing a uniform procedure for these defaults should make the rules simpler and easier to follow and also reduce overall training costs for the courts.

While these proposed rule changes are intended to reduce court costs associated with defaults in the procurement of the record, they would establish new requirements that would need to be implemented by the courts. This could require modification of existing notices and of case management systems, one-time training of staff on the new procedures, and potentially sending default notices in circumstances in which they were not previously sent. To help reduce some of these costs, if the rules are adopted by the Judicial Council, the committee will prepare checklists of the changes and develop model default notices that the courts may use.

Limited record in certain appeals. As noted above, rules 8.860 and 8.910 indicate what must ordinarily be included in the normal record on appeal in misdemeanor and infraction cases, respectively. Subdivision (b) in each of these rules provides that if the appellant and the respondent stipulate in writing that any part of the record is not required for proper determination of the appeal and file that stipulation in the trial court, that part of the record must not be prepared or sent to the appellate division.

The Judicial Council forms for appellants to notify the court of their elections relating to the record on appeal in misdemeanor and infraction appeals—*Notice Regarding Record of Oral Proceedings (Misdemeanor)* (form CR-134) and *Notice of Appeal and Record of Oral Proceedings (Infraction)* (form CR-142)—do not currently include space for appellants to indicate that they have stipulated to such a limited record. To encourage and facilitate such stipulations, and thereby reduce court costs for such records in these cases, this proposal would revise these forms to include a place where the appellant can indicate that he or she has stipulated with the respondent that certain items are not needed for the record on appeal in the case. To reflect this change, the form names would also be changed to *Notice Regarding Record on Appeal (Misdemeanor)* and *Notice of Appeal and Record on Appeal (Infraction)*, respectively.

Rule 8.867 also provides for a more limited record—including requiring fewer documents in the clerk’s transcript and fewer proceedings in the reporter’s transcript or other record of the oral proceedings—in certain misdemeanor appeals, such as those in which the People appeal from a judgment on a demurrer to the complaint or if the defendant or the People appeal from an appealable order other than a ruling on a motion for new trial in a case. There are also certain other identifiable types of misdemeanor appeals that are not currently listed in rule 8.867 in which a more limited record is needed than is required for an appeal of the final judgment.

To reduce costs associated with unnecessary inclusion of items in the record on appeal, much of which is borne by the courts, this proposal would:

- Amend rule 8.867 to provide for limited record in:
 - Pretrial appeals of orders under Penal Code section 1538.5; and
 - Appeals from the final judgment that challenge only the conditions of probation.

- Revise *Notice of Appeal (Misdemeanor)* (form CR-132) to provide spaces that appellants can use to identify those cases that would fall within the proposed new categories of cases with limited records under rule 8.867.

Extensions of time to prepare transcript

To limit delays in the preparation of the record on appeal, rule 8.60, relating to extension of time in appeals to the Court of Appeal, and rules 8.130, 8.336, and 8.409, relating to preparation of reporter's transcripts in civil, felony, and juvenile appeals to the Court of Appeal, respectively, provide that only the reviewing court may extend the time to prepare a reporter's transcript in these cases. Currently, there is no similar provision in the appellate division rules. In some cases, this has resulted in lengthy extensions of time being granted for the preparation of reporter's transcripts, which delay the resolution of appeals.

To make the practices in appellate division and Court of Appeal matters more consistent, and thereby reduce staff training costs, and to reduce delay in appellate division proceedings associated with extensions of time to prepare the record on appeal, this proposal would:

- Amend rule 8.810, relating to extensions of time in appellate division proceedings, to:
 - Specifically provide that, as in cases appealed to the Court of Appeal, the trial court cannot extend the time for a court reporter to prepare a transcript; and
 - Clarify that either a court reporter or a person preparing a transcript of an official electronic recording seeking an extension of time to prepare a transcript must comply with the requirements for filing an application to extend time.
- Amend rules 8.834, 8.866, and 8.919, relating to the preparation of reporters' transcripts in limited civil, misdemeanor, and infraction appeals, to provide, similar to rule 8.130 relating to civil cases appealed to the Court of Appeal, that only the presiding judge of the appellate division or his or her designee may extend the time to prepare the reporter's transcript.

Making the practice with regard to extensions of time to prepare verbatim transcripts in appellate divisions similar to that for Court of Appeal proceedings should simplify procedures for trial courts and reduce associated staff training needs. However, this could result in shifting some workload associated with reviewing applications to extend the time to prepare transcripts in appellate division cases from trial court judges to the presiding judge of the appellate division or his or her designee.

Preparation of statements on appeal

Rules 8.837, 8.869, and 8.916 address the preparation of statements on appeal (summaries of the trial court proceedings that are approved by the trial court judge) in limited civil, misdemeanor, and infraction appeals, respectively. These rules currently require the appellant to prepare a proposed statement on appeal that includes a statement of the grounds for the appeal and a condensed narrative of the trial court proceedings that contains "as much of the evidence or

proceeding as necessary to support the stated grounds.” Some appellants, particularly self-represented appellants, do not include a sufficient summary of the proceedings in their proposed statements on appeal. Correcting such inadequate proposed statements can take additional time for both the appellant and the trial court judge and can delay resolution of the appeal.

The rules governing statements on appeal also require the trial judge to review proposed statements prepared by the appellant and to modify or correct these statements to ensure that they provide an accurate summary of the trial court proceedings. These rules do not currently include provisions that specifically authorize trial judges to order that the appellant correct or modify a proposed statement on appeal, rather than the judge making the necessary changes to the statement himself or herself. However, the February 6, 2008, report to the Judicial Council recommending adoption of these rules suggested that it would be permissible for a judge to ask the appellant to make such modifications or corrections. In appropriate circumstances, having the appellant modify or correct a statement on appeal as directed by the trial judge can save the judge’s time and thus trial court resources.

This proposal includes several rule amendments intended to reduce court costs by assisting litigants to better understand what should be included in a proposed statement on appeal, reducing burdens on trial court judges associated with reviewing and correcting proposed statements, and generally making the rules simpler and clearer, including:

- Clarifying what the appellant must include in the condensed narrative portion of a proposed statement on appeal by consolidating the provisions relating to the contents of this narrative. Currently, some of the provisions in the portions of the rules addressing the statement of the points that the appellant is raising on appeal actually establish requirements for items that must be addressed in the narrative of the oral proceedings. Under this proposal, these requirements would be moved into the provision which addresses the condensed narrative of the oral proceedings.
- Providing more specific direction about what must be in a proposed statement by replacing the requirement that the proposed statement on appeal “include as much of the evidence or proceeding as necessary to support the stated grounds” for the appeal with a requirement that the condensed narrative portion of the statement “include a concise factual summary of the testimony of each witness and other evidence that is relevant to the points” that the appellant indicates he or she is raising on appeal.” This change is intended to reduce the number of times that appellants submit statements that contain an insufficient summary of the proceedings in the trial court and thus reduce the burden on both appellants and trial court judges associated with correcting these statements. This same proposed new language would also be used to indicate what the trial judge must ensure is in the final statement on appeal.
- Further reducing the potential burdens on the trial judge associated with reviewing and correcting proposed statements by:
 - Clarifying that the judge may order the appellant to prepare, serve, and file a new proposed statement if the statement submitted by the appellant does not include material required under the rules. This amendment is intended to address situations in which the

proposed statement is so inadequate that the trial judge would otherwise be placed in the position of trying to prepare the statement rather than review it.

- Clarifying that the judge has the option of ordering the appellant to prepare a statement incorporating necessary modifications or corrections. This amendment is intended to address situations in which substantial modifications or corrections to a statement are needed.
- Giving the judge 10—rather than 5—days to review the proposed modifications or objections to a statement.
- Making the rule simpler and easier to understand by:
 - Moving the procedures applicable when the trial judge orders a hearing to settle the statement into a separate subdivision from the procedures applicable if the judge does not order such a hearing.
 - Affirmatively requiring adoption of a local rule allowing the trial judge to order a transcript in lieu of reviewing a proposed statement on appeal rather than allowing this practice in the absence of a local rule forbidding it.
 - Making other nonsubstantive changes.

Other changes

In response to suggestions received by the committee, the proposal also includes the following additional changes to the appellate division rules:

- In the rules relating to appeals in limited civil cases, replacing references to the trial court clerk *mailing* the judgment, or order, or notice of its entry with references to the clerk *servicing* these documents. This would conform the language of these rules with the current language of the rules relating to civil appeals to the Court of Appeal and encompass situations in which the clerk electronically serves such documents. This should facilitate and encourage the use of electronic service by the courts, which can reduce court costs.
- Amending the rules on briefs to fill a gap by including the potential consequences if the People fail to file a respondent's brief.
- Amending the rules on decisions to require that appellate division decisions that are certified for publication are sent to the Reporter of Decisions as soon as they are certified.
- Revising the information sheets on appeals in limited civil, misdemeanor, and infraction cases (forms APP-101-INFO, CR-131-INFO, and CR-141-INFO), notice of appeal forms (forms APP-102, CR-132, and CR-142), record election forms (forms APP-103, APP-110, CR-134, and CR-142), proposed statement on appeal forms (forms APP-104, CR-135, and CR-143), and forms for orders concerning proposed statements on appeal (forms APP-105, CR-136, and CR-143) to reflect the proposed changes to the appellate division rules.

Comments, Alternatives Considered, and Policy Implications

Comments

This proposal was circulated for public comment between April 19 and June 19, 2013, as part of the regular spring 2013 comment cycle. Thirteen individuals or organizations submitted comments on this proposal: four commentators agreed with the proposal, and two of these provided reasons for this support; one commentator agreed with the proposal if modified; four commentators did not indicate a position on the proposal, but two of these expressed support for all or part of the proposal and suggested modifications; two commentators opposed the proposal; and two individuals submitted comments that were not about this proposal. The full text of the comments received (other than those that were not about the proposal) and the committee responses are set out in the attached comment chart at pages 146–162. The main substantive comments and the committee’s responses are discussed below.

Costs and benefits of proposal

Two commentators—the Superior Court of Los Angeles County and the Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee Joint Rules Working Group (joint rules working group)—opposed the proposal. The main reason given for this opposition is that the likely costs of implementing this proposal, including such things as case management system reprogramming and staff training, will outweigh the likely benefits. The comment from the Superior Court of Los Angeles County did not discuss any of the rule amendments in the proposal individually, either in terms of the costs that might be imposed or the potential benefits. The comment from the joint rules working group also did not individually discuss any of the proposed amendments, but it did identify specific potential operational impacts, some of which were attributed to specific aspects of the proposal. Another commentator, Judge Curtis Karnow, who was a member of the working group, expressed specific support for the proposal on the basis of its potential to reduce the costs, including trial court costs for the record on appeal and for appointed counsel.

Both the working group and the committee discussed the potential benefits and costs of the proposed rule changes. The attached table summarizes this information for each of the proposed amendments. Based on this review, the committee concluded that, with the exception of the time period for the trial courts to refer applications for appointment of counsel in misdemeanor appeals to the appellate division, the potential benefits of all of the proposed rule changes outweigh the potential costs. Overall, these potential benefits include:

- Reducing record preparation costs, including costs of clerk’s and reporter’s transcripts and transcripts from official electronic recordings;
- Reducing the time judges must spend in correcting or finalizing statements on appeal, freeing up judicial resources for other matters;
- Reducing procedural defaults, particularly defaults in the procurement of the record, and court costs, in the form of judicial, court staff, and appointed counsel time, associated with efforts to cure these procedural defaults/reinstate appeals that were dismissed;

- Facilitating the use of electronic service by the courts, which should reduce court costs;
- Simplifying, and therefore reducing the cost of, ongoing training by establishing uniform procedures for similar situations and making the procedures for both appellate division and Court of Appeal cases similar;
- Reducing court staff time spent on providing guidance to litigants on how to proceed and court staff and judge time spent addressing noncompliance with procedures or other problems by making procedures clearer and easier for litigants to follow; and
- Reducing delay in the preparation of records and in the resolution of appeals to the appellate division.

The committee also concluded that the potential costs of implementing the proposed changes could potentially be reduced if the committee:

- Creates checklists of changes for use in training staff and court reporters;
- Works with the Center for Judiciary Education and Research (CJER) to create checklists or other materials for judges;
- Works with CJER to incorporate information about changes in training curriculum for court staff and judges;
- Creates model notices that courts may consider; and
- Creates model local rules or gathers examples of local rules that courts may consider.

Based on this, in response to these comments, the committee revised the proposal to lengthen the period the trial court has to forward a request for appointment of counsel in a misdemeanor case to the appellate division from 3 days to 15 days. The committee also pledges that, if the Judicial Council adopts the recommended rules amendments, the committee will take the steps outlined above to reduce the potential costs of implementing these changes.

At its meeting on September 9, the council's Rules and Projects Committee (RUPRO) discussed the concerns of the joint rules working group and the Appellate Advisory Committee's response. RUPRO recommended that the council adopt the proposal, but, to give courts more time to implement the proposed rule and form changes, make these effective March 1, 2014 instead of January 1.

Notifying court reporters of abandonments

As noted above, notifying the clerk that the appellant is abandoning the appeal is among the new options that would be identified under the proposed amendments to rules 8.866, 8.868, 8.917, and 8.919 when nonindigent appellants in misdemeanor and infraction appeals learn the cost of a reporter's transcript, official electronic recording, or a transcript prepared from such a recording. The California Court Reporters Association suggested that the provisions that relate to abandonment of an appeal should provide for notice to the court reporter of the abandonment.

Current rules 8.855 and 8.904 establish the procedures for abandoning appeals in misdemeanor and infraction cases, respectively. These rules both require that, if a reporter's transcript has been requested, the clerk must immediately notify the court reporter if the appeal is abandoned before the reporter has filed the transcript. To clarify that rules 8.855 and 8.904 apply in the situations covered by the proposed amendments, the committee revised these proposed amendments to include cross-references to rules 8.855 and 8.904.

Limited record in appeals of suppression motions

The proposal that was circulated for public comment included proposed amendments to rule 8.867 that would add additional types of cases in which there would be limited records, including pretrial appeals of orders under Penal Code section 1538.5. The invitation to comment specifically sought input on whether the items that would be included in the record under these amendments are appropriate and sufficient for these types of appeals. One commentator suggested that the record for such appeals should also include photographs or other documentary evidence and audiotapes or CDs of police dispatch communications.

Under rule 8.870, exhibits, such as photographs or audio tapes, while part of the record on appeal, are not included in the clerk's transcript; they are transmitted separately to the reviewing court. The committee therefore concluded that it would not be appropriate to require that these items be included in the clerk's transcript for appeals of orders under Penal Code section 1538.5. However, to clarify that proposed 8.867(b) is not meant to limit the transmission of such exhibits under rule 8.870, the committee revised the proposed amendments to rule 8.867 to add a cross-reference to rule 8.870.

Mailing or service by court of corrected or modified statements on appeal

As discussed above, rules 8.837, 8.869, and 8.916 address the preparation of statements on appeal in limited civil, misdemeanor, and infraction appeals, respectively. These rules currently provide that if the trial court judge makes any corrections or modifications to the proposed statement submitted by the appellant, the clerk must send copies of the corrected or modified statement to the parties and the date that the statement is sent starts the time running for the parties to submit objections. Under the proposed amendments to these rules that were circulated for public comment, the court may order that the appellant make necessary modifications or corrections to the statement and then serve and file the corrected or modified statement. In such circumstances, it is the date of service that starts the time running for the parties to submit objections.

One commentator expressed concern about the time for objections potentially running either from the date the appellant serves or from the date the court sends the modified or corrected statement. She pointed out that when the date runs from service, the time to act will be extended under the Code of Civil Procedure depending on whether service is by mail or other permissible means. There is no extension of the time to act if that time runs from an event other than service. She therefore suggested that the rules be modified to refer to the court serving, rather than sending, the modified or corrected statement.

It is the committee's understanding that the current practice is for the clerk of the court to mail the modified or corrected statement with a certificate of mailing by the clerk. Since this current practice meets the standard for service by the clerk under Code of Civil Procedure Section 1013a, the committee concluded that changing the rule language as suggested by the commentator would not negatively impact the trial courts and, in fact, could facilitate electronic service, which could reduce court costs. The committee therefore revised the proposal as suggested by the commentator.

Other alternatives considered

The committee considered not proposing any changes to the appellate division rules or forms at this time. However, the committee concluded that, given the current fiscal crisis in the courts, it was important to make changes to the rules and forms designed to reduce costs for courts and improve efficiencies. To conserve resources, the committee also concluded that it would be preferable to develop and circulate a single proposal relating to the appellate division rules and forms, rather than developing separate proposals relating to the potential changes in particular areas.

The committee also considered but decided not to pursue a wide variety of alternatives related to specific substantive areas covered by the appellate division rules, including:

- The committee considered providing that when an appellant defaults in procuring a record of the oral proceedings that the appellant elected to use, one potential sanction would be for the appellate division to consider the appeal on the record of the documents from the trial court proceeding alone. The committee decided, instead, to give appellants more options when they learn of the cost of the record or that they must pay this cost—including deciding to proceed without a record of the oral proceedings. The committee concluded that this approach was preferable because it allows the appellant to determine whether and how to proceed, rather than placing that burden on the appellate division.
- The committee considered a suggestion that the appellate division be required to issue written opinions in all appeals but concluded that such an increase in the burden on the appellate division was not appropriate during the current fiscal crisis.

Implementation Requirements, Costs, and Operational Impacts

Please see the discussion above under public comments.

There would be some costs for trial courts associated with implementing the recommended amendments including, potentially, costs to train staff concerning changes in procedures and to modify case management systems to reflect these changes. These training and case management system costs should be one-time costs that are offset by ongoing reductions in costs, including costs associated with preparing records on appeal in appellate division cases. If this proposal is adopted, the committee will also take steps to reduce these training costs, including developing checklists of the changes for court staff and judges.

There would also be some costs for trial courts associated with implementing the proposed new procedures giving appellants more options when they learn of the cost of a reporter's transcript, official electronic recording, or transcript prepared from an official electronic recording. These costs should be offset by decreases in costs associated with potentially issuing default notices, entering dismissals, and vacating dismissals in these cases. If this proposal is adopted, the committee will also take steps to reduce these costs, including developing model default notices.

As discussed above, the committee reviewed the potential costs and benefits of each of the proposed rule amendments and concluded that the benefits of making the proposed changes will outweigh the potential costs.

Relevant Strategic Plan Goals and Operational Plan Objectives

This proposal will further the Judicial Council's Strategic Plan Goal: III. Modernization of management and administration and Operational Plan Objective: 5. Develop and implement effective trial and appellate case management rules, procedures, techniques, and practices to promote the fair, timely, consistent, and efficient processing of all types of cases.

Attachments

1. Roster of Appellate Division Rules Working Group at page 20
2. Cal. Rules of Court, rules 8.810, 8.822, 8.823, 8.834, 8.835, 8.837, 8.851, 8.864, 8.865, 8.866, 8.867, 8.868, 8.869, 8.874, 8.882, 8.887, 8.915, 8.916, 8.917, 8.918, 8.919, 8.924, and 8.927 at pages 21–62
3. Judicial Council forms APP-101-INFO, APP-102, APP-103, APP-104, APP-105, APP-110, CR-131-INFO, CR-132, CR-133, CR-134, CR-135, CR-136, CR-141-INFO, CR-142, CR-143, and CR-144 at pages 63–145
4. Comment chart at pages 146–162
5. Chart of potential benefits and costs of proposed amendments at pages 163–168

2012 Appellate Division Rules Working Group

As of February 28, 2013

<p>Hon. Ronald B. Robie, Chair Associate Justice of the Court of Appeal Third Appellate District</p>	<p>Hon. Cindee F. Mayfield Superior Court of California, County of Mendocino</p>
<p>Ms. Karissa Adame Research Attorney, Writs & Appeals Superior Court of California, County of Monterey</p>	<p>Mr. William R. Moffitt Judicial Staff Counsel Superior Court of California, County of San Bernardino</p>
<p>Hon. Dennis A. Cornell Associate Justice of the Court of Appeal Fifth Appellate District</p>	<p>Ms. Sheran L. Morton Assistant Court Executive Officer Superior Court of California, County of Fresno</p>
<p>Mr. Brentford J. Ferreira Office of the Los Angeles County District Attorney</p>	<p>Ms. Kathie M. O'Connell Senior Administrator-Litigation Support Administration Superior Court of California, County of Los Angeles</p>
<p>Mr. Dennis Fischer Attorney, Santa Monica</p>	<p>Mr. John Hamilton Scott Attorney Public Defender of City of Los Angeles</p>
<p>Ms. Lisa R. Jaskol Directing Attorney Appellate Law Program Public Counsel Law Center</p>	<p>Hon. Russell D. Scott Superior Court of California, County of Monterey</p>
<p>Hon. Curtis E.A. Karnow Superior Court of California, County of San Francisco</p>	<p>Mr. William T. Tanner Directing Attorney Legal Aid Society of Orange County</p>
<p>Hon. Sanjay T. Kumar Superior Court of California, County of Los Angeles</p>	<p><u>AOC STAFF TO THE WORKING GROUP</u> Heather Anderson Senior Attorney Administrative Office of the Courts Office of the General Counsel</p>
<p>Ms. Cyndi Mason Superior Court of California, County of Mendocino</p>	

Rules 8.874 and 8.924 of the California Rules of Court are adopted, and rules 8.810, 8.822, 8.823, 8.834, 8.835, 8.837, 8.851, 8.864, 8.865, 8.866, 8.867, 8.868, 8.869, 8.882, 8.887, 8.915, 8.916, 8.917, 8.918, 8.919, and 8.927 are amended, effective March 1, 2014, 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 8.810. Extending time

(a) * * *

(b) Extension by trial court

(1) For good cause and except as these rules provide otherwise, the presiding judge of the trial court, or his or her designee, may extend the time to do any act to prepare the record on appeal.

(2) The trial court may not extend:

(A) The time to do an act if that time—including any valid extension—has expired;
or

(B) The time for a court reporter to prepare a transcript.

(3) Notwithstanding anything in these rules to the contrary, the trial court may grant an initial extension to any party to do any act to prepare the record on appeal on an ex parte basis.

(c) Extension by appellate division

For good cause and except as these rules provide otherwise, the presiding judge of the appellate division, or his or her designee, may extend the time to do any act required or permitted under these rules, except the time to file a notice of appeal.

(d) Application for extension

(1) An application to extend time, including an application requesting an extension of time to prepare a transcript from either a court reporter or a person preparing a transcript of an official electronic recording, must include a declaration stating facts, not mere conclusions, and must be served on all parties. For good cause, the presiding judge of the appellate division, or his or her designee, may excuse advance service.

1 (2) The application must include a declaration stating facts, not mere conclusions, that
2 establish good cause for granting the extension. For applications filed by counsel or
3 self-represented litigants, the facts provided to establish good cause must be
4 consistent with the policies and factors stated in rule 8.811.
5

6 ~~(2)~~(3) The application must state:
7

8 (A) The due date of the document to be filed;
9

10 (B) The length of the extension requested; and
11

12 (C) Whether any earlier extensions have been granted and, if so, their lengths; ~~and~~
13

14 ~~(D) Good cause for granting the extension, consistent with the policies and factors~~
15 ~~stated in rule 8.811.~~
16

17 (e) * * *
18
19

20 Chapter 2. Appeals and Records in Limited Civil Cases

21 Article 1. Taking Civil Appeals

22 Rule 8.822. Time to appeal

23 (a) Normal time

24 (1) Unless a statute or rule 8.823 provides otherwise, a notice of appeal must be filed on
25 or before the earliest of:

26 (A) 30 days after the trial court clerk ~~mails~~ serves the party filing the notice of
27 appeal a document entitled "Notice of Entry" of judgment or a file-stamped
28 copy of the judgment, showing the date ~~either it was mailed~~ served;
29

30 (B)-(C) * * *
31

32 (2)-(3) * * *
33

34 (b)-(d) * * *
35
36

37 Rule 8.823. Extending the time to appeal

38 (a) * * *
39
40
41
42
43
44
45

1 **(b) Motion for a new trial**

2
3 If any party serves and files a valid notice of intention to move for a new trial, the
4 following extensions of time apply:

5
6 (1) If the motion is denied, the time to appeal from the judgment is extended for all
7 parties until the earliest of:

8
9 (A) 15 days after the trial court clerk ~~mails~~, or a party serves, an order denying the
10 motion or a notice of entry of that order;

11
12 (B)–(C) * * *

13
14 (2) * * *

15
16 **(c) Motion to vacate judgment**

17
18 If, within the time prescribed by rule 8.822 to appeal from the judgment, any party serves
19 and files a valid notice of intention to move to vacate the judgment or a valid motion to
20 vacate the judgment, the time to appeal from the judgment is extended for all parties until
21 the earliest of:

22
23 (1) 15 days after the trial court clerk ~~mails~~, or a party serves, an order denying the
24 motion or a notice of entry of that order;

25
26 (2)–(3) * * *

27
28 **(d) Motion for judgment notwithstanding the verdict**

29
30 (1) If any party serves and files a valid motion for judgment notwithstanding the verdict
31 and the motion is denied, the time to appeal from the judgment is extended for all
32 parties until the earliest of:

33
34 (A) 15 days after the trial court clerk ~~mails~~, or a party serves, an order denying the
35 motion or a notice of entry of that order;

36
37 (B)–(C) * * *

38
39 (2) * * *

40
41 **(e) Motion to reconsider appealable order**

42
43 If any party serves and files a valid motion to reconsider an appealable order under Code of
44 Civil Procedure section 1008(a), the time to appeal from that order is extended for all
45 parties until the earliest of:

1 (1) 15 days after the superior court clerk ~~mails~~, or a party serves, an order denying the
2 motion or a notice of entry of that order;

3
4 (2)–(3) * * *

5
6 (f) * * *

7
8 **(g) Cross-appeal**

9
10 (1) If an appellant timely appeals from a judgment or appealable order, the time for any
11 other party to appeal from the same judgment or order is extended until 10 days after
12 the trial court clerk ~~mails~~ serves notification of the first appeal.

13
14 (2) If an appellant timely appeals from an order granting a motion for a new trial, an
15 order granting—within 75 days after entry of judgment—a motion to vacate the
16 judgment, or a judgment notwithstanding the verdict, the time for any other party to
17 appeal from the original judgment or from an order denying a motion for judgment
18 notwithstanding the verdict is extended until 10 days after the clerk ~~mails~~ serves
19 notification of the first appeal.

20
21 **(h) ~~Showing date of order or notice; Proof of service~~**

22
23 ~~(1)—An order or notice mailed by the clerk under this rule must show the date it was~~
24 ~~mailed.~~

25
26 ~~(2)—Service under this rule may be by any method permitted by the Code of Civil~~
27 ~~Procedure, including electronic service when permitted under Code of Civil~~
28 ~~Procedure section 1010.6 and rules 2.250–2.261. An order or notice that is served by~~
29 ~~a party must be accompanied by proof of service.~~

30
31
32 **Article 2. Record in Civil Appeals**

33
34 **Rule 8.834. Reporter’s transcript⁷**

35
36 (a)–(c) * * *

37
38 **(d) Filing the reporter’s transcript; copies; payment**

39
40 (1) Within 20 days after the clerk notifies the reporter to prepare the transcript under
41 (b)(2)—or the reporter receives the fees from the appellant—the reporter must
42 prepare and certify an original of the reporter’s transcript and file it in the trial court.
43 The reporter must also file one copy of the original transcript or more than one copy

⁷ Please note that in a report relating to the reporter’s transcripts in civil appeals, the Appellate Advisory Committee and the Court Executives Advisory Committee are recommending other changes to rule 8.834.

1 if multiple appellants equally share the cost of preparing the record. Only the
2 presiding judge of the appellate division, or his or her designee, may extend the time
3 to prepare the reporter's transcript (see rule 8.810).
4

5 (2)–(4) * * *

6
7 **(e) Notice when proceedings cannot be transcribed**

8
9 (1) If any portion of the designated proceedings were not reported or cannot be
10 transcribed, the trial court clerk must so notify the designating party by mail; the
11 notice must:

12
13 (A) Indicate whether the identified proceedings were officially electronically
14 recorded under Government Code section 69957; and

15
16 (B) Show the date it was mailed.

17
18 (2) Within 10 days after the notice under (1) is mailed, the designating party must file a
19 new election notifying the court whether the party elects to proceed with or without a
20 record of the identified oral proceedings ~~that were not reported or cannot be~~
21 ~~transcribed~~. If the party elects to proceed with a record of these oral proceedings, the
22 notice must specify which form of the record listed in rule 8.830(a)(2) ~~other than a~~
23 ~~reporter's transcript~~ the party elects to use.

24
25 (A) The party may not elect to use a reporter's transcript.

26
27 (B) The party may not elect to use an official electronic recording or a transcript
28 prepared from an official electronic recording under rule 8.835 unless the
29 clerk's notice under (1) indicates that proceedings were officially electronically
30 recorded under Government Code section 69957.

31
32 (C) The party must comply with the requirements applicable to the form of the
33 record elected.

34
35 (3) This remedy supplements any other available remedies.
36

37
38 **Rule 8.835. Record when trial proceedings were officially electronically recorded**

39
40 (a)–(c) * * *

41
42 **(d) Notice when proceedings were not officially electronically recorded or cannot be**
43 **transcribed**

44
45 (1) If the appellant elects under rule 8.831 to use a transcript prepared from an official
46 electronic recording or the recording itself, the trial court clerk must notify the

1 appellant by mail if any portion of the designated proceedings was not officially
2 electronically recorded or cannot be transcribed. The notice must:

3
4 (A) Indicate whether the identified proceedings were reported by a court reporter;
5 and

6
7 (B) Show the date it was mailed.

8
9 (2) Within 10 days after the notice under (1) is mailed, the appellant must file a new
10 election notifying the court whether the appellant elects to proceed with or without a
11 record of the oral proceedings that were not recorded or cannot be transcribed. If the
12 party appellant elects to proceed with a record of these oral proceedings, the notice
13 must specify which form of the record listed in rule 8.830(a)(2) ~~other than an~~
14 ~~electronic recording~~ the appellant elects to use.

15
16 (A) The appellant may not elect to use an official electronic recording or a
17 transcript prepared from an official electronic recording.

18
19 (B) The appellant may not elect to use a reporter's transcript unless the clerk's
20 notice under (1) indicates that proceedings were reported by a court reporter.

21
22 (C) The appellant must comply with the requirements applicable to the form of the
23 record elected.

24
25
26 **Rule 8.837. Statement on appeal**

27
28 **(a) Description**

29
30 A statement on appeal is a summary of the trial court proceedings that is approved by the
31 trial court. An appellant can elect under rule 8.831 to use a statement on appeal as the
32 record of the oral proceedings in the trial court, replacing the reporter's transcript.

33
34 **(b) Preparing the proposed statement**

35
36 (1) If the appellant elects in its notice designating the record under rule 8.831 to use a
37 statement on appeal, the appellant must serve and file a proposed statement within 20
38 days after filing the notice under rule 8.831. If the appellant does not serve and file a
39 proposed statement within this time, rule 8.842 applies. ~~the trial court clerk must~~
40 ~~promptly notify the appellant by mail that it must file the proposed statement within~~
41 ~~15 days after the notice is mailed and that failure to comply will result in the appeal~~
42 ~~being dismissed.~~

43
44 (2) Appellants who are not represented by an attorney must file their proposed statement
45 on *Statement on Appeal (Limited Civil Case)* (form APP-104). For good cause, the
46 court may permit the filing of a statement that is not on form APP-104.

1
2 **(c) Contents of the proposed statement**
3

4 The proposed statement must contain:
5

6 ~~(1) A condensed narrative of the oral proceedings that the appellant believes necessary~~
7 ~~for the appeal and a summary of the trial court's holding and judgment. Subject to~~
8 ~~the court's approval, the appellant may present some or all of the evidence by~~
9 ~~question and answer.~~

10
11 ~~(2)~~(1) A statement of the points the appellant is raising on appeal. If the condensed
12 narrative under ~~(A)~~(3) covers only a portion of the oral proceedings, then the appeal
13 is limited to the points identified in the statement unless the appellate division
14 determines that the record permits the full consideration of another point or, on
15 motion, the appellate division permits otherwise.

16
17 (A) The statement must specify the intended grounds of appeal by clearly stating
18 each point to be raised but need not identify each particular ruling or matter to
19 be challenged.
20

21 ~~(B) The statement must include as much of the evidence or proceeding as~~
22 ~~necessary to support the stated grounds. Any evidence or portion of a~~
23 ~~proceeding not included will be presumed to support the judgment or order~~
24 ~~appealed from.~~

25
26 ~~(C)~~(B) If one of the grounds of appeal is insufficiency of the evidence, the statement
27 must specify how it is insufficient.
28

29 ~~(D) If one of the grounds of appeal challenges the giving, refusal, or modification~~
30 ~~of a jury instruction, the statement must include any instructions submitted~~
31 ~~orally and identify the party that requested the instruction and any~~
32 ~~modification.~~
33

34 (2) A summary of the trial court's rulings and judgment.
35

36 (3) A condensed narrative of the oral proceedings that the appellant believes necessary
37 for the appeal.
38

39 (A) The condensed narrative must include a concise factual summary of the
40 evidence and the testimony of each witness that is relevant to the points which
41 the appellant states under (1) are being raised on appeal. Any evidence or
42 portion of a proceeding not included will be presumed to support the judgment
43 or order appealed from.
44

45 (B) If one of the points which the appellant states under (1) is being raised on
46 appeal is a challenge to the giving, refusal, or modification of a jury

1 instruction, the condensed narrative must include any instructions submitted
2 orally and not in writing and must identify the party that requested the
3 instruction and any modification.
4

5 **(d) Review of the appellant’s proposed statement**
6

7 (1) Within 10 days after the appellant files the proposed statement, the respondent may
8 serve and file proposed amendments to that statement.
9

10 (2) No later than 10 days after the respondent files proposed amendments or the time to
11 do so expires, a party may request a hearing to review and correct the proposed
12 statement. No hearing will be held unless ordered by the trial court judge, and the
13 judge will not ordinarily order a hearing unless there is a factual dispute about a
14 material aspect of the trial court proceedings.
15

16 ~~(4)~~(3) Except as provided in (6), if no hearing is ordered, no later than 10 days after the
17 time for requesting a hearing expires, the trial court judge must review the proposed
18 statement and any proposed amendments filed by the respondent and take one of the
19 following actions:
20

21 (A) If the proposed statement does not contain material required under (c), the trial
22 judge may order the appellant to prepare a new proposed statement. The order
23 must identify the additional material that must be included in the statement to
24 comply with (c) and the date by which the new proposed statement must be
25 served and filed. If the appellant does not serve and file a new proposed
26 statement as directed, rule 8.842 applies.
27

28 (B) If the trial judge does not issue an order under (A), the trial judge must ~~and~~
29 either:
30

31 (i) Make any corrections or modifications to the statement necessary to
32 ensure that it is an accurate summary of the ~~trial court proceedings~~
33 evidence and the testimony of each witness that is relevant to the points
34 which the appellant states under (c)(1) are being raised on appeal; or
35

36 (ii) Identify the necessary corrections and modifications and order the
37 appellant to prepare a statement incorporating these corrections and
38 modifications. ~~If a hearing is ordered, the trial court judge must make~~
39 any corrections or modifications to the statement within 10 days after the
40 hearing.
41

42 ~~(3)~~(4) If a hearing is ordered, the court must promptly set the hearing date and provide the
43 parties with at least 5 days’ written notice of the hearing date. No later than 10 days
44 after the hearing, the trial court judge must either:
45

1 (A) Make any corrections or modifications to the statement necessary to ensure
2 that it is an accurate summary of the evidence and the testimony of each
3 witness that is relevant to the points which the appellant states under (c)(1) are
4 being raised on appeal; or

5
6 (B) Identify the necessary corrections and modifications and order the appellant to
7 prepare a statement incorporating these corrections and modifications.

8
9 (5) The trial court judge must not eliminate the appellant’s specification of grounds of
10 appeal from the proposed statement.

11
12 (6) If the trial court proceedings were reported by a court reporter or officially
13 electronically recorded under Government Code section 69957 and the trial court
14 judge determines that it would save court time and resources, instead of correcting a
15 proposed statement on appeal:

16
17 (A) If the court has a local rule for the appellate division permitting the use of an
18 official electronic recording as the record of the oral proceedings, the trial
19 court judge may order that the original of an official electronic recording of the
20 trial court proceedings, or a copy made by the court, be transmitted as the
21 record of these oral proceedings without being transcribed. The court will pay
22 for any copy of the official electronic recording ordered under this subdivision;
23 or

24
25 (B) ~~Unless~~ If the court has a local rule ~~providing otherwise permitting this,~~ the trial
26 court judge may order that a transcript be prepared as the record of the oral
27 proceedings. The court will pay for any transcript ordered under this
28 subdivision.

29
30 (e) **Review of the corrected statement**

31
32 (1) If the trial court judge makes any corrections or modifications to the proposed
33 statement under (d), the clerk must ~~send~~ serve copies of the corrected or modified
34 statement ~~to~~ on the parties. If under (d) the trial court judge orders the appellant to
35 prepare a statement incorporating corrections and modifications, the appellant must
36 serve and file the corrected or modified statement within the time ordered by the
37 court. If the appellant does not serve and file a corrected or modified statement as
38 directed, rule 8.842 applies.

39
40 (2) Within 10 days after the corrected or modified statement is ~~sent to~~ served on the
41 parties, any party may serve and file proposed modifications or objections to the
42 statement.

43
44 (3) Within 10 days after the time for filing proposed modifications or objections under
45 (2) has expired, the judge must review the corrected or modified statement and any
46 proposed modifications or objections to the statement filed by the parties. The

1 procedures in (d)(3) or (4) apply if the judge determines that further corrections or
2 modifications are necessary to ensure that the statement is an accurate summary of
3 the evidence and the testimony of each witness relevant to the points which the
4 appellant states under (c)(1) are being raised on appeal.
5

6 **(f) Certification of the statement on appeal**
7

8 (1)—If the trial court judge does not make or order any corrections or modifications to the
9 proposed statement under (d)(3), (d)(4), or (e)(3) and does not order either the use of
10 an official electronic recording or the preparation of a transcript in lieu of correcting
11 the proposed statement under (d)(6), the judge must promptly certify the statement.
12

13 ~~(2)—If the trial court judge corrects or modifies an appellant’s proposed statement under~~
14 ~~(d), within five days after the time for filing proposed modifications or objections~~
15 ~~has expired, the judge must review any proposed modifications or objections to the~~
16 ~~statement filed by the parties, make any corrections or modifications to the statement~~
17 ~~necessary to ensure that it is an accurate summary of the trial court proceedings, and~~
18 ~~certify the statement.~~
19

20 **Advisory Committee Comment**
21

22 **Subdivision (b)(2).** *Proposed Statement on Appeal (Limited Civil Case)* (form AP-104) is available at
23 any courthouse or county law library or online at ~~www.courtinfo.ca.gov/forms~~
24 www.courts.ca.gov/forms.
25

26 **Subdivision (d).** Under rule 8.804, the term “judge” includes a commissioner or a temporary judge.
27

28 **Subdivisions (d)(3)(B), (d)(4), and (f).** The judge need not ensure that the statement as modified or
29 corrected is complete, but only that it is an accurate summary of the evidence and testimony relevant to
30 the issues identified by the appellant.
31

32
33 **Chapter 3. Appeals and Records in Misdemeanor Cases**
34

35 **Article 1. Taking Appeals in Misdemeanor Cases**
36

37 **Rule 8.851. Appointment of appellate counsel**
38

39 **(a)** * * *

40
41 **(b) Application; duties of trial counsel and clerk**
42

43 (1) If defense trial counsel has reason to believe that the client is indigent and will file an
44 appeal, counsel must prepare and file in the trial court an application to the appellate
45 division for appointment of counsel.
46

- 1 (2) If the defendant was represented by appointed counsel in the trial court, the
2 application must include trial counsel's declaration to that effect. If the defendant
3 was not represented by appointed counsel in the trial court, the application must
4 include a declaration of indigency in the form required by the Judicial Council.
5
6 (3) ~~When the trial court receives~~ Within 15 court days after an application is filed in the
7 trial court, the clerk must promptly send it to the appellate division. A defendant
8 may, however, apply directly to the appellate division for appointment of counsel at
9 any time after filing the notice of appeal.
10
11 (4) The appellate division must grant or deny a defendant's application for appointment
12 of counsel within 30 days after the application is filed.
13

14 (c) * * *

17 Article 2. Record in Misdemeanor Appeals

19 Rule 8.864. Record of oral proceedings

21 (a)-(b) * * *

23 (c) Failure to file election

24
25 If the appellant does not file an election within the time specified in (b), rule 8.874 applies.
26 ~~the trial court clerk must promptly notify the appellant by mail that the election must be~~
27 ~~filed within 15 days after the notice is mailed and that failure to comply will result in the~~
28 ~~appeal proceeding without a record of the oral proceedings.~~
29

30 (d) ~~Statement on appeal when proceedings cannot be transcribed or were not recorded~~

31
32 (1) ~~If the appellant elects under (a) to use a reporter's transcript or a transcript prepared~~
33 ~~from an official electronic recording or the recording itself, the trial court clerk must~~
34 ~~notify the appellant within 10 days after the appellant files this election if any portion~~
35 ~~of the oral proceedings listed in rule 8.865 was not reported or officially recorded~~
36 ~~electronically or cannot be transcribed. The notice must indicate that the appellant~~
37 ~~may use a statement on appeal as the record of the portion of the proceedings that~~
38 ~~was not recorded or cannot be transcribed.~~
39

40 (2) ~~Within 15 days after this notice is mailed by the clerk, the appellant must file a~~
41 ~~notice with the court stating whether the appellant elects to use a statement on appeal~~
42 ~~as the record of the portion of the proceedings that was not recorded or cannot be~~
43 ~~transcribed.~~
44
45
46

1 **Rule 8.865. Contents of reporter’s transcript**

2
3 **(a) Normal contents**

4
5 Except in appeals covered by rule 8.867, ~~or~~ when the parties have filed a stipulation under
6 rule 8.860(b), or when, under a procedure established by a local rule adopted pursuant to
7 (b), the trial court has ordered that any of these items is not required for proper
8 determination of the appeal, the reporter’s transcript must contain:

- 9
10 (1) The oral proceedings on the entry of any plea other than a not guilty plea;
11
12 (2) The oral proceedings on any motion in limine;
13
14 (3) The oral proceedings at trial, but excluding the voir dire examination of jurors and
15 any opening statement;
16
17 (4) Any jury instructions given orally;
18
19 (5) Any oral communication between the court and the jury or any individual juror;
20
21 (6) Any oral opinion of the court;
22
23 (7) The oral proceedings on any motion for new trial;
24
25 (8) The oral proceedings at sentencing, granting or denying probation, or other
26 dispositional hearing;
27
28 (9) If the appellant is the defendant, the reporter’s transcript must also contain:
29
30 (A) The oral proceedings on any defense motion denied in whole or in part except
31 motions for disqualification of a judge;
32
33 (B) Any closing arguments; and
34
35 (C) Any comment on the evidence by the court to the jury.
36

37 **(b) Local procedure for determining contents**

38
39 A court may adopt a local rule that establishes procedures for determining whether any of
40 the items listed in (a) is not required for proper determination of the appeal or whether a
41 form of the record other than a reporter’s transcript constitutes a record of sufficient
42 completeness for proper determination of the appeal.

43
44 **Advisory Committee Comment**

45
46 **Subdivision (b).** Both the United States Supreme Court and the California Supreme Court have held that,
47 where the State has established a right to appeal, an indigent defendant convicted of a criminal offense

1 has a constitutional right to a “record of sufficient completeness’ to permit proper consideration of [his]
2 claims.” (*Mayer v. Chicago* (1971) 404 U.S. 189, 193–194; *March v. Municipal Court* (1972) 7 Cal.3d
3 422, 427–428.) The California Supreme Court has also held that an indigent appellant is denied his or her
4 right under the Fourteenth Amendment to the competent assistance of counsel on appeal if counsel fails to
5 obtain an appellate record adequate for consideration of appellant’s claims of errors (*People v. Barton*
6 (1978) 21 Cal.3d 513, 518–520.)

7
8 The *Mayer* and *March* decisions make clear, however, that the constitutionally required “record of
9 sufficient completeness” does not necessarily mean a complete verbatim transcript; other forms of the
10 record, such as a statement on appeal, or a partial transcript may be sufficient. The record that is
11 necessary depends on the grounds for the appeal in the particular case. Under these decisions, where the
12 grounds of appeal make out a colorable need for a complete transcript, the burden is on the State to show
13 that only a portion of the transcript or an alternative form of the record will suffice for an effective appeal
14 on those grounds. The burden of overcoming the need for a verbatim reporter’s transcript appears to be
15 met where a verbatim recording of the proceedings is provided. (*Mayer, supra*, 404 U.S. at p. 195; cf.
16 *Eyrich v. Mun. Court* (1985) 165 Cal.App.3d 1138, 1140 [“Although use of a court reporter is one way of
17 obtaining a verbatim record, it may also be acquired through an electronic recording when no court
18 reporter is available”].)

19
20 Some courts have adopted local rules that establish procedures for determining whether only a portion of
21 a verbatim transcript or an alternative form of the record will be sufficient for an effective appeal,
22 including (1) requiring the appellant to specify the points the appellant is raising on appeal; (2) requiring
23 the appellant and respondent to meet and confer about the content and form of the record; and (3) holding
24 a hearing on the content and form of the record. Local procedures can be tailored to reflect the methods
25 available in a particular court for making a record of the trial court proceedings that is sufficient for an
26 effective appeal.

29 **Rule 8.866. Preparation of reporter’s transcript**

31 **(a) When preparation begins**

- 32
33 (1) Unless the court has adopted a local rule under rule 8.865(b) that provides ~~providing~~
34 otherwise, the reporter must immediately begin preparing the reporter’s transcript if
35 the notice sent to the reporter by the clerk under rule 8.864(a)(1) indicates either:
36
37 (A) That the defendant was represented by appointed counsel at trial; or
38
39 (B) That the appellant is the People.
40
41 (2) If the notice sent to the reporter by the clerk under rule 8.864(a)(1) indicates that the
42 appellant is the defendant and that the defendant was not represented by appointed
43 counsel at trial:
44
45 (A) Within 10 days after the date the clerk mailed the notice under rule 8.864(a)(1),
46 the reporter must file with the clerk the estimated cost of preparing the
47 reporter’s transcript, ~~and~~
48

- 1 (B) The clerk must promptly notify the appellant and his or her counsel of the
2 estimated cost of preparing the reporter's transcript. The notification must
3 show the date it was mailed.
4
- 5 (C) Within 10 days after the date the clerk mailed the notice under (B), the
6 appellant must do one of the following:
7
- 8 (i) Deposit with the clerk an amount equal to the estimated cost of preparing
9 the transcript;
10
- 11 (ii) File a waiver of the deposit signed by the reporter;
12
- 13 ~~(iii)~~(iii) File a declaration of indigency supported by evidence in the form
14 required by the Judicial Council; or
15
- 16 (iv) File a certified transcript of all of the proceedings required to be included
17 in the reporter's transcript under rule 8.865. The transcript must comply
18 with the format requirements of rule 8.144;
19
- 20 ~~(iii)~~(v) Notify the clerk by filing a new election that he or she will be using a
21 statement on appeal instead of a reporter's transcript. The appellant must
22 prepare, serve, and file a proposed statement on appeal within 20 days
23 after serving and filing the notice and must otherwise comply with the
24 requirements for statements on appeal under rule 8.869; or
25
- 26 (vi) Notify the clerk by filing a new election that he or she now elects to
27 proceed without a record of the oral proceedings in the trial court; or
28
- 29 (vii) Notify the clerk that he or she is abandoning the appeal by filing an
30 abandonment in the reviewing court under rule 8.855.
31
- 32 (D) If the trial court determines that the appellant is not indigent, within 10 days
33 after the date the clerk mails notice of this determination to the appellant, the
34 appellant must do one of the following:
35
- 36 (i) Deposit with the clerk an amount equal to the estimated cost of preparing
37 the transcript;
38
- 39 (ii) File with the clerk a waiver of the deposit signed by the reporter;
40
- 41 (iii) File a certified transcript of all of the proceedings required to be included
42 in the reporter's transcript under rule 8.865. The transcript must comply
43 with the format requirements of rule 8.144;
44
- 45 (iv) Notify the clerk by filing a new election that he or she will be using a
46 statement on appeal instead of a reporter's transcript. The appellant must

1 prepare, serve, and file a proposed statement on appeal within 20 days
2 after serving and filing the notice and must otherwise comply with the
3 requirements for statements on appeal under rule 8.869;

4
5 (v) Notify the clerk by filing a new election that he or she now elects to
6 proceed without a record of the oral proceedings in the trial court; or

7
8 (vi) Notify the clerk that he or she is abandoning the appeal by filing an
9 abandonment in the reviewing court under rule 8.855.

10
11 ~~(D)~~(E) The clerk must promptly notify the reporter to begin preparing the transcript
12 when:

13
14 (i) The clerk receives the required deposit under (C)(i) or (D)(i);

15
16 (ii) The clerk receives a waiver of the deposit signed by the reporter under
17 (C)(ii) or (D)(ii); or

18
19 ~~(ii)~~(iii) The trial court determines that the ~~defendant~~ appellant is indigent and
20 orders that the ~~defendant~~ appellant receive the transcript without cost.
21

22 (b)–(c) * * *

23
24 **(d) When preparation must be completed**

25
26 The reporter must deliver the original and all copies to the trial court clerk as soon as they
27 are certified but no later than 20 days after the reporter is required to begin preparing the
28 transcript under (a). Only the presiding judge of the appellate division or his or her
29 designee may extend the time to prepare the reporter’s transcript (see rule 8.810).
30

31 (e) * * *

32
33 **(f) Notice when proceedings were not reported or cannot be transcribed**

34
35 (1) If any portion of the oral proceedings to be included in the reporter’s transcript was
36 not reported or cannot be transcribed, the trial court clerk must so notify the parties
37 by mail. The notice must:

38
39 (A) Indicate whether the identified proceedings were officially electronically
40 recorded under Government Code section 69957; and

41
42 (B) Show the date it was mailed.

43
44 (2) Within 15 days after this notice is mailed by the clerk, the appellant must serve and
45 file a notice with the court stating whether the appellant elects to proceed with or

1 without a record of the identified proceedings. When the party elects to proceed with
2 a record of these oral proceedings:

3
4 (A) If the clerk’s notice under (1) indicates that the proceedings were officially
5 electronically recorded under Government Code section 69957, the appellant’s
6 notice must specify which form of the record listed in rule 8.864(a) other than
7 a reporter’s transcript the appellant elects to use. The appellant must comply
8 with the requirements applicable to the form of the record elected.

9
10 (B) If the clerk’s notice under (1) indicates that the proceedings were not officially
11 electronically recorded under Government Code section 69957, the appellant
12 must prepare, serve, and file a proposed statement on appeal within 20 days
13 after serving and filing the notice.

14
15 **Advisory Committee Comment**

16
17 **Subdivision (a).** If the appellant was not represented by the public defender or other appointed counsel in
18 the trial court, the appellant must use *Defendant’s Financial Statement on Eligibility for Appointment of*
19 *Counsel and Reimbursement and Record on Appeal at Public Expense* (form MC-210) to show indigency.
20 This form is available at any courthouse or county law library or online at www.courtinfo.ca.gov/forms
21 www.courts.ca.gov/forms.

22
23 **Subdivisions (a)(2)(C)(iv) and (a)(2)(D)(iii).** Sometimes a party in a trial court proceeding will purchase
24 reporter’s transcripts of all or part of the proceedings before any appeal is filed. In recognition of the fact
25 that such transcripts may already have been purchased, this rule allows an appellant, in lieu of depositing
26 funds for a reporter’s transcript, to deposit with the trial court a certified transcript of the proceedings
27 necessary for the appeal. Subdivisions (a)(2)(C)(iv) and (a)(2)(D)(iii) make clear that the certified
28 transcript may be filed in lieu of a deposit for a reporter’s transcript only where the certified transcript
29 contains all of the proceedings required under rule 8.865 and the transcript complies with the format
30 requirements of rule 8.144.

31
32
33 **Rule 8.867. Limited normal record in certain appeals**

34
35 **(a) Application and additions**

36
37 This rule establishes a limited normal record for certain appeals. This rule does not alter the
38 parties’ right to request that exhibits be transmitted to the reviewing court under rule 8.870
39 nor preclude either an application in the superior court under (e) for additions to the limited
40 normal record or a motion in the reviewing court for augmentation under rule 8.841.

41
42 **(b) Pretrial appeals of rulings on motions under Penal Code section 1538.5**

43
44 If before trial either the defendant or the People appeal a ruling on a motion under Penal
45 Code section 1538.5 for the return of property or the suppression of evidence, the normal
46 record is composed of:

1 (1) Record of the documents filed in the trial court

2
3 A clerk's transcript or original trial court file containing:

- 4
5 (A) The complaint, including any notice to appear, and any amendment;
6
7 (B) The motion under Penal Code section 1538.5, with supporting and opposing
8 memoranda, and attachments;
9
10 (C) The order on the motion under Penal Code section 1538.5;
11
12 (D) Any court minutes relating to the order; and
13
14 (E) The notice of appeal.

15
16 (2) Record of the oral proceedings in the trial court

17
18 If an appellant wants to raise any issue that requires consideration of the oral
19 proceedings in the trial court, a reporter's transcript, a transcript prepared under rule
20 8.868, an official electronic recording under rule 8.868, or a statement on appeal
21 under rule 8.869 summarizing any oral proceedings incident to the order on the
22 motion under Penal Code section 1538.5.

23
24 **(c) Appeals from judgments on demurrers or certain appealable orders**

25
26 If the People appeal from a judgment on a demurrer to the complaint, including any notice
27 to appear, or if the defendant or the People appeal from an appealable order other than a
28 ruling on a motion for new trial or a ruling covered by (a), the normal record is composed
29 of:

30
31 (1) Record of the documents filed in the trial court

32
33 A clerk's transcript or original trial court file containing:

- 34
35 (A) The complaint, including any notice to appear, and any amendment;
36
37 (B) Any demurrer or other plea;
38
39 (C) Any motion or notice of motion granted or denied by the order appealed from,
40 with supporting and opposing memoranda and attachments;
41
42 (D) The judgment or order appealed from and any abstract of judgment or
43 commitment;
44
45 (E) Any court minutes relating to the judgment or order appealed from and:
46

- 1 (i) If there was a trial in the case, any court minutes of proceedings at the
2 time the original verdict is rendered and any subsequent proceedings; or
3
4 (ii) If the original judgment of conviction is based on a guilty plea or nolo
5 contendere plea, any court minutes of the proceedings at the time of entry
6 of such plea and any subsequent proceedings;
7
8 (F) The notice of appeal; and
9
10 (G) If the appellant is the defendant, all probation officer reports.
11

12 (2) *Record of the oral proceedings in the trial court*

13
14 If an appellant wants to raise any issue which requires consideration of the oral
15 proceedings in the trial court:

- 16
17 (A) A reporter's transcript, a transcript prepared under rule 8.868, an official
18 electronic recording under rule 8.868, or a statement on appeal under rule
19 8.869 summarizing any oral proceedings incident to the judgment or order
20 being appealed.
21
22 (B) If the appeal is from an order after judgment, a reporter's transcript, a transcript
23 prepared under rule 8.868, an official electronic recording under rule 8.868, or
24 a statement on appeal under rule 8.869 summarizing any oral proceedings
25 from:
26
27 (i) The original sentencing proceeding; and
28
29 (ii) If the original judgment of conviction is based on a guilty plea or nolo
30 contendere plea, the proceedings at the time of entry of such plea.
31

32 **(d) Appeals of the conditions of probation**

33
34 If a defendant's appeal of the judgment contests only the conditions of probation, the
35 normal record is composed of:

36
37 (1) Record of the documents filed in the trial court

38
39 A clerk's transcript or original trial court file containing:

- 40
41 (A) The complaint, including any notice to appear, and any amendment;
42
43 (B) The judgment or order appealed from and any abstract of judgment or
44 commitment;
45
46 (C) Any court minutes relating to the judgment or order appealed from and:

- 1
2 (i) If there was a trial in the case, any court minutes of proceedings at the
3 time the original verdict is rendered and any subsequent proceedings; or
4
5 (ii) If the original judgment of conviction is based on a guilty plea or nolo
6 contendere plea, any court minutes of the proceedings at the time of entry
7 of such plea and any subsequent proceedings;
8

9 (D) The notice of appeal; and

10 (E) All probation officer reports.

11
12
13 (2) Record of the oral proceedings in the trial court
14

15 If an appellant wants to raise any issue that requires consideration of the oral
16 proceedings in the trial court, a reporter's transcript, a transcript prepared under rule
17 8.868, an official electronic recording under rule 8.868, or a statement on appeal
18 under rule 8.869 summarizing any oral proceedings from:
19

20 (A) The sentencing proceeding; and

21 (B) If the judgment of conviction is based on a guilty plea or nolo contendere plea,
22 the proceedings at the time of entry of such plea.
23
24

25 (e) **Additions to the record**
26

27 Either the People or the defendant may apply to the superior court for inclusion in the
28 record under (b), (c), or (d) of any item that would ordinarily be included in the clerk's
29 transcript under rule 8.861 or a reporter's transcript under rule 8.865.
30

31 (1) An application for additional record must describe the material to be included and
32 explain how it may be useful in the appeal.
33

34 (2) The application must be filed in the superior court with the notice of appeal or as
35 soon thereafter as possible, and will be treated as denied if it is filed after the record
36 is sent to the reviewing court.
37

38 (3) The clerk must immediately present the application to the trial judge.
39

40 (4) Within five days after the application is filed, the judge must order that the record
41 include as much of the additional material as the judge finds proper to fully present
42 the points raised by the applicant. Denial of the application does not preclude a
43 motion in the reviewing court for augmentation under rule 8.841.
44

45 (5) If the judge does not rule on the application within the time prescribed by (4), the
46 requested material—other than exhibits—must be included in the clerk's transcript
47 or the reporter's transcript without a court order.

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45
- (i) Deposit with the clerk an amount equal to the estimated cost of preparing the transcript or the copy of the recording;
 - (ii) File a declaration of indigency supported by evidence in the form required by the Judicial Council; ~~or~~
 - (iii) Notify the clerk by filing a new election that he or she will be using a statement on appeal instead of a transcript or copy of the recording. The appellant must prepare, serve, and file a proposed statement on appeal within 20 days after serving and filing the notice and must otherwise comply with the requirements for statements on appeal under rule 8.869;
 - (iv) Notify the clerk by filing a new election that he or she now elects to proceed without a record of the oral proceedings in the trial court; or
 - (v) Notify the clerk that he or she is abandoning the appeal by filing an abandonment in the reviewing court under rule 8.855.
- (C) If the trial court determines that the appellant is not indigent, within 10 days after the date the clerk mails notice of this determination to the appellant, the appellant must do one of the following:
- (i) Deposit with the clerk an amount equal to the estimated cost of preparing the transcript or the copy of the recording;
 - (ii) Notify the clerk by filing a new election that he or she will be using a statement on appeal instead of a reporter's transcript. The appellant must prepare, serve, and file a proposed statement on appeal within 20 days after serving and filing the notice and must otherwise comply with the requirements for statements on appeal under rule 8.869;
 - (iii) Notify the clerk by filing a new election that he or she now elects to proceed without a record of the oral proceedings in the trial court; or
 - (iv) Notify the clerk that he or she is abandoning the appeal by filing an abandonment in the reviewing court under rule 8.855.
- ~~(C)~~(D) Preparation of the transcript or the copy of the recording must begin when:
- (i) The clerk receives the required deposit under (B)(i) or (C)(i); or
 - (ii) The trial court determines that the defendant is indigent and orders that the defendant receive the transcript or the copy of the recording without cost.

1
2 **(f) Notice when proceedings were not officially electronically recorded or cannot be**
3 **transcribed**
4

5 (1) If any portion of the oral proceedings to be included in the transcript was not
6 officially electronically recorded under Government Code section 69957 or cannot
7 be transcribed, the trial court clerk must so notify the parties by mail. The notice
8 must:
9

10 (A) Indicate whether the identified proceedings were reported by a court reporter;
11 and
12

13 (B) Show the date it was mailed.
14

15 (2) Within 15 days after this notice is mailed by the clerk, the appellant must serve and
16 file a notice with the court stating whether the appellant elects to proceed with or
17 without a record of the identified oral proceedings. When the party elects to proceed
18 with a record of these oral proceedings:
19

20 (A) If the clerk's notice under (1) indicates that the proceedings were reported by a
21 court reporter, the appellant's notice must specify which form of the record
22 listed in rule 8.864(a) other than an official electronic recording or a transcript
23 prepared from an official electronic recording the appellant elects to use. The
24 appellant must comply with the requirements applicable to the form of the
25 record elected.
26

27 (B) If the clerk's notice under (1) indicates that the proceedings were not reported
28 by a court reporter, the appellant must prepare, serve, and file a proposed
29 statement on appeal within 20 days after serving and filing the notice.
30
31

32 **Rule 8.869. Statement on appeal**
33

34 **(a) Description**
35

36 A statement on appeal is a summary of the trial court proceedings that is approved by the
37 trial court. An appellant can elect under rule 8.864 to use a statement on appeal as the
38 record of the oral proceedings in the trial court, replacing the reporter's transcript.
39

40 **(b) Preparing the proposed statement**
41

42 (1) If the appellant elects under rule 8.864 to use a statement on appeal, the appellant
43 must prepare, serve, and file a proposed statement within 20 days after filing the
44 record preparation election.
45

1 (2) Appellants who are not represented by an attorney must file their proposed statement
2 on *Proposed Statement on Appeal (Misdemeanor)* (form CR-135). For good cause,
3 the court may permit the filing of a statement that is not on form CR-135.
4

5 (3) If the appellant does not serve and file a proposed statement within the time specified
6 in (1), rule 8.874 applies. the trial court clerk must promptly notify the appellant by
7 mail that the proposed statement must be filed within 15 days after the notice is
8 mailed and that failure to comply will result in the appeal being dismissed.
9

10 **(c) Contents of the proposed statement on appeal**

11 A proposed statement prepared by the appellant must contain:
12
13

14 ~~(1) A condensed narrative of the oral proceedings that the appellant believes necessary~~
15 ~~for the appeal and a summary of the trial court's holding and the sentence imposed on~~
16 ~~the defendant. Subject to the court's approval, the appellant may present some or all~~
17 ~~of the evidence by question and answer; and~~
18

19 ~~(2)~~(1) A statement of the points the appellant is raising on appeal. The appeal is then
20 limited to those points unless the appellate division determines that the record
21 permits the full consideration of another point.
22

23 (A) The statement must specify the intended grounds of appeal by clearly stating
24 each point to be raised but need not identify each particular ruling or matter to
25 be challenged.
26

27 ~~(B) The statement must include as much of the evidence or proceeding as~~
28 ~~necessary to support the stated grounds. Any evidence or portion of a~~
29 ~~proceeding not included will be presumed to support the judgment or order~~
30 ~~appealed from.~~
31

32 ~~(C)~~(B) If one of the grounds of appeal is insufficiency of the evidence, the statement
33 must specify how it is insufficient.
34

35 ~~(D) If one of the grounds of appeal challenges the giving, refusal, or modification~~
36 ~~of a jury instruction, the statement must include any instructions submitted~~
37 ~~orally and identify the party that requested the instruction and any~~
38 ~~modification.~~
39

40 (2) A summary of the trial court's rulings and the sentence imposed on the defendant.
41

42 (3) A condensed narrative of the oral proceedings that the appellant believes necessary
43 for the appeal.
44

45 (A) The condensed narrative must include a concise factual summary of the
46 evidence and the testimony of each witness that is relevant to the points which

1 the appellant states under (1) are being raised on appeal. Any evidence or
2 portion of a proceeding not included will be presumed to support the judgment
3 or order appealed from.

4
5 (B) If one of the points which the appellant states under (1) is being raised on
6 appeal is a challenge to the giving, refusal, or modification of a jury
7 instruction, the condensed narrative must include any instructions submitted
8 orally and not in writing and must identify the party that requested the
9 instruction and any modification.

10
11 **(d) Review of the appellant's proposed statement**

12
13 (1) Within 10 days after the appellant files the proposed statement, the respondent may
14 serve and file proposed amendments to that statement.

15
16 (2) No later than 10 days after either the respondent files proposed amendments or the
17 time to do so expires, a party may request a hearing to review and correct the
18 proposed statement. No hearing will be held unless ordered by the trial court judge,
19 and the judge will not ordinarily order a hearing unless there is a factual dispute
20 about a material aspect of the trial court proceedings.

21
22 ~~(4)~~(3) Except as provided in (6), if no hearing is ordered, no later than 10 days after the
23 time for requesting a hearing expires, the trial court judge must review the proposed
24 statement and any proposed amendments filed by the respondent and take one of the
25 following actions:

26
27 (A) If the proposed statement does not contain material required under (c), the trial
28 court judge may order the appellant to prepare a new proposed statement. The
29 order must identify the additional material that must be included in the
30 statement to comply with (c) and the date by which the new proposed
31 statement must be served and filed. If the appellant does not serve and file a
32 new proposed statement as directed, rule 8.874 applies.

33
34 (B) If the trial court judge does not issue an order under (A), the trial court judge
35 must ~~and~~ either:

36
37 (i) Make any corrections or modifications to the statement necessary to
38 ensure that it is an accurate summary of the ~~trial court proceedings~~
39 evidence and the testimony of each witness that is relevant to the points
40 which the appellant states under (c)(1) are being raised on appeal; or

41
42 (ii) Identify the necessary corrections and modifications and order the
43 appellant to prepare a statement incorporating these corrections and
44 modifications. ~~If a hearing is ordered, the trial court judge must make~~
45 any corrections or modifications to the statement within 10 days after the
46 hearing.

1
2 (3)(4) If a hearing is ordered, the court must promptly set the hearing date and provide the
3 parties with at least 5 days' written notice of the hearing date. No later than 10 days
4 after the hearing, the trial court judge must either:

5
6 (A) Make any corrections or modifications to the statement necessary to ensure
7 that it is an accurate summary of the evidence and the testimony of each
8 witness that is relevant to the points which the appellant states under (c)(1) are
9 being raised on appeal; or

10
11 (B) Identify the necessary corrections and modifications and order the appellant to
12 prepare a statement incorporating these corrections and modifications.

13
14 (5) The trial court judge must not eliminate the appellant's specification of grounds of
15 appeal from the proposed statement.

16
17 (6) If the trial court proceedings were reported by a court reporter or officially
18 electronically recorded under Government Code section 69957 and the trial court
19 judge determines that it would save court time and resources, instead of correcting a
20 proposed statement on appeal:

21
22 (A) If the court has a local rule for the appellate division permitting the use of an
23 official electronic recording as the record of the oral proceedings, the trial
24 court judge may order that the original of an official electronic recording of the
25 trial court proceedings, or a copy made by the court, be transmitted as the
26 record of these oral proceedings without being transcribed. The court will pay
27 for any copy of the official electronic recording ordered under this subdivision;
28 or

29
30 (B) ~~Unless~~ If the court has a local rule ~~providing otherwise permitting this,~~ the trial
31 court judge may order that a transcript be prepared as the record of the oral
32 proceedings. The court will pay for any transcript ordered under this
33 subdivision.

34
35 (e) **Review of the corrected or modified statement**

36
37 (1) If the trial court judge makes any corrections or modifications to the proposed
38 statement under (d), the clerk must ~~send~~ serve copies of the corrected or modified
39 statement to on the parties. If under (d) the trial court judge orders the appellant to
40 prepare a statement incorporating corrections and modifications, the appellant must
41 serve and file the corrected or modified statement within the time ordered by the
42 court. If the appellant does not serve and file a corrected or modified statement as
43 directed, rule 8.874 applies.
44

1 (2) Within 10 days after the corrected or modified statement is ~~sent to~~ served on the
2 parties, any party may serve and file proposed modifications or objections to the
3 statement.
4

5 (3) Within 10 days after the time for filing proposed modifications or objections under
6 (2) has expired, the judge must review the corrected or modified statement and any
7 proposed modifications or objections to the statement filed by the parties. The
8 procedures in (d)(3) or (4) apply if the judge determines that further corrections or
9 modifications are necessary to ensure that the statement is an accurate summary of
10 the evidence and the testimony of each witness relevant to the points which the
11 appellant states under (c)(1) are being raised on appeal.
12

13 **(f) Certification of the statement on appeal**
14

15 (1)—If the trial court judge does not make or order any corrections or modifications to the
16 proposed statement under (d)(3), (d)(4), or (e)(3) and does not order either the use of
17 an official electronic recording or preparation of a transcript in lieu of correcting the
18 proposed statement under (d)(6), the judge must promptly certify the statement.
19

20 (2)—~~If the trial court judge corrects or modifies an appellant’s proposed statement under~~
21 ~~(d), within five days after the time for filing proposed modifications or objections~~
22 ~~under (e) has expired, the judge must review any proposed modifications or~~
23 ~~objections to the statement filed by the parties, make any corrections or~~
24 ~~modifications to the statement necessary to ensure that it is an accurate summary of~~
25 ~~the trial court proceedings, and certify the statement.~~
26

27 **(g) Extensions of time**
28

29 For good cause, the trial court may grant an extension of not more than 15 days to do any
30 act required or permitted under this rule.
31

32 **Advisory Committee Comment**
33

34 Rules 8.806, 8.810, and 8.812 address applications for extensions of time and relief from default.
35

36 **Subdivision (b)(2).** *Proposed Statement on Appeal (Misdemeanor)* (form CR-135) is available at any
37 courthouse or county law library or online at ~~www.courtinfo.ca.gov/forms~~ www.courts.ca.gov/forms.htm.
38

39 **Subdivision (d).** Under rule 8.804, the term “judge” includes a commissioner or a temporary judge.
40

41 **Subdivisions (d)(3)(B), (d)(4), and (f).** The judge need not ensure that the statement as modified or
42 corrected is complete, but only that it is an accurate summary of the evidence and testimony relevant to
43 the issues identified by the appellant.
44
45
46

1 **Rule 8.874. Failure to procure the record**

2
3 **(a) Notice of default**

4
5 If a party fails to do any act required to procure the record, the trial court clerk must
6 promptly notify that party by mail that it must do the act specified in the notice within 15
7 days after the notice is mailed and that, if it fails to comply, the appellate division may
8 impose the following sanctions:

9
10 (1) When the defaulting party is the appellant:

11
12 (A) If the appellant is the defendant and is represented by appointed counsel on
13 appeal, the appellate division may relieve that appointed counsel and appoint
14 new counsel; or

15
16 (B) If the appellant is the People or the appellant is the defendant and is not
17 represented by appointed counsel, the appellate division may dismiss the
18 appeal.

19
20 (2) When the defaulting party is the respondent:

21
22 (A) If the respondent is the defendant and is represented by appointed counsel on
23 appeal, the appellate division may relieve that appointed counsel and appoint
24 new counsel; or

25
26 (B) If the respondent is the People or the respondent is the defendant and is not
27 represented by appointed counsel, the appellate division may proceed with the
28 appeal on the record designated by the appellant.

29
30 **(b) Sanctions**

31
32 If the party fails to take the action specified in a notice given under (a), the trial court clerk
33 must promptly notify the appellate division of the default and the appellate division may
34 impose the sanction specified in the notice. If the appellate division dismisses the appeal, it
35 may vacate the dismissal for good cause. If the appellate division orders the appeal to
36 proceed on the record designated by the appellant, the respondent may obtain relief from
37 default under rule 8.812.

1 **Chapter 4. Briefs, Hearing, and Decision in Limited Civil and Misdemeanor Appeals**

2
3 **Rule 8.882. Briefs by parties and amici curiae**

4
5 **(a)–(b) * * ***

6
7 **(c) Failure to file a brief**

- 8
9 (1) If a party in a civil appeal fails to timely file an appellant’s opening brief or a
10 respondent’s brief, the appellate division clerk must promptly notify the party by
11 mail that the brief must be filed within 15 days after the notice is mailed and that if
12 the party fails to comply, the court may impose one of the following sanctions:
13
14 (A) If the brief is an appellant’s opening brief, the court may dismiss the appeal; or
15
16 (B) If the brief is a respondent’s brief, the court may decide the appeal on the
17 record, the appellant’s opening brief, and any oral argument by the appellant.
18
19 (2) If the appellant in a misdemeanor appeal fails to timely file an opening brief, the
20 appellate division clerk must promptly notify the appellant by mail that the brief
21 must be filed within 30 days after the notice is mailed and that if the appellant fails to
22 comply, the court may impose one of the following sanctions:
23
24 (A) If the appellant is the defendant and is represented by appointed counsel on
25 appeal, the court may relieve that appointed counsel and appoint new counsel;
26 or
27
28 (B) In all other cases, the court may dismiss the appeal.
29
30 (3) If the respondent in a misdemeanor appeal ~~is the defendant and the respondent~~ fails
31 to timely file a brief, the appellate division clerk must promptly notify the respondent
32 by mail that the brief must be filed within 30 days after the notice is mailed and that
33 if the respondent fails to comply, the court ~~will~~ may impose one of the following
34 sanctions:
35
36 (A) If the respondent is the defendant and is represented by appointed counsel on
37 appeal, the court may relieve that appointed counsel and appoint new counsel;
38 or
39
40 (B) In all other cases, the court may decide the appeal on the record, the
41 appellant’s opening brief, and any oral argument by the appellant.
42
43 (4) If a party fails to comply with a notice under (1), (2), or (3), the court may impose
44 the sanction specified in the notice.
45

1 (d)–(e) * * *

2
3
4 **Rule 8.887. Decisions**

5
6 (a)–(b) * * *

7
8 (c) **Opinions certified for publication**

- 9
10 (1) Opinions certified for publication must comply to the extent practicable with the
11 *California Style Manual*.
12
13 (2) ~~When the decision is final as to the appellate division in a case in which~~ the opinion
14 is certified for publication, the clerk must immediately send:
15
16 (A) Two paper copies and one electronic copy to the Reporter of Decisions in a
17 format approved by the Reporter.
18
19 (B) One copy to the Court of Appeal for the district. The copy must bear the
20 notation “This opinion has been certified for publication in the Official
21 Reports. It is being sent to assist the Court of Appeal in deciding whether to
22 order the case transferred to the court on the court’s own motion under rules
23 8.1000–8.1018.” The Court of Appeal clerk must promptly file that copy or
24 make a docket entry showing its receipt.
25

26
27 **Chapter 5. Appeals in Infraction Cases**

28
29 **Article 2. Record in Infraction Appeals**

30
31 **Rule 8.915. Record of oral proceedings**

32
33 (a)–(b) * * *

34
35 (c) **Failure to file election**

36
37 If the appellant does not file an election within the time specified in (b), rule 8.924 applies.
38 ~~the trial court clerk must promptly notify the appellant by mail that the election must be~~
39 ~~filed within 15 days after the notice is mailed and that failure to comply will result in the~~
40 ~~appeal proceeding without a record of the oral proceedings.~~

41
42 ~~(d) **Statement on appeal when proceedings cannot be transcribed or were not recorded**~~

- 43
44 ~~(1) If the appellant elects under (a) to use a reporter’s transcript or a transcript prepared~~
45 ~~from an official electronic recording or the recording itself, the trial court clerk must~~
46 ~~notify the appellant within 10 days after the appellant files this election if any portion~~

1 of the oral proceedings listed in rule 8.918 was not reported or officially recorded
2 electronically or cannot be transcribed. The notice must indicate that the appellant
3 may use a statement on appeal as the record of the portion of the proceedings that
4 was not recorded or cannot be transcribed.

5
6 ~~(2) Within 15 days after this notice is mailed by the clerk, the appellant must serve and~~
7 ~~file a notice with the court stating whether the appellant elects to use a statement on~~
8 ~~appeal as the record of the portion of the proceedings that was not recorded or cannot~~
9 ~~be transcribed.~~

10
11
12 **Rule 8.916. Statement on appeal**

13
14 **(a) Description**

15
16 A statement on appeal is a summary of the trial court proceedings that is approved by the
17 trial court.

18
19 **(b) Preparing the proposed statement**

- 20
21 (1) If the appellant elects under rule 8.915 to use a statement on appeal, the appellant
22 must prepare and file a proposed statement within 20 days after filing the record
23 preparation election. If the defendant is the appellant and the prosecuting attorney
24 appeared in the case, the defendant must serve a copy of the proposed statement on
25 the prosecuting attorney. If the People are the appellant, the prosecuting attorney
26 must serve a copy of the proposed statement on the respondent.
27
28 (2) Appellants who are not represented by an attorney must file their proposed
29 statements on *Proposed Statement on Appeal (Infraction)* (form CR-143). For good
30 cause, the court may permit the filing of a statement that is not on form CR-143.
31
32 (3) If the appellant does not serve and file a proposed statement within the time specified
33 in (1), rule 8.924 applies. the trial court clerk must promptly notify the appellant by
34 mail that the proposed statement must be filed within 15 days after the notice is
35 mailed and that failure to comply will result in the appeal being dismissed.

36
37 **(c) Contents of the proposed statement on appeal**

38
39 A proposed statement prepared by the appellant must contain:

- 40
41 ~~(1) A condensed narrative of the oral proceedings that the appellant believes necessary~~
42 ~~for the appeal and a summary of the trial court's holding and the sentence imposed~~
43 ~~on the defendant. Subject to the court's approval, the appellant may present some or~~
44 ~~all of the evidence by question and answer; and~~

1 ~~(2)~~(1) A statement of the points the appellant is raising on appeal. The appeal is then
2 limited to those points unless the appellate division determines that the record
3 permits the full consideration of another point.
4

5 (A) The statement must specify the intended grounds of appeal by clearly stating
6 each point to be raised but need not identify each particular ruling or matter to
7 be challenged.
8

9 ~~(B)~~ The statement must include as much of the evidence or proceeding as
10 necessary to support the stated grounds. Any evidence or portion of a
11 proceeding not included will be presumed to support the judgment or order
12 appealed from.
13

14 ~~(C)~~(B) If one of the grounds of appeal is insufficiency of the evidence, the statement
15 must specify how it is insufficient.
16

17 (2) A summary of the trial court's rulings and the sentence imposed on the defendant.

18
19 (3) A condensed narrative of the oral proceedings that the appellant believes necessary
20 for the appeal. The condensed narrative must include a concise factual summary of
21 the evidence and the testimony of each witness that is relevant to the points which
22 the appellant states under (1) are being raised on appeal. Any evidence or portion of
23 a proceeding not included will be presumed to support the judgment or order
24 appealed from.
25

26 (d) **Review of the appellant's proposed statement**
27

28 (1) Within 10 days after the appellant files the proposed statement, the respondent may
29 serve and file proposed amendments to that statement.
30

31 (2) No later than 10 days after the respondent files proposed amendments or the time to
32 do so expires, a party may request a hearing to review and correct the proposed
33 statement. No hearing will be held unless ordered by the trial court judge, and the
34 judge will not ordinarily order a hearing unless there is a factual dispute about a
35 material aspect of the trial court proceedings.
36

37 ~~(4)~~(3) Except as provided in (6), if no hearing is ordered, no later than 10 days after the
38 time for requesting a hearing expires, the trial court judge must review the proposed
39 statement and any proposed amendments filed by the respondent and take one of the
40 following actions:
41

42 (A) If the proposed statement does not contain material required under (c), the trial
43 court judge may order the appellant to prepare a new proposed statement. The
44 order must identify the additional material that must be included in the
45 statement to comply with (c) and the date by which the new proposed

1 statement must be served and filed. If the appellant does not serve and file a
2 new proposed statement as directed, rule 8.924 applies.

3
4 (B) If the trial court judge does not issue an order under (A), the trial court judge
5 must either:

6
7 (i) Make any corrections or modifications to the statement necessary to
8 ensure that it is an accurate summary of the ~~trial court proceedings~~
9 evidence and the testimony of each witness that is relevant to the points
10 which the appellant states under (c)(1) are being raised on appeal; or

11
12 (ii) Identify the necessary corrections and modifications and order the
13 appellant to prepare a statement incorporating these corrections and
14 modifications. ~~If a hearing is ordered, the trial court judge must make~~
15 any corrections or modifications to the statement within 10 days after the
16 hearing.

17
18 ~~(3)~~(4) If a hearing is ordered, the court must promptly set the hearing date and provide the
19 parties with at least 5 days' written notice of the hearing date. No later than 10 days
20 after the hearing, the trial court judge must either:

21
22 (A) Make any corrections or modifications to the statement necessary to ensure
23 that it is an accurate summary of the evidence and the testimony of each
24 witness that is relevant to the points which the appellant states under (c)(1) are
25 being raised on appeal; or

26
27 (B) Identify the necessary corrections and modifications and order the appellant to
28 prepare a statement incorporating these corrections and modifications.

29
30 (5) The trial court judge must not eliminate the appellant's specification of grounds of
31 appeal from the proposed statement.

32
33 (6) If the trial court proceedings were reported by a court reporter or officially
34 electronically recorded under Government Code section 69957 and the trial court
35 judge determines that it would save court time and resources, instead of correcting a
36 proposed statement on appeal:

37
38 (A) If the court has a local rule for the appellate division permitting the use of an
39 official electronic recording as the record of the oral proceedings, the trial
40 court judge may order that the original of an official electronic recording of the
41 trial court proceedings, or a copy made by the court, be transmitted as the
42 record of these oral proceedings without being transcribed. The court will pay
43 for any copy of the official electronic recording ordered under this subdivision;
44 or
45

1 (B) ~~Unless~~ If the court has a local rule ~~providing otherwise permitting this~~, the trial
2 court judge may order that a transcript be prepared as the record of the oral
3 proceedings. The court will pay for any transcript ordered under this
4 subdivision.

5
6 (e) **Review of the corrected or modified statement**

- 7
8 (1) If the trial court judge makes any corrections or modifications to the proposed
9 statement under (d), the clerk must ~~send~~ serve copies of the corrected or modified
10 statement ~~to~~ on the parties. If under (d) the trial court judge orders the appellant to
11 prepare a statement incorporating corrections and modifications, the appellant must
12 serve and file the corrected or modified statement within the time ordered by the
13 court. If the prosecuting attorney did not appear at the trial, the clerk will not send a
14 no copy of the statement is to be sent to or served on the prosecuting attorney. If the
15 appellant does not serve and file a corrected or modified statement as directed, rule
16 8.924 applies.
- 17
18 (2) Within 10 days after the statement is ~~sent to~~ served on the parties, any party may
19 serve and file proposed modifications or objections to the statement.
20
- 21 (3) Within 10 days after the time for filing proposed modifications or objections under
22 (2) has expired, the judge must review the corrected or modified statement and any
23 proposed modifications or objections to the statement filed by the parties. The
24 procedures in (d)(3) or (d)(4) apply if the judge determines that further corrections or
25 modifications are necessary to ensure that the statement is an accurate summary of
26 the evidence and the testimony of each witness relevant to the points which the
27 appellant states under (c)(1) are being raised on appeal.

28
29 (f) **Certification of the statement on appeal**

- 30
31 (1) ~~If the trial court judge does not make or order any corrections or modifications to the~~
32 ~~proposed statement under (d)(3), (d)(4), or (e)(3) and does not direct the preparation~~
33 ~~of a transcript in lieu of correcting the proposed statement under (d)(6), the judge~~
34 ~~must promptly certify the statement.~~
- 35
36 (2) ~~If the trial court judge corrects or modifies an appellant's proposed statement under~~
37 ~~(d), within five days after the time for filing proposed modifications or objections~~
38 ~~under (e) has expired, the judge must review any proposed modifications or~~
39 ~~objections to the statement filed by the parties, make any corrections or~~
40 ~~modifications to the statement necessary to ensure that it is an accurate summary of~~
41 ~~the trial court proceedings, and certify the statement.~~

42
43 (g) **Extensions of time**

44
45 For good cause, the trial court may grant an extension of not more than 15 days to do any
46 act required or permitted under this rule.
47

1
2
3 **Advisory Committee Comment**

4 Rules 8.806, 8.810, and 8.812 address applications for extensions of time and relief from default.

5 **Subdivision (b)(2).** *Proposed Statement on Appeal (Infraction)* (form CR-143) is available at any
6 courthouse or county law library or online at ~~www.courtinfo.ca.gov/forms~~ www.courts.ca.gov/forms.

7
8 **Subdivision (d).** Under rule 8.804, the term “judge” includes a commissioner or a temporary judge.

9
10 **Subdivisions (d)(3)(B), (d)(4), and (f).** The judge need not ensure that the statement as modified or
11 corrected is complete, but only that it is an accurate summary of the evidence and testimony relevant to
12 the issues identified by the appellant.

13
14
15 **Rule 8.917. Record when trial proceedings were officially electronically recorded**

16
17 **(a)–(c) * * ***

18
19 **(d) Contents**

20
21 Except in appeals when either the parties have filed a stipulation under rule 8.910(b) or the
22 trial court has ordered that any of these items is not required for proper determination of the
23 appeal, rules 8.918 and 8.920 govern the contents of a transcript of an official electronic
24 recording.

25
26 **(d)(e) When preparation begins**

- 27
28 (1) If the appellant is the People, preparation of a transcript or a copy of the recording
29 must begin immediately after the appellant files an election under rule 8.915(a) to
30 use a transcript of an official electronic recording or a copy of the official electronic
31 recording as the record of the oral proceedings.
32
33 (2) If the appellant is the defendant:
34
35 (A) Within 10 days after the date the appellant files the election under rule
36 8.915(a), the clerk must notify the appellant and his or her counsel of the
37 estimated cost of preparing the transcript or the copy of the recording. The
38 notification must show the date it was mailed.
39
40 (B) Within 10 days after the date the clerk mailed the notice under (A), the
41 appellant must do one of the following:
42
43 (i) Deposit with the clerk an amount equal to the estimated cost of preparing
44 the transcript or the copy of the recording;
45
46 (ii) File a declaration of indigency supported by evidence in the form
47 required by the Judicial Council; or

1
2 (iii) Notify the clerk by filing a new election that he or she will be using a
3 statement on appeal instead of a transcript or copy of the recording. The
4 appellant must prepare, serve, and file a proposed statement on appeal
5 within 20 days after serving and filing the notice and must otherwise
6 comply with the requirements for statements on appeal under rule 8.869;
7

8 (iv) Notify the clerk by filing a new election that he or she now elects to
9 proceed without a record of the oral proceedings in the trial court; or

10 (v) Notify the clerk that he or she is abandoning the appeal by filing an
11 abandonment in the reviewing court under rule 8.904.
12

13
14 (C) If the trial court determines that the appellant is not indigent, within 10 days
15 after the date the clerk mails notice of this determination to the appellant, the
16 appellant must do one of the following:
17

18 (i) Deposit with the clerk an amount equal to the estimated cost of preparing
19 the transcript or the copy of the recording;
20

21 (ii) Notify the clerk by filing a new election that he or she will be using a
22 statement on appeal instead of a reporter's transcript. The appellant must
23 prepare, serve, and file a proposed statement on appeal within 20 days
24 after serving and filing the notice and must otherwise comply with the
25 requirements for statements on appeal under rule 8.869;
26

27 (iii) Notify the clerk by filing a new election that he or she now elects to
28 proceed without a record of the oral proceedings in the trial court; or
29

30 (iv) Notify the clerk that he or she is abandoning the appeal by filing an
31 abandonment in the reviewing court under rule 8.904.
32

33 ~~(C)~~(D) Preparation of the transcript or the copy of the recording must begin when:
34

35 (i) The clerk receives the required deposit under (B)(i) or (C)(i); or
36

37 (ii) The trial court determines that the defendant is indigent and orders that
38 the defendant receive the transcript or the copy of the recording without
39 cost.
40

41 **(f) Notice when proceedings were not officially electronically recorded or cannot be**
42 **transcribed**
43

44 (1) If any portion of the oral proceedings to be included in the transcript were not
45 officially electronically recorded under Government Code section 69957 or cannot

1 be transcribed, the trial court clerk must so notify the parties by mail. The notice
2 must:

3
4 (A) Indicate whether the identified proceedings were reported by a court reporter;
5 and

6
7 (B) Show the date it was mailed.

8
9 (2) Within 15 days after this notice is mailed by the clerk, the appellant must serve and
10 file a notice with the court stating whether the appellant elects to proceed with or
11 without a record of the identified proceedings. When the party elects to proceed with
12 a record of these oral proceedings:

13
14 (A) If the clerk's notice under (1) indicates that the proceedings were reported by a
15 court reporter, the appellant's notice must specify which form of the record
16 listed in rule 8.915(a) other than an official electronic recording or a transcript
17 prepared from an official electronic recording the appellant elects to use. The
18 appellant must comply with the requirements applicable to the form of the
19 record elected.

20
21 (B) If the clerk's notice under (1) indicates that the proceedings were not reported
22 by a court reporter, the appellant must prepare, serve, and file a proposed
23 statement on appeal within 20 days after serving and filing the notice.

24
25
26 **Rule 8.918. Contents of reporter's transcript**

27
28 **(a) Normal contents**

29
30 Except in appeals covered by rule 8.920, ~~or~~ when the parties have filed a stipulation under
31 rule 8.910(b), or when, under a procedure established by a local rule adopted pursuant to
32 (b), the trial court has ordered that any of these items is not required for proper
33 determination of the appeal, the reporter's transcript must contain:

- 34
35 (1) The oral proceedings on the entry of any plea other than a not guilty plea;
36
37 (2) The oral proceedings on any motion in limine;
38
39 (3) The oral proceedings at trial, but excluding any opening statement;
40
41 (4) Any oral opinion of the court;
42
43 (5) The oral proceedings on any motion for new trial;
44
45 (6) The oral proceedings at sentencing or other dispositional hearing;
46

1 (7) If the appellant is the defendant, the reporter’s transcript must also contain:
2

3 (A) The oral proceedings on any defense motion denied in whole or in part except
4 motions for disqualification of a judge; and
5

6 (B) The closing arguments.
7

8 **(b) Local procedure for determining contents**
9

10 A trial court may adopt a local rule that establishes procedures for determining whether any
11 of the items listed in (a) is not required for proper determination of the appeal or whether a
12 form of the record other than a reporter’s transcript constitutes a record of sufficient
13 completeness for proper determination of the appeal.
14

15 **Advisory Committee Comment**
16

17 **Subdivision (b).** Both the United States Supreme Court and the California Supreme Court have held that,
18 where the State has established a right to appeal, an indigent defendant convicted of a criminal offense
19 has a constitutional right to a “record of sufficient completeness” to permit proper consideration of [his]
20 claims.” (*Mayer v. Chicago* (1971) 404 U.S. 189, 193–194; *March v. Municipal Court* (1972) 7 Cal.3d
21 422, 427–428.) The California Supreme Court has also held that an indigent appellant is denied his or her
22 right under the Fourteenth Amendment to the competent assistance of counsel on appeal if counsel fails to
23 obtain an appellate record adequate for consideration of appellant’s claims of errors (*People v. Barton*
24 (1978) 21 Cal.3d 513, 518–520).
25

26 The *Mayer* and *March* decisions make clear, however, that the constitutionally required “record of
27 sufficient completeness” does not necessarily mean a complete verbatim transcript; other forms of the
28 record, such as a statement on appeal or a partial transcript, may be sufficient. The record that is
29 necessary depends on the grounds for the appeal in the particular case. Under these cases, where the
30 grounds of appeal make out a colorable need for a complete transcript, the burden is on the State to show
31 that only a portion of the transcript or an alternative form of the record will suffice for an effective appeal
32 on those grounds. The burden of overcoming the need for a verbatim reporter’s transcript appears to be
33 met where a verbatim recording of the proceedings is provided. (*Mayer, supra*, 404 U.S. at p. 195; cf.
34 *Eyrich v. Mun. Court* (1985) 165 Cal.App.3d 1138, 1140 [“Although use of a court reporter is one way of
35 obtaining a verbatim record, it may also be acquired through an electronic recording when no court
36 reporter is available”].)
37

38 Some courts have adopted local rules that establish procedures for determining whether only a portion of
39 a verbatim transcript or an alternative form of the record will be sufficient for an effective appeal,
40 including: (1) requiring the appellant to specify the points the appellant is raising on appeal; (2) requiring
41 the appellant and respondent to meet and confer about the content and form of the record; and (3) holding
42 a hearing on the content and form of the record. Local procedures can be tailored to reflect the methods
43 available in a particular court for making a record of the trial court proceedings that is sufficient for an
44 effective appeal.
45
46
47

1 **Rule 8.919. Preparation of reporter’s transcript**

2
3 **(a) When preparation begins**

- 4
5 (1) Unless the court has adopted a local rule under rule 8.920(b) that provides otherwise,
6 the reporter must immediately begin preparing the reporter’s transcript if the notice
7 sent to the reporter by the clerk under rule 8.915(a)(3) indicates that the appellant is
8 the People.
9
10 (2) If the notice sent to the reporter by the clerk under rule 8.915(a)(3) indicates that the
11 appellant is the defendant:
12
13 (A) Within 10 days after the date the clerk mailed the notice under rule 8.915(a)(3),
14 the reporter must file with the clerk the estimated cost of preparing the
15 reporter’s transcript; and
16
17 (B) The clerk must promptly notify the appellant and his or her counsel of the
18 estimated cost of preparing the reporter’s transcript. The notification must
19 show the date it was mailed.
20
21 (C) Within 10 days after the date the clerk mailed the notice under (B), the
22 appellant must do one of the following:
23
24 (i) Deposit with the clerk an amount equal to the estimated cost of preparing
25 the transcript;
26
27 (ii) File a waiver of the deposit signed by the reporter;
28
29 ~~(ii)~~(iii) File a declaration of indigency supported by evidence in the form
30 required by the Judicial Council; or
31
32 (iv) File a certified transcript of all of the proceedings required to be included
33 in the reporter’s transcript under rule 8.918. The transcript must comply
34 with the format requirements of rule 8.144;
35
36 ~~(iv)~~(v) Notify the clerk by filing a new election that he or she will be using a
37 statement on appeal instead of a reporter’s transcript. The appellant must
38 prepare, serve, and file a proposed statement on appeal within 20 days
39 after serving and filing the notice and must otherwise comply with the
40 requirements for statements on appeal under rule 8.916;
41
42 ~~(iii)~~(vi) Notify the clerk by filing a new election that he or she now elects to
43 proceed without a record of the oral proceedings in the trial court; or
44
45 (vii) Notify the clerk that he or she is abandoning the appeal by filing an
46 abandonment in the reviewing court under rule 8.904.

- 1
2 (D) If the trial court determines that the appellant is not indigent, within 10 days
3 after the date the clerk mails notice of this determination to the appellant, the
4 appellant must do one of the following:
5
6 (i) Deposit with the clerk an amount equal to the estimated cost of preparing
7 the transcript;
8
9 (ii) File with the clerk a waiver of the deposit signed by the reporter;
10
11 (iii) File a certified transcript of all of the proceedings required to be included
12 in the reporter's transcript under rule 8.918. The transcript must comply
13 with the format requirements of rule 8.144;
14
15 (iv) Notify the clerk by filing a new election that he or she will be using a
16 statement on appeal instead of a reporter's transcript. The appellant must
17 prepare, serve, and file a proposed statement on appeal within 20 days
18 after serving and filing the notice and must otherwise comply with the
19 requirements for statements on appeal under rule 8.916;
20
21 (v) Notify the clerk by filing a new election that he or she now elects to
22 proceed without a record of the oral proceedings in the trial court; or
23
24 (vi) Notify the clerk that he or she is abandoning the appeal by filing an
25 abandonment in the reviewing court under rule 8.904.

26
27 ~~(D)~~(E) The clerk must promptly notify the reporter to begin preparing the transcript
28 when:

- 29
30 (i) The clerk receives the required deposit under (C)(i) or (D)(i); or
31
32 (ii) The clerk receives a waiver of the deposit signed by the reporter under
33 (C)(ii) or (D)(ii); or
34
35 ~~(ii)~~(iii) The trial court determines that the defendant is indigent and orders that
36 the defendant receive the transcript without cost.
37

38 (b)-(c) * * *

39
40 (d) **When preparation must be completed**

41
42 The reporter must deliver the original and all copies to the trial court clerk as soon as they
43 are certified but no later than 20 days after the reporter is required to begin preparing the
44 transcript under (a). Only the presiding judge of the appellate division or his or her
45 designee may extend the time to prepare the reporter's transcript (see rule 8.810).
46

1 (e) * * *

2
3 **(f) Notice when proceedings cannot be transcribed**

4
5 (1) If any portion of the oral proceedings to be included in the reporter's transcript was
6 not reported or cannot be transcribed, the trial court clerk must so notify the parties
7 by mail. The notice must:

8
9 (A) Indicate whether the identified proceedings were officially electronically
10 recorded under Government Code section 69957; and

11
12 (B) Show the date it was mailed.

13
14 (2) Within 15 days after this notice is mailed by the clerk, the appellant must serve and
15 file a notice with the court stating whether the appellant elects to proceed with or
16 without a record of the identified proceedings. When the party elects to proceed with
17 a record of these oral proceedings:

18
19 (A) If the clerk's notice under (1) indicates that the proceedings were officially
20 electronically recorded under Government Code section 69957, the appellant's
21 notice must specify which form of the record listed in rule 8.915(a) other than
22 a reporter's transcript the appellant elects to use. The appellant must comply
23 with the requirements applicable to the form of the record elected.

24
25 (B) If the clerk's notice under (1) indicates that the proceedings were not officially
26 electronically recorded under Government Code section 69957, the appellant
27 must prepare, serve, and file a proposed statement on appeal within 20 days
28 after serving and filing the notice.

29
30 **Advisory Committee Comment**

31
32 **Subdivision (a).** The appellant must use *Defendant's Financial Statement on Eligibility for Appointment*
33 *of Counsel and Reimbursement and Record on Appeal at Public Expense* (form MC-210) to show
34 indigency. This form is available at any courthouse or county law library or online at
35 www.courtinfo.ca.gov/forms www.courts.ca.gov/forms .

36
37 **Subdivisions (a)(2)(C)(iv) and (a)(2)(D)(iii).** Sometimes a party in a trial court proceeding will purchase
38 a reporter's transcripts of all or part of the proceedings before any appeal is filed. In recognition of the
39 fact that such transcripts may already have been purchased, this rule allows an appellant, in lieu of
40 depositing funds for a reporter's transcript, to deposit with the trial court a certified transcript of the
41 proceedings necessary for the appeal. Subdivisions (a)(2)(C)(iv) and (a)(2)(D)(iii) make clear that the
42 certified transcript may be filed in lieu of a deposit for a reporter's transcript only where the certified
43 transcript contains all of the proceedings required under rule 8.865 and the transcript complies with the
44 format requirements of rule 8.144.

1 **Rule 8.924. Failure to procure the record**

2
3 **(a) Notice of default**

4
5 If a party fails to do any act required to procure the record, the trial court clerk must
6 promptly notify that party by mail that it must do the act specified in the notice within 15
7 days after the notice is mailed and that, if it fails to comply, the reviewing court may
8 impose the following sanctions:

9
10 (1) If the defaulting party is the appellant, the court may dismiss the appeal or, if the
11 default relates only to procurement of the record of the oral proceedings, may
12 proceed on the clerk’s transcript or other record of the written documents from the
13 trial court proceedings; or

14
15 (2) If the defaulting party is the respondent, the court may proceed with the appeal on
16 the record designated by the appellant.

17
18 **(b) Sanctions**

19
20 If the party fails to take the action specified in a notice given under (a), the trial court clerk
21 must promptly notify the appellate division of the default and the appellate division may
22 impose the sanction specified in the notice. If the appellate division dismisses the appeal, it
23 may vacate the dismissal for good cause. If the appellate division orders the appeal to
24 proceed on the record designated by the appellant, the respondent may obtain relief from
25 default under rule 8.812.

26
27
28 **Article 3. Briefs, Hearing, and Decision in Infraction Appeals**

29
30 **Rule 8.927. Briefs**

31
32 **(a) * * ***

33
34 **(b) Failure to file a brief**

35
36 (1) If the appellant fails to timely file an opening brief, the appellate division clerk must
37 promptly notify the appellant by mail that the brief must be filed within 20 days after
38 the notice is mailed and that if the appellant fails to comply, the court may dismiss
39 the appeal.

40
41 (2) If the respondent is the defendant and the respondent fails to timely file a brief, the
42 appellate division clerk must promptly notify the respondent by mail that the brief
43 must be filed within 20 days after the notice is mailed and that if the respondent fails
44 to comply, the court will decide the appeal on the record, the appellant’s opening
45 brief, and any oral argument by the appellant.

1 (3) If a party fails to comply with a notice under (1) or (2), the court may impose the
2 sanction specified in the notice.

3
4 (c) * * *
5

GENERAL INFORMATION

1 What does this information sheet cover?

This information sheet tells you about appeals in limited civil cases. These are civil cases in which the amount of money claimed is \$25,000 or less.

If you are the party who is appealing (asking for the trial court's decision to be reviewed), you are called the APPELLANT, and you should read Information for the Appellant, starting on page 2. If you received notice that another party in your case is appealing, you are called the RESPONDENT and you should read Information for the Respondent, starting on page 11.

This information sheet does not cover everything you may need to know about appeals in limited civil cases. It is meant only to give you a general idea of the appeal process. To learn more, you should read rules 8.800–8.843 and 8.880–8.891 of the California Rules of Court, which set out the procedures for limited civil appeals. You can get these rules at any courthouse or county law library or online at www.courts.ca.gov/rules.

2 What is an appeal?

An appeal is a request to a higher court to review a decision made by a judge or jury in a lower court. **In a limited civil case, the court hearing the appeal is the appellate division of the superior court and the lower court—called the “trial court” in this information sheet—is the superior court.**

It is important to understand that **an appeal is NOT a new trial**. The appellate division will not consider new evidence, such as the testimony of new witnesses or new exhibits. The appellate division's job is to review a record of what happened in the trial court and the trial court's decision to see if certain kinds of legal errors were made:

For information about appeal procedures in other kinds of cases, see:

- *Information on Appeal Procedures for Unlimited Civil Cases* (form APP-001)
- *Information on Appeal Procedures for Infractions* (form CR-141-INFO)
- *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO)

You can get these forms at any courthouse or county law library or online at www.courts.ca.gov/forms.

- **Prejudicial error:** The appellant (the party who is appealing) may ask the appellate division to determine if an error was made about either the law or court procedures in the case that caused substantial harm to the appellant (this is called “prejudicial error”).

Prejudicial error can include things like errors made by the judge about the law, errors or misconduct by the lawyers, incorrect instructions given to the jury, and misconduct by the jury that harmed the appellant. When it conducts its review, the appellate division presumes that the judgment, order, or other decision being appealed is correct. It is the responsibility of the appellant to show the appellate division that an error was made and that the error was harmful.

- **No substantial evidence:** The appellant may also ask the appellate division to determine if there was substantial evidence supporting the judgment, order, or other decision being appealed. When it conducts its review, the appellate division only looks to see if there was evidence that reasonably supports the decision. The appellate division generally will not reconsider the jury's or trial court's conclusion about which side had more or stronger evidence or whether witnesses were telling the truth or lying.

The appellate division generally will not overturn the judgment, order, or other decision being appealed unless the record clearly shows that one of these legal errors was made.



3 Do I need a lawyer to represent me in an appeal?

You do not *have* to have a lawyer; if you are an individual (rather than a corporation, for example), you are allowed to represent yourself in an appeal in a limited civil case. But appeals can be complicated and you will have to follow the same rules that lawyers have to follow. If you have any questions about the appeal procedures, you should talk to a lawyer.

If you decide not to use a lawyer, you must put your address, telephone number, fax number (if available), and e-mail address (if available) on the first page of every document you file with the court and let the court know if this contact information changes so that the court can contact you if needed.

4 Where can I find a lawyer to help me with my appeal?

You have to hire your own attorney if you want one. You can get information about finding an attorney on the California Courts Online Self-Help Center at www.courts.ca.gov/selfhelp-lowcosthelp in the Getting Started section.

INFORMATION FOR THE APPELLANT

This part of the information sheet is written for the appellant—the party who is appealing the trial court’s decision. It explains some of the rules and procedures relating to appealing a decision in a limited civil case. The information may also be helpful to the respondent. Additional information for respondents can be found starting on page 11 of this information sheet.

5 Who can appeal?

Only a party in the trial court case can appeal a decision in that case. You may not appeal on behalf of a friend, a spouse, a child, or another relative unless you are a legally appointed representative of that person (such as the person’s guardian or conservator).

6 Can I appeal *any* decision the trial court made?

No. Generally, you can only appeal the final judgment—the decision at the end that decides the whole case. Other rulings made by the trial court before the final judgment generally cannot be separately appealed but can be reviewed only later as part of an appeal of the final judgment. There are a few exceptions to this general rule. Code of Civil Procedure section 904.2 lists a few types of orders in a limited civil case that can be appealed right away. These include orders that:

- Change or refuse to change the place of trial (venue)
- Grant a motion to quash service of summons or grant a motion to stay or dismiss the action on the ground of inconvenient forum
- Grant a new trial or deny a motion for judgment notwithstanding the verdict
- Discharge or refuse to discharge an attachment or grant a right to attach
- Grant or dissolve an injunction or refuse to grant or dissolve an injunction
- Appoint a receiver
- Are made after final judgment in the case

(You can get a copy of Code of Civil Procedure section 904.2 at <http://leginfo.legislature.ca.gov/faces/codes.xhtml>.)

7 How do I start my appeal?

First, you must serve and file a notice of appeal. The notice of appeal tells the other party or parties in the case and the trial court that you are appealing the trial court’s decision. You may use *Notice of Appeal/Cross-Appeal (Limited Civil Case)* (form APP-102) to prepare a notice of appeal in a limited civil case. You can get form APP-102 at any courthouse or county law library or online at www.courts.ca.gov/forms.



8 How do I “serve and file” the notice of appeal?

“Serve and file” means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver (“serve”) the notice of appeal to the other party or parties in the way required by law.
- Make a record that the notice of appeal has been served. This record is called a “proof of service.” *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. The proof of service must show who served the notice of appeal, who was served with the notice of appeal, how the notice of appeal was served (by mail or in person), and the date the notice of appeal was served.
- Bring or mail the original notice of appeal and the proof of service to the trial court that issued the judgment, order, or other decision you are appealing. You should make a copy of the notice of appeal you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the notice of appeal to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more 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.courts.ca.gov/selfhelp-serving.htm.

9 Is there a deadline to file my notice of appeal?

Yes. In a limited civil case, except in the very limited circumstances listed in rule 8.823, you must file your notice of appeal within **30 days** after the trial court clerk or a party serves either a document called a “Notice of Entry” of the trial court judgment or a file-stamped copy of the judgment or within 90 days after entry of the judgment, whichever is earlier. **This deadline for filing the notice of appeal cannot be extended. If your notice of appeal is late, the appellate division will not be able to consider your appeal.**

10 Do I have to pay to file an appeal?

Yes. Unless the court waives this fee, you must pay a fee for filing your notice of appeal. You can ask the clerk of the court where you are filing the notice of appeal what the fee is or look up the fee for an appeal in a limited civil case in the current Statewide Civil Fee Schedule linked at www.courts.ca.gov/7646.htm (note that the “Appeal and Writ Related Fees” section is near the end of this schedule and that there are different fees for limited civil cases depending on the amount demanded in the case). If you cannot afford to pay the fee, you can ask the court to waive it. To do this, you must fill out and file a *Request to Waive Court Fees* (form FW-001). You can get form FW-001 at any courthouse or county law library or online at www.courts.ca.gov/forms. You can file this application either before you file your notice of appeal or with your notice of appeal. The court will review this application to determine if you are eligible for a fee waiver.

11 If I file a notice of appeal, do I still have to do what the trial court ordered me to do?

Filing a notice of appeal does NOT automatically postpone most judgments or orders, such as those requiring you to pay another party money or to deliver property to another party (see Code of Civil Procedure sections 917.1–917.9 and 1176; you can get a copy of these laws at www.leginfo.ca.gov/calaw.html). These kinds of judgments or orders will be postponed, or “stayed,” only if you request a stay and the court grants your request. In most cases, other than unlawful detainer cases in which the trial court’s judgment gives a party possession of the property, if the trial court denies your request for a stay, you can apply to the appellate division for a stay. If you do not get a stay and you do not do what the trial court ordered you to do, court proceedings to collect the money or otherwise enforce the judgment or order may be started against you.

12 What do I need to do after I file my notice of appeal?

You must ask the clerk of the trial court to prepare and send the official record of what happened in the trial court in your case to the appellate division.



Since the appellate division judges were not there to see what happened in the trial court, an official record of what happened must be prepared and sent to the appellate division for its review. You can use *Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103) to ask the trial court to prepare this record. You can get form APP-103 at any courthouse or county law library or online at www.courts.ca.gov/forms.

You must serve and file this notice designating the record on appeal within 10 days after you file your notice of appeal. “Serving and filing” this notice means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver (“serve”) the notice to the other party or parties in the way required by law.
- Make a record that the notice has been served. This record is called a “proof of service.” *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. The proof of service must show who served the notice, who was served with the notice, how the notice was served (by mail or in person), and the date the notice was served.
- Bring or mail the original notice and the proof of service to the trial court that issued the judgment, order, or other decision you are appealing. You should make a copy of the notice you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the notice to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more 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.courts.ca.gov/selfhelp-serving.htm.

13 What is the official record of the trial court proceedings?

There are three parts of the official record:

- a. A record of the documents filed in the trial court (other than exhibits)

- b. A record of what was said in the trial court (this is called the “oral proceedings”)
- c. Exhibits that were admitted in evidence, refused, or lodged (temporarily placed with the court) in the trial court

Read below for more information about these parts of the record.

a. Record of the documents filed in the trial court

The first part of the official record of the trial court proceedings is a record of the documents that were filed in the trial court. There are three ways in which a record of the documents filed in the trial court can be prepared for the appellate division:

- (1) A *clerk’s transcript*
- (2) The original *trial court file* or
- (3) An *agreed statement*

Read below for more information about these options.

(1) Clerk’s transcript

Description: A clerk’s transcript is a record of the documents filed in the trial court prepared by the clerk of the trial court.

Contents: Certain documents, such as the notice of appeal and the trial court judgment or order being appealed, must be included in the clerk’s transcript. These documents are listed in rule 8.832(a) of the California Rules of Court and in *Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103).

If you want any documents other than those listed in rule 8.832(a) to be included in the clerk’s transcript, you must tell the trial court in your notice designating the record on appeal. You can use form APP-103 to do this. You will need to identify each document you want included in the clerk’s transcript by its title and filing date or, if you do not know the filing date, the date the document was signed.



If you—the appellant—request a clerk’s transcript, the respondent also has the right to ask the clerk to include additional documents in the clerk’s transcript. If this happens, you will be served with a notice saying what other documents the respondent wants included in the clerk’s transcript.

Cost: The appellant is responsible for paying for preparing a clerk’s transcript. The trial court clerk will send you a bill for the cost of preparing an original and one copy of the clerk’s transcript. You must do one of the following things within 10 days after the clerk sends this bill or the appellate division may dismiss your appeal:

- Pay the bill.
- Ask the court to waive the cost because you cannot afford to pay. To do this, you must fill out and file a *Request to Waive Court Fees* (form FW-001). You can get form FW-001 at any courthouse or county law library or online at www.courts.ca.gov/forms. The court will review this application to determine if you are eligible for a fee waiver.
- Give the court a copy of a court order showing that your fees in this case have already been waived by the court.

Completion and delivery: After the cost of preparing the clerk’s transcript has been paid or waived, the trial court clerk will compile the requested documents into a transcript format and, **when the record on appeal is complete, will forward the original clerk’s transcript to the appellate division for filing.** The trial court clerk will send you a copy of the transcript. If the respondent bought a copy, the clerk will also send a copy of the transcript to the respondent.

(2) Trial court file

When available: If the court has a local rule allowing this, the clerk can send the appellate division the original trial court file instead of a clerk’s transcript (see rule 8.833 of the California Rules of Court).

Cost: As with a clerk’s transcript, the appellant is responsible for paying for preparing the trial court file. The trial court clerk will send you a bill for this preparation cost. You must do one of the following things within 10 days after the clerk sends this bill or the appellate division may dismiss your appeal:

- Pay the bill.
- Ask the court to waive the cost because you cannot afford to pay. To do this, you must fill out and file a *Request to Waive Court Fees* (form FW-001). You can get form FW-001 at any courthouse or county law library or online at www.courts.ca.gov/forms. The court will review this application to determine if you are eligible for a fee waiver.
- Give the court a copy of a court order showing that your fees in this case have already been waived by the court.

Completion and delivery: After the cost of preparing the trial court file has been paid or waived **and the record on appeal is complete,** the trial court clerk will send the file and a list of the documents in the file to the appellate division. The trial court clerk will also send a copy of the list of documents to the appellant and respondent so that you can put your own files of documents from the trial court in the correct order.

(3) Agreed statement

Description: An agreed statement is a summary of the trial court proceedings agreed to by the parties (see rule 8.836 of the California Rules of Court).

When available: If you and the respondent agree to this, you can use an agreed statement instead of a clerk’s transcript. To do this, you must attach to your agreed statement all of the documents that are required to be included in a clerk’s transcript. If you choose this alternative, you must file with your notice designating the record on appeal either the agreed statement or a written agreement with the respondent (a “stipulation”), stating that you are trying to



agree on a statement. Within the next 30 days, you must then file the agreed statement or tell the court that you were unable to agree on a statement and file a new notice designating the record.

b. Record of what was said in the trial court (the “oral proceedings”)

The second part of the official record of the trial court proceedings is a record of what was said in the trial court (this is called a record of the “oral proceedings”). You do not *have* to send the appellate division a record of the oral proceedings. But if you want to raise any issue in your appeal that would require the appellate division to consider what was said in the trial court, the appellate division will need a record of those oral proceedings. For example, if you are claiming that there was not substantial evidence supporting the judgment, order, or other decision you are appealing, the appellate division will need a record of the oral proceedings.

You are responsible for deciding how the record of the oral proceedings will be provided and, depending on what option you select and your circumstances, you may also be responsible for paying for preparing this record or for preparing an initial draft of the record. If you do not take care of these responsibilities, a record of the oral proceedings in the trial court will not be prepared and sent to the appellate division. **If the appellate division does not receive this record, it will not be able to review any issues that are based on what was said in the trial court and it may dismiss your appeal.**

In a limited civil case, you can use *Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103) to tell the court whether you want a record of the oral proceedings and, if so, the form of the record that you want to use. You can get form APP-103 at any courthouse or county law library or online at www.courts.ca.gov/forms.

There are four ways in which a record of the oral proceedings can be prepared for the appellate division:

- (1) If you or the other party arranged to have a court reporter there during the trial court proceedings, the reporter can prepare a record, called a “*reporter’s transcript*.”

- (2) If the proceedings were officially electronically recorded, the trial court can have a transcript prepared from that recording or, if the court has a local rule permitting this and you and the other party agree (“stipulate”) to this, you can use the *official electronic recording* itself instead of a transcript.
- (3) You can use an *agreed statement*.
- (4) You can use a *statement on appeal*.

Read below for more information about these options.

(1) Reporter’s transcript

Description: A reporter’s transcript is a written record (sometimes called a “verbatim” record) of the oral proceedings in the trial court prepared by a court reporter. Rule 8.834 of the California Rules of Court establishes the requirements relating to reporter’s transcripts.

When available: If a court reporter was there in the trial court and made a record of the oral proceedings, you can choose (“elect”) to have the court reporter prepare a reporter’s transcript for the appellate division. In most limited civil cases, however, a court reporter will not have been there unless you or another party in your case made specific arrangements to have a court reporter there. Check with the court to see if a court reporter made a record of the oral proceedings in your case before choosing this option.

Contents: If you elect to use a reporter’s transcript, you must identify by date (this is called “designating”) what proceedings you want to be included in the reporter’s transcript. You can use the same form you used to tell the court you wanted to use a reporter’s transcript—*Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103)—to do this.

If you elect to use a reporter’s transcript, the respondent also has the right to designate additional proceedings to be included in the reporter’s transcript. If you elect to proceed without a reporter’s transcript, however, the



respondent may not designate a reporter's transcript without first getting an order from the appellate division.

Cost: The appellant is responsible for paying for preparing a reporter's transcript. The trial court clerk or the court reporter will notify you of the cost of preparing an original and one copy of the reporter's transcript. You must deposit payment for this cost (and a fee for the trial court) or one of the substitutes allowed by rule 8.834 with the trial court clerk within 10 days after this notice is sent. (See rule 8.834 for more information about this deposit and the permissible substitutes, such as a waiver of this deposit signed by the court reporter.)

Unlike the fee for filing the notice of appeal and the costs for preparing a clerk's transcript, the court cannot waive the fee for preparing a reporter's transcript. A special fund, called the Transcript Reimbursement Fund, may be able to help pay for the transcript. You can get information about this fund at: www.courtreportersboard.ca.gov/consumers/index.shtml#rtf. If you are unable to pay the cost of a reporter's transcript, a record of the oral proceedings can be prepared in other ways, by using an agreed statement or a statement on appeal, which are described below.

Completion and delivery: After the cost of preparing the reporter's transcript or a permissible substitute has been deposited, the court reporter will prepare the transcript and submit it to the trial court clerk. When the record is complete, the trial court clerk will submit the original transcript to the appellate division and send you a copy of the transcript. If the respondent has purchased it, a copy of the reporter's transcript will also be mailed to the respondent.

(2) Official electronic recording or transcript

When available: In some limited civil cases, the trial court proceedings were officially recorded on approved electronic recording equipment. If your case was officially recorded, you can choose ("elect") to have a transcript prepared from the recording. Check with the trial court to see if the

oral proceedings in your case were officially electronically recorded before you choose this option. If the court has a local rule permitting this and all the parties agree ("stipulate"), a copy of an official electronic recording itself can be used as the record, instead of preparing a transcript. If you choose this option, you must attach a copy of this agreement ("stipulation") to your notice designating the record on appeal.

Cost: The appellant is responsible for paying for preparing this transcript or making a copy of the official electronic recording. If you cannot afford to pay this cost, you can ask the court to waive it. To do this, you must fill out and file a *Request to Waive Court Fees* (form FW-001). You can get form FW-001 at any courthouse or county law library or online at www.courts.ca.gov/forms. The court will review this application to determine if you are eligible for a fee waiver.

Completion and delivery: After the estimated cost of the transcript or official electronic recording has been paid or waived, the clerk will have the transcript or copy of the recording prepared. When the transcript is completed or the copy of the official electronic recording is prepared and the rest of the record is complete, the clerk will send it to the appellate division.

(3) Agreed statement

Description: An agreed statement is a written summary of the trial court proceedings agreed to by all the parties.

When available: If the trial court proceedings were not recorded either by a court reporter or by official electronic recording equipment or if you do not want to use one of these options, you can choose ("elect") to use an agreed statement as the record of the oral proceedings (please note that it may take more of your time to prepare an agreed statement than to use either a reporter's transcript or official electronic recording, if they are available).

Contents: An agreed statement must explain what the trial court case was about, describe why the appellate division is the right court to consider an



appeal in this case (why the appellate division has “jurisdiction”), and describe the rulings of the trial court relating to the points to be raised on appeal.

The statement should include only those facts that you and the other parties think are needed to decide the appeal.

Preparation: If you elect to use this option, you must file the agreed statement with your notice designating the record on appeal or, if you and the other parties need more time to work on the statement, you can file a written agreement with the other parties (called a “stipulation”) stating that you are trying to agree on a statement. If you file this stipulation, within the next 30 days you must either file the agreed statement or tell the court that you and the other parties were unable to agree on a statement and file a new notice designating the record.

(4) Statement on appeal

Description: A statement on appeal is a summary of the trial court proceedings that is approved by the trial court judge who conducted those proceedings (the term “judge” includes commissioners and temporary judges).

When available: If the trial court proceedings were not recorded either by a court reporter or by official electronic recording equipment or if you do not want to use one of these options, you can choose (“elect”) to use a statement on appeal as the record of the oral proceedings (please note that it may take more of your time to prepare a statement on appeal than to use either a reporter’s transcript or official electronic recording, if they are available).

Contents: A statement on appeal must include:

- A statement of the points **you** (the appellant) **are** raising on appeal;
- **A summary of the trial court’s rulings and judgment; and**
- **A summary of the testimony of each witness and other evidence that is relevant to the issues you are raising on appeal.**

(See rule 8.837 of the California Rules of Court for more information about what must be included in a statement on appeal and the procedures for preparing a statement. You can get a copy of this rule at any courthouse or county law library or online at www.courts.ca.gov/rules.)

Preparing a proposed statement: If you elect to use a statement on appeal, you must prepare a proposed statement. If you are not represented by a lawyer, you must use *Proposed Statement on Appeal (Limited Civil Case)* (form APP-104) to prepare your proposed statement. You can get form APP-104 at any courthouse or county law library or online at www.courts.ca.gov/forms.

Serving and filing a proposed statement: You must serve and file the proposed statement with the trial court within 20 days after you file your notice designating the record. “Serve and file” means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver (“serve”) the proposed statement to the respondent in the way required by law.
- Make a record that the proposed statement has been served. This record is called a “proof of service.” *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. The proof of service must show who served the proposed statement, who was served with the proposed statement, how the proposed statement was served (by mail or in person), and the date the proposed statement was served.
- File the original proposed statement and the proof of service with the trial court. You should make a copy of the proposed statement you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the proposed statement to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and about proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on



the California Courts Online Self-Help Center at www.courts.ca.gov/selfhelp-serving.htm.

Review and modifications: The respondent has 10 days from the date you serve your proposed statement to serve and file proposed changes (called “amendments”) to this statement. The trial court judge then reviews both your proposed statement and any proposed amendments filed by the respondent. The trial judge will either make or order you (the appellant) to make any corrections or modifications to the statement that are needed to make sure that the statement provides an accurate summary of the testimony and other evidence relevant to the issues you indicated you are raising on appeal.

Completion and certification: If the judge makes any corrections or modifications to the proposed statement, the corrected or modified statement will be sent to you and the respondent for your review. If the judge orders you to make any corrections or modifications to the proposed statement, you must serve and file the corrected or modified statement within the time ordered by the judge. If you or the respondent disagree with anything in the modified or corrected statement, you have 10 days from the date the modified or corrected statement is sent to you to serve and file objections to the statement. The judge then reviews any objections, makes or orders you to make any additional corrections to the statement, and certifies the statement as an accurate summary of the testimony and other evidence relevant to the issues you indicated you are raising on appeal.

Sending statement to the appellate division: Once the trial court judge certifies the statement on appeal, the trial court clerk will send the statement to the appellate division along with any record of the documents filed in the trial court.

c. Exhibits

The third part of the official record of the trial court proceeding is the exhibits, such as photographs, documents, or other items that were admitted in evidence, refused, or lodged (temporarily placed with the court) in the trial court. Exhibits are considered part of the record on

appeal, but the clerk will not include any exhibits in the clerk’s transcript unless you ask that they be included in your notice designating the record on appeal. *Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103), includes a space for you to make this request.

You also can ask the trial court to send original exhibits to the appellate division at the time briefs are filed (see rule 8.843 for more information about this procedure and see below for information about briefs).

Sometimes, the trial court returns an exhibit to a party at the end of the trial. If the trial court returned an exhibit to you or another party and you or the other party ask for that exhibit to be included in the clerk’s transcript or sent to the appellate division, the party who has the exhibit must deliver that exhibit to the trial court clerk as soon as possible.

14 What happens after the official record has been prepared?

As soon as the record on appeal is complete, the clerk of the trial court will send it to the appellate division. When the appellate division receives the record, it will send you a notice telling you when you must file your brief in the appellate division.

15 What is a brief?

Description: A “brief” is a party’s written description of the facts in the case, the law that applies, and the party’s argument about the issues being appealed. If you are represented by a lawyer in your appeal, your lawyer will prepare your brief. If you are not represented by a lawyer, you will have to prepare your brief yourself. You should read rules 8.882–8.884 of the California Rules of Court, which set out the requirements for preparing, serving, and filing briefs in limited civil appeals, including requirements for the format and length of these briefs. You can get copies of these rules at any courthouse or county law library or online at www.courts.ca.gov/rules.

Contents: If you are the appellant, your brief, called an “appellant’s opening brief,” must clearly explain what



you believe are the legal errors made in the trial court. Your brief must refer to the exact places in the clerk's transcript and the reporter's transcript (or the other forms of the record you are using) that support your argument. Remember that an appeal is not a new trial. The appellate division will not consider new evidence, such as the testimony of new witnesses or new exhibits so do not include any new evidence in your brief.

Serving and filing: You must serve and file your brief in the appellate division by the deadline the court set in the notice it sent you, which is usually 30 days after the record is filed in the appellate division. "Serve and file" means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver ("serve") the brief to the other parties in the way required by law.
- Make a record that the brief has been served. This record is called a "proof of service." *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. The proof of service must show who served the brief, who was served with the brief, how the brief was served (by mail or in person), and the date the brief was served.
- File the original brief and the proof of service with the appellate division. You should make a copy of the brief you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the brief to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and about proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at www.courts.ca.gov/selfhelp-serving.htm.

You and the other parties can agree (stipulate) to extend the time for filing this brief by up to 30 days (see rule 8.882(b) for requirements for these agreements). You can also ask the court to extend the time for filing this brief if you can show good cause for an extension (see rule 8.811(b) for a list of the factors the court will consider in deciding whether there is good cause for an extension). You can use *Application for Extension of*

Time to File Brief (Limited Civil Case) (form APP-106) to ask the court for an extension.

If you do not file your brief by the deadline set by the appellate division, the court may dismiss your appeal.

16 What happens after I file my brief?

Within 30 days after you serve and file your brief, the respondent may, but is not required to, respond by serving and filing a respondent's brief. If the respondent does not file a brief, the appellant does not automatically win the appeal. The court will decide the appeal on the record, the appellant's brief, and any oral argument by the appellant.

If the respondent files a brief, within 20 days after the respondent's brief was filed, you may, but are not required to, file another brief replying to the respondent's brief. This is called a "reply brief."

17 What happens after all the briefs have been filed?

Once all the briefs have been filed or the time to file them has passed, the appellate division will notify you of the date for oral argument in your case.

18 What is "oral argument?"

"Oral argument" is the parties' chance to explain their arguments to the appellate division judges in person. You do not have to participate in oral argument if you do not want to; you can notify the appellate division that you want to "waive" oral argument. If all parties waive oral argument, the judges will decide your appeal based on the briefs and the record that were submitted. But if one party waives oral argument and another party or parties does not, the appellate division will hold oral argument with the party or parties who did not waive it.

If you do choose to participate in oral argument, you will have up to 10 minutes for your argument unless the appellate division orders otherwise. Remember that the judges will have already read the briefs, so you do not need to read your brief to the judges. It is more helpful to tell the judges what you think is most important in your appeal or ask the judges if they have any questions you could answer.



19 What happens after oral argument?

After oral argument is held (or the date it was scheduled passes if all the parties waive oral argument), the judges of the appellate division will make a decision about your appeal. The appellate division has 90 days after the date scheduled for oral argument to decide the appeal. The clerk of the court will mail you a notice of the appellate division's decision.

20 What should I do if I want to give up my appeal?

If you decide you do not want to continue with your appeal, you must file a written document with the appellate division notifying it that you are giving up (this is called "abandoning") your appeal. You can use *Abandonment of Appeal (Limited Civil Case)* (form APP-107) to file this notice in a limited civil case. You can get form APP-107 at any courthouse or county law library or online at www.courts.ca.gov/forms.

INFORMATION FOR THE RESPONDENT

This section of this information sheet is written for the respondent—the party responding to an appeal filed by another party. It explains some of the rules and procedures relating to responding to an appeal in a limited civil case. The information may also be helpful to the appellant.

21 I have received a notice of appeal from another party. Do I need to do anything?

You do not *have* to do anything. The notice of appeal simply tells you that another party is appealing the trial court's decision. However, this would be a good time to get advice from a lawyer, if you want it. You do not *have* to have a lawyer; if you are an individual (not a corporation, for example), you are allowed to represent yourself in an appeal in a limited civil case. But appeals can be complicated and you will have to follow the same rules that lawyers have to follow. If you have any questions about the appeal procedures, you should talk to a lawyer. You must hire your own lawyer if you want one. You can get information about finding a lawyer on the California Courts Online Self-Help Center at www.courts.ca.gov/selfhelp-lowcosthelp.htm.

22 If the other party appealed, can I appeal too?

Yes. Even if another party has already appealed, you may still appeal the same judgment or order. This is called a "cross-appeal." To cross-appeal, you must serve and file a notice of appeal. You can use *Notice of Appeal/Cross-Appeal (Limited Civil Case)* (form APP-102) to file this notice in a limited civil case. Please read the information for appellants about filing a notice of appeal, starting on page 2 of this information sheet, if you are considering filing a cross-appeal.

23 Is there a deadline to file a cross-appeal?

Yes. You must serve and file your notice of appeal within either the regular time for filing a notice of appeal (generally 30 days after mailing or service of Notice of Entry of the judgment or a file-stamped copy of the judgment) or within 10 days after the clerk of the trial court mails notice of the first appeal, whichever is later.

24 I have received a notice designating the record on appeal from another party. Do I need to do anything?

You do not *have* to do anything. A notice designating the record on appeal lets you know what kind of official record the appellant has asked to be sent to the appellate division. Depending on the kind of record chosen by the appellant, however, you may have the option to:

- Add to what is included in the record
- Participate in preparing the record *or*
- Ask for a copy of the record

Look at the appellant's notice designating the record on appeal to see what kind of record the appellant has chosen and read about that form of the record in the response to question **13** above. Then read below for what your options are when the appellant has chosen that form of the record.

(a) Clerk's transcript

If the appellant is using a clerk's transcript, you have the option of asking the clerk to include additional documents in the clerk's transcript.



To do this, within 10 days after the appellant serves its notice designating the record on appeal, you must serve and file a notice designating additional documents to be included in the clerk's transcript.

Whether or not you ask for additional documents to be included in the clerk's transcript, you must pay a fee if you want a copy of the clerk's transcript. The trial court clerk will send you a notice indicating the cost for a copy of the clerk's transcript. If you want a copy, you must deposit this amount with the court within 10 days after the clerk's notice was sent. If you cannot afford to pay this cost, you can ask the court to waive it. To do this, you must fill out and file a *Request to Waive Court Fees* (form FW-001). You can get form FW-001 at any courthouse or county law library or online at www.courts.ca.gov/forms. The court will review this application and determine if you are eligible for a fee waiver. The clerk will not prepare a copy of the clerk's transcript for you unless you deposit payment for the cost or obtain a fee waiver.

(b) Reporter's transcript

If the appellant is using a reporter's transcript, you have the option of asking for additional proceedings to be included in the reporter's transcript. To do this, within 10 days after the appellant files its notice designating the record on appeal, you must serve and file a notice designating additional proceedings to be included in the reporter's transcript.

Whether or not you ask for additional proceedings to be included in the reporter's transcript, you must **generally** pay a fee if you want a copy of the reporter's transcript. The trial court clerk or reporter will send you a notice indicating the cost of preparing a copy of the reporter's transcript. If you want a copy of the reporter's transcript, you must deposit this amount **(and a fee for the trial court) or one of the substitutes allowed by rule 8.834 with the trial court clerk** within 10 days after this notice is sent. (See rule 8.834 for more information about this deposit and the permissible

substitutes, such as a waiver of this deposit signed by the court reporter.)

Unlike the fee for preparing a clerk's transcript, the court cannot waive the fee for preparing a reporter's transcript. A special fund, called the Transcript Reimbursement Fund, may be able to help pay for the transcript. You can get information about this fund at: www.courtreportersboard.ca.gov/consumers/index.shtml#trf. The reporter will not prepare a copy of the reporter's transcript for you unless you **deposit the cost of the transcript, or one of the permissible substitutes, or your application for payment by the Transcript Reimbursement Fund is approved.**

If the appellant elects not to use a reporter's transcript, you may not designate a reporter's transcript without first getting an order from the appellate division.

(c) Agreed statement

If you and the appellant agree to prepare an agreed statement (a summary of the trial court proceedings that is agreed to by the parties), you and the appellant will need to reach an agreement on that statement within 30 days after the appellant files its notice designating the record.

(d) Statement on appeal

If the appellant elects to use a statement on appeal (a summary of the trial court proceedings that is approved by the trial court), the appellant will send you a proposed statement to review. You will have 10 days from the date the appellant sent you this proposed statement to serve and file suggested changes (called "amendments") that you think are needed to make sure that the statement provides **an accurate summary of the testimony and other evidence relevant to the issues the appellant indicated he or she is raising on appeal.** "Serve and file" means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or



- deliver (“serve”) the proposed amendments to the appellant in the way required by law.
- Make a record that the proposed amendments have been served. This record is called a “proof of service.” *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. The proof of service must show who served the proposed amendments, who was served with the proposed amendments, how the proposed amendments were served (by mail or in person), and the date the proposed amendments were served.
- File the original proposed amendments and the proof of service with the trial court. You should make a copy of the proposed amendments you are planning to file for your own records before you file them with the court. It is a good idea to bring or mail an extra copy of the proposed amendments to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more 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.courts.ca.gov/selfhelp-serving.htm.

25 What happens after the official record has been prepared?

As soon as the record on appeal is complete, the clerk of the trial court will send it to the appellate division. When the appellate division receives this record, it will send you a notice telling you when you must file your brief in the appellate division.

A brief is a party’s written description of the facts in the case, the law that applies, and the party’s argument about the issues being appealed. If you are represented by a lawyer, your lawyer will prepare your brief. If you are not represented by a lawyer in your appeal, you will have to prepare your brief yourself. You should read rules 8.882–8.884 of the California Rules of Court, which set out the requirements for preparing, serving, and filing briefs in limited civil appeals, including

requirements for the format and length of these briefs. You can get these rules at any courthouse or county law library or online at www.courts.ca.gov/rules.htm.

The appellant serves and files the first brief, called an “appellant’s opening brief.” You may, but are not required to, respond by serving and filing a respondent’s brief within 30 days after the appellant’s opening brief is filed. “Serve and file” means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver (“serve”) the brief to the other parties in the way required by law.
- Make a record that the brief has been served. This record is called a “proof of service.” *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. The proof of service must show who served the brief, who was served with the brief, how the brief was served (by mail or in person), and the date the brief was served.
- File the original brief and the proof of service with the appellate division. You should make a copy of the brief you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the brief to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more 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.courts.ca.gov/selfhelp-serving.htm.

You and the other parties can agree (stipulate) to extend the time for filing this brief by up to 30 days (see rule 8.882(b) for requirements for these agreements). You can also ask the court to extend the time for filing this brief if you can show good cause for an extension (see rule 8.811(b) for a list of the factors the court will consider in deciding whether there is good cause for an extension). You can use *Application for Extension of Time to File Brief (Limited Civil Case)* (form APP-106) to ask the court for an extension.

If you do not file a respondent's brief, the appellant does not automatically win the appeal. The court will decide the appeal on the record, the appellant's brief, and any oral argument by the appellant. Remember that an appeal is not a new trial. The appellate division will not consider new evidence, such as the testimony of new witnesses or new exhibits, so do not include any new evidence in your brief.

If you file a respondent's brief, the appellant then has an opportunity to serve and file another brief within 20 days replying to your brief.

26 What happens after all the briefs have been filed?

Once all the briefs have been filed or the time to file them has passed, the court will notify you of the date for oral argument in your case.

“Oral argument” is the parties' chance to explain their arguments to appellate division judges in person. You do not have to participate in oral argument if you do not want to; you can notify the appellate division that you want to “waive” oral argument. If all parties waive oral argument, the judges will decide the appeal based on the briefs and the record that were submitted. But if one party waives oral argument and another party or parties does not, the appellate division will hold oral argument with the party or parties who did not waive it.

If you do choose to participate in oral argument, you will have up to 10 minutes for your argument unless the appellate division orders otherwise. Remember that the judges will have already read the briefs, so you do not need to read your brief to the judges. It is more helpful to tell the judges what you think is most important in the appeal or ask the judges if they have any questions you could answer.

After oral argument is held (or the scheduled date passes if all parties waive argument), the judges of the appellate division will make a decision about the appeal. The appellate division has 90 days after oral argument to decide the appeal. The clerk of the court will mail you a notice of the appellate division's decision.

Clerk stamps date here when form is filed.

Instructions

- This form is only for appealing in a **limited civil case**. You can get other forms for appealing **in unlimited civil cases** at any courthouse or county law library or online at www.courts.ca.gov/forms.
- 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.courts.ca.gov/forms.
- You must serve and file this form **no later than 30 days** after the trial court or a party serves a document called a Notice of Entry of the trial court judgment or a file-stamped copy of the judgment or 90 days after entry of judgment, whichever is earlier (see rule 8.823 of the California Rules of Court for very limited exceptions). **If your notice of appeal is late, your appeal will be dismissed.**
- 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.courts.ca.gov/selfhelp-serving.htm.
- Take or mail the original completed form and proof of service on the other parties to the clerk’s office for the same court that issued the judgment or order you are appealing. 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 you are appealing:

Superior Court of California, County of

You fill in the number and name of the trial court case in which you are appealing the judgment or order:

Trial Court Case Number:

Trial Court Case Name:

The clerk will fill in the number below

Appellate Division Case Number:

1 Your Information

a. Name of appellant (the party who is filing this appeal):

b. Appellant’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 (*if available*): _____

c. Appellant’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 (*if available*): _____

Fax (*if available*): _____



Trial Court Case Name: _____

Trial Court Case Number: _____

- 2 This is (check a or b):
- a. The first appeal in this case.
 - b. A cross-appeal (an appeal filed after the first appeal in this case (complete (1), (2), and (3))).
 - (1) The notice of appeal in the first appeal was filed on (fill in the date that the other party filed its notice of appeal in this case): _____
 - (2) The trial court clerk served notice of the first appeal on (fill in the date that the clerk served the notice of the other party's appeal in this case): _____
 - (3) The appellate division case number for the first appeal is (fill in the appellate division case number of the other party's appeal, if you know it): _____

3 **Judgment or Order You Are Appealing**

I am/My client is appealing (check a or b):

- a. The final judgment in the trial court case identified in the box on page 1 of this form.
The date the trial court entered this judgment was (fill in the date): _____
- b. Other:
 - (1) An order made after final judgment in the case.
The date the trial court entered this order was (fill in the date): _____
 - (2) An order changing or refusing to change the place of trial (venue).
The date the trial court entered this order was (fill in the date): _____
 - (3) An order granting a motion to quash service of summons.
The date the trial court entered this order was (fill in the date): _____
 - (4) An order granting a motion to stay or dismiss the action on the ground of inconvenient forum.
The date the trial court entered this order was (fill in the date): _____
 - (5) An order granting a new trial.
The date the trial court entered this order was (fill in the date): _____
 - (6) An order denying a motion for judgment notwithstanding the verdict.
The date the trial court entered this order was (fill in the date): _____
 - (7) An order granting or dissolving an injunction or refusing to grant or dissolve an injunction.
The date the trial court entered this order was (fill in the date): _____

Trial Court Case Name: _____

Trial Court Case Number: _____

3 (continued)

- (8) An order appointing a receiver.

The date the trial court entered this order was (fill in the date): _____

- (9) Other action (please describe and indicate the date the trial court took the action you are appealing):

4 Record Preparation Election

Complete this section only if you are filing the first appeal in this case. If you are filing a cross-appeal, skip this section and go to the signature line.


Check a or b if you are filing the first appeal in this case:

- a. I have/My client has completed *Appellant’s Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103) and attached it to this notice of appeal.
- b. I/My client will complete *Appellant’s Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103) later. I understand that I must file this notice in the trial court within 10 days of the date I file this notice of appeal.

REMINDER: Except in the very limited circumstances listed in rule 8.823, you must serve and file this form no later than (1) 30 days after the trial court clerk or a party serves either a document called a Notice of Entry of the trial court judgment or a file-stamped copy of the judgment or (2) within 90 days after entry of judgment, whichever is earlier. If your notice of appeal is late, your appeal will be dismissed.

Date: _____

Type or print your name

 _____
Signature of appellant/cross-appellant or attorney

**Appellant's Notice Designating
Record on Appeal
(Limited Civil Case)**

Clerk stamps date here when form is filed.

Instructions

- This form is only for choosing (“designating”) the record on 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.courts.ca.gov/forms.
- This form can be attached to your notice of appeal. If it is not attached to your notice of appeal, you must serve and file this form within 10 days after you file your notice of appeal. **If you do not file this form on time, the court may dismiss your appeal.**
- 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 on the California Courts Online Self-Help Center site at www.courts.ca.gov/selfhelp-serving.htm.
- Take or mail the original completed form and proof of service on the other parties to the clerk’s office for the same court that issued the judgment or order you are appealing. 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 you are appealing:

Superior Court of California, County of

You fill in the number and name of the trial court case in which you are appealing the judgment or order:

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

You fill in the appellate division case number (if you know it):

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

- a. Name of Appellant (the party who is filing this appeal):

Name: _____

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

Street address: _____
Street City State ZipMailing address (*if different*): _____
Street City State ZipPhone: _____ E-mail (*if available*): _____

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

Name: _____ State Bar number: _____

Street address: _____
Street City State ZipMailing address (*if different*): _____
Street City State ZipPhone: _____ E-mail (*if available*): _____Fax (*if available*): _____

Trial Court Case Name: _____

Trial Court Case Number: _____

Information About Your Appeal

2 On (fill in the date): _____ I/my client filed a notice of appeal in the trial court case identified in the box on page 1 of this form.

Record of the Documents Filed in the Trial Court

3 I elect (choose)/My client elects to use the following record of the documents filed in the trial court (check a or b and fill in any required information):

a. **Clerk's Transcript.** (Fill out (1)–(4).) Note that, if the appellate division has adopted a local rule permitting this, the clerk may prepare and send the original court file to the appellate division instead of a clerk's transcript.

(1) **Required documents.** The clerk will automatically include the following items in the clerk's transcript, but you must provide the date each document was filed or, if that is not available, the date the document was signed.

Document Title and Description	Date of Filing
(a) Notice of appeal	
(b) Notice designating record on appeal (this document)	
(c) Judgment or order appealed from	
(d) Notice of entry of judgment (if any)	
(e) Notice of intention to move for new trial or motion to vacate the judgment, for judgment notwithstanding the verdict, or for reconsideration of an appealed order (if any)	
(f) Ruling on any item included under (e)	
(g) Register of actions or docket	

(2) **Additional documents.** If you want any documents in addition to the required documents listed in (1) above to be included in the clerk's transcript, you must identify those documents here.

I request that the clerk include in the transcript the following documents that were filed in the trial court. (Identify each document you want included by its title and provide the date it was filed or, if that is not available, the date the document was signed.)

Document Title and Description	Date of Filing
(a)	
(b)	
(c)	
(d)	
(e)	

Check here if you need more space to list other documents and attach a separate page or pages listing those documents. At the top of each page, write "APP-103, item 3a(2)."



3 a. (continued)

(3) Exhibits.

I request that the clerk include in the transcript the following exhibits that were admitted in evidence, refused, or lodged in the trial court. *(For each exhibit, give the exhibit number (such as Plaintiff's #1 or Defendant's A) and a brief description of the exhibit and indicate whether or not the court admitted the exhibit into evidence. If the trial court has returned a designated exhibit to a party, the party who has that exhibit must deliver it to the trial court clerk as soon as possible.)*

Exhibit Number	Description	Admitted Into Evidence	
		<input type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> No

Check here if you need more space to list other exhibits and attach a separate page or pages listing those exhibits. At the top of each page, write "APP-103, item 3a(3)."

(4) Payment for clerk's transcript. *(Check a or b.)*

- (a) I will pay the trial court clerk for this transcript myself when I receive the clerk's estimate of the costs of the transcript. I understand that if I do not pay for the transcript, it will not be prepared and provided to the appellate division.
- (b) I am asking that the clerk's transcript be provided at no cost to me because I cannot afford to pay this cost. I have attached *(check (i) or (ii) and attach the checked document)*:
 - (i) An order granting a waiver of the cost under rules 3.50–3.58
 - (ii) An application for a waiver of court fees and costs under rules 3.50–3.58 *(Use Request to Waive Court Fees (form FW-001). The court will review this form to decide if you are eligible for a fee waiver.)*

OR

- b. **Agreed statement.** *(You must complete item 5d below and attach to your agreed statement copies of all the documents that are required to be included in the clerk's transcript. These documents are listed in 3a(1) above and in rule 8.832 of the California Rules of Court.)*

Record of Oral Proceedings in the Trial Court

You do not have to provide the appellate division with a record of what was said in the trial court (this is called a record of the "oral proceedings"). But, if you do not, the appellate division will not be able to consider what was said during the trial court proceedings in deciding whether a legal error was made in those proceedings.

4 I elect (choose)/My client elects to proceed *(check a or b)*:

- a. WITHOUT a record of the oral proceedings in the trial court *(skip item 5); sign and date this form)*. I understand that if I proceed without a record of the oral proceedings, the appellate division will not be able to consider what was said in the trial court during those proceedings in deciding whether a legal error was made.

(Write initials here): _____



4 (continued)

b. WITH a record of the oral proceedings in the trial court (*complete item 5 below*). I understand that if I elect (choose) to proceed WITH a record of the oral proceedings in the trial court, I have to choose the record I want to use and take the actions described below to make sure this record is provided to the appellate division. I understand that if I do not take the actions described below and the appellate division does not receive this record, I am not likely to succeed in my appeal.

(Write initials here): _____

5 I want to use the following record of what was said in the trial court proceedings in my case (*check and complete only one of the following below—a, b, c, d, or e*):

a. **Reporter’s Transcript.** *This option is available only if there was a court reporter in the trial court who made a record of what was said in court. Check with the trial court to see if there was a court reporter in your case before choosing this option. (Complete (1) and (2).):*

(1) **Designation of proceedings to be included in reporter’s transcript.** I request that the following proceedings in the trial court be included in the reporter’s transcript. (*You must identify each proceeding you want included by its date, the department in which it took place, a description of the proceedings [for example, the examination of jurors, motions before trial, the taking of testimony, or the giving of jury instructions], the name of the court reporter who recorded the proceedings, and whether a certified transcript of the designated proceeding was previously prepared.*)

Date	Department	Description	Reporter’s Name	Prev. prepared?
(a)				<input type="checkbox"/> Yes <input type="checkbox"/> No
(b)				<input type="checkbox"/> Yes <input type="checkbox"/> No
(c)				<input type="checkbox"/> Yes <input type="checkbox"/> No
(d)				<input type="checkbox"/> Yes <input type="checkbox"/> No
(e)				<input type="checkbox"/> Yes <input type="checkbox"/> No
(f)				<input type="checkbox"/> Yes <input type="checkbox"/> No
(g)				<input type="checkbox"/> Yes <input type="checkbox"/> No

Check here if you need more space to list other proceedings and attach a separate page or pages listing those proceedings. At the top of each page, write “APP-103, item 5a.”

(2) The proceedings designated in (1) include do not include all of the testimony in the trial court. If the designated proceedings DO NOT include all of the testimony, state the points that you intend to raise on appeal. (*Rule 8.834(a)(2) provides that your appeal will be limited to these points unless, on motion, the appellate division permits otherwise.*)

Check here if you need more space to list other points and attach a separate page or pages listing those points. At the top of each page, write “APP-103, item 5a(2).”



5 a. (continued)

(3) **Payment for reporter’s transcript.** I will pay for this transcript myself or request payment from the Transcript Reimbursement Fund when I receive the court reporter’s estimate of the costs of this transcript. I understand that if I do not pay the trial court clerk’s office for this transcript, file with the court a written waiver of this deposit signed by the reporter, or receive approval of my Transcript Reimbursement Fund application, the transcript will not be prepared and provided to the appellate division.
(Write initials here): _____

- I request that the reporters provide (check one):
 - (i) My copy of the reporter’s transcript in paper format.
 - (ii) My copy of the reporter’s transcript in computer-readable format.
 - (iii) My copy of the reporter’s transcript in paper format and a second copy of the reporter’s transcript in computer-readable format.

OR

- b. **Transcript From Official Electronic Recording.** *This option is available only if an official electronic recording was made of what was said in the trial court. Check with the trial court to see if an official electronic recording was made in your case before choosing this option (Check and complete (1) or (2).):*
- (1) I will pay the trial court clerk for this transcript myself when I receive the clerk’s estimate of the costs of the transcript. I understand that if I do not pay for the transcript, it will not be prepared and provided to the appellate division.
 - (2) I am asking that the transcript be provided at no cost to me because I cannot afford to pay this cost. I have attached (check (a) or (b) and attach the appropriate document):
 - (a) An order granting a waiver of the cost under rules 3.50–3.58
 - (b) An application for a waiver of court fees and costs under rules 3.50–3.58 (Use Request to Waive Court Fees (form FW-001). The court will review this form to decide if you are eligible for a fee waiver.)

OR

- c. **Copy of Official Electronic Recording.** *This option is available only if an official electronic recording was made of what was said in the trial court, the court has a local rule for the appellate division permitting the use of the official electronic recording itself as the record of the proceedings, and all of the parties have agreed (stipulated) that they want to use the recording itself as the record of what was said in the case. Check with the trial court to see if an official electronic recording was made in your case before choosing this option. You must attach a copy of your agreement (stipulation) with the other parties to this notice. (Check and complete (1) or (2).):*
- (1) I will pay the trial court clerk for this copy of the recording myself when I receive the clerk’s estimate of the costs of this copy. I understand that if I do not pay for this copy of the recording, it will not be prepared and provided to the appellate division.
 - (2) I am asking that a copy of the recording be provided at no cost to me because I cannot afford to pay this cost. I have attached (check (a) or (b) and attach the appropriate document):
 - (a) An order granting a waiver of the cost under rules 3.50–3.58
 - (b) An application for a waiver of court fees and costs under rules 3.50–3.58 (Use Request to Waive Court Fees (form FW-001). The court will review this form to decide if you are eligible for a fee waiver.)



Trial Court Case Name: _____

Trial Court Case Number: _____

5 (continued)

OR


- d. **Agreed Statement.** *An agreed statement is a summary of the trial court proceedings agreed to by the parties. See form APP-101-INFO for information about preparing an agreed statement. (Check (1) or (2).):*
- (1) I have attached an agreed statement to this notice.
 - (2) All the parties have agreed in writing (stipulated) to try to agree on a statement (*you must attach a copy of this agreement (stipulation) to this notice*). I understand that, within 30 days after I file this notice, I must file either the agreed statement or a notice indicating the parties were unable to agree on a statement and a new notice designating the record on appeal.

OR

- e. **Statement on Appeal.** *A statement on appeal is a summary of the trial court proceedings approved by the trial court. See form APP-101-INFO for information about preparing a proposed statement (Check (1) or (2).):*
- (1) I have attached my proposed statement on appeal to this notice. (*If you are not represented by a lawyer in this appeal, you must use Proposed Statement on Appeal (Limited Civil Case) (form APP-104) to prepare and file this proposed statement. You can get a copy of form APP-104 at any courthouse or county law library or online at www.courts.ca.gov/forms.htm.*)
 - (2) I have NOT attached my proposed statement on appeal to this notice. I understand that I must serve and file this proposed statement in the trial court within 20 days of the date I file this notice and that if I do not file the proposed statement on time, the court may dismiss my appeal.

Date: _____

Type or print your name

 _____
Signature of appellant or attorney

Clerk stamps date here when form is filed.

Instructions

- This form is only for preparing a proposed statement on 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.courts.ca.gov/forms.
- This form can be attached to your *Appellant's Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103). If it is not attached to that notice, this form must be filed **no later than 20 days after you file that notice. If you have chosen to prepare a statement on appeal and do not file this form on time, the court may dismiss your appeal.**
- 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.courts.ca.gov/selfhelp-serving.htm.
- Take or mail the original completed form and proof of service on the other parties to the clerk's office for the same court that issued the judgment or order you are appealing. 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 you are appealing:

Superior Court of California, County of

You fill in the number and name of the trial court case in which you are appealing the judgment or order:

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

You fill in the appellate division case number (if you know it):

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

- a. Name of Appellant (
- the party who is filing this appeal*
-):

Name: _____

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

Street address: _____
Street City State ZipMailing address (*if different*): _____
Street City State ZipPhone: _____ E-mail (*if available*): _____

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

Name: _____ State Bar number: _____

Street address: _____
Street City State ZipMailing address (*if different*): _____
Street City State ZipPhone: _____ E-mail (*if available*): _____Fax (*if available*): _____

Trial Court Case Name: _____

Trial Court Case Number: _____

Information About Your Appeal

- 2 On (fill in the date): _____, I/my client filed a notice of appeal in the trial court case identified in the box on page 1 of this form.
- 3 On (fill in the date): _____, I/my client filed a notice designating the record on appeal, electing to use a statement on appeal.

Proposed Statement

4 Reasons for Your Appeal

Remember, in an appeal, the appellate division can only review a case for whether certain kinds of legal errors were made (read form APP-101-INFO to learn about these legal errors):

- There was not “substantial evidence” supporting the judgment, order, or other decision you are appealing.
- A “prejudicial error” was made during the trial court proceedings.

The appellate division:

- Cannot retry your case or take new evidence.
- Cannot consider whether witnesses were telling the truth or lying.
- Cannot consider whether there was more or stronger evidence supporting your position than there was supporting the trial court’s decision.

(Check all that apply and describe the legal error or errors you believe were made that are the reason for this appeal.)

a. There was not substantial evidence that supported the judgment, order, or other decision that I/my client indicated in the notice of appeal is being appealed in this case. (Explain why you think the judgment, order, or other decision was not supported by substantial evidence): _____

b. The following error or errors about either the law or court procedure was/were made that caused substantial harm to me/my client. (Describe each error and how you were/your client was harmed by that error.)

(1) Describe the error: _____

Describe how you were/your client was harmed by the error: _____



Trial Court Case Name: _____

Trial Court Case Number: _____

(2) Describe the error: _____

Describe how you were/your client was harmed by the error: _____

(3) Describe the error: _____

Describe how you were/your client was harmed by the error: _____

Check here if you need more space to describe these or other errors and attach a separate page or pages describing the errors. At the top of each page, write "APP-104, item 4."

5 The Dispute

a. In the trial court, I/my client was the (check one):

- plaintiff (the party who filed the complaint in the case).
- defendant (the party against whom the complaint was filed).

b. The plaintiff's complaint in this case was about (briefly describe what was claimed in the complaint filed with the trial court): _____

c. The defendant's response to this complaint was (briefly describe how the defendant responded to the complaint filed with the trial court): _____

Check here if you need more space to describe the dispute and attach a separate page or pages describing it. At the top of each page, write "APP-104, Item 5."



6 Summary of Any Motions and the Court's Order on the Motion

a. Were any motions (requests for the trial court to issue an order) made in this case that are relevant to the reasons you gave in 4 for this appeal?

Yes (fill out b) No (skip to 7)

b. In the spaces below, describe any motions (requests for orders) that were made in the trial court that are relevant to the reasons you gave in 4 for this appeal. Write a complete and accurate summary of what was said at any hearings on these motions and indicate how the trial court ruled on these motions.

(1) Describe the first motion: _____

The motion was filed by the plaintiff. defendant.

There was was not a hearing on this motion.

If there was a hearing on this motion, write a complete and accurate summary of what was said at this hearing: _____

The trial court granted this motion. did not grant this motion.

Other (describe any other action the trial court took concerning this motion): _____

Check here if you need more space to describe this motion and attach a separate page or pages describing this motion. At the top of each page, write "APP-104, Item 6b(1)."

(2) Describe the second motion: _____

The motion was filed by the plaintiff. defendant.

There was was not a hearing on this motion.

If there was a hearing on this motion, write a complete and accurate summary of what was said at this hearing: _____

The trial court granted this motion. did not grant this motion.



Other (describe any other action the trial court took concerning this motion): _____

Check here if you need more space to describe this motion and attach a separate page or pages describing this motion. At the top of each page, write "APP-104, item 6b(2)."

(3) Check here if any other motions were filed that are relevant to the reasons you gave in ④ for this appeal and attach a separate page describing each motion, identifying who made the motion and whether there was a hearing on the motion, summarizing what was said at the hearing on the motion, and indicating whether the trial court granted or denied the motion. At the top of each page, write "APP-104, item 6b(3)."

7 Summary of Testimony and Other Evidence

a. Was there a trial in your case?

No (skip items b, c, d, and e and go to item ⑧)

Yes (check (1) or (2) and complete items b, c, d, and e)

(1) Jury trial

(2) Trial by judge only

b. Did you/your client testify at the trial?

No

Yes (Write a complete and accurate summary of the testimony you/your client gave that is relevant to the reasons you gave in ④ for this appeal. Include only what you actually said; do not comment or give your opinion about what was said. Please indicate whether any objections were made concerning your/your client's testimony or any exhibits you/your client asked to present and whether these objections were sustained.): _____

Check here if you need more space to summarize your/your client's testimony and attach a separate page or pages summarizing this testimony. At the top of each page, write "APP-104, Item 7b."

c. Were there any other witnesses at the trial whose testimony is relevant to the reasons you gave in ④ for this appeal?

No

Yes (complete items (1), (2), and (3)):

(1) The witness's name is (fill in the witness's name): _____

(2) The witness testified on behalf of the (check one): plaintiff. defendant.



(3) This witness testified that *(Write a complete and accurate summary of the witness’s testimony that is relevant to the reasons you gave in 4 for this appeal. Include only what the witness actually said; do not comment on or give your opinion about what the witness said. Please indicate whether any objections were made concerning this witness’s testimony or any exhibits this witness asked to present and whether these objections were sustained.)*: _____

Check here if you need more space to summarize this witness’s testimony and attach a separate page or pages summarizing this testimony. At the top of each page, write “APP-104, Item 7c.”

d. Check here if any other witnesses gave testimony at the trial that is relevant to the reasons you gave in 4 for this appeal. Attach a separate page or pages identifying each witness and who the witness testified for, summarizing what that witness said in his or her testimony that is relevant to the reasons you gave in 4 for this appeal, and indicating whether any objections were made concerning this witness’s testimony or any exhibits the witness asked to present and whether these objections were sustained. At the top of each page, write “APP-104, Item 7d.”

e. Summarize the evidence, other than testimony, that was given during the trial that is relevant to the reasons you gave in 4 for this appeal. *(Write a complete and accurate summary of the evidence given by both you and the respondent. Include only the evidence given; do not comment on or give your opinion about this evidence.)*:

Check here if you need more space to describe the evidence and attach a separate page or pages describing the evidence. At the top of each page, write “APP-104, Item 7e.”

8 The Trial Court's Findings

Did the trial court make findings in the case?

No

Yes *(describe the findings made by the trial court)*: _____

Check here if you need more space to describe the trial court’s findings and attach a separate page or pages describing these findings. At the top of each page, write “APP-104, Item 8.”



Trial Court Case Name: _____

Trial Court Case Number: _____

9 The Trial Court's Final Judgment

The trial court issued the following final judgment in this case (check all that apply and fill in any required information):

a. I/My client was required to:

pay the other party damages of (fill in the amount of the damages): \$ _____

do the following (describe what you were ordered to do): _____

b. The other party was required to:

pay me/my client damages of (fill in the amount of the damages): \$ _____

do the following (describe what the other party was ordered to do): _____

c. Other (describe): _____

Check here if you need more space to describe the trial court's judgment or order and attach a separate page or pages describing this judgment or order. At the top of each page, write "APP-104, Item 9."

Date: _____

Type or print your name



Signature of appellant or attorney

Order Concerning Appellant's Proposed Statement on Appeal (Limited Civil Case)

1 The court has received and reviewed the *Proposed Statement on Appeal* (form APP-104) filed by the appellant on (fill in date): _____

2 The court makes the following order:

a. The court certifies that parts 5 through 9 of the statement as proposed by the appellant are an accurate summary of the evidence and testimony that is relevant to the issues the appellant indicated in item 4 are the reason for this appeal. This statement is ready to be sent to the appellate division.

b. Corrections are needed in order for parts 5 through 9 of the statement proposed by the appellant to be an accurate summary of the evidence and testimony that is relevant to the issues the appellant indicated in item 4 are the reason for this appeal.

(1) A modified statement is attached to this order. This modified statement must be sent to the parties.

(2) The appellant is ordered to prepare a statement incorporating the modifications listed below and to serve and file this modified statement.

(a) _____

(b) _____

(c) _____

(3) More corrections than could be listed above were needed in order for parts 5 through 9 of the statement proposed by the appellant to be an accurate summary of the testimony and other evidence that is relevant to the issues the appellant indicated in item 4 are the reasons for this appeal. A list of required modifications is attached. The appellant is ordered to prepare a statement incorporating these modifications and serve and file the modified statement.

Clerk stamps date here when form is filed.

Clerk fills in the name and street address of the court:

Superior Court of California, County of

Clerk fills in the number and name of the case

Trial Court Case Number:

Trial Court Case Name:
The People of the State of California
v. _____

Clerk fills in the number below:

Appellate Division Case Number:



Trial Court Case Name: _____

- c. The proposed statement does not contain the following material required by rule 8.837.

The appellant is ordered to prepare a new proposed statement that includes this material.

- d. The trial court proceedings in this case were reported by a court reporter or officially recorded electronically under Government Code section 69957. Instead of correcting this statement, the court orders under rule 8.837(d)(6)(B) that a transcript be prepared as the record of these proceedings. *(Check the court's local rules to make sure the court has a rule providing that this option is available.)*
- e. This superior court has a local rule for the appellate division authorizing the use of an official electronic recording as the record of the oral proceedings. The trial court proceedings in this case were officially electronically recorded. Instead of correcting this statement, the court orders that a copy of that electronic recording be prepared as the record of these proceedings at the court's expense.

Date: _____



Signature of trial court judicial officer

**Respondent's Notice Designating
Record on Appeal
(Limited Civil Case)**

Clerk stamps date here when form is filed.

Instructions

- This form is only for choosing (“designating”) the record on 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.courts.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) or on the California Courts Online Self-Help Center at www.courts.ca.gov/selfhelp-serving.htm.
- Take or mail the original completed form and proof of service on the other parties to the clerk’s office for the same court that issued the judgment or order that is being appealed. 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 you are appealing:

Superior Court of California, County of

You fill in the number and name of the trial court case in which you are appealing the judgment or order:

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

You fill in the appellate division case number (if you know it):

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

- a. Name of respondent (the party who is responding to an appeal filed by another party):

Name: _____

- b. Respondent’s contact information (
- skip this if the respondent has a lawyer for this appeal*
-):

Street address: _____
Street City State ZipMailing address (*if different*): _____
Street City State ZipPhone: _____ E-mail (*if available*): _____

- c. Respondent’s lawyer (
- skip this if the respondent does not have a lawyer for this appeal*
-):

Name: _____ State Bar number: _____

Street address: _____
Street City State ZipMailing address (*if different*): _____
Street City State ZipPhone: _____ E-mail (*if available*): _____Fax (*if available*): _____

Trial Court Case Name: _____

Trial Court Case Number: _____

Information About the Appeal

- ② On (fill in the date): _____ another party filed a notice of appeal in the trial court case identified in the box on page 1 of this form.
- ③ On (fill in the date): _____ the appellant filed an appellant’s notice designating the record on appeal.

Record of the Documents Filed in the Trial Court

- ④ The appellant elected (chose) to use a clerk’s transcript under rule 8.832 as the record of the documents filed in the trial court.
 - a. **Additional documents or exhibits.** *If you want any documents or exhibits in addition to those designated by the appellant to be included in the clerk’s transcript, you must identify those documents here.*

(1) Documents

- In addition to the documents designated by the appellant, I request that the clerk include in the transcript the following documents that were filed in the trial court. *(Identify each document you want included by its title and provide the date it was filed or, if that is not available, the date the document was signed).*

Document Title and Description	Date of Filing
(a)	
(b)	
(c)	
(d)	

- Check here if you need more space to list other documents and attach a separate page or pages listing those documents. At the top of each page, write “APP-110, item 4a(1).”*

(2) Exhibits

- I request that the clerk include in the transcript the following exhibits that were admitted in evidence, refused, or lodged in the trial court. *(For each exhibit, give the exhibit number [such as Plaintiff’s #1 or Defendant’s A] and a brief description of the exhibit and indicate whether or not the court admitted the exhibit into evidence. If the trial court has returned a designated exhibit to a party, the party who has that exhibit must deliver it to the trial court clerk as soon as possible.)*

Exhibit Number	Description	Admitted Into Evidence	
		<input type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> No

- Check here if you need more space to list other exhibits and attach a separate page or pages listing those exhibits. At the top of each page, write “APP-110, item 4a(2).”*



4 (continued)

- b. **Copy of clerk’s transcript.** I request a copy of the clerk’s transcript. *(Check (1) or (2).)*
- (1) I will pay the trial court clerk for this transcript myself when I receive the clerk’s estimate of the costs of the transcript.
- (2) I am asking that a copy of the clerk’s transcript be provided at no cost to me because I cannot afford to pay this cost. I have attached *(check (a) or (b) and attach the checked document):*
- (a) An order granting a waiver of the cost under rules 3.50–3.58.
- (b) An application for a waiver of court fees and costs under rules 3.50–3.58. *(Use Request to Waive Court Fees (form FW-001). The court will review this form to decide if you are eligible for a fee waiver.)*

Record of Oral Proceedings in the Trial Court

5 The appellant elected to use the following record of what was said in the trial court proceedings *(check and complete only one of the following below—a, b, or c):*

- a. **Reporter’s Transcript.** The appellant elected to use a reporter’s transcript under rule 8.834 as the record of the oral proceedings in the trial court.
- (1) **Designation of additional proceedings to be included in the reporter’s transcript.** *(If you want any proceedings in addition to the proceedings designated by the appellant to be included in the reporter’s transcript, you must identify those proceedings here.)*

In addition to the proceedings designated by the appellant, I request that the following proceedings in the trial court be included in the reporter’s transcript. *(You must identify each proceeding you want included by its date, the department in which it took place, a description of the proceedings [for example, the examination of jurors, motions before trial, the taking of testimony, or the giving of jury instructions], the name of the court reporter who recorded the proceedings, and whether a certified transcript of the designated proceeding was previously prepared.)*

Date	Department	Description	Reporter’s Name	Prev. prepared?
(a)				<input type="checkbox"/> Yes <input type="checkbox"/> No
(b)				<input type="checkbox"/> Yes <input type="checkbox"/> No
(c)				<input type="checkbox"/> Yes <input type="checkbox"/> No
(d)				<input type="checkbox"/> Yes <input type="checkbox"/> No
(e)				<input type="checkbox"/> Yes <input type="checkbox"/> No
(f)				<input type="checkbox"/> Yes <input type="checkbox"/> No
(g)				<input type="checkbox"/> Yes <input type="checkbox"/> No

Check here if you need more space to list other proceedings and attach a separate page or pages listing those proceedings. At the top of each page, write “APP-110, item 5a(1).”



5 a. (continued)

(2) Copy of reporter’s transcript.

- (a) I request a copy of the reporter’s transcript. I will pay for this transcript myself or request payment from the Transcript Reimbursement Fund when I receive the court reporter’s estimate of the costs of this transcript. I understand that if I do not pay the trial court clerk’s office for this transcript or file with the court a waiver of this deposit signed by the court reporter or receive approval of my Transcript Reimbursement Fund application, I will not receive a copy.
- (b) I request that the court reporter provide (check one):
 - (i) My copy of the reporter’s transcript in paper format.
 - (ii) My copy of the reporter’s transcript in computer-readable format.
 - (iii) My copy of the reporter’s transcript in paper format and a second copy of the reporter’s transcript in computer-readable format.

OR

b. **Transcript From Official Electronic Recording.** The appellant elected to use the transcript from an official electronic recording as the record of the oral proceedings in the trial court under rule 8.835(b). I request a copy of this transcript. (Check and complete (1) or (2).):

- (1) I will pay the trial court clerk for this transcript myself when I receive the clerk’s estimate of the cost of the transcript.
- (2) I am asking that the transcript be provided at no cost to me because I cannot afford to pay this cost. I have attached (check (a) or (b) and attach the appropriate document):
 - (a) An order granting a waiver of the cost under rules 3.50–3.58
 - (b) An application for a waiver of court fees and costs under rules 3.50–3.58 (Use Request to Waive Court Fees (form FW-001). The court will review this form to decide if you are eligible for a fee waiver.)

OR

c. **Copy of Official Electronic Recording.** The appellant and I have agreed to use the official electronic recording itself as the record of the oral proceedings in the trial court under rule 8.835(a). I request a copy of this recording. (Check and complete (1) or (2).):

- (1) I will pay the trial court clerk for this copy of the recording myself when I receive the clerk’s estimate of the costs of this copy.
- (2) I am asking that the transcript be provided at no cost to me because I cannot afford to pay this cost. I have attached (check (a) or (b) and attach the appropriate document):
 - (a) An order granting a waiver of the cost under rules 3.50–3.58
 - (b) An application for a waiver of court fees and costs under rules 3.50–3.58 (Use Request to Waive Court Fees (form FW-001). The court will review this form to decide if you are eligible for a fee waiver.)

Date: _____

Type or print your name

▶ _____
Signature of respondent or attorney

1 What does this information sheet cover?

This information sheet tells you about appeals in misdemeanor cases. It is only meant to give you a general idea of the appeal process, so it does not cover everything you may need to know about appeals in misdemeanor cases. To learn more, you should read rules 8.800–8.816 and 8.850–8.890 of the California Rules of Court, which set out the procedures for misdemeanor appeals. You can get these rules at any courthouse or county law library or online at www.courts.ca.gov/rules.

2 What is a misdemeanor?

A misdemeanor is a crime that can be punished by jail time of up to one year, but not by time in state prison. (See Penal Code sections 17 and 19.2. You can get a copy of these laws at at <http://leginfo.legislature.ca.gov/faces/codes.xhtml>.) If you were also charged with or convicted of a felony, then your case is a felony case, not a misdemeanor case.

3 What is an appeal?

An appeal is a request to a higher court to review a decision made by a lower court. **In a misdemeanor case, the court hearing the appeal is the appellate division of the superior court and the lower court—called the “trial court” in this information sheet—is the superior court.**

It is important to understand that **an appeal is NOT a new trial**. The appellate division will not consider new evidence, such as the testimony of new witnesses or new exhibits. The appellate division’s job is to review a record of what happened in the trial court and the trial court’s decision to see if certain kinds of legal errors were made in the case:

- **Prejudicial error:** The party that appeals (called the “appellant”) may ask the appellate division to determine if an error was made about either the law or court procedures in the case that caused substantial harm to the appellant (this is called “prejudicial error”). Prejudicial error can include things like errors made by the judge about the law, errors or misconduct by the lawyers, incorrect

For information about appeal procedures in other cases, see:

- *Information on Appeal Procedures for Infractions* (form CR-141-INFO)
- *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO)

You can get these forms at any courthouse or county law library or online at www.courts.ca.gov/forms.

instructions given to the jury, and misconduct by the jury that harmed the appellant. When it conducts its review, the appellate division presumes that the judgment, order, or other decision being appealed is correct. It is the responsibility of the appellant to show the appellate division that an error was made and that the error was harmful.

- **No substantial evidence:** The appellant may also ask the appellate division to determine if there was substantial evidence supporting the judgment, order, or other decision being appealed. When it conducts its review, the appellate division only looks to see if there was evidence that reasonably supports the decision. The appellate division generally will not reconsider the jury’s or trial court’s conclusion about which side had more or stronger evidence or whether witnesses were telling the truth or lying.

The appellate division generally will not overturn the judgment, order, or other decision being appealed unless the record clearly shows that one of these legal errors was made.

4 Do I need a lawyer to appeal?

You do not *have* to have a lawyer; you are allowed to represent yourself in an appeal in a misdemeanor case. But appeals can be complicated, and you will have to follow the same rules that lawyers have to follow. If you have any questions about the appeal procedures, you should talk to a lawyer.

If you are representing yourself, you must put your address, telephone number, fax number, and e-mail address (if available) on the cover of every document



you file with the court and let the court know **if** this contact information changes so that the court can contact you if needed.

5 How do I get a lawyer to represent me?

The court is required to appoint a lawyer to represent you if you are indigent (you cannot afford to pay for a lawyer) and:

- Your punishment includes going to jail or paying a fine of more than \$500 (including penalty and other assessments) or
- You are likely to suffer other significant harm as a result of being convicted.

The court may, but is not required to, appoint a lawyer to represent you on appeal in other circumstances if you are indigent. You are automatically considered indigent if you were represented by the public defender or other court-appointed lawyer in the trial court. You will also be considered indigent if you can show that your income and assets are too low to pay for a lawyer.

If you think you are indigent, you can ask the court to appoint a lawyer to represent you for your appeal. You may use *Request for Court-Appointed Lawyer in Misdemeanor Appeal* (form CR-133) to ask the court to appoint a lawyer to represent you on appeal in a misdemeanor case. You can get form CR-133 at any courthouse or county law library or online at www.courts.ca.gov/forms.

If you want a lawyer and you are not indigent or if the court turns down your request to appoint a lawyer, you must hire a lawyer at your own expense. You can get information about finding a lawyer on the California Courts Online Self-Help Center at www.courts.ca.gov/selfhelp.htm at the “Getting Started” tab.

6 Who can appeal?

Only a party in the trial court case can appeal a decision in that case. You may not appeal on behalf of a friend, a spouse, a child, or another relative.

The party that is appealing is called the APPELLANT; in a misdemeanor case, this is usually the party

convicted of committing the misdemeanor. The other party is called the RESPONDENT; in a misdemeanor case, this is usually the government agency that filed the criminal charges (on court papers, this party is called the People of the State of California).

7 Can I appeal any decision that the trial court made?

No. Generally, you may appeal only the final judgment—the decision at the end that decides the whole case. The final judgment includes the punishment that the court imposed. **With the exception listed below**, rulings made by the trial court before final judgment generally cannot be separately appealed, but can be reviewed only later as part of an appeal of the final judgment. In a misdemeanor case, the party convicted of committing a misdemeanor usually appeals that conviction or the sentence (punishment) ordered by the trial court. In a misdemeanor case, a party can also appeal:

- **Before the trial court issues a final judgment in the case, from** an order granting or denying a motion to suppress evidence (Penal Code section 1538.5(j))
- **From** an order made by the trial court after judgment that affects a substantial right of the appellant (Penal Code section 1466(2)(B))

You can get a copy of these laws at <http://leginfo.legislature.ca.gov/faces/codes.xhtml>.

8 How do I start my appeal?

First, you must file a notice of appeal. The notice of appeal tells the other party in the case and the trial court that you are appealing the trial court’s decision. You may use *Notice of Appeal (Misdemeanor)* (form CR-132) to prepare and file a notice of appeal in a misdemeanor case. You can get form CR-132 at any courthouse or county law library or online at www.courts.ca.gov/forms.

9 Is there a deadline for filing my notice of appeal?

Yes. Except in the very limited circumstances listed in rule 8.853(b), in a misdemeanor case, you must file your notice of appeal within **30 days** after the trial court



makes (“renders”) its final judgment in your case or issues the order you are appealing. (You can get a copy of rule 8.853 at any courthouse or county law library or online at www.courts.ca.gov/rules) The date the trial court makes its judgment is normally the date the trial court issues its order saying what your punishment is (sentences you). **This deadline for filing the notice of appeal cannot be extended. If your notice of appeal is late, the appellate division will not be able to consider your appeal.**

10 How do I file my notice of appeal?

To file the notice of appeal in a misdemeanor case, you must bring or mail the original notice of appeal to the clerk of the trial court that made the judgment or issued the order you are appealing. It is a good idea to bring or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

There is no fee for filing the notice of appeal in a misdemeanor case. You can ask the clerk of that court if there are any other requirements for filing your notice of appeal.

After you file your notice of appeal, the clerk will send a copy of your notice of appeal to the office of the prosecuting attorney (for example, the district attorney, county counsel, city attorney, or state Attorney General).

11 If I file a notice of appeal, do I still have to go to jail or complete other parts of my punishment?

Filing the notice of appeal does NOT automatically postpone your punishment, such as serving time in jail, paying fines, or probation conditions.

If you have been sentenced to jail in a misdemeanor case, you have a right to be released either with or without bail while your appeal is waiting to be decided, but you must ask the court to set bail or release you. If the trial court has not set bail or released you after your notice of appeal has been filed, you must ask the trial court to set bail or release you. If the trial court denies your release or sets the bail amount higher than you think it should be, you can apply to the appellate division for release or for lower bail.

Other parts of your punishment, such as fines or probation conditions, will be postponed (“stayed”) only if you request a stay and the court grants your request. If you want a stay, you must first ask the trial court for a stay. You can also apply to the appellate division for a stay, but you must show in your application to the appellate division that you first asked the trial court for a stay and that the trial court unjustifiably denied your request. If you do not get a stay and you do not pay your fine or complete another part of your punishment by the date ordered by the court, a warrant may be issued for your arrest or a civil collections process may be started against you, which could result in a civil penalty being added to your fine.

12 What do I need to do after I file my appeal?

You must tell the trial court (1) whether you have agreed with the respondent (“stipulated”) that you do not need parts of the normal record on appeal, and (2) whether you want a record of what was said in the trial court (this is called a record of the “oral proceedings”) sent to the appellate division and, if so, what form of that record you want to use. You may use *Notice Regarding Record on Appeal (Misdemeanor)* (form CR-134) for this notice. (You can get form CR-134 at any courthouse or county law library or online at www.courts.ca.gov/forms) You must file this notice either:

- (1) within 20 days after you file your notice of appeal, or, if it is later
- (2) within 10 days after the court decides whether to appoint a lawyer to represent you (if you ask the court to appoint a lawyer within 20 days after you file your notice of appeal).

13 In what cases does the appellate division need a record of what was said in the trial court?

You do not *have* to send the appellate division a record of what was said in the trial court. But if you want to raise any issue in your appeal that would require the appellate division to consider what was said in the trial court, the appellate division will need a record of these oral proceedings. For example, if you are claiming that there was not substantial evidence supporting the



judgment, order, or other decision you are appealing, the appellate division will need a record of the oral proceedings. Since the appellate division judges were not there for the proceedings in the trial court, an official record of these oral proceedings must be prepared and sent to the appellate division for its review.

Depending on what form of the record you choose to use, you will be responsible for paying to have the official record of the oral proceedings prepared (unless you are indigent) or for preparing an initial draft of this record yourself. If you do not take care of these responsibilities, a record of the oral proceedings in the trial court will not be prepared and sent to the appellate division. If the appellate division does not receive this record, it will not be able to consider what was said in the trial court in deciding whether a legal error was made and it may dismiss your appeal.

14 What are the different forms of the record?

There are three ways a record of the oral proceedings in the trial court can be prepared and provided to the appellate division in a misdemeanor case:

- a. If a court reporter was there during the trial court proceedings, the reporter can prepare a record called a “*reporter’s transcript*.”
- b. If the proceedings were officially electronically recorded, the trial court can have a transcript prepared from that recording; or if the court has a local rule permitting this and you and the respondent (the prosecuting agency) agree (“stipulate”) to this, you can use the *official electronic recording* itself as the record, instead of a transcript.
- c. You can use a *statement on appeal*.

Read below for more information about these options.

a. Reporter’s transcript

When available: In some misdemeanor cases, a court reporter is there in the trial court and makes a record of the oral proceedings. If a court reporter made a record of your case, you can ask to have the court reporter prepare a transcript of those oral

proceedings, called a “reporter’s transcript.” You should check with the trial court to see if a court reporter made a record of your case before you choose this option. Some courts also have local rules that establish procedures for deciding whether a statement on appeal or a transcript of only some of the oral proceedings will be a good enough record to consider the issues you are raising on appeal. You should check whether the court has such a local rule.

Cost: Ordinarily, the appellant must pay for preparing a reporter’s transcript. The court reporter will provide the clerk of the trial court with an estimate of the cost of preparing the transcript and the clerk will notify you of this estimate. If you want the reporter to prepare a transcript, you must deposit this estimated amount or one of the substitutes allowed under rule 8.866 with the clerk within 10 days after the clerk sends you the estimate. However, under rule 8.866 you can decide to use a different form of the record or take other action instead of proceeding with a reporter’s transcript.

If, however, you are indigent (you cannot afford to pay the cost of a reporter’s transcript), you may be able to get a free transcript. If you were represented by the public defender or another court-appointed lawyer in the trial court, you are automatically considered indigent. If you were not represented by a court-appointed lawyer in the trial court, you can complete and file *Defendant’s Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form MC-210), to show that you are indigent. You can get form MC-210 at any courthouse or county law library or online at www.courts.ca.gov/forms. The court will review this form to decide whether you are indigent.

If the court finds that you are indigent, a court reporter made a record of your case, and you show that you need a transcript, the court must provide you with a free transcript. Whether you need a transcript depends on the issues you are raising on appeal. If the issues you are raising on appeal include that there was not substantial evidence supporting the judgment, order, or other decision

you are appealing or that there was misconduct in your case that harmed you, that is generally enough to show that you need a transcript. If you ask for a reporter's transcript, the court may ask you what issues you are raising on appeal and may decide that a statement on appeal or a transcript of only some of the oral proceedings will be a good enough record to consider the issues you are raising.

If the court finds that you are not indigent, it will send you a notice and you will have a chance to pick another form of the record or take other actions listed in rule 8.866.

Completion and delivery: Once you deposit the estimated cost of the transcript or one of the substitutes allowed under rule 8.866 or show the court you are indigent and need a transcript, the clerk will notify the reporter to prepare the transcript. When the reporter completes the transcript, the clerk will send the reporter's transcript to the appellate division along with the clerk's transcript.

b. Official electronic recording or transcript from an official recording

When available: In some misdemeanor cases, the trial court proceedings are officially recorded on approved electronic recording equipment. If your case was officially recorded, you can ask to have a transcript prepared from that official electronic recording. You should check with the trial court to see if your case was officially electronically recorded before you choose this option. As with reporter's transcripts, some courts also have local rules that establish procedures for deciding whether a statement on appeal or a transcript of only some of the oral proceedings will be a good enough record to consider the issues you are raising on appeal. You should check whether the court has such a local rule.

If the court has a local rule for the appellate division permitting this and all the parties agree ("stipulate"), a copy of the official electronic recording itself can be used as the record of the oral proceedings instead of preparing a transcript. You should check with the trial court to see if your

case was officially electronically recorded and check to make sure there is a local rule permitting the use of the recording itself before choosing this option. If you choose this option, you must attach a copy of your agreement with the other parties (called a "stipulation") to your notice regarding the oral proceedings.

Cost: Ordinarily, the appellant must pay for preparing a transcript or making a copy of the official electronic recording. The court will send you an estimate of the cost for this transcript or the copy of the electronic recording. If you still want this transcript or recording, you must deposit this amount with the court. However, you can also choose to use a statement on appeal instead, or take one of the other actions listed in rule 8.868.

If, however, you are indigent (you cannot afford to pay the cost of the transcript or recording), you may be able to get a free transcript or recording. If you were represented by the public defender or another court-appointed attorney in the trial court, you are automatically considered indigent. If you were not represented by a court-appointed lawyer in the trial court, you can complete and file *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form MC-210) to show that you are indigent. You can get form MC-210 at any courthouse or county law library or online at www.courts.ca.gov/forms. The court will review this form to decide whether you are indigent.

If you are indigent, an official electronic recording of your case was made, and you show that you need a transcript, the court must provide you with a free transcript. As with reporter's transcripts, whether you need a transcript depends on the issues you are raising on appeal. If the issues you are raising on appeal include that there was not substantial evidence supporting the judgment, order, or other decision you are appealing or that there was misconduct in your case that harmed you, that is generally enough to show that you need a transcript. If you ask for a transcript, the court may ask you what issues you are raising on appeal and may decide that a statement on appeal or a transcript of only some of the oral



proceedings will be a good enough record to consider the issues you are raising.

If the court finds that you are not indigent, it will send you a notice and you will have a chance to use a statement on appeal instead or take one of the other actions listed in rule 8.868.

Completion and delivery: Once you deposit the estimated cost of the transcript or the official electronic recording with the clerk or show the court you are indigent and need a transcript, the clerk will have the transcript or copy of the recording prepared. When the transcript is completed or the copy of the official electronic recording is prepared, the clerk will send the transcript or recording to the appellate division along with the clerk's transcript.

c. Statement on appeal

Description: A statement on appeal is a summary of the trial court proceedings approved by the trial court judge who conducted those proceedings (the term “judge” includes commissioners and temporary judges).

When available: If the trial court proceedings were not recorded either by a court reporter or by official electronic recording equipment, or if you do not want to use either of these forms of the record, you can choose (“elect”) to use a statement on appeal as the record of the oral proceedings in the trial court (please note that it may take more of your time to prepare a statement on appeal than to use either a reporter's transcript or electronic recording, if they are available).

Contents: A statement on appeal must include:

- A statement of the points you (the appellant) are raising on appeal;
- A summary of the trial court's rulings and judgment; and
- A summary of the testimony of each witness and other evidence that is relevant to the issues you are raising on appeal.

(See rule 8.869 of the California Rules of Court for more information about what must be included in a statement on appeal and the procedures for preparing a statement. You can get this rule at any courthouse or county law library or online at www.courts.ca.gov/rules.htm)

Preparing a proposed statement: If you choose to use a statement on appeal, you must prepare a proposed statement. If you are not represented by a lawyer, you must use *Proposed Statement on Appeal (Misdemeanor)* (form CR-135) to prepare your proposed statement. You can get form CR-135 at any courthouse or county law library or online at www.courts.ca.gov/forms.

Serving and filing a proposed statement: You must serve and file your proposed statement in the trial court within 20 days after you file your notice regarding the record of the oral proceedings. “Serve and file” means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver (“serve”) a copy of the proposed statement to the prosecuting attorney and any other party in the way required by law.
- Make a record that the proposed statement has been served. This record is called a “proof of service.” *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. The proof of service must show who served the proposed statement, who was served with the proposed statement, how the proposed statement was served (by mail or in person), and the date the proposed statement was served.
- File the original proposed statement and the proof of service with the trial court. You should make a copy of the proposed statement you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the proposed statement to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.



You can get more 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.courts.ca.gov/selfhelp-serving.htm.

Review and modifications: The prosecuting attorney and any other party have 10 days from the date you serve your proposed statement to serve and file proposed changes (called “amendments”) to this statement. The trial court judge then reviews both your proposed statement and any proposed amendments filed by the prosecuting attorney and any other party. The judge will then make or order you to make any corrections or modifications to the statement needed to make sure that the statement provides a complete and accurate summary of the relevant testimony and other evidence.

Completion and certification: If the judge makes or orders you to make any corrections or modifications to the proposed statement, the corrected or modified statement will be sent to you, the prosecuting attorney, and any other party for your review. If you disagree with anything in the judge’s statement, you will have 10 days from the date the statement is sent you to serve and file objections to the statement. The judge then reviews any objections, makes any additional corrections to the statement, and certifies the statement as a complete and accurate summary of the relevant testimony and other evidence.

Sending the statement to appellate division: Once the trial court judge certifies the statement on appeal, the trial court clerk will send the statement to the appellate division along with the clerk’s transcript.

15 Is there any other part of the record that needs to be sent to the appellate division?

Yes. There are two other parts of the official record that need to be sent to the appellate division:

- **Documents filed in the trial court:** The trial court clerk is responsible for preparing a record of the

written documents filed in your case, called a “clerk’s transcript,” and sending this to the appellate division. (The documents the clerk must include in this transcript are listed in rule 8.861 of the California Rules of Court. You can get a copy of this rule at any courthouse or county law library or online at www.courts.ca.gov/rules)

- **Exhibits submitted during trial:** Exhibits, such as photographs, that were admitted in evidence, refused, or lodged (temporarily placed with the court) in the trial court are considered part of the record on appeal. If you want the appellate division to consider such an exhibit, however, you must ask the trial court clerk to send the original exhibit to the appellate division within 10 days after the last respondent’s brief is filed in the appellate division. (See rule 8.870 of the California Rules of Court for more information about this procedure. You can get a copy of this rule at any courthouse or county law library or online at www.courts.ca.gov/rules.) Sometimes, the trial court returns an exhibit to a party at the end of the trial. If the trial court returned an exhibit to you or another party and you or the other party ask for the exhibit to be sent to the appellate division, the party who has the exhibit must deliver that exhibit to the appellate division as soon as possible.

16 What happens after the record is prepared?

As soon as the record of the oral proceeding is ready, the clerk of the trial court will send it to the appellate division along with the clerk’s transcript. When the appellate division receives this record, it will send you a notice telling you when you must file your brief in the appellate division.

17 What is a brief?

A brief is a party’s written description of the facts in the case, the law that applies, and the party’s argument about the issues being appealed. If you are represented by a lawyer in your appeal, your lawyer will prepare your brief. If you are not represented by a lawyer in your appeal, you will have to prepare your brief yourself. You should read rules 8.880–8.891 of the California Rules of Court, which set out the requirements for preparing,

serving, and filing briefs in misdemeanor appeals, including requirements for the format and length of those briefs. You can get copies of these rules at any courthouse or county law library or online at www.courts.ca.gov/rules.

Contents: If you are the appellant (the party who is appealing), your brief, called the “appellant’s opening brief,” must clearly explain what you believe are the legal errors made in the trial court. Your brief must refer to the exact places in the clerk’s transcript and the reporter’s transcript (or other record of the oral proceedings) that support your argument. Remember that an appeal is not a new trial. The appellate division will not consider new evidence, such as the testimony of new witnesses or new exhibits, so do not include any new evidence in your brief.

Serving and filing: You must serve and file your brief in the appellate division by the deadline the court set in the notice it sent you, which is usually 30 days after the record is filed in the appellate division. “Serve and file” means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver (“serve”) the brief to the respondent (the prosecuting agency) and any other party in the way required by law.
- Make a record that the brief has been served. This record is called a “proof of service.” *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. The proof of service must show who served the brief, who was served with the brief, how the brief was served (by mail or in person), and the date the brief was served.
- File the original brief and the proof of service with the appellate division. You should make a copy of the brief you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the brief to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and at www.courts.ca.gov/selfhelp-serving.htm.

If you do not file your brief by the deadline set by the appellate division, the court may dismiss your appeal.

18 What happens after I file my brief?

Within 30 days after you serve and file your brief, the respondent (the prosecuting agency) may, but is not required to, respond by serving and filing a respondent’s brief. If the respondent does not file a brief, the appellant does not automatically win the appeal. The court will decide the appeal on the record, the appellant’s brief, and any oral argument by the appellant.

If the respondent serves and files a brief, within 20 days after the respondent’s brief was served, you may, but are not required to, serve and file another brief replying to the respondent’s brief. This is called a “reply brief.”

19 What happens after all the briefs have been filed?

Once all the briefs have been served and filed or the time to serve and file them has passed, the court will notify you of the date for oral argument in your case.

20 What is oral argument?

“Oral argument” is the parties’ chance to explain their arguments to the appellate division judges in person. You do not have to participate in oral argument if you do not want to; you can notify the appellate division that you want to “waive” oral argument. If all parties waive oral argument, the judges will decide your appeal based on the briefs and the record that were submitted. But if one party waives oral argument and another party or parties does not, the appellate division will hold oral argument with the party or parties who did not waive it.

If you choose to participate in oral argument, you will have up to 10 minutes for your argument, unless the court orders otherwise. Remember that the judges will already have read the briefs, so you do not need to read your brief to the judges. It is more helpful to tell the judges what you think is most important in your appeal or ask the judges if they have any questions you could answer.



21 What happens after oral argument?

After the oral argument is held (or the date it was scheduled passes if all the parties waive oral argument), the judges of the appellate division will make a decision about your appeal. The appellate division has 90 days after the date scheduled for oral argument to decide the appeal. The clerk of the court will mail you a notice of that decision.

22 What should I do if I want to give up my appeal?

If you decide you do not want to continue with your appeal, you must file a written document with the appellate division notifying it that you are giving up (this is called “abandoning”) your appeal. You can use *Abandonment of Appeal (Misdemeanor)* (form CR-137) to file this notice in a misdemeanor case. You can get form CR-137 at any courthouse or county law library or online at www.courts.ca.gov/forms.

If you decide not to continue your appeal and it is dismissed, you will (with only very rare exceptions) permanently give up the chance to raise any objections to your conviction, sentence, or other matter that you could have raised on the appeal. If you were released from custody with or without bail or your sentence or any probation conditions were stayed during the appeal, you may be required to start serving your sentence or complying with your probation conditions immediately after your appeal is dismissed.

Clerk stamps date here when form is filed.

Instructions

- This form is only for appealing in a **misdemeanor case**. You can get other forms for appealing in a civil or infraction case at any courthouse or county law library or online at www.courts.ca.gov/forms.
- Before you fill out this form, read *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO) to know your rights and responsibilities. You can get form CR-131-INFO at any courthouse or county law library or online at www.courts.ca.gov/forms.
- **You must file this form no later than 30 days after the trial court issued the judgment or order you are appealing** (see rule 8.853(b) of the California Rules of Court for very limited exceptions). **If your notice of appeal is late, the court will not take your appeal.**
- Fill out this form and make a copy of the completed form for your records.
- Take or mail the completed form to the clerk’s office for the same trial court that issued the judgment or order you are appealing. 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 you are appealing:

Superior Court of California, County of

You fill in the number and name of the trial court case in which you are appealing the judgment or order:

Trial Court Case Number:

Trial Court Case Name:

You fill in the appellate division case number (if you know it):

Appellate Division Case Number:

1 Your Information

a. Name of Appellant (the party who is filing this appeal):

Name: _____

Street address: _____
Street City State Zip

Mailing address (if different): _____
Street City State Zip

Phone: _____ E-mail (if available): _____

b. Appellant’s lawyer (skip this if the appellant is filling out this form):

The lawyer filling out this form is (check (1) or (2)):

(1) was the appellant's lawyer in the trial court. (2) is the appellant's 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 (if available): _____

Fax (if available): _____



2 Judgment or Order You Are Appealing

I am/My client is appealing (*check one*):

- a. The final judgment of conviction in this case (Penal Code section 1466(2)(A)).
 I am/My client is contesting only the conditions of the probation.
- b. The following order made after the judgment in this case that affects an important right of mine/my client (for example, an order after a probation violation) (Penal Code section 1466(2)(B)).
 An order modifying the conditions of probation.
 Other (*describe the action you are appealing and give the date the trial court took the action*):

- c. The trial court has not yet issued a final judgment in this case. I am appealing before final judgment an order that denied a motion to suppress evidence in this case (Penal Code section 1538.5(j)).
- d. Other action (*describe the action you are appealing and give the date the trial court took the action*):

3 Record on Appeal

See form CR-131-INFO for information about the record on appeal.

- a. The final judgment of conviction in this case (Penal Code section 1466(2)(A)).
- b. I have **not** attached a *Notice Regarding Record on Appeal (Misdemeanor)* (form CR-134). I understand that I must file this notice in the trial court within either: (1) 20 days after I file this notice of appeal; or, if it is later, (2) 10 days after the court appoints a lawyer for me (if I file a request for a court-appointed lawyer within 20 days after I file my notice of appeal). I also understand that if I do not file the notice on time, the court will not be able to consider what was said in the trial court in deciding whether an error was made in the trial court proceedings.


4 Court-Appointed Lawyer

- a. I/My client was was not represented by the public defender or another court-appointed lawyer in the trial court.
- b. I am/My client is (*check (1) or (2)*):
 - (1) asking the court to appoint a lawyer to represent me/my client in this appeal. I have completed *Request for Court-Appointed Lawyer in Misdemeanor Appeal* (form CR-133) and attached it to this notice of appeal.
 - (2) **not** asking the court to appoint a lawyer to represent me/my client in this appeal.

REMINDER—Except in the very limited circumstances listed in rule 8.835(b), you must file this form no later than 30 days after the trial court issued the judgment or order you are appealing in your case. If your notice of appeal is late, the court will not take your appeal.

Date: _____

Type or print your name

 _____
Signature of appellant or attorney

Clerk stamps date here when form is filed.

Instructions

- This form is only for requesting that the court appoint a lawyer to represent a person appealing in a **misdemeanor** case.
- Before you fill out this form, read *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO) to know your rights and responsibilities. You can get form CR-131-INFO at any courthouse or county law library or online at www.courts.ca.gov/forms.
- The court is required to appoint a lawyer to represent you on appeal only if you cannot afford to hire a lawyer and
 - (1) your punishment includes going to jail or paying a fine of more than \$500 (including penalty and other assessments), or
 - (2) you are likely to suffer other significant harm as a result of being convicted.
- This form can be filed at the same time as your notice of appeal.
- Fill out this form and make a copy of the completed form for your records.
- Take or mail the completed form to the clerk's office for the same trial court where you filed your notice of appeal. 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 you are appealing:

Superior Court of California, County of

You fill in the number and name of the trial court case in which you are appealing the judgment or order:

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

You fill in the appellate division case number (if you know it):

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

- a. Name of Appellant (the party who is filing this appeal):

Name: _____

Street address: _____
Street City State ZipMailing address (if different): _____
Street City State Zip

Phone: _____ E-mail (if available): _____

- b. Appellant's lawyer (skip this if the appellant is filling out this form):

Name: _____ State Bar number: _____

Street address: _____
Street City State ZipMailing address (if different): _____
Street City State Zip

Phone: _____ E-mail (if available): _____

Fax (if available): _____



Trial Court Case Name: _____

Trial Court Case Number: _____

Information About Your Case

2 Were you/was your client represented by the public defender or another court-appointed lawyer in the trial court proceedings in this case? (Check a or b.)

- a. Yes
- b. No (Complete and attach Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense (form MC-210) showing that you/your client cannot afford to hire a lawyer. You can get form MC-210 at any courthouse or county law library or online at www.courts.ca.gov/forms.)

3 Describe the punishment the trial court gave you/your client in this case (check all that apply and fill in any required information):

- a. Jail time
- b. A fine (including penalty and other assessments) (fill in the amount of the fine): \$ _____
- c. Restitution (fill in the amount of the restitution): \$ _____
- d. Probation (fill in the amount of time on probation): _____
- e. Other punishment (describe any other punishment that the trial court gave you/your client in this case):

4 Describe any significant harm that you are/your client is likely to suffer because of this conviction:

Notice to Appellant: If you were represented by appointed counsel in the trial court and the trial court finds that you are able to pay all or part of the cost of that counsel, at the conclusion of the proceedings, the court may also determine after a hearing whether you are able to pay all or a portion of the cost of any attorney appointed to represent you in this appeal. 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 orders will have the same force and effect as a judgment in a civil action and will be subject to enforcement.

Date: _____

Type or print name

▶ _____
Signature of appellant or attorney

Clerk stamps date here when form is filed.

Instructions

- This form is only for giving the court notice about the record on appeal in a misdemeanor case.
Before you fill out this form, read Information on Appeal Procedures for Misdemeanors (form CR-131-INFO) to know your rights and responsibilities.
This form can be filed with your notice of appeal. If it is not filed with your notice of appeal, this form must be filed within either:
(1) 20 days after you file your notice of appeal, or, if it is later
(2) 10 days after the court appoints a lawyer to represent you on appeal
Fill out this form and make a copy of the completed form for your records.
Take or mail the completed form to the clerk's office for the same trial court where you filed your notice of appeal.

You fill in the name and street address of the court that issued the judgment or order you are appealing:

Superior Court of California, County of

You fill in the number and name of the trial court case in which you are appealing the judgment or order:

Trial Court Case Number:
Trial Court Case Name:

You fill in the appellate division case number (if you know it):

Appellate Division Case Number:

1 Your Information

a. Name of Appellant (the party who is filing this appeal):

Name:
Street address:
Mailing address (if different):
Phone: E-mail (if available):

b. Appellant's lawyer (skip this if the appellant is filling out this form):

The lawyer filling out this form is (check (1) or (2)):

- (1) was the appellant's lawyer in the trial court. (2) is the appellant's lawyer for this appeal.

Name: State Bar number:
Street address:
Mailing address (if different):
Phone: E-mail (if available):
Fax (if available):

Trial Court Case Name: _____

Trial Court Case Number: _____

Information About Your Appeal

- ② On (*fill in the date*): _____ I/my client filed a notice of appeal in the trial court case identified in the box on page 1 of this form.

Your Choices About the Record on Appeal

Stipulation for Limited Record

- ③ The respondent and I/my client have agreed ("stipulated") under rule 8.860 that parts of the normal record on appeal are not required for proper determination of this appeal. A copy of our stipulation identifying those parts of the record that are not required is attached.

Record of Oral Proceedings

You do not have to provide the appellate division with a record of what was said in the trial court (this is called a record of the "oral proceedings"). But, if you do not, the appellate division will not be able to consider what was said during the trial court proceedings in deciding whether a legal error was made in those proceedings.

- ④ I elect (choose)/My client elects to proceed (*check a or b*):
- a. WITHOUT a record of the oral proceedings in the trial court (*skip item ⑤*; *sign and date this form*). I understand that if I proceed without a record of the oral proceedings, the appellate division will not be able to consider what was said in the trial court during those proceedings in deciding whether a legal error was made.

(Write initials here): _____

- b. WITH a record of the oral proceedings in the trial court (*complete item ⑤ below*). I understand that if I elect (choose) to proceed WITH a record of the oral proceeding in the trial court, I have to choose the record I want to use and take the actions described below to make sure this record is provided to the appellate division. I understand that if I do not take the actions described below and the appellate division does not receive this record, I am not likely to succeed in my appeal.

(Write initials here): _____



5 I want to use the following record of what was said in the trial court proceedings in my case (*check and complete only one—a, b, c, or d*):

- a. **Reporter's Transcript.** *This option is available only if there was a court reporter in the trial court who made a record of what was said in court. Check with the trial court to see if there was a court reporter in your case before choosing this option. Some courts also have local rules that establish procedures for determining whether only a portion of a reporter's transcript or a different form of the record will be sufficient for an effective appeal. Check with the trial court to see if it has such a local rule. (Check and complete (1) or (2)):*
- (1) I will pay the trial court clerk's office for this transcript myself when I receive the court reporter's estimate of the costs of this transcript. I understand that if I do not pay for this transcript, it will not be prepared and provided to the appellate division.
- (2) I am asking that this transcript be prepared at no cost to me because I cannot afford to pay this cost.
- (a) I was represented by the public defender or another court-appointed lawyer in the trial court proceedings in this case.
- (b) I was not represented by the public defender or another court-appointed lawyer in the trial court proceedings in this case, but I have completed and attached *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form MC-210). (You can get form MC-210 at any courthouse or county law library or online at www.courts.ca.gov/forms. The court will review this form to decide if you are eligible for a free reporter's transcript.)

OR

- b. **Transcript From Official Electronic Recording.** *This option is available only if an official electronic recording was made of what was said in the trial court. Check with the trial court to see if an official electronic recording was made in your case before choosing this option. Some courts also have local rules that establish procedures for determining whether only a portion of a transcript or a different form of the record will be sufficient for an effective appeal. Check with the trial court to see if it has such a local rule. (Check and complete (1) or (2).):*
- (1) I will pay the trial court clerk's office for this transcript myself. I understand that if I do not pay for this transcript, it will not be prepared and provided to the appellate division.
- (2) I am asking that this transcript be provided at no cost to me because I cannot afford to pay this cost.
- (a) I was represented by the public defender or another court-appointed lawyer in the trial court proceedings in this case.
- (b) I was not represented by the public defender or another court-appointed lawyer in the trial court proceedings in this case, but I have completed and attached *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form MC-210). (You can get form MC-210 at any courthouse or county law library or online at www.courts.ca.gov/forms. The court will review this form to decide if you are eligible for a free reporter's transcript.)

OR



5 (continued)


- c. **Copy of Official Electronic Recording.** *This option is available only if an official electronic recording was made of what was said in the trial court, the court has a local rule for the appellate division permitting the use of the official electronic recording itself as the record of the court proceedings, and you and the respondent (the prosecuting agency) have agreed (stipulated) that you want to use the recording itself as the record of what was said in your case. Check with the trial court to see if an official electronic recording was made in your case before choosing this option. You must attach a copy of your agreement (stipulation) with the respondent to this notice. (Check and complete (1) or (2).):*
- (1) I will pay the trial court clerk's office for this official electronic recording myself. I understand that if I do not pay for this recording, it will not be prepared and provided to the appellate division.
- (2) I am asking that this official electronic recording be provided at no cost to me because I cannot afford to pay this cost.
- (a) I was represented by the public defender or another court-appointed lawyer in the trial court proceedings in this case.
- (b) I was not represented by the public defender or another court-appointed lawyer in the trial court proceedings in this case, but I have completed and attached *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form MC-210). (You can get form MC-210 at any courthouse or county law library or online at www.courts.ca.gov/forms. The court will review this form to decide if you are eligible for a free reporter's transcript.)

OR

- d. **Statement on Appeal.** A statement on appeal is a summary of the trial court proceedings approved by the trial court. See form CR-131-INFO for information about preparing a proposed statement. (Check and complete (1) or (2).):
- (1) I have attached my proposed statement on appeal to this notice. (If you are not represented by a lawyer in this appeal, you must use Proposed Statement on Appeal (Misdemeanor) (form CR-135) to prepare and file this proposed statement. You can get a copy of form CR-135 at any courthouse or county law library or online at www.courts.ca.gov/forms.)
- (2) I have NOT attached my proposed statement on appeal to this notice. I understand that I must serve and file this proposed statement in the trial court within 20 days of the date I file this notice and that if I do not file the proposed statement on time, the court may dismiss my appeal.

Date: _____

Type or print your name

 _____
Signature of appellant or attorney

Clerk stamps date here when form is filed.

You fill in the name and street address of the court that issued the judgment or order you are appealing:

Superior Court of California, County of

You fill in the number and name of the trial court case in which you are appealing the judgment or order:

Trial Court Case Number:

Trial Court Case Name:
The People of the State of California
v.

You fill in the appellate division case number (if you know it):

Appellate Division Case Number:

Instructions

- This form is only for preparing a proposed statement on appeal in an **misdemeanor** case.
- Before you fill out this form, read *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO) to know your rights and responsibilities. You can get form CR-131-INFO at any courthouse or county law library or online at www.courts.ca.gov/forms.
- This form can be attached to your *Notice Regarding Record on Appeal (Misdemeanor)* (form CR-134). If it is not attached to that notice, this form must be filed **no later than 20 days after you file that notice. If you have chosen to prepare a statement on appeal and do not file this form on time, the court may dismiss your appeal.**
- 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.courts.ca.gov/selfhelp-serving.htm.
- Take or mail the completed form and proof of service on each of the other parties to the clerk’s office for the same court that issued the judgment or order you are appealing. 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.

1 Your Information

a. Appellant (the party who is filing this appeal):

Name: _____

Street address: _____
Street City State Zip

Mailing address (if different): _____
Street City State Zip

Phone: _____ E-mail (if available): _____

b. Appellant’s lawyer (skip this if the appellant is filling out this form):

The lawyer filling out this form (check (1) or (2)):

(1) was the appellant’s lawyer in the trial court. (2) is the appellant’s 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 (if available): _____

Fax (if available): _____



Trial Court Case Name: _____

Trial Court Case Number: _____

Information About Your Appeal

- 2 On (fill in the date): _____, I/my client filed a notice of appeal in the trial court case identified in the box on page 1 of this form.
- 3 On (fill in the date): _____, I/my client filed a Notice Regarding Record on Appeal, choosing to use a statement on appeal as the record of what was said in this case.

Proposed Statement

4 Reasons for Your Appeal

Remember, in an appeal, the appellate division can only review a case for whether certain kinds of legal errors were made in the trial court proceedings (read form CR-131-INFO to learn about these legal errors):

- There was not “substantial evidence” supporting the judgment, order, or other decision you are appealing.
- A “prejudicial error” was made during the trial court proceedings.

The appellate division:

- Cannot retry your case or take new evidence.
- Cannot consider whether witnesses were telling the truth or lying.
- Cannot consider whether there was more or stronger evidence supporting your position than there was supporting the trial court’s decision.

(Check all that apply and describe in detail the legal error or errors you believe were made that are the reason for this appeal.)

a. There was not substantial evidence that supported the judgment, order, or other decision that I/my client indicated in the notice of appeal that is being appealed in this case. (Explain why you think the judgment, order, or other decision was not supported by substantial evidence.): _____

b. The following error or errors about either the law or court procedure was/were made that caused substantial harm to me/my client. (Describe each error and how you were/your client was harmed by that error.)

(1) Describe the error: _____

Describe how this error harmed you/your client: _____

4 b. (continued)

(2) Describe the error: _____

Describe how this error harmed you/your client: _____

(3) Describe the error: _____

Describe how this error harmed you/your client: _____

Check here if you need more space to describe these or other errors and attach a separate page or pages describing the errors. At the top of each page, write "CR-135, item 4."

5 The Charges Against Me/My Client

a. The charges against me/my client were (list all of the charges indicated on the citation or complaint filed with the court by the prosecutor): _____

b. I/My client (check (1), (2), or (3))

(1) pleaded not guilty to all of the charges.

(2) pleaded guilty to only the following charges: _____

(3) pleaded guilty to all of these charges.

6 Summary of Any Motions and the Court's Order on the Motion

a. Were any motions (requests for the trial court to issue an order) made in this case that are relevant to the reasons you gave in **4** for this appeal?

Yes (fill out b) No (skip to item **7**)

b. In the spaces below, describe any motions (requests for orders) that were made in the trial court that are relevant to the reasons you gave in **4** for this appeal. Write a complete and accurate summary of what was said at any hearings on these motions and indicate how the trial court ruled on these motions:

(1) Describe the first motion: _____

The motion was filed by the prosecutor. defendant.

There was was not a hearing on this motion.

If there was a hearing on this motion, write a complete and accurate summary of what was said at this hearing: _____

The trial court granted this motion. did not grant this motion.

Other (describe any other action the trial court took concerning this motion): _____

Check here if you need more space to describe this motion and attach a separate page or pages describing it. At the top of each page, write "CR-135, Item **6b(1)**."

(2) Describe the second motion: _____

The motion was filed by the prosecutor. defendant.

There was was not a hearing on this motion.

If there was a hearing on this motion, write a complete and accurate summary of what was said at this hearing: _____

The trial court granted this motion. did not grant this motion.

Other (describe any other action the trial court took concerning this motion): _____

Check here if you need more space to describe this motion and attach a separate page or pages describing this motion. At the top of each page, write "CR-135, item **6b(2)**."



- (3) Check here if any other motions were filed that are relevant to the reasons you gave in ④ for this appeal, and attach a separate page or pages describing each motion, identifying who made the motion and whether there was a hearing on the motion, summarizing what was said at the hearing on the motion, and indicating whether the trial court granted or denied the motion. At the top of each page, write CR-135, item 6b(3).”

7 Summary of Testimony and Other Evidence

a. Was there a trial in your case?

No (skip items b, c, d, e, and f, and go to item ⑧)

Yes (complete items b, c, d, e, and f)

(1) Jury trial

(2) Trial by judge only

b. Did you/your client testify at the trial?

No

Yes (Write a complete and accurate summary of the testimony you/your client gave that is relevant to the reasons you gave in ④ for this appeal. Include only what you actually said; do not comment on or give your opinion about what you said. Please indicate whether any objections were made concerning your/your client’s testimony or any exhibits you/your client asked to present and whether these objections were sustained.): _____

Check here if you need more space to summarize your/your client’s testimony and attach a separate page or pages summarizing this testimony. At the top of each page, write “CR-135, Item 7b.”

c. Did an officer from the police department, sheriff’s office, or other government agency that charged you/your client testify at the trial? (Check one):

No

Yes (complete (1) and (2)):

(1) The name of the officer who testified is (fill in the officer’s name): _____

(2) This officer testified that (Write a complete and accurate summary of the officer’s testimony that is relevant to the reasons you gave in ④ for this appeal. Include only what the officer actually said; do not comment on or give your opinion about what the officer said. Please indicate whether any objections were made concerning the officer’s testimony or any exhibits the officer asked to present and whether these objections were sustained.): _____

Check here if you need more space to summarize the officer’s testimony and attach a separate page or pages summarizing this testimony. At the top of each page, write “CR-135, Item 7c.”



7 (continued)

d. Were there any other witnesses at the trial whose testimony is relevant to the reasons you gave in 4 for this appeal?

No

Yes (fill out (1)–(4)):

(1) The witness’s name is (fill in the witness’s name): _____

(2) The witness was was not an officer from the police department, sheriff’s office, or other government agency that charged me/my client.

(3) The witness testified on behalf of me/my client. the prosecution.

(4) This witness testified that (Write a complete and accurate summary of the witness’s testimony that is relevant to the reasons you gave in 4 for this appeal. Include only what the witness actually said; do not comment on or give your opinion about what the witness said. Please indicate whether any objections were made concerning the witness’s testimony or any exhibits the witness asked to present and whether these objections were sustained.): _____

Check here if you need more space to summarize this witness’s testimony and attach a separate page or pages summarizing this testimony. At the top of each page, write “CR-135, Item 7d.”

e. Check here if any other witnesses gave testimony at the trial that is relevant to the reasons you gave in 4 for this appeal. Attach a separate page or pages identifying each witness, whether the witness testified on your/your client’s behalf or the prosecution’s behalf, summarizing what that witness said in his or her testimony that is relevant to the reasons you gave in 4 for this appeal, and indicating whether any objections were made concerning the witness’s testimony or any exhibits the witness asked to present and whether these objections were sustained. At the top of each page, write “CR-135, item 7e.”

f. Summarize the evidence, other than the testimony, that was given during the trial that is relevant to the reasons you gave in 3 for this appeal (Write a complete and accurate summary of the evidence given by both you and the respondent. Include only the evidence; do not comment or give your opinion about this evidence.):

Check here if you need more space to summarize the evidence and attach a separate page or pages summarizing this evidence. At the top of each page, write “CR-135, Item 7f.”



Trial Court Case Name: _____

Trial Court Case Number: _____

8 The Trial Court's Findings

- a. I/My client was found guilty of the following offenses (*list all of the offenses for which you were/your client was found guilty*): _____

- b. I/My client was found not guilty of the following offenses (*list all of the offenses for which you were/your client was found not guilty*): _____

9 The Sentence

The trial court imposed the following fine or other punishment on me/my client (*check all that apply and fill in any required information*):

- a. Jail time (*fill in the amount of time you are/your client is required to spend in jail*): _____
- b. A fine (including penalty and other assessments) (*fill in the amount of the fine*): \$ _____
- c. Restitution (*fill in the amount of the restitution*): \$ _____
- d. Probation (*fill in the amount of time you are/your client is required to be on probation*): _____
- e. Other punishment (*describe any other punishment that the trial court imposed in this case*): _____

REMINDER: You must serve and file this form no later than 20 days after you file your notice regarding the oral proceedings. If you do not file this form on time, the court may dismiss your appeal.

Date: _____

Type or print name

▲

Signature of appellant or attorney

**Order Concerning Appellant's
Proposed Statement on Appeal
(Misdemeanor)**

Clerk stamps date here when form is filed.

1 The court has received and reviewed the *Proposed Statement on Appeal* (form CR-135) filed by the appellant on (fill in date): _____

2 The court makes the following order:

a. The court certifies that parts 5 through 9 of the statement as proposed by the appellant are an accurate summary of the testimony and other evidence that is relevant to the issues the appellant indicated in item 4 are the reason for this appeal. This statement is ready to be sent to the appellate division.

b. Corrections are needed in order for parts 5 through 9 of the statement proposed by the appellant to be an accurate summary of the testimony and other evidence that is relevant to the issues the appellant indicated in item 4 are the reason for this appeal.

(1) A modified statement is attached to this order. This modified statement must be sent to the parties.

(2) The appellant is ordered to prepare a statement incorporating these modifications listed below and to serve and file this modified statement.

(a) _____

(b) _____

(c) _____

(3) More corrections than could be listed above were needed in order for parts 5 through 9 of the statement proposed by the appellant to be an accurate summary of the testimony and other evidence that is relevant to the issues the appellant indicated in item 4 are the reasons for this appeal. A list of the required modifications is attached. The appellant is ordered to prepare a statement incorporating those modifications and to serve and file this modified statement.

Clerk fills in the name and street address of the court:

Superior Court of California, County of

Clerk fills in the number and name of the case

Trial Court Case Number:

Trial Court Case Name:
The People of the State of California
v.

Clerk fills in the number below:

Appellate Division Case Number:



Trial Court Case Name: _____

- c. The proposed statement does not contain the following material required by rule 8.869:

The appellant is ordered to prepare a new proposed statement that includes this material.

- d. The trial court proceedings in this case were reported by a court reporter or officially recorded electronically under Government Code section 69957. Instead of correcting this statement, the court orders under rule 8.869(d)(6)(B) that a transcript be prepared as the record of these proceedings. *(Check the court's local rules to make sure the court has adopted a rule providing that this option is available.)*
- e. This superior court has a local rule for the appellate division authorizing the use of an official electronic recording as the record of the oral proceedings. The trial court proceedings in this case were officially electronically recorded. Instead of correcting this statement, the court orders that a copy of that electronic recording be prepared as the record of these proceedings at the court's expense.

Date: _____



Signature of trial court judicial officer

1 What does this information sheet cover?

This information sheet tells you about appeals in infraction cases. It is only meant to give you a general idea of the appeal process, so it does not cover everything you may need to know about appeals in infraction cases. To learn more, you should read rules 8.900–8.929 of the California Rules of Court, which set out the procedures for infraction appeals. You can get these rules at any courthouse or county law library or online at www.courts.ca.gov/rules.

2 What is an infraction?

Infractions are crimes that can be punished by a fine, traffic school, or some form of community service but not by time in jail or prison. (See Penal Code sections 17, 19.6, and 19.8. You can get a copy of these laws at <http://leginfo.legislature.ca.gov/faces/codes.xhtml>.) Examples of infractions are many traffic violations for which you can get a ticket or violations of some city or county ordinances for which you can get a citation. If you were also charged with or convicted of a misdemeanor, then your case is a misdemeanor case, not an infraction case.

3 What is an appeal?

An appeal is a request to a higher court to review a ruling or decision made by a lower court. **In an infraction case, the court hearing the appeal is the appellate division of the superior court, and the lower court—called the “trial court” in this information sheet—is the superior court.**

It is important to understand that **an appeal is NOT a new trial**. The appellate division will not consider new evidence, such as the testimony of new witnesses or new exhibits. The appellate division’s job is to review a record of what happened in the trial court and the trial court’s decision to see if certain kinds of legal errors were made in the case:

- **Prejudicial error:** The party that appeals (called the “appellant”) may ask the appellate division to determine if an error was made about either the law or court procedures in the case that caused substantial harm to the appellant (this is called

For information about appeal procedures in other cases, see:

- *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO)
- *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO)

You can get these forms at any courthouse or county law library or online at www.courts.ca.gov/forms.

“prejudicial error”). Prejudicial error can include things like errors made by the judge about the law or errors or misconduct by the lawyers that harmed the appellant. When it conducts its review, the appellate division presumes that the judgment, order, or other decision being appealed is correct. It is the responsibility of the appellant to show the appellate division that an error was made and that the error was harmful.

- **No substantial evidence:** The appellant may also ask the appellate division to determine if there was substantial evidence supporting the judgment, order, or other decision being appealed. When it conducts its review, the appellate division only looks to see if there was evidence that reasonably supports the decision. The appellate division generally will not reconsider the trial court’s conclusion about which side had more or stronger evidence or whether witnesses were telling the truth or lying.

The appellate division generally will not overturn the judgment, order, or other decision being appealed unless the record clearly shows that one of these legal errors was made.

4 Do I need a lawyer to appeal?

You do not *have* to have a lawyer; you are allowed to represent yourself in an appeal in an infraction case. But appeals can be complicated, and you will have to follow the same rules that lawyers have to follow. If you have any questions about the appeal procedures, you should talk to a lawyer. You will need to hire a lawyer yourself if you want one. You can get information about finding a lawyer on the California Courts Online Self-Help Center at www.courts.ca.gov/selfhelp-lowcosthelp.htm.



If you are representing yourself, you must put your address, telephone number, fax number (if available), and e-mail address (if available) on the cover of every document you file with the court and let the court know if this contact information changes so that the court can contact you if needed.

5 Who can appeal?

Only a party in the trial court case can appeal a decision in that case. You may not appeal on behalf of a friend, a spouse, a child, or another relative.

The party that is appealing is called the APPELLANT; in an infraction case, this is usually the party convicted of committing the infraction. The other party is called the RESPONDENT; in an infraction case, this is usually the government agency that filed the criminal charges (on court papers, this party is called the People of the State of California).

6 Can I appeal any decision that the trial court made?

No. Generally, you may appeal only a final judgment of the trial court—the decision at the end that decides the whole case. The final judgment includes the punishment that the court imposed. Other rulings made by the trial court before final judgment cannot be separately appealed, but can be reviewed only later as part of an appeal of the final judgment. In an infraction case, the party that was convicted of committing an infraction usually appeals that conviction or the sentence (the fine or other punishment) ordered by the trial court. In an infraction case, a party can also appeal from an order made by the trial court after judgment that affects a substantial right of the appellant (Penal Code section 1466(2)(B). You can get a copy of this law at <http://leginfo.legislature.ca.gov/faces/codes.xhtml>.)

7 How do I start my appeal?

First, you must file a notice of appeal. The notice of appeal tells the other party in the case and the trial court that you are appealing the trial court's decision. You may use *Notice of Appeal and Record on Appeal (Infraction)* (form CR-142) to prepare and file a notice of appeal in an infraction case. You can get

form CR-142 at any courthouse or county law library or online at www.courts.ca.gov/forms.htm.

8 Is there a deadline for filing my notice of appeal?

Yes. In an infraction case, you must file your notice of appeal within **30 days** after the trial court makes (“renders”) its judgment in your case or issues the order you are appealing. The date the trial court makes its judgment is normally the date the trial court orders you to pay a fine or orders other punishment in your case (sentences you). **This deadline for filing the notice of appeal cannot be extended. If your notice of appeal is late, the appellate division will not be able to consider your appeal.**

9 How do I file my notice of appeal?

To file the notice of appeal in an infraction case, you must bring or mail the original notice of appeal to the clerk of the trial court in which you were convicted of the infraction. It is a good idea to bring or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

There is no fee for filing the notice of appeal in an infraction case. You can ask the clerk of that court if there are any other requirements for filing your notice of appeal.

After you file your notice of appeal, the clerk will send a copy of your notice to the office of the prosecuting attorney (for example, the district attorney, county counsel, city attorney, or state Attorney General).

10 If I file a notice of appeal, do I still have to pay my fine or complete other parts of my punishment?

Filing the notice of appeal does NOT automatically postpone the deadline for paying your fine or completing any other part of your sentence. To postpone your sentence, you must ask the trial court for a “stay” of the judgment. If you want a stay, you must first ask the trial court for a stay. You can also apply to the appellate division for a stay, but you must show in



your application to the appellate division that you first asked the trial court for a stay and that the trial court unjustifiably denied your request. Your fine or other parts of your punishment will not be postponed unless the trial court or appellate division grants a stay. If you do not get a stay and you do not pay your fine or satisfy another part of your sentence by the date ordered by the court, a warrant may be issued for your arrest or a civil collections process may be started against you, which could result in a civil penalty being added to your fine.

11 Is there anything else I need to do when I file my notice of appeal?

Yes. When you file your notice of appeal, you must tell the trial court (1) whether you have agreed with the respondent (“stipulated”) that you do not need parts of the normal record on appeal, and (2) whether you want a record of what was said in the trial court (this is called a record of the “oral proceedings”) sent to the appellate division and, if so, what form of that record you want to use. *Notice of Appeal and Record on Appeal (Infraction)* (form CR-142) includes boxes you can check to tell the court whether and how you want to provide this record.

12 In what cases does the appellate division need a record of the oral proceedings?

You do not *have* to send the appellate division a record of what was said in the trial court. But if you want to raise any issue in your appeal that would require the appellate division to consider what was said in the trial court, the appellate division will need a record of these oral proceedings. For example, if you are claiming that there was not substantial evidence supporting the judgment, order, or other decision you are appealing, the appellate division will need a record of the oral proceedings. Since the appellate division judges were not there for the proceedings in the trial court, an official record of these proceedings must be prepared and sent to the appellate court for its review.

Depending on what form of the record you choose to use, you will be responsible for paying to have the official record of the oral proceedings prepared (unless you are indigent) or for preparing an initial draft of the record yourself. If you do not take care of these

responsibilities, a record of the oral proceedings in the trial court will not be prepared and sent to the appellate division. If the appellate division does not receive the record, it will not be able to consider what was said in the trial court in deciding whether a legal error was made and it may dismiss your appeal.

13 What are the different forms of the record?

There are three ways a record of the oral proceedings in a trial court can be prepared and provided to the appellate division in an infraction case:

- a. You can use a *statement on appeal*.
- b. If the proceedings were officially electronically recorded, the trial court can have a transcript prepared from the recording or, if the court has a local rule permitting this and all the parties agree (“stipulate”), you can use the official electronic recording itself as the record, instead of a transcript.
- c. If a court reporter was there during the trial court proceedings, the reporter can prepare a record called a “*reporter’s transcript*.”

Read below for more information about these options.

a. Statement on appeal

Description: A statement on appeal is a summary of the trial court proceedings approved by the trial court judge who conducted the trial court proceedings (the term “judge” includes commissioners and temporary judges).

When available: If the trial court proceedings were not recorded either by a court reporter or by official electronic recording equipment or if you do not want to use either of these forms of the record, you can choose (“elect”) to use a statement on appeal as the record of the oral proceedings in the trial court (please note that it may take more of your time to prepare a statement on appeal than to use either a reporter’s transcript or electronic recording, if they are available).



Contents: A statement on appeal must include:

- A statement of the points **you** (the appellant) **are** raising on appeal;
- **A summary of the trial court’s rulings and judgment; and**
- **A summary of the testimony of each witness and other evidence that is relevant to the issues you are raising on appeal.**

(See rule 8.916 of the California Rules of Court for more information about what must be included in a statement on appeal and the procedures for preparing a statement. You can get a copy of this rule at any courthouse or county law library or online at www.courts.ca.gov/rules.)

Preparing a proposed statement: If you choose to use a statement on appeal, you must prepare a proposed statement. If you are not represented by a lawyer, you must use *Proposed Statement on Appeal (Infraction)* (form CR-143) to prepare your proposed statement. You can get form CR-143 at any courthouse or county law library or online at www.courts.ca.gov/forms.

Serving and filing a proposed statement: You must serve and file your proposed statement within 20 days after you file your notice of appeal. “Serve and file” means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver (“serve”) the proposed statement to the prosecuting attorney and any other party in the way required by law. If the prosecuting attorney did not appear in your case, you do not need to serve the prosecuting attorney.
- Make a record that the proposed statement has been served. This record is called a “proof of service.” *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. The proof of service must show who served the proposed statement, who was served with the proposed statement, how the proposed statement was served (by mail or in person), and the date the proposed statement was served.

- File the original proposed statement and the proof of service with the trial court. You should make a copy of the proposed statement you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the proposed statement to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more 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.courts.ca.gov/selfhelp-serving.htm.

Review and modifications: The prosecuting attorney and any other party have 10 days from the date you serve your proposed statement to serve and file proposed changes (called “amendments”) to this statement. The trial judge then reviews both your proposed statement and any proposed amendments **filed by the prosecuting attorney and any other party.** **The judge will then make or order you to make** any corrections or modifications to the proposed statement that are needed to make sure that the statement provides a complete and accurate summary of the **relevant testimony and other evidence.**

Completion and certification: If the judge makes **or orders you to make** any corrections or modifications to the proposed statement, the corrected or modified statement will be sent to you, the prosecuting attorney, and any other party for your review. If you disagree with anything in the judge’s statement, you will have 10 days from the date the statement is sent to you to serve and file objections to the statement. The judge then reviews any objections, makes any additional corrections to the statement, and certifies the statement as a complete and accurate summary of the **relevant testimony and other evidence.**

Sending the statement to the appellate division: Once the trial judge certifies the statement on appeal, the trial court clerk will send the statement to the appellate division along with the clerk’s transcript.



b. Official electronic recording or transcript from official recording

When available: In some infraction cases, the trial court proceedings are officially recorded on approved electronic recording equipment. If your case was officially recorded, you can ask to have a transcript prepared for the appellate division from the official electronic recording of the proceedings. You should check with the trial court to see if your case was officially electronically recorded before you choose this option. Some courts also have local rules that establish procedures for deciding whether a statement on appeal or a transcript of only some of the oral proceedings will be a good enough record to consider the issues you are raising on appeal. You should check whether the court has such a local rule.

If the court has a local rule for the appellate division permitting this and all the parties agree (“stipulate”), a copy of the official electronic recording itself can be used as the record of these oral proceedings instead of preparing a transcript. You should check with the trial court to see if your case was officially electronically recorded and check to make sure that there is a local rule permitting the use of the recording itself before choosing this option. If you choose this option, you must attach a copy of your agreement with the other parties (called a “stipulation”) to your notice regarding the oral proceedings.

Cost: Ordinarily, the appellant must pay for preparing the transcript or making a copy of the official electronic recording. The court will send you an estimate of the cost for this transcript or the copy of the electronic recording. If you still want this transcript or recording, you must deposit this amount with the court. However, you can also choose to use a statement on appeal instead, or take one of the other actions listed in rule 8.917.

If, however, you are indigent (you cannot afford to pay the cost of the transcript or electronic recording), you may be able to get a free transcript or official electronic recording. You can complete and file *Defendant’s Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form MC-210) to show that you are

indigent. You can get form MC-210 at any courthouse or county law library or online at www.courts.ca.gov/forms. The court will review this form to decide whether you are indigent.

If you are indigent, an official electronic recording of your case was made, and you show that you need a transcript, the court must provide you with a free transcript. Whether you need a transcript depends on the issues you are raising on appeal. If the issues you are raising on appeal include that there was not substantial evidence supporting the judgment, order, or other decision you are appealing or that there was misconduct in your case that harmed you, that is generally enough to show that you need a transcript. If you ask for a transcript, the court may ask you what issues you are raising on appeal and may decide that a statement on appeal or a transcript of only some of the oral proceedings will be a good enough record to consider the issues you are raising.

If the court finds that you are not indigent, it will send you a notice and you will have a chance to use a statement on appeal instead or take one of the other actions listed in rule 8.917.

Completion and delivery: Once you deposit the estimated cost of the transcript or official electronic recording with the clerk or show the court you are indigent and need a transcript, the clerk will have the transcript or copy of the recording prepared. When the transcript is completed or the copy of the official electronic recording is prepared, the clerk will send the transcript or recording to the appellate division along with the clerk’s transcript.

c. Reporter’s transcript

When available: In some infraction cases, a court reporter is there in the trial court and makes a record of the oral proceedings. If a court reporter made a record of your case, you can ask to have the court reporter prepare a transcript of those oral proceedings, called a “reporter’s transcript.” You should check with the trial court to see if a court reporter made a record of your case before you choose this option. Some courts also have local rules that establish procedures for deciding whether a statement on appeal or a transcript of only some of the oral proceedings will be a good enough record to



consider the issues you are raising on appeal. You should check whether the court has such a local rule.

Cost: Ordinarily, the appellant must pay for preparing a reporter's transcript. The court reporter will provide the clerk of the trial court with an estimate of the cost of preparing the transcript, and the clerk will notify you of this estimate. If you want the reporter to prepare a transcript, you must deposit this estimated amount or one of the substitutes allowed under rule 8.919 with the clerk within 10 days after the clerk sends you the estimate. However, under rule 8.919 you can decide to use a different form of the record or take other action instead of proceeding with a reporter's transcript.

If, however, you are indigent (you cannot afford to pay the cost of the reporter's transcript), you may be able to get a free transcript. You can complete and file *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form MC-210) to show that you are indigent. You can get form MC-210 at any courthouse or county law library or online at www.courts.ca.gov/forms. The court will review this form to decide whether you are indigent.

If the court finds that you are indigent, a court reporter made a record of your case, and you show that you need a transcript, the court must provide you with a free transcript. Whether you need a transcript depends on the issues you are raising on appeal. If the issues you are raising on appeal include that there was not substantial evidence supporting the judgment, order, or other decision you are appealing or that there was misconduct in your case that harmed you, that is generally enough to show that you need a transcript. If you ask for a reporter's transcript, the court may ask you what issues you are raising on appeal and may decide that a statement on appeal or a transcript of only some of the oral proceedings will be a good enough record to consider the issues you are raising.

If the court finds that you are not indigent, it will send you a notice and you will have a chance to pick another form of the record or take other actions listed in rule 8.919.

Completion and delivery: Once you deposit the estimated cost of the transcript or one of the substitutes allowed under rule 8.919 or show the court you are indigent and need a transcript, the clerk will notify the reporter to prepare the transcript. When the reporter completes the transcript, the clerk will send both the reporter's transcript and clerk's transcript to the appellate division.

14 Is there any other part of the record that needs to be sent to the appellate division?

Yes. There are two other parts of the official record that need to be sent to the appellate division:

- **Documents filed in the trial court:** The trial court clerk is responsible for preparing a record of the written documents filed in your case, called a "clerk's transcript," and sending this to the appellate division. (The documents the clerk must include in this transcript are listed in rule 8.912 of the California Rules of Court. You can get a copy of this rule at any courthouse or county law library or online at www.courts.ca.gov/rules.)
- **Exhibits submitted during trial:** Exhibits, such as photographs or maps, that were admitted in evidence, refused, or lodged (temporarily placed with the court) in the trial court are considered part of the record on appeal. If you want the appellate division to consider an exhibit, however, you must ask the trial court clerk to send the original exhibit to the appellate division within 10 days after the last respondent's brief is filed in the appellate division. (See rule 8.921 of the California Rules of Court for more information about this procedure. You can get a copy of this rule at any courthouse or county law library or online at www.courts.ca.gov/rules.)

Sometimes, the trial court returns an exhibit to a party at the end of the trial. If the trial court returned an exhibit to you or another party and you or the other party ask for the exhibit to be sent to the appellate division, the party who has the exhibit must deliver that exhibit to the appellate division as soon as possible.

15 What happens after the record is prepared?

As soon as the record of the oral proceeding is ready, the clerk of the trial court will send it to the appellate division along with the clerk's transcript. When the appellate division receives this record, it will send you a notice telling you when you must file your brief in the appellate division.

16 What is a brief?

A brief is a party's written description of the facts in the case, the law that applies, and the party's argument about the issues being appealed. If you are represented by a lawyer in your appeal, your lawyer will prepare your brief. If you are not represented by a lawyer in your appeal, you will have to prepare your brief yourself. You should read rules 8.927–8.928 of the California Rules of Court, which set out the requirements for preparing, serving, and filing briefs in infraction appeals, including requirements for the format and length of these briefs. You can get these rules at any courthouse or county law library or online at www.courts.ca.gov/rules.

Contents: If you are the appellant (the party who is appealing), your brief, called the “appellant’s opening brief,” must clearly explain what you believe are the legal errors made in the trial court. Your brief must refer to the exact places in the clerk’s transcript and the statement on appeal (or other record of the oral proceedings) that support your argument. Remember that an appeal is not a new trial. The appellate division will not consider new evidence, such as the testimony of new witnesses or new exhibits, so do not include any new evidence in your brief.

Serving and filing: You must serve and file your brief in the appellate division by the deadline the court set in the notice it sent you, which is usually 30 days after the record is filed in the appellate division. **If you do not file your brief by the deadline set by the appellate division, the court may dismiss your appeal.**

“Serve and file” means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver (“serve”) the brief to the respondent (the prosecuting agency) and any other party in the way required by law.

- Make a record that the brief has been served. This record is called a “proof of service.” *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. The proof of service must show who served the brief, who was served with the brief, how the brief was served (by mail or in person), and the date the brief was served.
- File the original brief and the proof of service with the appellate division. You should make a copy of the brief you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the brief to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and at www.courts.ca.gov/selfhelp-serving.htm.

17 What happens after I file my brief?

Within 30 days after you serve and file your brief, the respondent (the prosecuting agency) may, but is not required to, respond by serving and filing a respondent’s brief. If the respondent does not file a brief, the appellant does not automatically win the appeal. The court will decide the appeal on the record, the appellant’s brief, and any oral argument by the appellant.

If the respondent serves and files a brief, within 20 days after the respondent’s brief was served, you may, but are not required to, serve and file another brief replying to the respondent’s brief. This is called a “reply brief.”

18 What happens after all the briefs have been filed?

Once all the briefs have been served and filed or the time to serve and file them has passed, the court will notify you of the date for oral argument in your case.

19 What is oral argument?

“Oral argument” is the parties’ chance to explain their arguments to the appellate division judges in person.



You do not have to participate in oral argument, if you do not want to; you can notify the appellate division that you want to “waive” oral argument. If all parties waive oral argument, the judges will decide your appeal based on the briefs and the record that were submitted. But if one party waives oral argument and another party or parties does not, the appellate division will hold oral argument with the party or parties who did not waive it.

If you do choose to participate in oral argument, you will have up to five minutes for your argument, unless the court orders otherwise. Remember that the judges will already have read the briefs, so you do not need to read your brief to the judges. It is more helpful to tell the judges what you think is most important in your appeal or ask the judges if they have any questions you could answer.

20 What happens after oral argument?

After oral argument is held (or the date it was scheduled passes if all the parties waive oral argument), the judges of the appellate division will make a decision about your appeal. The appellate division has 90 days after the date scheduled for oral argument to decide the appeal. The clerk of the court will mail you a notice of that decision.

21 What should I do if I want to give up my appeal?

If you decide you do not want to continue with your appeal, you must file a written document with the appellate division notifying it that you are giving up (this is called “abandoning”) your appeal. You can use *Abandonment of Appeal (Infraction)* (form CR-145) to file this notice in an infraction case. You can get form CR-145 at any courthouse or county law library or online at www.courts.ca.gov/forms.

If you decide not to continue your appeal and it is dismissed, you will (with only very rare exceptions) permanently give up the chance to raise any objections to your conviction, sentence, or other matter that you could have raised in the appeal. If your punishment was stayed during the appeal, you may be required to start complying with your punishment immediately after your appeal is dismissed.

Clerk stamps date here when form is filed.

You fill in the name and street address of the court that issued the judgment or order you are appealing:

Superior Court of California, County of

You fill in the number and name of the trial court case in which you are appealing the judgment or order:

Trial Court Case Number:
Trial Court Case Name:

The clerk will fill in the number below:
Appellate Division Case Number:

Instructions

- This form is only for appealing in an infraction case, such as a case about a traffic ticket. You can get other forms for appealing in a civil or misdemeanor case at any courthouse or county law library or online at www.courts.ca.gov/forms.
Before you fill out this form, read Information on Appeal Procedures for Infractions (form CR-141-INFO) to know your rights and responsibilities. You can get form CR-141-INFO at any courthouse or county law library or online at www.courts.ca.gov/forms.
You must file this form no later than 30 days after the trial court issued the judgment or order you are appealing (see rule 8.902(b) of the California Rules of Court for very limited exceptions). If your notice of appeal is late, the court will not take your appeal.
Fill out this form and make a copy of the completed form for your records.
Take or mail the completed form to the clerk's office for the same trial court that issued the judgment or order you are appealing. 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.

1 Your Information

a. Name of Appellant (the party who is filing this appeal):

Name: _____

Street address: _____
Street City State Zip

Mailing address (if different): _____
Street City State Zip

Phone: _____ E-mail (if available): _____

b. Appellant's lawyer (skip this if the appellant is filling out this form):

The lawyer filling out this form is (check (1) or (2)):

(1) [] was the appellant's lawyer in the trial court. (1) [] is the appellant's 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 (if available): _____

Fax (if available): _____



2 Judgment or Order You Are Appealing

I am/My client is appealing (check a, b, or c):

- a. the final judgment of conviction in the case (Penal Code section 1466(2)(A)).
The trial court issued (rendered) this judgment on (fill in the date):
- b. an order made by the trail court after judgment that affects an important (substantial) right of mine/my client (Penal Code section 1466(2)(B)).
The trial court issued (rendered) this order on (fill in the date):
- c. Other (Describe the action you are appealing and indicate the date the trial court took the action.):

Your Choices About the Record on Appeal

Stipulation for Limited Record

- 3 The respondent and I/my client have agreed (“stipulated”) under rule 8.910 that parts of the normal record on appeal are not required for proper determination of this appeal. A copy of our stipulation identifying those parts of the record that are not required is attached. *At the top of each page write “CR-142, item 3.”*

Record of Oral Proceedings

You do not have to provide the appellate division with a record of what was said in the trial court (this is called a record of the “oral proceedings”). But, if you do not, the appellate division will not be able to consider what was said during the trial court proceedings in deciding whether an error was made in those proceedings.

- 4 I elect (choose)/My client elects to proceed (check a or b):
 - a. WITHOUT a record of the oral proceedings in the trial court (skip item 5; sign and date this form). I understand that if I proceed without a record of the oral proceedings, the appellate division will not be able to consider what was said in the trial court during those proceedings in deciding whether a legal error was made.

(Write initials here): _____

- b. WITH a record of the oral proceedings in the trial court (complete item 5 below). I understand that if I elect (choose) to proceed WITH a record of the oral proceedings in the trial court, I have to choose the record I want to use and take the actions described below to make sure this record is provided to the appellate division. I understand that if I do not take the actions described below and the appellate division does not receive this record, I am not likely to succeed in my appeal.

(Write initials here): _____

- 5 I want to use the following record of what was said in the trial court proceedings in my case (check and complete only one—a, b, c, or d):

- a. **Statement on Appeal.** A statement on appeal is a summary of the trial court proceedings approved by the trial court. See form CR-141-INFO for information about preparing a proposed statement. (Check and complete (1) or (2).):



5 (continued)

- (1) I have attached my proposed statement on appeal to this notice. (If you are not represented by a lawyer in this appeal, you must use Proposed Statement on Appeal (Infraction) (form CR-143) to prepare and file this proposed statement. You can get form CR-143 at any courthouse or county law library or online at www.courts.ca.gov/forms.)
- (2) I have NOT attached my proposed statement on appeal to this notice. I understand that I must serve and file this proposed statement in the trial court within 20 days of the date I file this notice and that if I do not file the proposed statement on time, the court may dismiss my appeal.

OR

- b. **Transcript From Official Electronic Recording.** This option is available only if an official electronic recording was made of what was said in the trial court. Check with the trial court to see if an official electronic recording was made in your case before choosing this option. Some courts also have local rules that establish procedures for determining whether only a portion of a transcript or a different form of the record will be sufficient for an effective appeal. Check with the trial court to see if it has such a local rule. (Check and (1) or (2).):
- (1) I will pay the trial court clerk's office for this transcript myself. I understand that if I do not pay for this transcript, it will not be prepared and provided to the appellate division.
- (2) I am asking that this transcript be provided at no cost to me because I cannot afford to pay this cost. I have completed and attached *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form MC-210). (You can get form MC-210 at any courthouse or county law library or online at www.courts.ca.gov/forms. The court will review this form to decide if you are eligible for a free transcript.)

OR

- c. **Copy of Official Electronic Recording.** This option is available only if an official electronic recording was made of what was said in the trial court, the court has a local rule for the appellate division permitting the use of the official electronic recording itself as the record of the court proceedings, and you and the respondent (the prosecuting agency) have agreed (stipulated) that you want to use the recording itself as the record of what was said in your case. Check with the trial court to see if an official electronic recording was made in your case before choosing this option. You must attach a copy of your agreement (stipulation) with the respondent to this notice. (Check and complete (1) or (2).):
- (1) I will pay the trial court clerk's office for this official electronic recording myself. I understand that if I do not pay for this recording, it will not be provided to the appellate division.
- (2) I am asking that this official electronic recording be provided at no cost to me because I cannot afford to pay this cost. I have completed and attached *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form MC-210). (You can get form MC-210 at any courthouse or county law library or online at www.courts.ca.gov/forms. The court will review this form to decide if you are eligible for a free copy of the official electronic recording.)



Trial Court Case Name: _____

Trial Court Case Number: _____


5 (continued)

OR

- d. **Reporter's Transcript.** *This option is available only if there was a court reporter in the trial court who made a record of what was said in court. Check with the trial court to see if there was a court reporter in your case before choosing this option. Some courts also have local rules that establish procedures for determining whether only a portion of the reporter's transcript or a different form of the record will be sufficient for an effective appeal. Check with the trial court to see if it has such a local rule. (Check (1) or (2)):*
- (1) I will pay the trial court clerk's office for this transcript myself when I receive the court reporter's estimate of the cost of the transcript. I understand that if I do not pay for this transcript, it will not be prepared and provided to the appellate division.
- (2) I am asking that this transcript be provided at no cost to me because I cannot afford to pay this cost. I have completed and attached *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form MC-210). (You can get form MC-210 at any courthouse or county law library or online at www.courts.ca.gov/forms. The court will review this form to decide if you are eligible for a free reporter's transcript.)

Date: _____

Type or print your name

 _____
Signature of appellant or attorney

Clerk stamps date here when form is filed.

You fill in the name and street address of the court that issued the judgment or order you are appealing:

Superior Court of California, County of

You fill in the number and name of the trial court case in which you are appealing the judgment or order:

Trial Court Case Number: Trial Court Case Name: The People of the State of California v.

You fill in the appellate division case number (if you know it):

Appellate Division Case Number:

Instructions

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1 Your Information

a. Appellant (the party who is filing this appeal):

Name:

Street address: Street City State Zip

Mailing address (if different): Street City State Zip

Phone: E-mail (if available):

b. Appellant's lawyer (skip this if the appellant is filling out this form):

The lawyer filling out this form (check (1) or (2)):

(1) [] was the appellant's lawyer in the trial court. (2) [] is the appellant's 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 (if available):

Fax (if available):



Information About Your Appeal

2 On (fill in the date): _____, I/my client filed a Notice of Appeal and Record on Appeal (Infraction), choosing to use a statement on appeal as the record of what was said in this case.

Proposed Statement

3 Reasons for Your Appeal

Remember, in an appeal, the appellate division can only review a case for whether certain kinds of legal errors were made in the trial court proceedings (read form CR-141-INFO to learn about these legal errors):

- There was not “substantial evidence” supporting the judgment, order, or other decision you are appealing.
- A “prejudicial error” was made during the trial court proceedings.

The appellate division:

- Cannot retry your case or take new evidence.
- Cannot consider whether witnesses were telling the truth or lying.
- Cannot consider whether there was more or stronger evidence supporting your position than there was supporting the trial court’s decision.

(Check all that apply and describe the legal error or errors you believe were made that are the reason for this appeal.)

a. There was not substantial evidence that supported the judgment, order, or other decision that I/my client indicated in the notice of appeal is being appealed in this case. (Explain why you think the judgment, order, or other decision was not supported by substantial evidence): _____

b. The following error or errors about either the law or court procedure was/were made that caused substantial harm to me/my client. (Describe each error and how you were/your client was harmed by that error.)

(1) Describe the error: _____

Describe how this error harmed you/your client: _____

(2) Describe the error: _____

Describe how this error harmed you/your client: _____

3 (continued)

(3) Describe the error: _____

Describe how this error harmed you/your client: _____

Check here if you need more space to describe these or other errors and attach a separate page or pages describing the errors. At the top of each page, write "CR-143, item 3."

4 The Charges Against Me/My Client

a. If the charges against you/your client are based on a citation (ticket) you received, provide the citation number (fill in the citation number from your ticket): _____

b. The charges against me/my client were (list all of the charges indicated on the citation or complaint filed by the prosecutor with the court): _____

c. I/My client (check (1), (2), or (3))

(1) pleaded not guilty to all of the charges.

(2) pleaded guilty to only the following charges: _____

(3) pleaded guilty to all of the charges.

5 Summary of Any Motions and the Court's Order on the Motion

a. Were any motions (requests for the trial court to issue an order) made in this case that are relevant to the reasons you gave in **3** for this appeal?

Yes (fill out b) No (skip to item **6**)

b. In the spaces below, describe any motions (requests for orders) that were made in the trial court that are relevant to the reasons you gave in **3** for this appeal. Write a complete and accurate summary of what was said at any hearings on these motions and indicate how the trial court ruled on these motions:

(1) I/My client made the following requests (motions) in the trial court (check all that apply):

(a) To submit a photograph or photographs as evidence (describe the photographs):

There was was not a hearing on this motion.



5 b.(1)(a) (continued)

If there was a hearing on this motion, write a complete and accurate summary of what was said at this hearing: _____

The court did did not accept the photographs.

Check here if you need more space to describe the motion and attach a separate page or pages describing it. At the top of each page write "CR-143, item 5b(1)(a)."

(b) To submit a map or maps as evidence (describe the maps): _____

There was was not a hearing on this motion.

If there was a hearing on this motion, write a complete and accurate summary of what was said at this hearing: _____

The court did did not accept the maps.

Check here if you need more space to describe the motion and attach a separate page or pages describing it. At the top of each page write "CR-143, item 5b(1)(b)."

(c) To submit other material as evidence (describe what you asked to submit as evidence): _____

There was was not a hearing on this motion.

If there was a hearing on this motion, write a complete and accurate summary of what was said at this hearing: _____

The court did did not accept this material.

Check here if you need more space to describe the motion and attach a separate page or pages describing it. At the top of each page write "CR-143, item 5b(1)(c)."

(d) Other (describe any other request you made in the trial court and whether the court granted or denied this request): _____

Check here if you need more space to describe the motion and attach a separate page or pages describing it. At the top of each page write "CR-143, item 5b(1)(d)."

5 b. (continued)

(2) The prosecutor made the following request (motion) in the trial court (describe any request the prosecutor made in the trial court and whether the court granted or denied this request):

There was was not a hearing on this motion.

If there was a hearing on this motion, write a complete and accurate summary of what was said at this hearing: _____

The court did did not grant this motion.

Other (describe any other action the trial court took on this motion): _____

Check here if you need more space to describe the motion and attach a separate page or pages describing it. At the top of each page write "CR-143, item 5b(2)."

(3) Check here if other motions were filed that are relevant to the reasons you gave in 3 for this appeal, and attach a separate page or pages describing these other motions, identifying who made them and whether there was a hearing on the motion, summarizing what was said at the hearing on the motion, and indicating whether the trial court granted or denied the motion. At the top of each page, write CR-143, item 5b(3).

6 Summary of Testimony and Other Evidence

a. Was there a trial in your case?

No (skip items b, c, d, e, and f, and go to item 7)

Yes (complete items b, c, d, e, and f)

b. Did you/your client testify at the trial?

No

Yes (Write a complete and accurate summary of the testimony you/your client gave that is relevant to the reasons you gave in 3 for this appeal. Include only what you actually said; do not comment on or give your opinion about what you said. Please indicate whether any objections were made concerning your/your client's testimony or any exhibits you/your client asked to present and whether these objections were sustained.): _____

Check here if you need more space to summarize your/your client's testimony and attach a separate page or pages summarizing this testimony. At the top of each page, write "CR-143, Item 6b."



6 (continued)

c. Did an officer from the police department, sheriff's office, or other government agency that charged you/your client testify at the trial? (Check one):

No

Yes (complete (1) and (2)):

(1) The name of the officer who testified is (fill in the officer's name): _____

(2) This officer testified that (Write a complete and accurate summary of the officer's testimony that is relevant to the reasons you gave in 3 for this appeal. Include only what the officer actually said; do not comment on or give your opinion about what the officer said. Please indicate whether any objections were made concerning the officer's testimony or any exhibits the officer asked to present and whether these objections were sustained.): _____

Check here if you need more space to summarize the officer's testimony and attach a separate page or pages summarizing this testimony. At the top of each page, write "CR-143, Item 6c."

d. Were there any other witnesses at the trial?

No

Yes (fill out (1)-(4)):

(1) The witness's name is (fill in the witness's name): _____

(2) The witness was was not an officer from the government agency that charged me/my client.

(3) The witness testified on behalf of me/my client. the prosecution.

(4) This witness testified that (Write a complete and accurate summary of the witness's testimony that is relevant to the reasons you gave in 3 for this appeal. Include only what the witness actually said; do not comment on or give your opinion about what the witness said. Please indicate whether any objections were made concerning the witness's testimony or any exhibits the witness asked to present and whether these objections were sustained.): _____

e. Check here if other witnesses gave testimony at the trial that is relevant to the reasons you gave in 3 for this appeal. Attach a separate page or pages identifying each other witness that testified at your trial, stating whether that witness testified on your/your client's behalf or the prosecution's behalf, summarizing what that witness said in his or her testimony that is relevant to the reasons you gave in 3 for this appeal, and indicating whether any objections were made concerning the witness's testimony or any exhibits the witness asked to present and whether these objections were sustained. At the top of each page, write "CR-143, item 6e."



Trial Court Case Name: _____

Trial Court Case Number: _____

6 (continued)

f. Summarize the evidence, other than the testimony, that was given during the trial that is relevant to the reasons you gave in **3** for this appeal (*Write a complete and accurate summary of the evidence given by both you and the respondent. Include only the evidence; do not comment or give your opinion about this evidence.*):

Check here if you need more space to summarize the evidence and attach a separate page or pages summarizing this evidence. At the top of each page, write "CR-143, Item 6f."

7 The Trial Court's Findings

a. I/My client was found guilty of the following offenses (*list all of the offenses for which you were/your client was found guilty*): _____

b. I/My client was found not guilty of the following offenses (*list all of the offenses for which you were/your client was found not guilty*): _____

c. The following charges were dismissed after proof of correction was shown to the judge (*list all of the charges that were dismissed*): _____

8 The Sentence

The trial court imposed the following fine or other punishment on me/my client (*check all that apply and fill in any required information*):

a. A fine of (*fill in the amount of the fine*): \$ _____

b. Traffic school

c. Community service (*fill in the number of hours*): _____

d. Other punishment (*describe any other punishment that the court imposed in this case*):

REMINDER: You must serve and file this form no later than 20 days after you file your notice of appeal. If you do not file this form on time, the court may dismiss your appeal.

Date: _____

Type or print name

Signature of appellant or attorney

**Order Concerning Appellant's
Proposed Statement on Appeal
(Infraction)**

1 The court has received and reviewed the *Proposed Statement on Appeal* (form CR-143) filed by the appellant on (fill in date):

2 The court makes the following order:

a. The court certifies that parts 4 through 8 of the statement as proposed by the appellant are an accurate summary of the testimony and other evidence that is relevant to the issues that the appellant indicated in item 3 are the reasons for this appeal. This statement is ready to be sent to the appellate division.

b. Corrections are needed in order for parts 4 through 8 of the statement proposed by the appellant to be an accurate summary of the testimony and other evidence that is relevant to the issues the appellant indicated in item 3 are the reasons for this appeal.

(1) A modified statement is attached to this order. This modified statement must be sent to the parties.

(2) The appellant is ordered to prepare a statement incorporating the modifications listed below and to serve and file this modified statement.

(a) _____

(b) _____

(c) _____

(3) More corrections than could be listed above were needed in order for parts 4 through 8 of the statement proposed by the appellant to be an accurate summary of the testimony and other evidence that is relevant to the issues appellant indicated in item 3 are the reasons for this appeal. A list of the required modifications is attached. The appellant is ordered to prepare a statement incorporating those modifications and to serve and file this modified statement.

Clerk stamps date here when form is filed.

Clerk fills in the name and street address of the court:
Superior Court of California, County of

Clerk fills in the number and name of the case:
Trial Court Case Number:
Trial Court Case Name:
The People of the State of California
v. _____

Clerk fills in the number below:
Appellate Division Case Number:

Trial Court Case Name: _____

Trial Court Case Number: _____

- c. The proposed statement does not contain the following material required by rule 8.916:

The appellant is ordered to prepare a new proposal statement that includes this material.

- d. The trial court proceedings in this case were reported by a court reporter or officially recorded electronically under Government Code section 69957. Instead of correcting this statement, the court orders under rule 8.916(d)(6)(B) that a transcript be prepared as the record of these proceedings. *(Check the court's local rules to make sure the court has adopted a rule providing that this option is available.)*
- e. This superior court has a local rule for the appellate division authorizing the use of an official electronic recording as the record of the oral proceedings. The trial court proceedings in this case were officially electronically recorded. Instead of correcting this statement, the court orders that a copy of that electronic recording be prepared as the record of these proceedings at the court's expense.

Date: _____



Signature of trial court judicial officer

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Appellate Procedure: Appellate Division Rules and Forms. Adopt Cal. Rules of Court, rules 8.874 and 8.924; amend rules 8.810, 8.822, 8.823, 8.834, 8.835, 8.837, 8.851, 8.864, 8.865, 8.866, 8.867, 8.868, 8.869, 8.882, 8.887, 8.915, 8.916, 8.917, 8.918, 8.919, and 8.927; and revise forms APP-101-INFO, APP-102, APP-103, APP-104, APP-105, and APP-110 relating to appeals in limited civil cases; CR-131-INFO, CR-132, CR-133, CR-134, CR-135, and CR-136 relating to appeals in misdemeanor cases; and CR-141-INFO, CR-142, CR-143, and CR-144 relating to appeals in infraction cases

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	Appellate Court Committee of San Diego County Bar Association By: Rupa G. Singh, Chair	A	The proposed revisions to the superior court appellate division's rules and forms seem appropriate. We commend the Judicial Council's continued efforts to increase efficiency in the appellate division by conforming its rules and forms to those of the Court of Appeal.	The committee notes the commentator's support for the proposal.
2.	California Academy of Appellate Lawyers By: Robert A. Olson, President Los Angeles, California	NI	The Academy is mindful that the rules governing Appellate Division practice were revamped significantly several years ago to conform those rules more closely to Court of Appeal practice. There is ongoing debate on further revisions that may be desirable. The Academy is following this discussion and may comment at greater length in the future, but has no comment on the current proposal.	The committee appreciates this input.
3.	California Court Reporters Association By: Pam Katros, Chair Judicial Procedures Committee	NI	The California Court Reporters Association, CCRA, agrees with the provisions in this proposal. However, we would appreciate some consideration. In all the code sections that relate to when an appellant abandons their appeal, we would request the reporter be notified by the clerk of this occurrence. Also, there should be provisions that the reporter be compensated for the cost of the preparation of the transcript up to the time of the abandonment.	The committee notes the commentator's support for the proposal. With regard to appeals abandoned by the appellant, rules 8.825, 8.855, and 8.904, which lay out the procedures for abandoning appeals in limited civil, misdemeanor, and infraction cases, respectively, all require that, if a reporter's transcript has been requested, the clerk must immediately notify the court reporter if the appeal is abandoned before the reporter has filed the transcript. To clarify that these rules apply in the

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Appellate Procedure: Appellate Division Rules and Forms. Adopt Cal. Rules of Court, rules 8.874 and 8.924; amend rules 8.810, 8.822, 8.823, 8.834, 8.835, 8.837, 8.851, 8.864, 8.865, 8.866, 8.867, 8.868, 8.869, 8.882, 8.887, 8.915, 8.916, 8.917, 8.918, 8.919, and 8.927; and revise forms APP-101-INFO, APP-102, APP-103, APP-104, APP-105, and APP-110 relating to appeals in limited civil cases; CR-131-INFO, CR-132, CR-133, CR-134, CR-135, and CR-136 relating to appeals in misdemeanor cases; and CR-141-INFO, CR-142, CR-143, and CR-144 relating to appeals in infraction cases

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
				<p>situations covered by this proposal, the committee has revised the proposal to include cross-references to the rules on abandonment of appeals in the proposed amendments to the rules on preparation of reporter’s transcripts. However, the committee also notes that at this stage of the proceedings, when the parties have not yet made the required deposit for a reporter’s transcript, the court reporter should not yet have started preparing a transcript, so providing court reporter’s with notice of such early abandonments should not be urgent.</p> <p>Current subdivision (d)(3) of rule 8.834, relating to reporter’s transcripts in limited civil cases also specifically provides that if an appeal is abandoned or is dismissed before the reporter has filed the transcript, the reporter must inform the clerk of the cost of the portion of the transcript that the reporter has completed and the clerk must pay that amount to the reporter from the appellant’s deposited funds and refund any excess deposit. Rules 8.866 and 8.919, relating to preparation of reporter’s transcripts in misdemeanor and infraction appeals, do not currently contain such a provision and the proposal that was circulated for public comment did not include such a provision. As a general rule, amendments to the Rules of Court are not</p>

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Appellate Procedure: Appellate Division Rules and Forms. Adopt Cal. Rules of Court, rules 8.874 and 8.924; amend rules 8.810, 8.822, 8.823, 8.834, 8.835, 8.837, 8.851, 8.864, 8.865, 8.866, 8.867, 8.868, 8.869, 8.882, 8.887, 8.915, 8.916, 8.917, 8.918, 8.919, and 8.927; and revise forms APP-101-INFO, APP-102, APP-103, APP-104, APP-105, and APP-110 relating to appeals in limited civil cases; CR-131-INFO, CR-132, CR-133, CR-134, CR-135, and CR-136 relating to appeals in misdemeanor cases; and CR-141-INFO, CR-142, CR-143, and CR-144 relating to appeals in infraction cases

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>CCRA believes the requests for extensions of time for reporters’ transcripts in the appellate division of the superior courts should be handled by the trial courts. All courts handle these requests differently depending on their local court policies.</p>	<p>recommended for adoption without first being circulated for public comment. The committee will therefore consider during a later rules cycle whether to develop a proposal to address payment of court reporters for portions of transcripts prepared before a misdemeanor or infraction appeal is abandoned.</p> <p>The committee appreciates this input but concluded that it is preferable for requests for extensions of time in appellate division proceedings to be handled in a similar fashion as such requests in Court of Appeal proceedings, including that extensions of time to prepare reporter’s transcripts be determined by the reviewing court.</p>
4.	<p>Committee on Appellate Courts State Bar of California By: Kira Klatchko, Acting Chair 2012-2013 San Francisco, California</p>	NI	<p>The Committee supports this proposal except as noted below.</p> <p>Comments are specifically sought regarding the proposed rule changes for limited record in appeals of suppression motions per rule 8.867(b). The Committee has identified possible additional documents that could be included in the new rule as items normally to be included in an appeal of a suppression motion. Often a photograph or other documentary evidence is important in a suppression motion.</p>	<p>The committee notes the commentator’s support.</p> <p>Rule 8.867 generally addresses the contents of the clerk’s transcript or original trial court file. Under rule 8.870, exhibits, such as photographs or audio tapes, while part of the record on appeal, are not included in the clerk’s transcript; they are transmitted separately to the reviewing court. To clarify that proposed 8.867(b) is not meant to limit the transmission of such exhibits under rule 8.870, the committee has revised the proposal to add a</p>

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Appellate Procedure: Appellate Division Rules and Forms. Adopt Cal. Rules of Court, rules 8.874 and 8.924; amend rules 8.810, 8.822, 8.823, 8.834, 8.835, 8.837, 8.851, 8.864, 8.865, 8.866, 8.867, 8.868, 8.869, 8.882, 8.887, 8.915, 8.916, 8.917, 8.918, 8.919, and 8.927; and revise forms APP-101-INFO, APP-102, APP-103, APP-104, APP-105, and APP-110 relating to appeals in limited civil cases; CR-131-INFO, CR-132, CR-133, CR-134, CR-135, and CR-136 relating to appeals in misdemeanor cases; and CR-141-INFO, CR-142, CR-143, and CR-144 relating to appeals in infraction cases

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>Similarly, an audio-tape or CD of police dispatch communications may be important in a suppression motion.</p> <p>While rule 8.867(e) provides that a party may identify and request additional documents to be added to the record, because the items listed above are usually important to the decision on a suppression motion, they could be included in a new subdivision, rule 8.867(b)(1)(F).</p> <p>The Committee notes that the Appellate Advisory Committee considered a suggestion that the Appellate Division be required to issue written opinions in all appeals but concluded that such an increase in the burden on the Appellate Division was not appropriate during the current fiscal crisis. Although the Committee is sensitive to the cost issues, it recommends that this decision be reconsidered.</p> <p>The United States Supreme Court has held that a minimal component of Due Process is a statement of reasons sufficient to permit meaningful judicial review. <i>Kent v. United States</i> (1966) 383 U.S. 541, 546. In misdemeanor trials, important issues are often decided in the middle of trial, based upon oral motions and oral objections, without written</p>	<p>cross-reference to rule 8.870 to rule 8.867(a).</p> <p>The committee considered a similar suggestion when it was developing this proposal. Because of the severe budget crisis facing the trial courts, the committee concluded that this was not the appropriate time to propose this change, which would add new responsibilities for the trial courts. The committee will keep the suggestion that written opinions be required in Appellate Division appeals on its list of suggestions to be considered at a later time.</p>

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			<p>briefing, and with a simple oral pronouncement by the trial court that the objection is sustained or overruled. Because the rules provide for only discretionary review of an Appellate Division decision in the Court of Appeal, and provide for no review in the Supreme Court, the Appellate Division decision is almost always the <i>only</i> opportunity for any reasoned explanation of whether a misdemeanor trial was conducted with due regard for the constitutional and statutory rights of the defendant. Even federal habeas review is limited in misdemeanor cases, because the defendant may no longer be on probation or in custody by the time the state appeals are exhausted, and because federal habeas review requires that the issues be presented to the California Supreme Court, while the state court rules provide no means for doing so. The lack of a requirement of written Appellate Division decision potentially undermines public confidence that the issues were adequately considered or that they were actually considered at all.</p> <p>While misdemeanors often have less serious penal consequences than felonies, particularly for defendants with prior records, there is a large segment of misdemeanor defendants who are generally law-abiding citizens and for whom</p>	

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			<p>a misdemeanor charge is their only contact with the criminal justice system. For these individuals, a misdemeanor charge, trial and appeal may have tremendous consequences in their lives and particularly on their ability to remain employed and, if need be, licensed by an appropriate regulatory agency. The lack of any formal decision requirement on their only chance for appeal may deny minimal due process rights, and could undermine their confidence in the criminal justice system.</p> <p>For all of these reasons the Committee recommends that consideration be given to adding a requirement of a written decision by the Appellate Division.</p> <p>Although beyond the scope of the current proposal, the Committee also notes that costs of misdemeanors could be otherwise reduced by providing increased use of diversionary programs for misdemeanors, and by requiring mandatory settlement conferences for appeals of misdemeanors to attempt to resolve some misdemeanor appeals without the costs of transcripts, briefing and Appellate Division hearings.</p>	<p>The committee appreciates these suggestions and will consider them in an upcoming rules cycle.</p>

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5.	Fred Garcia Joshua Tree, CA	NI	Comment not related to proposal.	No response required.
6.	Hon. Curtis Karnow Superior Court of the State of California, County of San Francisco	A	I am a member of the working group that prepared the proposed rules and write on my own behalf, and as presiding judge of my court's appellate division. The proposals are well designed to reduce the costs of appeals to appellate panels of the superior court. Many of those participating in these appeals (in limited civil cases and traffic appeals) are self represented (SRLs), and especially for these parties it is important to have rules which fully explain options and the consequences of making various choice as the appeal is perfected. The new rules do that. The proposals will reduce the costs of appeals in at least these ways: the cost of preparing the record will be reduced; the time to prepare appeals will be reduced, the time to have counsel appointed will be reduced; a mechanism is provided whereby the court may (in appropriate cases) direct that less than the full transcript of a criminal trial be prepared (recall, this is at public expense); better guidance on the contents of e.g., a proposed statement on appeal is provided, which in turn will reduce delay; among other efficiencies. A number of the changes are essentially re-organization, making the rules simpler to apply	The committee notes the commentator's support for the proposal and appreciates this input regarding the impact of the proposal on court costs.

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			and so, again, reducing costs and delay. Forms are especially important in cases involving SRLs, because they provide guidance, ensure the appropriate data is provided, and in effect implement rules without always requiring the user to know the specific content of the rules. Thus, the working group has proposed the relevant changes in forms, which too should have the effect of reducing confusion and wasted time, all of which will reduce the costs of the appellate process to the parties—and to the courts.	
7.	Orange County Bar Association By: Wayne R. Gross, President Newport Beach, California	A	Significant delays in misdemeanor appeals most frequently occur in the preparation of the reporter’s transcript and/or transcription of the recorded proceedings and the need to augment the record by resubmission to the trial court due to an incomplete or inadequate record. Proceedings similar to the appellate process in the Court of Appeal make good sense. Control by the Appellate Division of the extension process, particularly in the preparation of the reporter’s transcript, should result in speedier resolutions.	The committee notes the commentator’s support for the proposal and appreciates this input.
8.	Ronald Pierce Squaw Valley, California	NI	Comment not related to proposal.	No response required.

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9.	Cheryl Siler, Esq. Rules Department Manager Aderant	NI	<p>As proposed, rule 8.837(3)(2) states:</p> <p>Within 10 days after the <u>corrected or modified</u> statement is sent to the parties by <u>the court or served by the appellant</u>, any party may serve and file proposed modifications or objections to the statement.</p> <p>My concern with the proposed revisions is that it distinguishes between a statement that is <u>sent</u> by the court with one that is <u>served</u> by the appellant. This could be confusing for practitioners. Presumably, when the statement is served by the appellant, the 10-day time period for filing and serving proposed modifications or objections is increased if the statement was served by mail, fax, overnight delivery or electronic means (pursuant to CRC 8.60 as well as CCP 1013 and 1010.6). On the other hand, as proposed, it is unclear whether a party is entitled to that same extension of time when the statement is “sent” by the court. In order to avoid any confusion, I suggest that the proposed language be revised as follows:</p> <p>Within 10 days after the corrected or modified statement is <u>served on</u> sent to the parties by the court or served by the appellant, any party may serve and file</p>	The committee appreciates this comment and has revised the proposal as suggested by the commentator.

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			<p>proposed modifications or objections to the statement.</p> <p>The same issue arises with respect to the proposed amendment to Rule 8.869(e)(2).</p>	
10.	<p>Standing Committee on the Delivery of Legal Services State Bar of California By: S. Lynn Martinez, Chair San Francisco, California</p>	AM	<p>One portion of SPR13-02 would allow trial court judges in limited civil cases to order the appellant to incorporate corrections or modifications into a statement on appeal. Most low-income litigants who are appellants in limited civil cases lack representation and therefore, will have difficulty complying with the court's order either to (1) submit a new proposed statement that meets with the court's approval or (2) prepare a statement that incorporates the judge's corrections or modifications. Often, an unlawful detainer trial is not recorded electronically or by a court reporter. If so, and if an unrepresented appellant is unable to comply with the court's order, the appeal may be lost because the appellant cannot provide the Appellate Division with a record of the oral proceedings. Accordingly, self-represented appellants who are already disadvantaged going into the Appellate Division will have even more hurdles to overcome, further preventing adequate access to justice.</p>	<p>The committee appreciates this input and the concerns expressed by the commentator. As indicated in the invitation to comment, although the current rules do not include provisions that specifically authorize trial judges to order that the appellant correct or modify a proposed statement on appeal, the February 6, 2008 report to the Judicial Council recommending adoption of the current rules suggested that it would be permissible for a judge to ask the appellant to make such modifications or corrections. The committee therefore views the proposed amendments to the rules specifically authorizing this as a clarification, not a substantive change. Many appellants in appeals to the appellate division are represented or are sufficiently sophisticated to modify or correct a proposed statement on appeal that they prepared. The committee's view is that judges should not be prevented from ordering such appellants to modify or correct a proposed statement. The committee expects that trial court judges will exercise reasonable discretion in determining</p>

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				when to order that a new statement be prepared or that corrections or modifications be made by the appellant.
11.	Superior Court of Los Angeles County	N	The stated purpose of this Rule is to provide cost savings and efficiencies for trial courts. This Rule proposal includes a large number of small changes in process. It is unclear whether efficiencies will be achieved and substantial changes in process will be required, which generate work in retraining staff and redesigning work flow. In light of RUPRO’s policy of limiting rule proposals to critical rule and form proposals that are mandated by statute or case law or are otherwise deemed urgent and necessary, we recommend that these rule changes not go forward.	The committee reviewed the potential costs and benefits of each of the proposed rule amendments identified by commentators and working group members and ideas for reducing the potential costs. Attached is a table laying out this information. The committee’s view is that, with the exception of the time period for the trial court to refer applications for appointment of counsel in misdemeanor appeals to the appellate division, the potential benefits of each of the proposed rule changes outweigh the potential costs. The committee also concluded that many of the potential costs could be reduced if the committee prepared checklists of the proposed changes for use in training court staff and judicial officers, worked with CJER on including relevant information about these changes in upcoming training curriculum, and prepared model notices that incorporate the new elements in the proposed rules. Based on this conclusion, the committee revised the proposal to lengthen the period the trial court has to forward a request for appointment of counsel in a misdemeanor case to the appellate division from 3 days to 15 days but

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				did not make other changes to the proposal in response to this comment. If the proposal is adopted by the Judicial Council, the committee will undertake the efforts outlined above to reduce the potential cost of implementing the proposal.
12.	Superior Court of San Diego County By: Mike Roddy, Executive Officer	A	No additional comments.	The committee notes the commentator’s support for the proposal.
13.	TCPJAC/CEAC Joint Rules Working Group	N	<p>The JRWG recommends that the benefits of the proposal be weighed against RUPRO’s policy of limiting rule proposals to critical rule and form proposals that are mandated by statute or case law, or are otherwise deemed urgent and necessary. Based on their review, the JRWG believes that the operational impacts will outweigh the minimal benefits that this proposal will bring. Given the reductions in staffing in the trial courts, the JRWG does not agree with going forward with this proposal. The JRWG does support the concept for reducing the need for transcripts of the oral record, but cannot support implementing this proposal at this time.</p> <p><u>Operational impacts identified by the working group:</u></p> <p>1. Cause a Potential Fiscal Impact No impact identified.</p>	The committee reviewed the potential costs and benefits of each of the proposed rule amendments identified by commentators and working group members and ideas for reducing the potential costs. Attached is a table laying out this information. The committee’s view is that, with the exception of the time period for the trial court to refer applications for appointment of counsel in misdemeanor appeals to the appellate division, the potential benefits of each of the proposed rule changes outweigh the potential costs. The committee also concluded that many of the potential costs could be reduced if the committee prepared checklists of the proposed changes for use in training court staff and judicial officers, worked with CJER on including relevant information about these changes in upcoming training curriculum, and prepared model notices that incorporate the new elements in the proposed rules. Based on this conclusion, the committee

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			<p>2. Create an Impact on Existing Automated Systems Courts using the Sustain case management may see the following changes: 1) Several new codes would need to be added; 2) existing appeal time standards (ticklers) would need to be updated; 3) if a court prints appeal forms from the CMS, these forms would need to be updated. Items #1 and #3 have a very low impact; Item #2 is a medium to high impact as the updates would need to be identified, approved by the court and implemented.</p> <p>Courts could also anticipate creating new notices and adding some new coding to track cases.</p> <p>3. Raise Any Trial Court Labor or Employment Related Concerns No impact identified.</p> <p>4. Require Development of Local Rules or Forms The proposal allows for the adoption of a local rule, that may limit the proceedings required to be included in the oral record on appeal. The creation of a local rule is permissive and would serve to reduce the size and cost of the record.</p>	<p>revised the proposal to lengthen the period the trial court has to forward a request for appointment of counsel in a misdemeanor case to the appellate division from 3 days to 15 days but did not make other changes to the proposal in response to this comment. If the proposal is adopted by the Judicial Council, the committee will undertake the efforts outlined above to reduce the potential cost of implementing the proposal.</p>

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			<p>Courts may choose to develop, publish and adopt local rules to fully realize the time and cost savings of most of the new provisions in the Rules of Court. Without adopting local rules, the court would not see savings in cost or time for smaller transcripts.</p> <p>5. Create the Need for Additional Training, Which Requires the Commitment of Staff Time and Court Resources</p> <p>Training will be required for all appeals-related operations staff for the new requirements implemented by this proposal. Training will also be required for any new local rules that are created and adopted. Updates to new and existing written procedures will be required in addition to possible new procedures that will need to be drafted. Between 4-8 hours would be necessary for supervisors and managers. Clerks would need up to 4 hours of training to implement.</p> <p>Courts will also have training needs for judicial staff as well, as it relates to the preparation of statements on appeal.</p> <p>6. Increase Court Staff Workload</p> <p>Impacts in this area are unknown. There may</p>	

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			<p>be some trial court staff workload increases as a result of tasks associated with implementing the proposed new procedures giving appellants more options when they learn of the cost of a reporter’s transcript, official electronic recording, or transcript prepared from an official electronic recording. Staff may be spending more time with the litigants, especially in infractions, explaining the options and answering questions.</p> <p>Court staff workloads may also be affected as a result of new procedures implemented to require forwarding of a request for appointed counsel on appeal to the appellate department within 3 working days; and to grant or deny a defendant’s application for appointment of counsel in misdemeanor appeals, within 30 days after the application is filed. Given the staffing shortages trial courts are experiencing a 3 day requirement may be too restrictive. A longer time period to grant or deny a defendant’s application for appointment of counsel may benefit those courts that have appellate panels located within different court houses throughout the county.</p> <p>7. Change the Responsibilities of the Presiding Judge and/or Supervising</p>	<p>Based on this comment, the committee has revised the proposal to provide that the request must be forwarded to the appellate division within 15 days.</p>

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			<p>Judge Impacts in this area are unknown. There may be impacts on the presiding judge of appellate divisions.</p> <p>8. Impact on Court Security No impact identified.</p> <p>9. Create An Impact on Local or Statewide Justice Partners The courts will need to apprise local district attorneys and defense counsel attorneys of the new forms and requirements.</p> <p>10. Implementation The project sponsor asked whether a minimum of two months implementation would be sufficient if approved by the Judicial Council at its October 24-25, 2013 business meeting. Because the local rule is permissive and is to the benefit of the court and the litigants to streamline the oral record, it would not require adoption prior to the effectiveness of this proposal.</p> <p>11. Any Other Major Fiscal or Operational Impacts No other operational impacts have been</p>	

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			<p>identified. <u><i>It is a large proposal with a lot of small changes in process. While the intent is to make the process more efficient, courts struggling to provide access to services may find it inconvenient to train and implement.</i></u></p> <p>12. Request for Specific Comments The JRWG is unable to comment on the proposed form changes included in the proposal. There were no highlights or indications to direct the viewer, to where the proposed changes should occur.</p>	

Potential Benefits and Costs of Proposed Amendments to the Appellate Division Rules

Proposed Rule Amendments	Potential Benefits	Potential Costs for Courts	Ideas for Reducing Court Costs
<p>Amend rule 8.810 to provide that the trial court cannot extend the time for a court reporter to prepare a transcript and amend rules 8.834, 8.866, and 8.919 to provide that only the presiding judge of the appellate division or his or her designee may extend the time to prepare the reporter's transcript.</p>	<ul style="list-style-type: none"> • Simplify, and therefore reduce cost of, ongoing training, since procedure will be similar for both appellate division and Court of Appeal cases; and • Reduce delay in the preparation of records in appeals to the appellate division. 	<p><i>One Time</i> Training staff and judges about new procedure</p> <p><i>Ongoing</i> None—since amendment would be switching authority to grant requests from one superior court judge to another, no change in ongoing costs.</p>	<ul style="list-style-type: none"> • Create checklist of changes for use in training staff; • Work with CJER to create checklist or other materials for judges; and • Work with CJER to incorporate information about changes in training curriculum for court staff and judges.
<p>Amend rule 8.810 to:</p> <ul style="list-style-type: none"> • Clarify that a person seeking an extension of time to prepare a reporter's transcript or a transcript of an official electronic recording must comply with the requirements for filing an application to extend time; and • Consolidate and clarify the provisions relating to the declaration of facts establishing good cause for an extension of time. 	<ul style="list-style-type: none"> • Reduce court staff and judge time spent addressing problems with extension requests from court reporters or other persons preparing transcript by clarifying required procedures for and content of extension requests; and • Reduce court staff time spent on providing guidance to court reporters or other persons preparing transcript on how to proceed in these circumstances. 	<p><i>One Time</i> Training court reporters about changes in procedures</p> <p><i>Ongoing</i> None—obligations are imposed on court reporter or other person preparing transcript.</p>	<p>Create checklist of changes for use in training court reporters.</p>
<p>Amend rules 8.822 and 8.823 to replace references to the trial court clerk <i>mailing</i> the judgment, or order, or notice of its entry with references to the clerk <i>servicing</i> these documents.</p>	<p>Facilitate the use of electronic service by the courts, which should reduce court costs, by allowing service by any permissible means, including electronic, to trigger the start of the period for filing a notice of appeal.</p>	<p>None—this should not require any change in court practices. It is the committee's understanding that courts that are mailing the judgment, or order, or notice of its entry are already complying with the requirements of 1013a(4) regarding a clerk's certificate of mailing that are required to constitute proof of service by mail by the clerk.</p>	
<p>Amend rules 8.834, 8.835, 8.866, 8.868, 8.917, and 8.919 to:</p> <ul style="list-style-type: none"> • Require that when all or part of the designated record was not recorded in the form requested by 	<ul style="list-style-type: none"> • Reduce court staff time spent addressing problems with litigants trying to exercise their options under this rule by making the procedures clearer and easier for 	<p><i>One Time</i></p> <ul style="list-style-type: none"> • Training staff about new procedures; and • Updating notices to comply with new procedures. 	<ul style="list-style-type: none"> • Create checklist of changes for use in training staff; • Work with CJER to incorporate information about changes in training curriculum for court staff;

Proposed Rule Amendments	Potential Benefits	Potential Costs for Courts	Ideas for Reducing Court Costs
<p>the appellant or cannot be transcribed, the clerk’s notice informing the appellant of this must indicate whether the record was recorded in another form;</p> <ul style="list-style-type: none"> • Clarify the alternative record options available to the appellant in these circumstances; and • Specify how the appellant must exercise the available options. 	<p>litigants to follow;</p> <ul style="list-style-type: none"> • Reduce court staff time spent on providing guidance to litigants on how to proceed in these circumstances; • Reduce court staff time and resources spent and delay associated with responding to requests for record options that are not available; • Reduce defaults in the procurement of the record and support resolution of appeals on the merits; • Reduce court costs, in the form of judicial, court staff, and appointed counsel time, associated with efforts to cure these procedural defaults/reinstate appeals that were dismissed; and • Reduce delay in the resolution of these appeals associated with defaults and efforts to cure them. 	<p><i>Ongoing</i> None—clerk is already required to send notices in these circumstances.</p>	<p>and</p> <ul style="list-style-type: none"> • Create model notice that courts may consider.
<p>Amend rules 8.837, 8.869, and 8.916 to:</p> <ul style="list-style-type: none"> • Clarify what the appellant must include in the condensed narrative portion of a proposed statement on appeal; and • Replace the requirement that the proposed statement on appeal “include as much of the evidence or proceeding as necessary to support the stated grounds” for the appeal with a requirement that the condensed narrative portion of the statement “include a concise factual summary of the testimony of each witness and other evidence that is relevant to the points” that the appellant indicates 	<ul style="list-style-type: none"> • Reduce court staff and judge time spent addressing problems with proposed statements on appeal by making it clearer to litigants what must be included in such statements; • Reduce the time judges must spend in correcting/finalizing statements on appeal, freeing up judicial resources for other matters; and • Improve the quality of statements on appeal and support resolution of appeals on the merits. 	<p><i>One Time</i> Training staff and judges about new standard <i>Ongoing</i> None—judges must already correct and finalize statements on appeal.</p>	<ul style="list-style-type: none"> • Create checklist of changes for use in training staff; • Work with CJER to create training materials for judges; and • Work with CJER to incorporate information about changes in training curriculum for judges and court staff.

Proposed Rule Amendments	Potential Benefits	Potential Costs for Courts	Ideas for Reducing Court Costs
he or she is raising on appeal.			
Amend rules 8.837, 8.869, and 8.916 to specifically permit the trial judge to order that the appellant either submit a new proposed statement if the initial one does not contain required material or prepare a statement that incorporates necessary corrections or modifications identified by the judge.	<p>Note that these amendments permit, but do not require, a judge to make such an order, so there will only be benefits if a judge uses this procedure.</p> <ul style="list-style-type: none"> Reduce the time the judge must spend in correcting/finalizing statements on appeal, freeing up judicial resources for other matters. 	<p><i>One Time</i></p> <ul style="list-style-type: none"> Training staff and judges about new procedure; and Possible case management system changes to enable such orders and monitoring of deadlines. <p><i>Ongoing</i></p> <p>Note that these amendments permit, but do not require, a judge to make such an order, so no ongoing costs are mandated. If a judge makes such an order, there will be staff costs associated with monitoring deadlines the judge imposes for the new or revised statement.</p>	<ul style="list-style-type: none"> Create checklist of changes for use in training staff; and Work with CJER to create checklist or other materials for judges.
<p>Amend rule 8.851 to:</p> <ul style="list-style-type: none"> Require the trial court to send any application for appointment of appellate counsel filed in that court to the appellate division within 3 court days after the application is filed; and Require that the appellate division grant or deny an application for appointment of appellate counsel within 30 days after the application is filed. 	<ul style="list-style-type: none"> Ensure timely appointment of counsel for indigent defendants in misdemeanor appeals; and Reduce delay in misdemeanor appeals. 	<p><i>One Time</i></p> <ul style="list-style-type: none"> Training staff about new procedures; and Possible case management system changes to reflect new deadlines. <p><i>Ongoing</i></p> <p>Monitoring deadlines associated with appointment of counsel. (This may already be done in some courts.)</p>	<ul style="list-style-type: none"> Increase the time the trial court has to transmit an application to the reviewing court from 3 to 15 days; Create checklist of changes for use in training staff; and Work with CJER to incorporate information about changes in training curriculum for court staff.
<p>Amend rule 8.867 to provide for limited record in:</p> <ul style="list-style-type: none"> Pretrial appeals of orders under Penal Code section 1538.5; and Appeals from the final judgment that challenge only the conditions of probation. 	<ul style="list-style-type: none"> Reduce court costs for the record on appeal, including: <ul style="list-style-type: none"> Clerk's transcripts; and Reporter's transcripts or transcripts from electronic recordings in these appeals. 	<p><i>One Time</i></p> <p>Training staff about new procedures</p> <p><i>Ongoing</i></p> <p>None</p>	<ul style="list-style-type: none"> Create checklist of changes for use in training staff; and Work with CJER to incorporate information about changes in training curriculum for court staff.

Proposed Rule Amendments	Potential Benefits	Potential Costs for Courts	Ideas for Reducing Court Costs
<p>Amend rules 8.865 and 8.918 to specifically provide that a court may adopt a local rule establishing procedures for determining:</p> <ul style="list-style-type: none"> • Whether items ordinarily required to be included in a reporter's transcript are not required for proper determination of an appeal; or • Whether a form of the record other than a reporter's transcript will be sufficient for proper determination of the appeal. 	<p>Note that these amendments permit, but do not require, a court to adopt a local rule implementing this procedure, so there will only be benefits if the court adopts such a rule.</p> <ul style="list-style-type: none"> • Reduce costs for reporter's transcripts and transcripts prepared from official electronic recordings. 	<p>Note that these amendments permit, but do not require, a court to adopt a local rule implementing this procedure, so there will only be costs if a court decides to implement this procedure. Each court can determine whether the potential costs outweigh the benefits.</p> <p><i>One Time</i></p> <ul style="list-style-type: none"> • Developing and adopting a local rule; • Training staff and judges about local procedures; and • Possible case management system changes to reflect local procedures. <p><i>Ongoing</i></p> <p>If a court implements a local procedure, there may be costs associated with that procedure, such as hearing costs.</p>	<ul style="list-style-type: none"> • Create model local rule or gather examples of local rules that courts may consider; • Create checklist of changes for use in training staff; and • Work with CJER to incorporate information about changes in training curriculum for court staff.
<p>Amend rules 8.868 and 8.917 to include a new provision clarifying that the rules regarding the content of reporter's transcripts in misdemeanor and infraction appeals generally govern the contents of a transcript of an official electronic recording.</p>	<p>Reduce court costs for transcripts from electronic recordings in these appeals.</p>	<p><i>One Time</i></p> <p>Training staff about clarified content requirements</p> <p><i>Ongoing</i></p> <p>None</p>	<ul style="list-style-type: none"> • Create checklist of changes for use in training staff; and • Work with CJER to incorporate information about changes in training curriculum for court staff.
<p>Amend rules 8.866, 8.868, 8.917, and 8.919 to provide options in addition to using a statement on appeal when nonindigent appellants learn the cost of a reporter's transcript, official electronic recording, or a transcript prepared from such a recording.</p>	<ul style="list-style-type: none"> • Reduce defaults in the procurement of the record and support resolution of appeals on the merits; • Reduce court costs, in the form of judicial, court staff, and appointed counsel time, associated with efforts to cure these procedural defaults/reinstate appeals that were dismissed; • Reduce delay in the resolution of these appeals associated with defaults and efforts to cure them. 	<p><i>One Time</i></p> <ul style="list-style-type: none"> • Training staff about new procedures; • Updating notices to comply with new procedures; and • Possible case management system changes to reflect new alternative record options. <p><i>Ongoing</i></p> <p>Monitoring deadlines associated with new alternative record options.</p>	<ul style="list-style-type: none"> • Create checklist of changes for use in training staff; • Work with CJER to incorporate information about changes in training curriculum for court staff; and • Create model notice that courts may consider.

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<ul style="list-style-type: none"> Adopt new rules 8.874 and 8.924 to establish a default procedure when a party in a misdemeanor or infraction appeal fails to take the steps necessary to procure the record, including requiring notice to the defaulting party of the potential consequences if the default is not corrected; and Replace the current provisions in rules 8.837, 8.869, and 8.916 addressing failure to timely file a proposed statement on appeal and in rules 8.864 and 8.915 addressing the failure by an appellant in a misdemeanor or infraction appeal to file a record election with a cross references to rules 8.842, 8.874 and 8.924. 	<ul style="list-style-type: none"> Reduce court staff time used to determine appropriate procedure in the event of a default; Simplify, and thus reduce the costs of, ongoing training since procedure will be the same for most record defaults; Ensure that litigants get appropriate notice and an opportunity to cure; Reduce procedural defaults and support the resolution of appeals on the merits; Reduce court costs, in the form of judicial, court staff, and appointed counsel time, associated with efforts to cure these procedural defaults/reinstate appeals that were dismissed; Reduce delay in the resolution of these appeals associated with defaults and efforts to cure them. 	<p><i>One Time</i></p> <ul style="list-style-type: none"> Training staff about new procedures; and Possible case management system changes to reflect new procedures. <p><i>Ongoing</i></p> <p>Sending default notices—note, however, that to provide appropriate due process, courts are likely already sending some type of notice to defaulting parties before imposing sanctions.</p>	<ul style="list-style-type: none"> Create checklist of changes for use in training staff; and Work with CJER to incorporate information about changes in training curriculum for court staff.
<p>Amend rules 8.882 and 8.927 to specify the potential consequences if the People fail to file a respondent’s brief in a misdemeanor or infraction appeal.</p>	<p>Reduce court staff time used to determine appropriate procedure in the event of a default.</p>	<p><i>One Time</i></p> <p>Training staff about procedures</p> <p><i>Ongoing</i></p> <p>None</p>	<ul style="list-style-type: none"> Create checklist of changes for use in training staff; and Work with CJER to incorporate information about changes in training curriculum for court staff.
<p>Amend rule 8.887 to require that appellate division decisions that are certified for publication are sent to the Reporter of Decisions as soon as they are certified.</p>	<p>Facilitate timely publication of appellate division opinions.</p>	<p><i>One Time</i></p> <p>Training staff about new deadline</p> <p><i>Ongoing</i></p> <p>None</p>	<ul style="list-style-type: none"> Create checklist of changes for use in training staff; and Work with CJER to incorporate information about changes in training curriculum for court staff.
<p>Revise the record election forms for misdemeanor and infraction appeals (forms CR-134 and CR-142) to include a space where the parties can indicate that they have stipulated to the use of a limited record.</p>	<p>Reduce court costs for the record on appeal by facilitating stipulations to limited records.</p>	<p><i>One Time</i></p> <p>If court made hard copies of existing forms, will need to replace any remaining copies.</p> <p><i>Ongoing</i></p> <p>None</p>	

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<p>Revise the information sheets on appeals in limited civil, misdemeanor, and infraction cases (forms APP-101-INFO, CR-131-INFO, and CR-141-INFO), notice of appeal forms (forms APP-102, CR-132, and CR-142), record election forms (forms APP-103, APP-110, CR-134, and CR-142), proposed statement on appeal forms (forms APP-104, CR-135, and CR-143), and forms for orders concerning proposed statements on appeal (forms APP-105, CR-136, and CR-143) to:</p> <ul style="list-style-type: none"> • Reflect the proposed changes to the appellate division rules; • Update references to the California Courts website; and • Make other nonsubstantive and clarifying changes. 	<p>Facilitate use of the forms and avoid confusion caused by inconsistency between the rules and forms.</p>	<p><i>One Time</i> If court made hard copies of existing forms, will need to replace any remaining copies. <i>Ongoing</i> None</p>	
<p>Revise <i>Request for Court-Appointed Lawyer in Misdemeanor Appeal</i> (form CR-133) to add a note to CR-133 alerting defendants of the possibility that the appellate division may order a defendant to pay all or part of that cost of counsel on appeal if the appellate division finds the defendant able to pay that cost.</p>	<p>Provide notice to defendants of this possibility.</p>	<p><i>One Time</i> If court made hard copies of existing forms, will need to replace any remaining copies. <i>Ongoing</i> None</p>	