



JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue • San Francisco, California 94102-3688
Telephone 415-865-4200 • Fax 415-865-4205 • TDD 415-865-4272

MEMORANDUM

Date

January 28, 2020

Action Requested

Please read before February 3 rules
subcommittee conference call

To

Members of the Appellate Advisory
Committee's Rules Subcommittee

Deadline

February 3, 2020

From

Sarah Abbott, Attorney, Legal Services

Contact

Sarah Abbott
415-865-7687
Sarah.abbott@jud.ca.gov

Subject

Method of notice to the court reporter

Introduction

Item 11 on the Appellate Advisory Committee's annual agenda this year is to consider whether to recommend amending California Rules of Court,¹ rules 8.405, 8.450, and 8.454, to remove or modify the requirement that the clerk notify the court reporter "by telephone and in writing" to prepare a transcript in juvenile appeals and writs. This is a priority 2(b) project with a proposed January 1, 2021 completion date. Attached for the subcommittee's review are draft amendments to California Rules of Court, rules 8.405, 8.450, and 8.454 that would remove the requirement that court clerks notify court reporters "by telephone and in writing" to make them more consistent with other appellate rules. This memo discusses the proposed amendments as well as alternatives that the subcommittee may wish to consider in lieu of or in addition to these amendments.

Background

Rules 8.400 through 8.474 of the appellate rules govern juvenile appeals and writs. Rule 8.405(b)(1) provides that when a notice of appeal is filed in a juvenile case, the superior court clerk "must immediately . . . [n]otify the reporter *by telephone and in writing* to prepare a reporter's transcript and deliver it to the clerk within 20 days after the notice of appeal is filed."

¹ All further references to "rule" or "rules" are to the California Rules of Court.

(Italics added.)² Rules 8.450 and 8.454 address the filing of a notice of intent to file a writ petition to review orders under Welfare and Institutions Code sections 366.26 and 366.28, respectively.³ Subdivision (h)(1) of each of these rules requires that:

When the notice of intent is filed, the superior court clerk must:

(1) Immediately notify each court reporter *by telephone and in writing* to prepare a reporter's transcript of the oral proceedings at each session of the hearing that resulted in the order under review and deliver the transcript to the clerk within 12 calendar days after the notice of intent is filed.

(Italics added.) No other appellate rule requires a court clerk to notify a court reporter “by telephone and in writing” to prepare a transcript. Some appellate rules do require that a reviewing court clerk “make a reasonable effort to notify the clerk of the respondent court by telephone or e-mail” of an urgent situation such as an appellate decision to grant a writ or issue an order staying or prohibiting a proceeding to occur in the lower court within a short timeframe.⁴ Other appellate rules require a clerk to notify the parties “by telephone or another expeditious method” of events that would seem to require immediate attention, such as shortening the time for oral argument.⁵ However, none of these rules require immediate telephonic and written notification for court reporters simply because an appeal or writ is filed.

Instead, the rules addressing the notice that a court clerk must give to court reporters in other types of appeals use more general language, and generally require court clerks to “promptly” (or in at least one case “immediately”) send notice of an appeal to court reporters, without specifying the method of notification. For example:

² Under rule 8.409(c), the reporter typically has 20 days from the date the notice of appeal is filed to prepare the transcript. Rule 8.407(c)(7) and 8.411(c)(1)(C) require that the clerk “must immediately” notify the reporter if additions to the reporter's transcript are required or the appeal is abandoned before the reporter has filed the transcript.

³ Welfare and Institutions Code section 366.26 governs hearings terminating parental rights or establishing guardianship of children adjudged dependent children of court, and section 366.28 governs the appeal of decisions involving placement or removal orders following the termination of parental rights.

⁴ See, e.g., rules 8.452(h)(3) (requiring appellate court clerk to make “reasonable effort to notify the clerk of the respondent court by telephone or e-mail” if a writ under Welfare and Institutions Code section 366.26 staying or prohibiting a proceeding to occur within seven days or requiring action within seven days is granted); 8.456(h)(3) (same for writ or order under juvenile writ under Welfare and Institutions Code section 366.28); 8.489(b)(1) (same for writ or order in Supreme Court and Court of Appeal); 8.975(b)(1) (same for small claims writ in appellate division).

⁵ See, e.g., rules 8.256(b) (requiring appellate clerk to “immediately notify the parties by telephone or other expeditious method” if notice period for oral argument in court of appeal is shortened); 8.392(b)(5) (same if court of appeal requires an answer to a request for certificate of appealability to review superior court decision denying relief on successive habeas corpus petition in death penalty-related proceeding); 8.524(c) (same if notice period for oral argument in Supreme Court is shortened); 8.702(g) (same if notice period for oral argument in CEQA appeals is shortened); 8.716 (same if notice period for oral argument in appeal of decision to compel arbitration is shortened); 8.885(c)(1) (same if notice period for oral argument in misdemeanor appeal is shortened); 8.889(b)(2) (same if court decides to require answer to request for rehearing in misdemeanor appeal); 8.929(c)(1) (same if notice period for oral argument in infraction appeal is shortened).

- Rule 8.130(d)(2), governing the superior court clerk’s duties with respect to the reporter’s transcript in **civil appeals**, provides that: “The clerk must *promptly send the reporter notice* of the designation [of the reporter’s transcript] and of the deposit or substitute and notice to prepare the transcript, showing the date the notice was sent to the reporter” when the clerk receives specified items.⁶
- Rule 8.304(c)(1), governing **criminal appeals**, provides that: “When a notice of appeal is filed, the superior court clerk must *promptly send a notification* of the filing . . . to each court reporter, and to any primary reporter or reporting supervisor.”⁷
- Rule 8.392(c)(1), governing **appeals from superior court decisions in death penalty-related habeas corpus proceedings**, provides that in most cases, “when a notice of appeal is filed, the superior court clerk must *promptly--and no later than five days after the notice of appeal is filed--send a notification* of the filing to . . . (G) Each court reporter; and (H) Any primary reporter or reporting supervisor.”
- Rule 8.482(c)(1), governing **appeals from an order authorizing a conservator to consent to sterilization of a conservatee**, requires that after entering judgment, the superior court clerk “must *immediately . . . notify* the reporter to prepare a reporter’s transcript . . .”
- Rule 8.613, governing the **record of preliminary proceedings in automatic death penalty appeals**, contains the following requirements relating to court reporter notification:

(d) Notice to prepare transcript and lists

Within five days after receiving notice under (b)(1) or notifying the judge under (b)(2), the clerk must do the following:

(1) *Notify* each reporter who reported a preliminary proceeding to prepare a transcript of the proceeding. If there is more than one reporter, the designated judge may assign a reporter or another designee to perform the functions of the primary reporter.

...

(i) Transcript delivered in electronic form

⁶ The advisory committee comment to subdivision (d)(2) explains that the requirement that the clerk’s notice to the reporter show the date on which the clerk sent the notice is intended to establish the date when the period for preparing the reporter’s transcript begins to run. Additionally, under rule 8.130(d)(5), the clerk must also “promptly notify the reporter if a check for a deposit is dishonored or an appeal is abandoned or is dismissed before the reporter has filed the transcript.”

⁷ See also rule 8.316(c)(3) (clerk “must immediately notify the reporter” if the appeal is abandoned before the reporter has filed the transcript); 8.324(d)(3) (clerk “must immediately notify the reporter if additions to the reporter’s transcript are required . . .”); 8.336(d)(1) (reporter must begin preparing the reporter’s transcript immediately on being notified by the clerk under rule 8.304(c)(1).)

(1) When the record of the preliminary proceedings is certified as complete and accurate, the clerk must *promptly notify* the reporter to prepare five copies of the transcript in electronic form and two additional copies in electronic form for each codefendant against whom the death penalty is sought.⁸

- Rule 8.616(a)(1), governing the **trial record in automatic death penalty appeals**, provides that the clerk “*must promptly--and no later than five days after the judgment of death is rendered*” *notify* the reporter to prepare the reporter’s transcript;⁹
- Rule 8.834(b)(4) governing the reporter’s transcript in **limited civil appeals** to the appellate division of the superior court, provides that “[t]he clerk must *promptly notify* the reporter to prepare the transcript when the court receives” the deposit or substitute for the cost. Likewise, subdivision (a)(4) of this rule requires that the clerk “*must promptly send* a copy of each notice [designating a reporter’s transcript] to the reporter” showing the date it was sent.
- Rules 8.864(a)(1) and 8.915(a)(1) governing the record of oral proceedings in **misdemeanor and infraction appeals**, both provide that: “If the appellant elects to use a reporter’s transcript, the clerk must *promptly send* a copy of appellant’s notice making this election and the notice of appeal to each court reporter.”¹⁰

(Italics added.)

The rules governing writ proceedings in the Supreme Court and Court of Appeal (rules 8.116 (supersedeas), 8.380 and 8.384 (habeas corpus) and 8.485–8.493 (mandate, certiorari and prohibition) and in the superior court appellate division (rules 8.824 (supersedeas) and 8.930–8.936 (mandate, certiorari and prohibition) do not contain any additional requirement that the reviewing court clerk notify the court reporter that a writ has been filed.

Suggestion

In 2016, Tricia Penrose, Director of Juvenile Operations for the Los Angeles Superior Court (Region 4), originally suggested removing the requirement that court reporters in juvenile

⁸ See also rule 8.613(l) (“After the clerk has notified the court reporter to prepare the pretrial record, if the death penalty is no longer sought, the clerk must *promptly notify* the reporter that this rule does not apply.”).

⁹ Rule 8.619(d)(1) further provides that when the record in a death penalty appeal is certified for completeness, “the clerk must promptly notify the reporter to prepare five copies of the transcript in electronic form and two additional copies in electronic form for each codefendant sentenced to death.” And when the record is certified for accuracy, rule 8.622(c)(1) requires the clerk to “promptly notify the reporter to prepare six copies of the reporter’s transcript in electronic form and two additional copies in electronic form for each codefendant sentenced to death.”

¹⁰ Also governing misdemeanor appeals, rule 8.866(a)(2)(E) provides that the “clerk must promptly notify the reporter to begin preparing the transcript when it receives a deposit, waiver, or order that the appellant receive the transcript without cost.” Moreover, under rules 8.855(c)(3), 8.867(e)(6), and 8.904(c)(3), the “clerk must immediately notify the reporter” if an appeal is abandoned before the reporter has filed the transcript or additions to the reporter’s transcript are required.

appeals be notified “by telephone and in writing,” presumably in response to other amendments around that time that substituted the word “send” for “mail” (and variations of those words) throughout the appellate rules to account for electronic transmission. However, there is no indication that those prior amendments were also intended to remove reference to telephonic or written notification. Nevertheless, because the requirement for immediate telephonic and written notice appears to be an anomaly, the proposal is to amend rules 8.405, 8.450, and 8.454 to remove or modify the required notification to make them more consistent with other rules requiring notification by the clerk.

As explained above, it appears that most analogous appellate rules require some form of “prompt” or “immediate” notification by the clerk to the reporter when an appeal is filed, but do not require any particular form of notification. Thus, staff agrees that it may be advisable to amend these three juvenile appellate rules to more closely align them with other appellate rules by removing the phrase “by telephone and in writing” from each of them.¹¹

Draft Rule Amendments

Rule 8.405(b)(1)(B), 8.450(h)(1), 8.454(h)(1)

Attached for your consideration are draft possible amendments to rules 8.405(b)(1)(B), 8.450(h)(1), and 8.454(h)(1) to make the notice that court clerks are required to give court reporters more consistent with other appellate rules by removing the requirement that the notice be “by telephone and in writing.” The possible amendments are as follows:

Rule 8.405. Filing the appeal

(a) Notice of appeal

(b) Superior court clerk’s duties

- (1) When a notice of appeal is filed, the superior court clerk must immediately:
 - (A) Send a notification of the filing to:
 - (i) Each party other than the appellant, including the child if the child is 10 years of age or older;
 - (ii) The attorney of record for each party;
 - (iii) Any person currently awarded by the juvenile court the status of the child’s de facto parent;
 - (iv) Any Court Appointed Special Advocate (CASA) volunteer;

¹¹ Rule 5.585 of the juvenile rules specifies that “[t]he rules in title 8, chapter 5 [i.e., rules 8.400–8.474 governing juvenile appeals and writs] govern appellate review of judgments and orders in cases under Welfare and Institutions Code section 300, 601, or 602.” Rule 8.400 also specifies the types of proceedings to which the juvenile appellate rules apply.

- (v) If the court knows or has reason to know that an Indian child is involved, the Indian custodian, if any, and tribe of the child or the Bureau of Indian Affairs, as required under Welfare and Institutions Code section 224.2; and
 - (vi) The reviewing court clerk; and
- (B) Notify the reporter **by telephone and in writing** to prepare a reporter's transcript and deliver it to the clerk within 20 days after the notice of appeal is filed.

Rule 8.450. Notice of intent to file writ petition to review order setting hearing under Welfare and Institutions Code section 366.26

(h) Preparing the record

When the notice of intent is filed, the superior court clerk must:

- (1) Immediately notify each court reporter **by telephone and in writing** to prepare a reporter's transcript of the oral proceedings at each session of the hearing that resulted in the order under review and deliver the transcript to the clerk within 12 calendar days after the notice of intent is filed; and
- (2) Within 20 days after the notice of intent is filed, prepare a clerk's transcript that includes the notice of intent, proof of service, and all items listed in rule 8.407(a).

Rule 8.454. Notice of intent to file writ petition under Welfare and Institutions Code section 366.28 to review order designating specific placement of a dependent child after termination of parental rights

(h) Preparing the record

When the notice of intent is filed, the superior court clerk must:

- (1) Immediately notify each court reporter **by telephone and in writing** to prepare a reporter's transcript of the oral proceedings at each session of the hearing that

resulted in the order under review and to deliver the transcript to the clerk within 12 calendar days after the notice of intent is filed; and

- (2) Within 20 days after the notice of intent is filed, prepare a clerk's transcript that includes the notice of intent, proof of service, and all items listed in rule 8.407(a).

Alternatives to Consider

Because the requirement that court clerks notify court reporters “by telephone and in writing” does not appear to directly conflict with another rule, the subcommittee may wish to consider not recommending any amendment to these rules.

Additionally or alternatively, the subcommittee may wish to consider whether to recommend modification of the existing requirement in each of these rules that notification to the court reporter be “immediate,” as opposed to “prompt.” As set forth above, most of the other appellate rules addressing the notice that a court clerk is required to give to a court reporter require prompt notice. For example, rule 8.304(c)(1) governing criminal appeals, provides in relevant part that: “When a notice of appeal is filed, the superior court clerk must *promptly send* a notification of the filing to the attorney of record for each party, to any unrepresented defendant, to the reviewing court clerk, to each court reporter, and to any primary reporter or reporting supervisor.” The subcommittee may wish to consider whether it thinks it advisable to substitute the word “promptly” for “immediately” in the three rules under consideration for the sake of consistency. However, consideration should be given to the fact that, by statute, juvenile appeals have priority over most other appeals¹² and for the appeal to be processed quickly, the appellate court must receive the reporter's transcript as soon as possible. This priority seems to justify the requirement for “immediate” rather than “prompt” note to the reporter. Staff has not included these amendments as part of the proposed rule amendments because this change was not part of the original suggestion, and is not necessary.

Issues for the subcommittee's consideration

Issues that the subcommittee may want to consider in reviewing the draft rule amendments:

1. Does the subcommittee wish to recommend moving forward with circulating amendments that remove the phrase “by telephone and in writing” from the rules governing juvenile appeals and writs to make them more consistent with other appellate rules?
2. Does the subcommittee wish to recommend moving forward with circulating additional or alternative amendments that replace the word “immediately” with “promptly” in the three rules under consideration?

Rules Subcommittee Task

¹² See Welf. & Inst. Code, §§ 800(a) [delinquency], 395(a)(1) [dependency]; Code of Civ. Proc. § 45 [appeals from orders freeing a minor from parent's custody/control].

The subcommittee's task is to analyze this proposal and:

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

Attachment

Draft amended rules 8.405, 8.450, 8.454

1 Title 8. Appellate Rules

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

4
5 Chapter 5. Juvenile Appeals and Writs

6
7 Article 2. Appeals

8
9
10 Rule 8.405. Filing the appeal

11
12 (a) Notice of appeal

13 ***

14
15
16 (b) Superior court clerk's duties

17
18 (1) When a notice of appeal is filed, the superior court clerk must immediately:

19
20 (A) Send a notification of the filing to:

- 21
22 (i) Each party other than the appellant, including the child if the
23 child is 10 years of age or older;
24
25 (ii) The attorney of record for each party;
26
27 (iii) Any person currently awarded by the juvenile court the status of
28 the child's de facto parent;
29
30 (iv) Any Court Appointed Special Advocate (CASA) volunteer;
31
32 (v) If the court knows or has reason to know that an Indian child is
33 involved, the Indian custodian, if any, and tribe of the child or the
34 Bureau of Indian Affairs, as required under Welfare and
35 Institutions Code section 224.2; and
36
37 (vi) The reviewing court clerk; and

38
39 (B) Notify the reporter ~~by telephone and in writing~~ to prepare a reporter's
40 transcript and deliver it to the clerk within 20 days after the notice of
41 appeal is filed.

42
43 ***

1
2 **Article 3. Writs**
3

4 **Rule 8.450. Notice of intent to file writ petition to review order setting hearing**
5 **under Welfare and Institutions Code section 366.26**
6

7 ***
8

9 **(h) Preparing the record**
10

11 When the notice of intent is filed, the superior court clerk must:
12

- 13 (1) Immediately notify each court reporter **by telephone and in writing** to prepare
14 a reporter's transcript of the oral proceedings at each session of the hearing
15 that resulted in the order under review and deliver the transcript to the clerk
16 within 12 calendar days after the notice of intent is filed; and
17
18 (2) Within 20 days after the notice of intent is filed, prepare a clerk's transcript
19 that includes the notice of intent, proof of service, and all items listed in rule
20 8.407(a).
21

22 *(Subd (h) amended and relettered effective January 1, 2013; adopted as subd (g);*
23 *previously amended effective January 1, 2006, January 1, 2007, January 1, 2008, and July*
24 *1, 2010.)*
25

26 ***
27

28 **Rule 8.454. Notice of intent to file writ petition under Welfare and Institutions Code**
29 **section 366.28 to review order designating specific placement of a dependent**
30 **child after termination of parental rights**
31

32 ***
33

34 **(h) Preparing the record**
35

36 When the notice of intent is filed, the superior court clerk must:
37

- 38 (1) Immediately notify each court reporter **by telephone and in writing** to prepare
39 a reporter's transcript of the oral proceedings at each session of the hearing
40 that resulted in the order under review and to deliver the transcript to the
41 clerk within 12 calendar days after the notice of intent is filed; and
42

1 (2) Within 20 days after the notice of intent is filed, prepare a clerk's transcript
2 that includes the notice of intent, proof of service, and all items listed in rule
3 8.407(a).

4

5 *(Subd (h) amended effective July 1, 2013; adopted as subd (g) effective January 1, 2005;*
6 *previously amended and relettered effective January 1, 2006; previously amended effective*
7 *July 1, 2006, January 1, 2007, January 1, 2008, and July 1, 2010.)*

8

9 ***



JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue • San Francisco, California 94102-3688
Telephone 415-865-4200 • Fax 415-865-4205 • TDD 415-865-4272

MEMORANDUM

Date

January 29, 2020

Action Requested

Please read before February 3 rules
subcommittee conference call

To

Members of the Appellate Advisory
Committee's Rules Subcommittee

Deadline

February 3, 2020

From

Eric Long, Attorney, Legal Services

Contact

Eric Long
415-865-7691 phone
eric.long@jud.ca.gov

Subject

Consent to Electronic Service

Introduction

The current appellate rules allow the act of electronic filing to serve as consent to electronic service. Amendments effective January 1, 2019, to Code of Civil Procedure, section 1010.6, may conflict with that practice, although an argument can be made that section 1010.6 only applies to trial courts and does not apply to appellate courts. Among other things, section 1010.6, subdivision (a)(2)(A)(ii) provides that for cases filed on or after January 1, 2019, electronic service of a document is not authorized unless a person has expressly consented to receive electronic service or the court has ordered such service. Express consent may be accomplished either by filing and serving notice on all parties, or by manifesting affirmative consent through electronic means. Under the statute, the act of electronic filing shall not be construed as express consent.

Based on the language of section 1010.6, subdivision (a), the Appellate Advisory Committee included a proposal on its annual agenda relating to the possible revision of three California Rules of Court, rules 8.72, 8.74, and 8.78, concerning consent to electronic service. The proposal was assigned to the Rules Subcommittee. Staff suggests that the Rules Subcommittee recommend no revisions to these appellate rules. However, if the subcommittee concludes amendment is preferable, rules 8.25, 8.72 and 8.78 could be revised to address express consent,

or the subcommittee could endorse minor revisions to clarify the difference in procedure between the trial courts and the appellate courts.

Background

The current appellate rules expressly allow the act of electronic filing to serve as consent to electronic service.¹ (Cal. R. Ct. 8.78(a)(2)(B).) That same paragraph also sets forth an opt-out procedure: “unless the party serves a notice on all parties and files the notice with the court that the party does not accept electronic service and chooses instead to be served paper copies at an address specified in the notice.” (Id.) To facilitate transmission of court confirmations relating to receipt and filing of documents submitted electronically, rule 8.72 requires electronic filers to “[f]urnish one or more electronic service addresses, in the manner specified by the court, at which the electronic filer agrees to accept service[.]” (Cal. R. Ct. 8.72(b)(2).) Rule 8.74 addresses consent to service by providing that “[t]he inclusion of a fax number or email address on any electronic document does not constitute consent to service by fax or email unless otherwise provided by law.” (Cal. R. Ct. 8.74(a)(9).)

Code of Civil Procedure section 1010.6 was amended January 1, 2019. Section 1010.6, as amended, does not allow the act of electronic filing alone to serve as consent to electronic service, although the section arguably applies only to the trial courts. (Code Civ. Proc., § 1010.6(a)(2)(A)(ii).²) Section 1010.6 requires express consent, which may be manifested through electronic means. (Ibid.)

To address the legislation’s affirmative consent requirement, the Information Technology Advisory Committee recommended amending several trial court rules, including the electronic service rule. As effective January 1, 2010, rule 2.251 requires express consent from all parties in an action to authorize electronic service, and provides that electronic service may be established in an action by serving a notice to that effect on all parties and filing the notice with the court, or by agreeing to the terms of service agreement with an Electronic Filing Service Provider (EFSP) or filing form EFS-005-CV (Consent to Electronic Service and Notice of Electronic Service Address form). (Cal. R. Ct. 2.251(b).) These revisions eliminated consent to electronic service by electronically filing any document with a trial court. (The rule had provided, “The act of electronic filing is evidence that the party agrees to accept service at the electronic service address the party has furnished to the court under rule 2.256(a)(4). This subparagraph (B) does

¹ Paragraph (2) of rule 8.78 expressly provides that a party indicates that the party agrees to accept electronic service by “[e]lectronically filing any document with the court.” As defined in Code of Civil Procedure, electronic service is service of a document on a party or other person by electronic means, including transmission or notification. (Code Civ. Proc., § 1010.6(a)(1)(A).) Electronic service is generally authorized under rule 8.78, California Rules of Court, in two circumstances: (1) if electronic service is provided for by law or court order, or (2) if the recipient agrees to accept electronic services as provided by these rules and the document is otherwise authorized to be served by mail, express mail, overnight delivery, or fax transmission.

² All statutory references in this document are to the Code of Civil Procedure.

not apply to self-represented parties; they must affirmatively consent to electronic service under subparagraph (A).” Cal. R. Ct. 2.251(b)(1)(B).)

As a result of these amendments, the appellate procedure of consent to electronic service by electronic filing may now be inconsistent with the Code of Civil Procedure. The committee’s annual agenda acknowledged the change in law by including a proposal to consider “[a]mend[ing] rules 8.72, 8.74, and 8.78 to conform to section 1010.6 of the Code of Civil Procedure, which was recently amended and provides that the act of electronic filing does not constitute consent to electronic service.” Although there is nothing that mandates conformity between the appellate rules and the trial court rules, the existing appellate rules reference the Code of Civil Procedure generally, section 1010.6 specifically, and the trial court rules (2.250–2.261). (See rules discussed below.)

The issues for the subcommittee to decide are whether to proceed with a proposal to revise the appellate rules, and if so, how to do so. There are at least three options: (1) no changes to the appellate rules, (2) revisions to the appellate rules to address express consent, or (3) minor revisions to the appellate rules to maintain the existing appellate procedures, but to clarify the difference for litigants and practitioners. Staff suggests maintaining the existing appellate rules, which require mandatory electronic filing (with limited exceptions) and presume consent to electronic service in the appellate courts, but has drafted revisions to rules 8.25, 8.72, and 8.78 for consideration. For the third option, staff has suggested language for the subcommittee to consider that might identify the difference in procedure between the trial courts and the appellate courts concerning consent to electronic service.

Option 1: No Changes—Maintain the Status Quo of Mandatory Electronic Filing and Presumed Consent to Electronic Service

By its terms, section 1010.6 arguably does not govern appellate proceedings in the Supreme Court and the Courts of Appeal, and should not be construed to conflict with the existing appellate rules (Title 8. Appellate Rules, Division 1. Rules Relating to the Supreme Court and Courts of Appeal). Section 1010.6, subdivision (a) provides: “A document may be served electronically in an action filed with the court as provided in this section, in accordance with rules adopted pursuant to subdivision (e).” (§ 1010.6, subd. (a).) The prohibition on treating the act of electronic filing as express consent is contained in subdivision (a)(2). Section 1010.6(a)(2)(A)(ii) states:

For cases filed on or after January 1, 2019, if a document may be served by mail, express mail, overnight delivery, or facsimile transmission, electronic service of the document is not authorized unless a party or other person has expressly consented to receive electronic service in that specific action or the court has ordered electronic service on a represented party or other represented person under subdivision (c) or (d). ... The act of electronic filing shall not be construed as express consent.

Although subdivision (a)'s terminology—*an action, the court, and even cases filed*—are broad enough to encompass appellate proceedings in the Supreme Court and the courts of appeal, subdivision (e)—the provision that mandates the Judicial Council's adopting rules concerning electronic service—and the remainder of section 1010.6 expressly concern only the trial courts.

Subdivision (e) directs the Judicial Council to “adopt uniform rules for electronic filing and service of documents *in the trial courts of the state*, which shall include statewide policies on vendor contracts, privacy, and access to public records, and rules relating to the integrity of electronic service.” (§ 1010.6, subd. (e) (emphasis added).) Subdivision (f) further instructs the Judicial Council to “adopt uniform rules to permit the mandatory electronic filing and service of documents *for specified civil actions in the trial courts of the state*, which shall include statewide policies on vendor contracts, privacy, access to public records, unrepresented parties, parties with fee waivers, hardships, reasonable exceptions to electronic filing, and rules relating to the integrity of electronic service.” (§ 1010.6, subd. (f) (emphasis added).) And subdivision (g) commands the Judicial Council to adopt certain rules relating to trial court's systems and contracts for electronic filing and service of documents.

Like the mandates found in subdivisions (e), (f), and (g), the other provisions of section 1010.6 are also directed to the trial courts. Subdivision (b) states: “*A trial court may* adopt local rules permitting electronic filing of documents, subject to rules adopted pursuant to subdivision (e) and the following conditions: [seven conditions omitted].” (§ 1010.6, subd. (b) (emphasis added).) Subdivision (c) permits a trial court that has adopted rules conforming to subdivision (b), to “provide by order that all parties to an action file and serve documents electronically in a class action, a consolidated action, a group of actions, a coordinated action, or an action that is deemed complex under Judicial Council rules, provided that the trial court's order does not cause undue hardship or significant prejudice to any party in the action.” (§ 1010.6, subd. (c).) Subdivision (d) provides: “*A trial court may*, by local rule, require electronic filing and service in civil actions, subject to the requirements and conditions stated in subdivision (b), the rules adopted by the Judicial Council under subdivision (f), and the following conditions: [five conditions omitted].” (§ 1010.6, subd. (d) (emphasis added).) Ultimately, there are no provisions in section 1010.6 that expressly speak to appellate filings or proceedings.

AB 976 (Stats. 2017, ch. 317) amended Code of Civil Procedure, section 1010.6. The legislative history for AB 976 confirms that the legislature's focus was exclusively trial courts.³ The initial

³ AB 976 was Judicial Council-sponsored legislation. Judicial Council of Cal., Rep. on “Judicial Council-Sponsored Legislation: Electronic Filing, Service, and Signatures” (Oct. 28, 2016), available at <https://jcc.legistar.com/View.ashx?M=F&ID=4813982&GUID=E68E83CC-D6E9-4186-9D79-71ADC80E9110>. It was intended to codify local rules from a pilot program in the Superior Court of Orange County, and maintain mandatory electronic filing and service, with an exception for self-represented litigants. *Id.* at p. 5. The express consent provision was added during the legislative amendment process; it was not part of the legislation sponsored by the Council.

discussion in the Assembly’s judiciary committee concerned the number of filings in *superior courts* and *the number of trial courts* that have adopted some form of mandatory electronic filing. (Assembly Judiciary Com. (Apr. 16, 2017).) Later analysis in the Senate characterized the bill as “[a]llow[ing] a trial court to require electronic filing and service in civil actions, subject to specified requirements and rules of court.” (Sen. Floor Analysis (Sept. 9, 2017).) And the Assembly’s comments on certain Senate amendments before final passage of the bill concerned only trial court issues. (See Assemb. Floor Analysis (Sept. 13, 2017).) At no point in any of the written bill analyses were appellate court practices considered or discussed.

Although section 1010.6 arguably does not mandate change to the appellate rules, staff notes that the appellate rules do reference the Code of Civil Procedure and section 1010.6.⁴ For example, Rule 8.25, titled “Service, filing, and filing fees,” states, “Before filing any document, a party must serve, by any method permitted by the Code of Civil Procedure, one copy of the document on the attorney for each party separately represented, on each unrepresented party, and on any other person or entity when required by statute or rule.” (Cal. R. Ct. 8.25(a).) The advisory committee comment explains: “Subdivision (a)(1) requires service ‘by any method permitted by the Code of Civil Procedure.’ The reference is to the several permissible methods of service provided in Code of Civil Procedure sections 1010–1020. Information Sheet for Proof of Service (Court of Appeal) (form APP-009-INFO) provides additional information about how to serve documents and how to provide proof of service.” (Id., advisory committee comment.) These references in rule 8.25 and its advisory committee comment are not directly in conflict with the current appellate rules, but there is arguably potential for confusion.

Because there is a strong argument that neither the plain language of Code Civ. Proc., § 1010.6, nor the legislative history of AB 976, supports applying the affirmative consent provision for trial courts in the appellate courts, staff suggests no action with respect to Title 8’s electronic service and consent rules. If the legislature intended to eliminate automatic consent in the appellate courts, the legislature could have expressly addressed appellate filings or proceedings and directed the Judicial Council to adopt implementing rules to that effect. It did not. At this time, staff suggests that the status quo does not need to change, and that no action is required with respect to the rules concerning consent to electronic service.

⁴ There are rules in other Divisions of Title 8 that reference the Code of Civil Procedure. Rules 8.104 and 8.108 regarding time to appeal and extending the time to appeal expressly cite to “any method of service permitted by the Code of Civil Procedure, including electronic service when permitted under Code of Civil Procedure section 1010.6 and rules 2.250–2.261.” These rules, though appellate, concern filing a notice of appeal in a trial court. As such, they are not at odds with the appellate electronic filing rules. Rules 8.701 and 8.711 contain filing and service rules for Review of California Environmental Quality Act Cases Under Public Resources Code Sections 21168.6.6, 21178–21189.3, and 21189.50–21189.57, and Appeals Under Code of Civil Procedure Section 1294.4 From an Order Dismissing or Denying a Petition to Compel Arbitration, respectively. These procedural rules are distinct from the appellate rules at issue in this proposal. Rules 8.817, 8.822, and 8.823, located in Division 4, are rules relating to the Superior Court Appellate Division. Because these rules govern appeals in the superior courts, these three rules are essentially appellate rules of procedure for the trial courts that are distinct from the appellate rules at issue in this proposal. Staff does not recommend any revisions to these rules.

Option 2: Revise the Appellate Rules to Provide that Registration with an EFSP Manifests Affirmative Consent

Given the aforementioned references in the appellate rules to the Code of Civil Procedure and section 1010.6, revising rules 8.25, 8.72, and 8.78 to address express consent may be warranted.

To implement some version of express consent to electronic service, Rule 8.78 would need the greatest substantive revision. The 2020 revisions to Rule 2.251(b)(1) offer a roadmap. Paragraph (A), which remains consistent with 8.78(a)(2), maintained the rule's original language for opting in to electronic service. Paragraph (B) contains entirely new language. Rule 2.251(b)(1)(B) adds two methods for manifesting affirmative consent to receive electronic service: agreeing to an EFSP's terms on the subject or filing a consent form.⁵ These are either-or options, but must accompany "serving notice of consent to all parties."

The appellate rule could implement an express-consent requirement without creating a new form. (Appellate forms are much less common than trial court forms.) The most straightforward revisions to Rule 8.78(a) would provide that registration with the court's EFSP manifests affirmative consent to receive electronic service. Proposed changes to rule 8.78(a) are highlighted below:

(a) Authorization for Express consent to receive electronic service; exceptions

- (1) A document may be electronically served under these rules:
 - (A) If electronic service is provided for by law or court order; or

⁵ As effective January 1, 2020, rule 2.251(b), titled "Electronic service by express consent," provides:

- (1) A party or other person indicates that the party or other person agrees to accept electronic service by:
 - (A) Serving a notice on all parties and other persons that the party or other person accepts electronic service and filing the notice with the court. The notice must include the electronic service address at which the party or other person agrees to accept service; or
 - (B) Manifesting affirmative consent through electronic means with the court or the court's electronic filing service provider, and concurrently providing the party's electronic service address with that consent for the purpose of receiving electronic service. A party or other person may manifest affirmative consent by serving notice of consent to all parties and other persons and either:
 - (i) Agreeing to the terms of service with an electronic filing service provider, which clearly states that agreement constitutes consent to receive electronic service; or
 - (ii) Filing Consent to Electronic Service and Notice of Electronic Service Address (form EFS-005-CV).

- (B) If the recipient agrees expressly consents to accept receive electronic services as provided by these rules and the document is otherwise authorized to be served by mail, express mail, overnight delivery, or fax transmission.

- (2) A party indicates that the party agrees to accept electronic service Express consent to electronic service is accomplished by:
 - (A) Serving a notice on all parties that the party accepts consents to receive electronic service and filing the notice with the court. The notice must include the electronic service address at which the party agrees consents to accept service receive electronic service; or
 - (B) Electronically filing any document with the court. The act of electronic filing shall be deemed to show that the party agrees to accept service at the electronic service address that the party has furnished to the court under rule 8.72(b)(2); unless the party serves a notice on all parties and files the notice with the court that the party does not accept electronic service and chooses instead to be served paper copies at an address specified in the notice. Manifesting affirmative consent through electronic means with the court's electronic filing service provider, and concurrently providing the party's electronic service address with that consent for the purpose of receiving electronic service. Registration with the court's electronic filing service provider manifests affirmative consent to receive electronic service.

In addition to rule 8.78's consent provisions, rules 8.25 and 8.72 would require modest revisions. Eliminating language that incorporates the Code of Civil Procedure's service methods from rule 8.25 is an option. With respect to Rule 8.72, which currently requires an electronic filer to furnish an email address at which the filer agrees to accept service, the rule could still require an email address for communications from the court relating to electronic filing (e.g., receipt and filing confirmations under rule 8.77). Adding a clause that addresses electronic service, if applicable (i.e., *only if* the filer has expressly consented to electronic service), might resolve the issue.

Rule 8.72(b), Responsibilities of the electronic filer, could be revised as follows:

Each electronic filer must:

- (1) * * *

- (2) Furnish one or more electronic service addresses, in the manner specified by the court, at which the electronic filer agrees to accept service receipt and filing confirmations

under rule 8.77, and, if applicable, at which the electronic filer has expressly consented to receive service; and

(3) * * *

To clarify that courts will deliver all court documents to the e-filer's email address, rule 8.72 might be drafted more broadly to include all court documents. An alternate option might be: "Furnish one or more electronic service addresses, in the manner specified by the court, at which the electronic agrees to accept delivery of court documents, and, if applicable, at which the electronic filer has expressly consented to receive service[.]"⁶

Staff notes that rule 8.74 was identified as possibly needing amendment in light of section 1010.6. Staff suggests no changes to Rule 8.74, because it only recognizes that including a fax number or email address on any electronic document is not consent to service by fax or email. That provision remains viable, regardless of whether the appellate rules require express consent to electronic service.

Option 3: State the Differences in Appellate Procedure and Trial Court Procedure re: Consent to Electronic Service in an Advisory Committee Comment or Existing Rule
Rule 8.25 (and other appellate rules) and Form APP-009-INFO, *Information Sheet for Proof of Service (Court of Appeal)*, mention the Code of Civil Procedure's service provisions. Whether the subcommittee recommends either option above (or variations on them), another possibility is to make the difference between appellate procedure and trial court procedure as it relates to consent to electronic service plain in an advisory committee comment and on the related appellate information sheet.

If the subcommittee recommends revising rule 8.78 as discussed above, advising litigants and practitioners that registration with the court's EFSP manifests affirmative consent to receive electronic service, that this method of affirmative consent is solely an appellate practice (and one not applicable to the appellate division of the superior courts), and that the appellate practice differs from the trial courts could be instructive. New language could reference the (proposed) new provisions of rule 8.78. For example, the advisory committee comment and form could state: "Notwithstanding the express consent provision for electronic service in the trial courts (Code of Civil Procedure section 1010.6(a)(2)(A)(ii)), registration with the court's electronic

⁶ Rule 8.78(g) is arguably at odds with this alternative; it states that, "The court may electronically serve any notice, order, opinion, or other document issued by the court in the same manner that parties may serve documents by electronic service."

filing service provider manifests affirmative consent to receive electronic service in the Supreme Court and the Courts of Appeal. See rule 8.78(a).”

If the subcommittee recommends no substantive changes, the advisory comment to rule 8.25 and/or appellate form might state something similar to the following: “Unless otherwise provided by law, the express consent to electronic service provision in Code of Civil Procedure section 1010.6(a)(2)(A)(ii) does not apply to any filing in the Supreme Court or the Courts of Appeal.”

Rules Subcommittee Task

The subcommittee’s task is to analyze section 1010.6 and staff’s recommendations concerning consent to electronic service, and:

- Recommend to the full committee no changes to the appellate rules at this time;
- Recommend to the full committee revisions to rules 8.25, 8.72, and/or 8.78, implementing express consent to electronic service;
- Recommend to the full committee revisions to rule 8.25’s advisory committee comment and Form APP-009-INFO; and/or
- Ask staff or committee members for further information/analysis.

Attachment and Links

1. California Rules of Court, rules 8.25, 8.72, and 8.78, at pages 10–15
2. *Information Sheet for Proof of Service (Court of Appeal)*, Form APP-009-INFO, at pages 16–18
3. Link A: Code of Civil Procedure section 1010.6,
http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP§ionNum=1010.6
4. Link B: AB 976 Bill Analysis,
https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201720180AB976
5. Link C: California Rules of Court, rule 8.74,
https://www.courts.ca.gov/cms/rules/index.cfm?title=eight&linkid=rule8_74
6. Link D: California Rules of Court, rule 8.77,
https://www.courts.ca.gov/cms/rules/index.cfm?title=eight&linkid=rule8_77
6. Link E: California Rules of Court, rule 2.251,
https://www.courts.ca.gov/cms/rules/index.cfm?title=two&linkid=rule2_251

Rules 8.25, 8.72, and 8.78 of the California Rules of Court would be amended, effective January 1, 2021, to read:

Rule 8.25. Service, filing, and filing fees

(a) Service

- (1) Before filing any document, a party must serve, ~~by any method permitted by the Code of Civil Procedure,~~ one copy of the document on the attorney for each party separately represented, on each unrepresented party, and on any other person or entity when required by statute or rule.
- (2) The party must attach to the document presented for filing a proof of service showing service on each person or entity required to be served under (1). The proof must name each party represented by each attorney served.

(b)–(c) * * * [Filing & Filing fees, respectively]

Advisory Committee Comment

Subdivision (a). ~~Subdivision (a)(1) requires service “by any method permitted by the Code of Civil Procedure.” The reference is to the several permissible methods of service provided in~~ Code of Civil Procedure sections 1010–1020 ~~describe permissible methods of service.~~ *Information Sheet for Proof of Service (Court of Appeal)* (form APP-009-INFO) provides additional information about how to serve documents and how to provide proof of service. ~~[Note: Consider whether to specifically reference the Code of Civil Procedure section 1010.6 language regarding express consent and/or related language in rule 8.78. Consider whether to add similar information to Information Sheet, APP-009-INFO.]~~

Subdivision (b). In general, to be filed on time, a document must be received by the clerk before the time for filing that document expires. There are, however, some limited exceptions to this general rule. For example, (5) provides that if the clerk receives a document by mail from a custodial institution after the deadline for filing the document has expired but the envelope shows that the document was mailed or delivered to custodial officials for mailing before the deadline expired, the document is deemed timely. This provision applies to notices of appeal as well as to other documents mailed from a custodial institution and reflects the “prison-delivery” exception articulated by the California Supreme Court in *In re Jordan* (1992) 4 Cal.4th 116 and *Silverbrand v. County of Los Angeles* (2009) 46 Cal.4th 106.

Note that if a deadline runs from the date of filing, it runs from the date that the document is actually received and deemed filed under (b)(1); neither (b)(3) nor (b)(5) changes that date. Nor do these provisions extend the date of finality of an appellate opinion or any other deadline that is based on finality, such as the deadline for the court to modify its opinion or order rehearing. Subdivision (b)(5) is also not intended to limit a criminal defendant’s appeal rights under the case law of constructive filing. (See, e.g., *In re Benoit* (1973) 10 Cal.3d 72.)

Rules 8.25, 8.72, and 8.78 of the California Rules of Court would be amended, effective January 1, 2021, to read:

Subdivision (b)(3). This rule includes applications to file amicus curiae briefs because, under rules 8.200(c)(4) and 8.520(f)(5), a proposed amicus curiae brief must accompany the application to file the brief.

Subdivision (c). Government Code section 68926 establishes fees in civil cases for filing a notice of appeal, filing a petition for a writ within the original civil jurisdiction of the Supreme Court or a Court of Appeal, and for a party other than appellant or petitioner filing its first document in such an appeal or writ proceeding in the Supreme Court or a Court of Appeal. Government Code section 68927 establishes fees for filing a petition for review in a civil case in the Supreme Court and for a party other than the petitioner filing its first document in a civil case in the Supreme Court. These statutes provide that fees may not be charged in appeals from, petitions for writs involving, or petitions for review from decisions in juvenile cases or proceedings to declare a minor free from parental custody or control, or proceedings under the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code).

Subdivision (c)(2)(A) and (D). Under rule 8.100(f), “notice of appeal” includes a notice of a cross-appeal and a respondent who files a notice of cross-appeal in a civil appeal is considered an appellant and is required to pay the fee for filing a notice of appeal under Government Code section 68926.

A person who files an application to file an amicus brief is not a “party” and therefore is not subject to the fees applicable to a party other than the appellant or petitioner.

Subdivision (c)(3). Rule 8.100 establishes the procedures applicable when an appellant in a civil appeal fails to pay the fee for filing a notice of appeal or the deposit for the clerk’s transcript that must also be paid at that time.

Rule 8.72. Responsibilities of court and electronic filer

(a) Responsibilities of court

- (1) The court will publish, in both electronic form and print form, the court’s electronic filing requirements.
- (2) If the court is aware of a problem that impedes or precludes electronic filing, it must promptly take reasonable steps to provide notice of the problem.

(Subd (a) amended effective January 1, 2020; previously amended effective January 1, 2017.)

(b) Responsibilities of electronic filer

Each electronic filer must:

Rules 8.25, 8.72, and 8.78 of the California Rules of Court would be amended, effective January 1, 2021, to read:

- (1) Take all reasonable steps to ensure that the filing does not contain computer code, including viruses, that might be harmful to the court's electronic filing system and to other users of that system;
- (2) Furnish one or more electronic service addresses, in the manner specified by the court, at which the electronic filer agrees to accept service receipt and filing confirmations under rule 8.77, and, if applicable, at which the electronic filer has expressly consented to receive service; and
- (3) Immediately provide the court and all parties with any change to the electronic filer's electronic service address.

Advisory Committee Comment

Subdivision (b)(1). One example of a reasonable step an electronic filer may take is to use a commercial virus scanning program. Compliance with this subdivision requires more than an absence of intent to harm the court's electronic filing system or other users' systems.

Rule 8.78. Electronic service

(a) Authorization for Express consent to receive electronic service; exceptions

- (1) A document may be electronically served under these rules:
 - (A) If electronic service is provided for by law or court order; or
 - (B) If the recipient agrees expressly consents to accept receive electronic services as provided by these rules and the document is otherwise authorized to be served by mail, express mail, overnight delivery, or fax transmission.
- (2) A party indicates that the party agrees to accept electronic service Express consent to electronic service is accomplished by:
 - (A) Serving a notice on all parties that the party accepts consents to receive electronic service and filing the notice with the court. The notice must include the electronic service address at which the party accepts consents to accept service receive electronic service; or
 - (B) Electronically filing any document with the court. The act of electronic filing shall be deemed to show that the party agrees to accept service at the electronic service address that the party has furnished to the court under rule 8.72(b)(2); unless the party serves a notice on all parties and files the notice with the court

Rules 8.25, 8.72, and 8.78 of the California Rules of Court would be amended, effective January 1, 2021, to read:

~~that the party does not accept electronic service and chooses instead to be served paper copies at an address specified in the notice. Manifesting affirmative consent through electronic means with the court's electronic filing service provider, and concurrently providing the party's electronic service address with that consent for the purpose of receiving electronic service. Registration with the court's electronic filing service provider manifests affirmative consent to receive electronic service.~~

- (3) A document may be electronically served on a nonparty if the nonparty consents to electronic service or electronic service is otherwise provided for by law or court order. All provisions of this rule that apply or relate to a party also apply to any nonparty who has agreed to or is otherwise required by law or court order to accept electronic service or to electronically serve documents.

(b) Maintenance of electronic service lists

When the court orders or permits electronic service in a case, it must maintain and make available electronically to the parties an electronic service list that contains the parties' current electronic service addresses as provided by the parties that have been ordered to or have consented to electronic service in the case.

(c) Service by the parties

Notwithstanding (b), parties are responsible for electronic service on all other parties in the case. A party may serve documents electronically directly, by an agent, or through a designated electronic filing service provider.

(d) Change of electronic service address

- (1) A party whose electronic service address changes while the appeal or original proceeding is pending must promptly file a notice of change of address electronically with the court and must serve this notice electronically on all other parties.
- (2) A party's election to contract with an electronic filing service provider to electronically file and serve documents or to receive electronic service of documents on the party's behalf does not relieve the party of its duties under (1).

(e) Reliability and integrity of documents served by electronic notification

A party that serves a document by means of electronic notification must:

Rules 8.25, 8.72, and 8.78 of the California Rules of Court would be amended, effective January 1, 2021, to read:

- (1) Ensure that the documents served can be viewed and downloaded using the hyperlink provided;
- (2) Preserve the document served without any change, alteration, or modification from the time the document is posted until the time the hyperlink is terminated; and
- (3) Maintain the hyperlink until the case is final.

(f) Proof of service

- (1) Proof of electronic service may be by any of the methods provided in Code of Civil Procedure section 1013a, with the following exceptions:
 - (A) The proof of electronic service does not need to state that the person making the service is not a party to the case.
 - (B) The proof of electronic service must state:
 - (i) The electronic service address of the person making the service, in addition to that person's residence or business address;
 - (ii) The date of the electronic service, instead of the date and place of deposit in the mail;
 - (iii) The name and electronic service address of the person served, in place of that person's name and address as shown on the envelope; and
 - (iv) That the document was served electronically, in place of the statement that the envelope was sealed and deposited in the mail with postage fully prepaid.
- (2) Proof of electronic service may be in electronic form and may be filed electronically with the court.
- (3) The party filing the proof of electronic service must maintain the printed form of the document bearing the declarant's original signature and must make the document available for inspection and copying on the request of the court or any party to the action or proceeding in which it is filed, in the manner provided in rule 8.75.

(g) Electronic service by or on court

Rules 8.25, 8.72, and 8.78 of the California Rules of Court would be amended, effective January 1, 2021, to read:

- (1) The court may electronically serve any notice, order, opinion, or other document issued by the court in the same manner that parties may serve documents by electronic service.
- (2) A document may be electronically served on a court if the court consents to electronic service or electronic service is otherwise provided for by law or court order. A court indicates that it agrees to accept electronic service by:
 - (A) Serving a notice on all parties that the court accepts electronic service. The notice must include the electronic service address at which the court agrees to accept service; or
 - (B) Adopting a local rule stating that the court accepts electronic service. The rule must indicate where to obtain the electronic service address at which the court agrees to accept service.

INFORMATION SHEET FOR PROOF OF SERVICE (COURT OF APPEAL)

GENERAL INFORMATION ABOUT SERVICE AND PROOF OF SERVICE

This information sheet provides instructions for completing *Proof of Service (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E). This information sheet is not part of the proof of service and does not need to be copied, served, or filed.

Rule 8.25 of the California Rules of Court provides that before filing any document in court in a case in the Court of Appeal, a party must serve, by any method permitted by the Code of Civil Procedure, one copy of the document on the attorney for each party separately represented, on each unrepresented party, and on any other person or entity when required by statute or rule. Other rules specifically require that certain documents be served, including the notice of appeal and notice designating the record on appeal in civil appeals and briefs in both civil and criminal appeals.

To “serve” a document on a person means to have that document delivered to the person. The general requirements concerning service are set out in Code of Civil Procedure sections 1010.6–1013a. There are three main ways to serve documents: (1) by mail, (2) by personal delivery, or (3) by electronic service. Regardless of what method of service is used, the Code of Civil Procedure provides that a document in a court case can only be served by a person who is over 18 years of age. Service by mail or personal delivery must be by someone who is not a party in the case; electronic service may be performed directly by a party. Electronic service may be by electronic transmission, transmitting a document to the electronic service address of a person, or by electronic notification, sending a message to the electronic service address specifying the exact name of the document served and providing a hyperlink at which the served document may be viewed and downloaded.

If you are a party to the case and wish to serve documents by mail or personal delivery, you must therefore have someone else who is over 18 and who is not a party to the case serve any documents in your case. You will need to give the person doing the serving (the server) the names and addresses of all those who must be served. You will also need to give the server one copy of each document that needs to be served for each person or entity that is being served.

If you are serving documents electronically, you can do this yourself or have another person over 18 do it for you. The person doing the serving (the server) will need the names and electronic service addresses of all those who must be served, and the document to be served in a form that allows it to be electronically transmitted or made available by hyperlink.

Rule 8.25 also requires the party filing a document in the court to attach to the document presented for filing a proof of service showing the required service. *Proof of Service (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E) may be used to provide this required proof of service in any proceeding in the Court of Appeal. The server should follow the instructions below for completing the *Proof of Service (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E). If another person is serving the documents for you—as is required if the document will be served by mail or personal delivery—tell the server to give you the original form when it is completed. You will need to attach this original proof of service to the document you are filing.

INSTRUCTIONS FOR THE SERVER (THE PERSON WHO IS SERVING THE DOCUMENTS) IF SERVING BY MAIL OR PERSONAL DELIVERY

If you are serving a document for a party in a court case, it is your responsibility to prepare the proof of service. You can use *Proof of Service (Court of Appeal)* (form APP-009) to prepare this proof of service in any case in the Court of Appeal. The proof of service should be printed or typed. If you have Internet access, a fillable version of form APP-009 is available at www.courts.ca.gov/forms. You can fill out most of the form before you serve the document, but you should sign and date the form only after you have finished serving the document.

Complete the top section of *Proof of Service (Court of Appeal)* (form APP-009) as follows:

1. *First box, left side:* Check whether the document is being served by mail or by personal delivery.
2. *Third box, left side:* Print the name of the case in which the document is being filed, the Court of Appeal case number, and the superior court case number. Use the same case name and numbers as are on the top of the document that you are serving.
3. *Box, top of form, right side:* Leave this box blank for the court's use.

Complete items 1–3 as follows:

1. You are stating that you are over the age of 18 and that you are not a party to this action.
2. Check one of the boxes and provide your home or business address.

3. Fill in the name of the document that you are serving.
- a. If you are serving the document by mail, check box a. and BEFORE YOU SEAL AND MAIL THE ENVELOPE, fill in the following information:
- (1) Check box (1)(a) if you will personally deposit the document with the U.S. Postal Service such as at a U.S. Postal Service Office or U.S. Postal Service mailbox; Check box (1)(b) if you will put the document in the mail at your place of business.
 - (2) Provide the date the documents are being mailed.
 - (3) Provide the name and address of each person to whom you are mailing the document. If you need more space to list additional names and addresses, check the box after item (3)(c) and attach a page listing them. At the top of the page, write "APP-009, Item 3a."
 - (4) You are stating that you live or work in the county in which the document is being mailed. Provide the city and state from which the document is being mailed.

Once you have finished filling out these parts of the form, make one copy of *Proof of Service (Court of Appeal)* (form APP-009) with this information filled in for each person you are serving by mail and put this copy in the envelope with the document you are serving. Seal the envelope and mail the document as you have indicated on the proof of service.

- b. If you personally delivered the document, check box 3b. For a party represented by an attorney, delivery needs to be made by giving the document directly to the party's attorney or by leaving the document in an envelope or package clearly labeled to identify the attorney being served with a receptionist at the attorney's office or an individual in charge of the office. For a party who is not represented by an attorney, delivery needs to be made by giving the document directly to the party or by leaving the document at the party's residence with some person not less than 18 years of age between the hours of eight in the morning and six in the evening. Under b, for each person to whom you delivered the document, you need to provide:
- (1) The name of the person;
 - (2) The address at which you delivered the document;
 - (3) The date on which you delivered the document; and
 - (4) The time at which you delivered the document.

If you need more space to list additional names, addresses, and delivery dates and times, check the box under item 3b and attach a page listing this information. At the top of the page, write "APP-009, Item 3b."

At the bottom of the form, print your name, sign the form, and fill in the date on which you signed the form. **By signing, you are stating under penalty of perjury that all the information you have provided on *Proof of Service (Court of Appeal)* is true and correct.**

Give the original completed *Proof of Service* to the party for whom you served the document.

INSTRUCTIONS FOR THE SERVER (THE PERSON WHO IS SERVING THE DOCUMENTS) IF SERVING ELECTRONICALLY

If you are serving a document for a party in a court case, it is your responsibility to prepare the proof of service. If you are serving a document electronically, you can use *Proof of Electronic Service (Court of Appeal)* (form APP-009E) to prepare this proof of service in any case in the Court of Appeal. The proof of service should be printed or typed. A fillable version of form APP-009E is available at www.courts.ca.gov/forms. You can fill out most of the form before you serve the document, but you should sign and date the form only after you have finished serving the document.

Complete the top section of *Proof of Electronic Service (Court of Appeal)* (form APP-009E) as follows:

1. *Third box, left side:* Print the name of the case in which the document is being filed, the Court of Appeal case number, and the superior court case number. Use the same case name and numbers as are on the top of the document that you are serving.
2. *Box, top of form, right side:* Leave this box blank for the court's use.

Complete items 1–4 as follows:

1. You are stating that you are over the age of 18.
2. a. Check one of the boxes and provide your home or business address.
- b. Provide your electronic service address. This is the address at which you have agreed to accept electronic service.

Continued on the reverse

- 3. Fill in the names of the documents that you are serving.
- 4. Fill in the information for the person to whom you are sending the document. If you are serving more than one person, check the box after item (4)(c) and attach a page listing the persons served, with the electronic service address and date and time of service for each person served. At the top of the page, write "APP-009E, Item 4."
 - a. Provide the name of the person being served. If the person being served is an attorney, also fill in the name or names of the parties represented.
 - b. Provide the electronic service address of the person to whom you are sending the document.
 - c. Provide the date on which you transmitted the document.

After you have filled in the information in items 1–4, create an electronic copy of the *Proof of Electronic Service (Court of Appeal)* (form APP-009E). Transmit the filled-in form with the document you are serving to each person served.

At the bottom of the form, print your name, sign the form, and fill in the date on which you signed the form. **By signing, you are stating under penalty of perjury that all the information you have provided on *Proof of Electronic Service (Court of Appeal)* is true and correct.**

If you are not the party for whom the documents are served, give the original completed Proof of Service to the party for whom you served the document.

JUDICIAL COUNCIL OF CALIFORNIA

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

www.courts.ca.gov/policyadmin-invitationstocomment.htm

INVITATION TO COMMENT

SPR20-[# as assigned]

Title

Appellate Procedure: Date and Time of Filing for Electronically Submitted Documents

Action Requested

Review and submit comments by June 9, 2020

Proposed Rules, Forms, Standards, or Statutes

Amend Cal. Rules of Court, rule 8.77

Proposed Effective Date

January 1, 2021

Proposed by

Appellate Advisory Committee
Hon. Louis R. Mauro, Chair

Contact

Eric Long, Attorney
415-865-7691
eric.long@jud.ca.gov

Executive Summary and Origin

The Appellate Advisory Committee proposes amending the rule regarding confirmation of receipt and filing of electronically submitted documents to clarify the date and time of filing. Among other things, California Rules of Court, rule 8.77 currently addresses the receipt date of submissions received after the close of business but is silent as to when a received document is deemed filed. The committee proposes amending rule 8.77 to state that an electronic document that complies with filing requirements is deemed filed on the date and time it was received by the court. Such an amendment would be consistent with California Rules of Court, rule 1.20, which states: “Unless otherwise provided, a document is deemed filed on the date it is received by the court clerk.” This proposal is based on a suggestion from the California Lawyers Association, Committee on Appellate Courts, Litigation Section.

Background

Electronic filing allows for submission of documents at any time, even after a clerk’s office is closed. Regardless of the date and time a document is submitted and received, however, the clerk’s office needs time to confirm that the document complies with filing requirements. Such review by the clerk’s office must be prompt, but it is not instantaneous for an electronically submitted document. Moreover, when a document is submitted after court business hours, the document will not be reviewed by the clerk’s office before the next business day.

Under rule 8.77(a)(1), an electronically submitted document is initially “received” by the court, and a confirmation of receipt is generated. Rule 8.77(c) instructs that if a document is received

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

after 11:59 p.m., it is considered received on the next court day.¹ Then, once a court clerk confirms that the document complies with filing requirements, a confirmation of “filing” indicating the date and time of filing is generated under rule 8.77(a)(2). However, rule 8.77 does not specify when the document is deemed filed.²

It has been reported that appellate courts are determining the date and time of filing in different ways. Some courts deem compliant documents filed on the day they were received, but other courts deem them filed on the day the clerk approves the document for filing.

A practitioner reported electronically submitting a writ petition for filing in an appellate district on Day 1 at 5:30 p.m. A court clerk reviewed the materials on Day 2 and determined that the filing requirements had been satisfied. The clerk filed the document on Day 2 even though it was received by the court on Day 1. If the litigant’s writ petition had been due on Day 1, it would have been untimely.

The Proposal

This proposal would clarify that the date and time of filing is the date and time a compliant document is received by the court.

The committee also proposes revising the title of rule 8.77 to reflect electronic submission and to encompass date and time of filing.

The proposal would alleviate concerns of litigants and practitioners that their submissions may be deemed untimely. The proposal is of particular importance when an appellate due date is jurisdictional (e.g., a statutory writ). A uniform time-of-filing provision will assist with the consistent handling of electronically submitted documents.

Alternatives Considered

The committee considered no action but determined that the experience of litigants and practitioners warrants action.

A submission from an electronic filer reaches the court through an electronic filing service provider (EFSP). Although the court generally receives a submission almost instantaneously, the committee recognizes the possibility that transmission delays could occur. For example, it is possible an electronic filer might submit a document before midnight, but the court might not

¹ “A document that is received electronically by the court after 11:59 p.m. is deemed to have been received on the next court day.” (Cal. Rules of Court, rule 8.77(c).)

² Some California appellate courts also address this topic by local rule. The local rules for the First and Fifth Appellate Districts state: “Filing documents electronically does not alter any filing deadlines. In order to be timely filed on the day they are due, all electronic transmissions of documents must be completed (i.e., received completely by the Clerk of the Court) prior to midnight.” (Ct. App., First Dist. and Fifth Dist., Local Rules, rules 16(f) and 8(g), respectively, Electronic Filing.) Additionally, the Third Appellate District provides: “Electronic filing does not alter any filing deadlines. An electronic filing not completely received by the court by 11:59 p.m. will be deemed to have been received on the next court day.” (Ct. App., Third Dist., Local Rules, rule 5(j), Electronic Filing.) The local rules for the Second, Fourth, and Sixth Districts do not address the topic.

receive the document until after midnight due to a transmission delay between the EFSP and the court. Given such a possibility, the committee considered two alternatives to using the date and time of receipt as the date and time of filing: (1) using the date and time of submission to the EFSP as the date and time of filing, or (2) imposing an after-hours deadline (such as 11:45 p.m.) for submission of documents to an EFSP to make it more likely a court will receive a submission before midnight. The committee seeks comments on these alternatives.

Fiscal and Operational Impacts

The committee anticipates no significant fiscal or operational impacts and no costs of implementation other than informing courts and litigants of the new rule amendments.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?
- The proposed rule uses the court's receipt date and time as the date and time of filing because transmission from the electronic filing service provider (EFSP) to the court is generally instantaneous. Would it be more appropriate, however, to use the date and time of submission to the EFSP as the date and time of filing? Or would another alternative prove more workable? If an alternative is appropriate, describe the alternative and explain why it would be preferable to the instant proposal.
- Can you document one or more transmission delays between (1) the date and time of submission to an EFSP, and (2) the date and time of receipt by a court? If so, would an after-hours submission deadline adequately address such a transmission delay, and if so, what should the deadline be?

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

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

Attachments and Links

1. Cal. Rules of Court, rule 8.77, at p. 4

Rule 8.77 of the California Rules of Court would be amended, effective January 1, 2021, to read:

1 **Title 8. Appellate Rules**

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

4
5 **Chapter 1. General Provisions**

6 **Rule 8.77. Actions by court on receipt of ~~electronic filing~~ electronically submitted**
7 **document; date and time of filing**

8
9 **(a) Confirmation of receipt and filing of document**

10
11 (1) *Confirmation of receipt*

12
13 When the court receives an electronically submitted document, the court must
14 arrange to promptly send the electronic filer confirmation of the court's receipt of the
15 document, indicating the date and time of receipt. A document is considered received
16 at the date and time the confirmation of receipt is created.

17
18 (2) *Confirmation of filing*

19
20 If the document received by the court under (1) complies with filing requirements,
21 the document is deemed filed on the date and time it was received by the court, as
22 indicated on the confirmation of receipt in (1). † The court must arrange to promptly
23 send the electronic filer confirmation that the document has been filed. The filing
24 confirmation must indicate the date and time of filing. ~~and~~ The filing confirmation is
25 proof that the document was filed on the date and at the time specified. The filing
26 confirmation must also specify:

27
28 (A) Any transaction number associated with the filing; and

29
30 (B) The titles of the documents as filed by the court.

31
32 (3)–(4) * * *

33
34 **(b)–(e) * * ***



JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue • San Francisco, California 94102-3688
Telephone 415-865-4200 • Fax 415-865-4205 • TDD 415-865-4272

MEMORANDUM

Date

January 29, 2020

Action Requested

Please review before subcommittee meeting
on February 3, 2020

To

Members of the Rules Subcommittee of the
Appellate Advisory Committee

Deadline

February 3, 2020

From

Christy Simons
Attorney, Legal Services

Contact

Christy Simons
Legal Services
415-865-7694 phone
christy.simons@jud.ca.gov

Subject

Proposal re Record Retention in Criminal
Appeals

Introduction

Item 6 on the Appellate Advisory Committee's annual agenda is to consider amending rule 10.1028 to extend the time for keeping reporters' transcripts in criminal appeals and to consider mandating a digital copy. This is a priority 1(e) project with a completion date of January 1, 2021. In addition, based on recent amendments to Code of Civil Procedure section 271, subdivision (a), a provision in rule 10.1028 permitting the court to keep an electronic copy in lieu of an original paper reporter's transcript should be revised. Attached for your review are a draft invitation to comment and amended rule that would conform the rule to section 271, subdivision (a) and extend from 20 years to 50 years the time the Court of Appeal must keep an original reporter's transcript in certain cases affirming felony convictions.

The Proposal

The project description on the annual agenda includes considering whether to require a digital copy of the reporter's transcript. This suggestion dates back several years to before section 271(a) was amended. At this point, the statute provides that the default format for an original reporter's transcript is electronic; paper is permitted under specific exceptions. The proposed amendments to the rule contain the expectation that most reporters' transcripts will be in electronic format but also allow the court to retain a true and correct electronic copy instead of the original if the original is in paper. Requiring a digital copy is not consistent with the statute and not necessary if courts can keep a true and correct electronic copy instead of paper.

The suggestions to increase the length of time the Court of Appeal must keep a reporter's transcript in cases affirming a criminal conviction did not include specifics regarding which case types (if not all criminal convictions) should be included in a longer retention period or any specific length of time. The suggestions were clearly aimed, however, at serious felonies and long prison sentences. Thus, the draft rule includes two possibilities as a starting point for discussion:

- (1) Extend to 50 years the retention period in all felony convictions that are affirmed; or
- (2) Extend to 50 years the retention period in capital felony cases in which the defendant is sentenced to death and any felony convictions resulting in a sentence of life or life without the possibility of parole that are affirmed.

As a starting point for drafting the invitation to comment, staff referred to Government Code section 68150, which is referenced in rule 10.1028. Subdivision (b) of this section, which is part of the chapter governing management of trial court records, states that this section does not apply to court reporter's transcripts and that reporter's transcripts are governed by the rules of court. Section 68152 sets forth the amount of time records in various case types must be kept. Subdivision (c) addresses criminal actions and proceedings, including separate provisions for (1) capital felonies in which the defendant is sentenced to death and felonies resulting in a sentence of life or life without the possibility of parole; and (2) felony; (3) felony reduced to a misdemeanor; etc.

Subcommittee Task

The subcommittee should review the materials and consider the options for language extending the time to keep a reporter's transcript—length of time and types of cases.

The subcommittee may:

1. Recommend to the advisory committee that the invitation to comment be approved for circulation as presented or as modified;
2. Recommend that the proposal not move forward; or
3. Request that staff or subcommittee members gather more information or research.

Attachments

1. Invitation to Comment
2. Rule 10.1028
3. Link to Code of Civil Procedure section 271:
http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP§ionNum=271.
4. Link to Government Code section 68152:
http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV§ionNum=68152.

JUDICIAL COUNCIL OF CALIFORNIA

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

www.courts.ca.gov/policyadmin-invitationstocomment.htm

INVITATION TO COMMENT

SPR20-[# as assigned]

Title

Court Records: Time for Court of Appeal to Retain Reporters' Transcripts in Certain Cases Affirming a Felony Conviction

Action Requested

Review and submit comments by June 9, 2020

Proposed Effective Date

January 1, 2021

Proposed Rules, Forms, Standards, or Statutes

Amend Cal. Rules of Court, rule 10.1028

Contact

Christy Simons, Attorney
415-865-7694
christy.simons@jud.ca.gov

Proposed by

Appellate Advisory Committee
Hon. Louis R. Mauro, Chair

Executive Summary and Origin

To conform to a recent statutory change and to better align the length of time reporters' transcripts must be kept with the length of time they may be needed, the Appellate Advisory Committee proposes amending the rule regarding preservation and destruction of Court of Appeal records. Based on recent amendments to Code of Civil Procedure section 271, subdivision (a), a provision in rule 10.1028 permitting the court to keep an electronic copy in lieu of an original paper reporter's transcript should be revised. This proposal would also extend the time the court must keep the original reporter's transcript in certain criminal cases from 20 years to 50 years. The rule's current requirement to keep the reporter's transcript for 20 years in any case affirming a criminal conviction is not long enough to account for longer sentences imposed in the most serious felony cases. This proposal originated with suggestions from a clerk/executive officer of a Court of Appeal and an attorney at the Supreme Court.

The Proposal

Former Code of Civil Procedure section 271 authorized courts and parties to receive, on request, copies of reporters' transcripts in "computer-readable form." Subdivision (a) of the statute required that "an original transcript shall be on paper." Legislation repealing and replacing section 271 took effect January 1, 2018. Among other changes, new section 271 requires that the reporter's transcript be delivered in electronic form unless any of the specified exceptions apply. The exceptions allow for original paper transcripts in certain circumstances. New section 271,

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

subdivision (d) now provides that an electronic transcript is deemed to be an original for all purposes unless an original paper transcript is delivered under any of the specified exceptions.

Also effective January 1, 2018, rule 10.1028 was amended based on former section 271 to allow the Court of Appeal to keep an electronic copy of the reporter's transcript in lieu of the original on paper. In light of the amendments to the statute, which now provides that the default format for an original reporter's transcript is electronic, the language that was added to rule 10.1028(d) and an advisory committee comment explaining the added language should be modified. The proposed amendments to subdivision (d) and the advisory committee comment include language allowing the court to keep a true and correct electronic copy of a reporter's transcript if the original is in paper.

Rule 10.1028(d) governs the time the Court of Appeal is required to keep records. Under subdivision (c), the court must permanently keep the court's minutes and a register of appeals and original proceedings. Under subdivision (d), all other records, with one exception, may be destroyed 10 years after the decision becomes final. The exception is for original reporters' transcripts in cases affirming a criminal conviction; these must be kept for 20 years after the decision becomes final. This retention time has not changed since the adoption of a predecessor version of the rule in 1975. (See former rule 55, adopted effective July 1, 1975; renumbered as rule 70 effective January 1, 2005.)

The individuals who suggested amending this rule noted that sentences for the most serious felony convictions often exceed 20 years, and it is not unusual for the actual time served under these sentences to exceed 20 years. Capital appeals routinely take longer than 20 years, and certain writ proceedings may be filed at any time during service of a prison sentence.

Accordingly, the committee proposes adding a provision to rule 10.1028(d) to extend the time for keeping the original reporter's transcript in specified criminal cases. New paragraph (d)(3) would state: "In a capital felony case in which the defendant is sentenced to death and any felony resulting in a sentence of life or life without the possibility of parole in which the court affirms a judgment of conviction, the clerk/executive officer must keep the original reporter's transcript or, if the original is in paper, a true and correct electronic copy, for 50 years after the decision becomes final."

This proposal is both required to conform to statute and responsive to an identified concern. It would improve access to justice by ensuring that the original reporter's transcript is available during the time it may be needed by an individual whose conviction is affirmed and whose sentence is described in the amendment.

Alternatives Considered

The committee considered taking no action, but rejected this option because the rule is not completely consistent with statute and because the rule that a reporter's transcript in any case affirming a criminal conviction need only be kept for 20 years is inadequate.

The committee also considered amending the rule to extend the time for keeping the reporter's transcript in *all* cases affirming felony convictions. The committee rejected this option because it is too broad and would result needlessly in a vast increase in the number of reporters' transcripts courts would have to retain.

The committee considered other amendments, including whether any reporters' transcripts should be retained permanently and whether the rule should provide that the reporter's transcript must be kept for a certain number of years or for a certain number of years (such as 10) following the death of the defendant. The committee rejected these options as adding needless complexity to a rule that is simple and straightforward and with which it is easy for the courts to comply, but welcomes comments on these and other options.

Fiscal and Operational Impacts

This proposal would require the District Courts of Appeal to change their record retention policies and procedures with respect to reporters' transcripts in the identified cases. Education and training of staff would also be required. Despite the implementation requirements, the committee believes that the benefit of the proposal—making certain reporters' transcripts available to defendants for a more realistic amount of time within which they may be needed, and thereby improving access to justice—outweighs its potential cost to the courts.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?
- Should reporters' transcripts in any type of case be retained permanently?
- Should any other provisions regarding retention of an original reporter's transcript be considered?

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

- Would the proposal provide cost savings? If so, please quantify.
- What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?
- Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Cal. Rules of Court, rule 10.1028

1 **Title 10. Judicial Administration Rules**

2
3 **Division 5. Appellate Court Administration**

4
5 **Chapter 1. Rules Relating to the Supreme Court and Courts of Appeal**

6
7
8 **Rule 10.1028. Preservation and destruction of Court of Appeal records**

9
10 **(a) Form or forms in which records may be preserved**

- 11
12 (1) Court of Appeal records may be created, maintained, and preserved in any
13 form or forms of communication or representation, including paper or
14 optical, electronic, magnetic, micrographic, or photographic media or other
15 technology, if the form or forms of representation or communication satisfy
16 the standards or guidelines for the creation, maintenance, reproduction, and
17 preservation of court records established under rule 10.854.
18
19 (2) If records are preserved in a medium other than paper, the following
20 provisions of Government Code section 68150 apply: subdivisions (c)–(l),
21 excluding subdivision (i)(1).
22

23 **(b) Methods for signing, subscribing, or verifying documents**

24
25 Any notice, order, ruling, decision, opinion, memorandum, certificate of service, or
26 similar document issued by an appellate court or by a judicial officer of an
27 appellate court may be signed, subscribed, or verified using a computer or other
28 technology in accordance with procedures, standards, and guidelines established by
29 the Judicial Council. Notwithstanding any other provision of law, all notices,
30 orders, rulings, decisions, opinions, memoranda, certificates of service, or similar
31 documents that are signed, subscribed, or verified by computer or other
32 technological means under this subdivision shall have the same validity, and the
33 same legal force and effect, as paper documents signed, subscribed, or verified by
34 an appellate court or a judicial officer of the court.
35

36 **(c) Permanent records**

37
38 The clerk/executive officer of the Court of Appeal must permanently keep the court's
39 minutes and a register of appeals and original proceedings.
40

41 **(d) Time to keep other records**

42

- 1 (1) Except as provided in (2), the clerk/executive officer may destroy all other
2 records in a case 10 years after the decision becomes final, as ordered by the
3 administrative presiding justice or, in a court with only one division, by the
4 presiding justice.
5
- 6 (2) Except as provided in (3), in a criminal case in which the court affirms a
7 judgment of conviction, the clerk/executive officer must keep the original
8 reporter's transcript or, if the original is in paper, either the original or a true
9 and correct electronic copy, for 20 years after the decision becomes final.
10
- 11 (3) In a felony case in which the court affirms a judgment of conviction, the
12 clerk/executive officer must keep the original reporter's transcript or, if the
13 original is in paper, a true and correct electronic copy, for 50 years after the
14 decision becomes final. OR: In a capital felony case in which the defendant
15 is sentenced to death and any felony resulting in a sentence of life or life
16 without the possibility of parole in which the court affirms a judgment of
17 conviction, the clerk/executive officer must keep the original reporter's
18 transcript or, if the original is in paper, either the original or a true and correct
19 electronic copy, for 50 years after the decision becomes final.
20

21 Advisory Committee Comment

22

23 **Subdivision (d).** Subdivision (d) permits the Court of Appeal to keep an electronic copy of the
24 reporter's transcript in lieu of keeping the original if the original transcript is in paper. Although
25 subdivision (a) allows the Court of Appeal to maintain its records in any format that satisfies the
26 otherwise applicable standards for maintenance of court records, including electronic formats, ~~the~~
27 ~~original of a reporter's transcript is required to be on paper under Code of Civil Procedure section~~
28 ~~271(a).~~ Code of Civil Procedure section 271 provides that an original reporter's transcript must be
29 in electronic form unless a specified exception allows for an original paper transcript. Subdivision
30 (d) therefore specifies that an electronic copy may be kept if the original transcript is in paper, to
31 clarify that the paper original need not be kept by the court.
32



JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue • San Francisco, California 94102-3688
Telephone 415-865-4200 • Fax 415-865-4205 • TDD 415-865-4272

MEMORANDUM

Date January 28, 2020	Action Requested Please review
To Appellate Advisory Committee Hon. Louis R. Mauro, Chair	Deadline March 5, 2020
From Christy Simons Attorney, Legal Services	Contact Christy Simons Legal Services 415-865-7694 phone christy.simons@jud.ca.gov
Subject Gender terms in forms within the purview of the Appellate Advisory Committee	

Introduction

Item 7 on the committee's annual agenda this committee year is to identify Judicial Council forms that contain gender identity questions or gender terms and to propose revisions to those forms to replace gender terms with neutral terms or eliminate the questions. This project has been assigned by the Rules and Projects Committee (RUPRO) to all advisory committees that draft rules and forms. Staff has identified the forms managed by the committee or within its purview that use a gender term; none contain gender identity questions. Staff recommends that the committee approve revising these forms to remove gender terms, and that the revisions proceed as technical changes.

Background

In a March 26, 2019, letter to advisory committee lead staff regarding this project, Justice Hull, chair of RUPRO, provided the following background:

“The Advisory Committee on Providing Access and Fairness (PAF) has made the Rules and Projects Committee aware of its work on assessing best practices for addressing gender expression and identity in Judicial Council court forms and in education and training. A PAF working group began its assessment, in part, as a result of Senate Bill 179, the Gender Recognition Act. That bill, among other things, establishes nonbinary as a new option for gender recognition on birth certificates, driver licenses, and state-issued identification cards issued by the Department of Motor Vehicles. In addition, in 2018, the Assembly passed Concurrent Resolution No. 260 to encourage the Legislature ‘to revise existing statutes and introduce new legislation with inclusive language by using gender-neutral pronouns or reusing nouns to avoid the use of gendered pronouns.’ The resolution also encourages ‘state agencies to engage in similar efforts to use gender-neutral pronouns and avoid the use of gendered pronouns when drafting policies, regulations, and other guidance.’ ”

Discussion

This committee manages all APP forms. Also within its purview are CR and JV forms used in appellate court proceedings. Although the Family and Juvenile Law Advisory Committee is conducting an initial review of the appellate JV forms, the Appellate Advisory Committee will have an opportunity to review any proposed revisions to those forms. The scope of the instant project for the Appellate Advisory Committee encompasses all of the APP forms and the appellate CR forms. Nine forms contain gendered pronouns:

- *Civil Case Information Statement (Appellate)* (form APP-004) states that “a party to the appeal may not perform the mailing or delivery himself or herself” (see box at the top of page 4);
- *Appellant’s Proposed Settled Statement (Unlimited Civil Case)* (form APP-014) refers to “his or her own attorney” (see item 3 at page 2) and “he or she” (see item 5a at page 5);
- *Order on Court Fee Waiver (Court of Appeal or Supreme Court) (Ward or Conservatee)* (form APP-016-GC/FW-016-GC) refers to “he or she” (see item 6b(2) at page 2);
- *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO) refers to “he or she” (see item 24(c) at page 13);
- *Proposed Statement on Appeal (Limited Civil Case)* (form APP-104) refers to “his or her testimony” (see item 7d at page 6);
- *What Is Proof of Service?* (form APP-109-INFO) refers to “he or she” (see item 4 at page 2);
- *Information on Writ Proceedings in Misdemeanor, Infraction, and Limited Civil Cases* (form APP-150-INFO) refers to “he or she” (see item 6 at page 2 and item 18c at page 9);
- *Proposed Statement on Appeal (Misdemeanor)* (form CR-135) refers to “his or her testimony” (see item 7e at page 6); and
- *Proposed Statement on Appeal (Infraction)* (form CR-143) refers to “his or her testimony” (see item 6e at page 6).

These forms are used regularly, and only one, form APP-101-INFO, is proposed to be revised for reasons other than replacing gender-specific language.

Under rule 10.22(d), if a proposal presents a non-substantive technical change or correction or minor substantive change that is unlikely to create controversy, RUPRO may recommend that the council adopt it without circulating it for public comment.

Recommendation

Staff recommends that the committee approve technical changes to these nine forms to replace the gendered pronouns with gender-neutral language.

- Form APP-004: delete “himself or herself;” no replacement language is necessary;
- Form APP-014: replace “his or her” with “the party’s,” and replace “he or she” with “the judge;”
- Form APP-016-GC/FW-016-GC: replace “he or she” with “the (proposed) ward or conservatee;”
- Form APP 101-INFO: replace “he or she” with “the appellant” [this revision will be included in the spring proposal that would make substantive changes to this form];
- Form APP-104: replace “what that witness said in his or her” with “the witness’s;”
- Form APP-109-INFO: replace “he or she” with “the party;”
- Form APP-150-INFO: replace “he or she” with “the person” in item 6 and “the petitioner” in item 18c;
- Form CR-135: replace “what that witness said in his or her” with “the witness’s;” and
- Form CR-143: replace “what that witness said in his or her” with “the witness’s.”

Subcommittee Task

The subcommittee’s task is to review the proposed revisions to the forms and:

- Approve the proposed forms revisions as technical changes and recommend to the full committee that the revisions be approved as technical changes;
- Modify any or all of the proposed revisions and recommend to the full committee that the modified revisions be approved as technical changes;
- Recommend to the full committee that the proposed or modified revisions proceed as substantive changes that require circulation for public comment; or
- Ask staff or committee members for further information/analysis.

January 28, 2020

Page 4

Attachments

1. Forms APP-004, APP-014, APP-016-GC/FW-016-GC, APP-101-INFO, APP-104, APP-109-INFO, APP-150-INFO, CR-135, and CR-143

COURT OF APPEAL, _____ APPELLATE DISTRICT, DIVISION _____	COURT OF APPEAL CASE NUMBER (if known):
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	FOR COURT USE ONLY
APPELLANT: RESPONDENT:	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____ STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
JUDGES (all who participated in case):	SUPERIOR COURT CASE NUMBER:
CIVIL CASE INFORMATION STATEMENT	
NOTE TO APPELLANT: You must file this form with the clerk of the Court of Appeal within 15 days after the clerk mails you the notification of the filing of the notice of appeal required under rule 8.100(e)(1). You must attach to this form a copy of the judgment or order being appealed that shows the date it was entered (see Cal. Rules of Court, rule 8.104 for definition of "entered"). A copy of this form must also be served on the other party or parties to this appeal. (CAUTION: An appeal in a limited civil case (Code Civ. Proc., § 85) may be taken ONLY to the appellate division of the superior court (Code Civ. Proc., § 904.2) or to the superior court (Code Civ. Proc., § 116.710 [small claims cases]).	

PART I – APPEAL INFORMATION

A. APPEALABILITY

1. Appeal is from:

- Judgment after jury trial
- Judgment after court trial
- Default judgment
- Judgment after an order granting a summary judgment motion
- Judgment of dismissal under Code Civ. Proc., § 581d, 583.250, 583.360, or 583.430
- Judgment of dismissal after an order sustaining a demurrer
- An order after judgment under Code Civ. Proc., § 904.1(a)(2)
- An order or judgment under Code Civ. Proc., § 904.1(a)(3)–(13)
- Other (describe and specify code section that authorizes this appeal):

2. Does the judgment appealed from dispose of all causes of action, including all cross-actions between the parties?

- Yes No (If no, please explain why the judgment is appealable):

B. TIMELINESS OF APPEAL (Provide all applicable dates.)

1. Date of entry of judgment or order appealed from:
2. Date that notice of entry of judgment or a copy of the judgment was served by the clerk or by a party under California Rules of Court, rule 8.104:
3. Was a motion for new trial, for judgment notwithstanding the verdict, for reconsideration, or to vacate the judgment made and denied?

- Yes No (If yes, please specify the type of motion):

Date notice of intention to move for new trial (if any) filed:

Date motion filed:

Date motion denied:

Date denial served:

4. Date notice of appeal or cross-appeal filed:

C. BANKRUPTCY OR OTHER STAY

Is there a related bankruptcy case or a court-ordered stay that affects this appeal? Yes No
 (If yes, please attach a copy of the bankruptcy petition [without attachments] and any stay order.)

APPELLATE CASE TITLE:	APPELLATE COURT CASE NUMBER:
-----------------------	------------------------------

D. APPELLATE CASE HISTORY (*Provide additional information, if necessary, on attachment I.D.*) Is there now, or has there previously been, any appeal, writ, or other proceeding related to this case pending in any California appellate court?

Yes No (If yes, insert name of appellate court):

Appellate court case no.:

Title of case:

Name of trial court:

Trial court case no.:

E. SERVICE REQUIREMENTS

Is service of documents in this matter, including a notice of appeal, petition, or brief, required on the Attorney General or other nonparty public officer or agency under California Rules of Court, rule 8.29 or a statute?

Yes No (*If yes, please indicate the rule or statute that applies*)

- | | |
|--|--|
| <input type="checkbox"/> Rule 8.29 (e.g., constitutional challenge; state or county party) | <input type="checkbox"/> Code Civ. Proc., § 1355 (Escheat) |
| <input type="checkbox"/> Bus. & Prof. Code, §16750.2 (Antitrust) | <input type="checkbox"/> Gov. Code, § 946.6(d) (Actions against public entities) |
| <input type="checkbox"/> Bus. & Prof. Code, § 17209 (Unfair Competition Act) | <input type="checkbox"/> Gov. Code, § 4461 (Disabled access to public buildings) |
| <input type="checkbox"/> Bus. & Prof. Code, § 17536.5 (False advertising) | <input type="checkbox"/> Gov. Code, § 12656(a) (False Claims Act) |
| <input type="checkbox"/> Civ. Code, § 51.1 (Unruh, Ralph, or Bane Civil Rights Acts; antiboycott cause of action; sexual harassment in business or professional relations; civil rights action by district attorney) | <input type="checkbox"/> Health & Saf. Code, § 19954.5 (Accessible seating and accommodations) |
| <input type="checkbox"/> Civ. Code, § 55.2 (Disabled access to public conveyances, accommodations, and housing) | <input type="checkbox"/> Health & Saf. Code, § 19959.5 (Disabled access to privately funded public accommodations) |
| | <input type="checkbox"/> Pub. Resources Code, § 21167.7 (CEQA) |
| | <input type="checkbox"/> Other (specify statute): |

NOTE: The rule and statutory provisions listed above require service of a copy of a party's notice of appeal, petition, or brief on the Attorney General or other public officer or agency. Other statutes requiring service on the Attorney General or other public officers or agencies may also apply.

PART II – NATURE OF ACTION

A. Nature of action (*check all that apply*):

1. Conservatorship
 2. Contract
 3. Eminent domain
 4. Equitable action a. Declaratory relief b. Other (*describe*):
 5. Family law
 6. Guardianship
 7. Probate
 8. Real property rights a. Title of real property b. Other (*describe*):
 9. Tort
 - a. Medical malpractice
 - b. Product liability
 - c. Other personal injury
 - d. Personal property
 - e. Other tort (*describe*):
 10. Trust proceedings
 11. Writ proceedings in superior court
 - a. Mandate (Code Civ. Proc., § 1085)
 - b. Administrative mandate (Code Civ. Proc., § 1094.5)
 - c. Prohibition (Code Civ. Proc., § 1102)
 - d. Other (*describe*):
 12. Other action (*describe*):
- B. This appeal is entitled to calendar preference/priority on appeal (*cite authority*):

APPELLATE CASE TITLE:	APPELLATE COURT CASE NUMBER:
-----------------------	------------------------------

PART III – PARTY AND ATTORNEY INFORMATION

In the spaces below or on a separate page or pages, list all the parties and all their attorneys of record who will participate in the appeal. For each party, provide all of the information requested on the left side of the page. On the right side of the page, if a party is self-represented please check the appropriate box and provide the party's mailing address, telephone number, fax number, and e-mail address. If a party is represented by an attorney, on the right side of the page, check the appropriate box and provide all of the requested information about that party's attorney.

Responses to Part III are attached instead of below

Name of Party: Appellate court designation: <input type="checkbox"/> Appellant <input type="checkbox"/> Respondent Trial court designation: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Other (specify):	<input type="checkbox"/> Represented by attorney <input type="checkbox"/> Self-represented Name of attorney: State Bar no: Firm name: Mailing address: Telephone no.: Fax no: E-Mail address:
Name of Party: Appellate court designation: <input type="checkbox"/> Appellant <input type="checkbox"/> Respondent Trial court designation: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Other (specify):	<input type="checkbox"/> Represented by attorney <input type="checkbox"/> Self-represented Name of attorney: State Bar no: Firm name: Mailing address: Telephone no.: Fax no: E-Mail address:
Name of Party: Appellate court designation: <input type="checkbox"/> Appellant <input type="checkbox"/> Respondent Trial court designation: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Other (specify):	<input type="checkbox"/> Represented by attorney <input type="checkbox"/> Self-represented Name of attorney: State Bar no: Firm name: Mailing address: Telephone no.: Fax no: E-Mail address:
Name of Party: Appellate court designation: <input type="checkbox"/> Appellant <input type="checkbox"/> Respondent Trial court designation: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Other (specify):	<input type="checkbox"/> Represented by attorney <input type="checkbox"/> Self-represented Name of attorney: State Bar no: Firm name: Mailing address: Telephone no.: Fax no: E-Mail address:

Additional pages attached

Date:

This statement is prepared and submitted by:



(SIGNATURE OF ATTORNEY OR SELF-REPRESENTED PARTY)

APPELLATE CASE TITLE:	APPELLATE COURT CASE NUMBER:
-----------------------	------------------------------

NOTICE TO PARTIES: A copy of this form must be served on the other party or parties to this appeal. If served by mail or personal delivery, A PARTY TO THE APPEAL MAY NOT PERFORM THE MAILING OR DELIVERY HIMSELF OR HERSELF. Electronic service is authorized only if ordered by the court or if the party served has agreed to accept electronic service. A person who is at least 18 years old must complete the information below and serve all pages of this document. When all pages of this document have been completed and a copy served, the original may then be filed with the court.

PROOF OF SERVICE

Mail
 Personal Service
 Electronic Service

1. At the time of service I was at least 18 years of age.
2. My residence or business address is *(specify)*:

3. I mailed, personally delivered, or electronically served a copy of the *Civil Case Information Statement (Appellate)* as follows *(complete a, b, or c)*:
 - a. **Mail.** I am a resident of or employed in the county where the mailing occurred and am not a party to this legal action.
 - (1) I enclosed a copy in an envelope **and**
 - (a) deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
 - (b) **placed** the envelope for collection and mailing on the date and at the place shown in items below, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.
 - (2) The envelope was addressed and mailed as follows:
 - (a) Name of person served:
 - (b) Address on envelope:

 - (c) Date of mailing:
 - (d) Place of mailing *(city and state)*:
 - b. **Personal delivery.** I am not a party to this legal action. I personally delivered a copy as follows:
 - (1) Name of person served:
 - (2) Address where delivered:

 - (3) Date delivered:
 - (4) Time delivered:
 - c. **Electronic service.** My electronic service address is *(specify)*:
 I electronically served a copy as follows:
 - (1) Name of person served:
 - (2) Electronic service address of person served:
 - (3) On *(date)*:

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

Date:

(TYPE OR PRINT NAME)	(SIGNATURE OF DECLARANT)
----------------------	--------------------------

ATTORNEY OR PARTY WITHOUT ATTORNEY NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	STATE BAR NUMBER: FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER PARENT/PARTY:	SUPERIOR COURT CASE NUMBER:
APPELLANT'S PROPOSED SETTLED STATEMENT (UNLIMITED CIVIL CASE)	COURT OF APPEAL CASE NUMBER (if known):
Re: Appeal filed on (date):	
Notice: Please read Information Sheet for Proposed Settled Statement (form APP-014-INFO) before completing this form. You must file this form in the superior court, not in the Court of Appeal.	

1. PRELIMINARY INFORMATION

- a. I am appealing (check one): an order filed on a judgment entered on (date): _____
- b. On (date): _____, I filed a notice of appeal. A copy of the judgment or order I am appealing is attached.
- c. On (date): _____, (check the one that applies):
 - (1) I filed a notice designating the record on appeal, choosing to use a settled statement.
 - (2) The court sent me I was served with an order granting my request to use a settled statement.
- d. On (date): _____, the court ordered me to modify or correct my proposed settled statement.

2. REASONS FOR YOUR APPEAL

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

- a. **No substantial evidence.** There was no substantial evidence that supported the judgment or order that I am appealing.
(Explain why you think the judgment or order was not supported by substantial evidence).

Attachment 2a

- b. **Errors.** The following error or errors about either the law or court procedure affected the outcome of the case
(Describe each error.)

Attachment 2b

PLAINTIFF/PETITIONER:	SUPERIOR COURT CASE NUMBER:
DEFENDANT/RESPONDENT:	COURT OF APPEAL CASE NUMBER (if known):
OTHER PARENT/PARTY:	

3. SUMMARY OF THE PARTIES' TESTIMONY AND OTHER EVIDENCE

a. Did any of the parties testify at the trial or hearing? No Yes

(Specify the name of the party who testified and the date on which the party testified. Then, write a complete and accurate summary of what each party said that is relevant to the reasons you gave in item 2 for this appeal (for example, what the party said in response to questions asked by this or her own attorney, the other party (or the attorney), and/or the court). Include only what was actually said; do not comment or give your opinion about what was said.)

(1) Name of party: _____ testified on (date): _____

Summary:

the party's

Attachment 3a(1)

(a) Did a party (or attorney) make an objection to this party's testimony? No Yes (Specify in item 3b.)

(b) During this party's testimony, were any exhibits (documents, records, or other materials) relevant to the appeal presented that the judge allowed to be used as evidence to support or disprove this party's testimony? No Yes (Specify in item 3c.)

(c) During this party's testimony, were any exhibits (documents, records, or other materials) relevant to the appeal presented that the judge did not allow to be used as evidence to support or disprove this party's testimony? No Yes (Specify in item 3d.)

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER PARENT/PARTY:	SUPERIOR COURT CASE NUMBER:
	COURT OF APPEAL CASE NUMBER (if known):

3. a. (2) Name of party: _____ testified on (date): _____
 Summary:

- Attachment 3a(2)
- (a) Did a party (or attorney) make an objection to this party's testimony? No Yes (Specify in item 3b.)
- (b) During this party's testimony, were any exhibits (documents, records, or other materials) relevant to the appeal presented that the judge allowed to be used as evidence to support or disprove this party's testimony? No Yes (Specify in item 3c.)
- (c) During this party's testimony, were any exhibits (documents, records, or other materials) relevant to the appeal presented that the judge *did not* allow to be used as evidence to support or disprove this party's testimony? No Yes (Specify in item 3d.)

(3) Was there testimony from other parties? No Yes

(If you answered yes, fill out and attach to this form Other Party and Nonparty Witness Testimony and Evidence Attachment (form APP-014A).)

PLAINTIFF/PETITIONER:	SUPERIOR COURT CASE NUMBER:
DEFENDANT/RESPONDENT:	
OTHER PARENT/PARTY:	COURT OF APPEAL CASE NUMBER (if known):

3. **b. Objections to a party's testimony relevant to the appeal**

(Indicate which party's testimony was objected to and specify the objection. Also indicate whether the court "sustained the objection" (prevented the party from saying something) or "overruled the objection" (allowed the party to make a statement) and include any explanation given by the court.)

Attachment 3b

- c. **Exhibits (documents, records, or other materials) relevant to the appeal allowed to be used as evidence to support or disprove a party's testimony.** *(Write a complete and accurate summary of the exhibits presented by each party. Include any objections and the court's ruling on those objections. Do not comment or give your opinion about the exhibits.)*

Attachment 3c

- d. **Exhibits (documents, records, or materials) relevant to the appeal not allowed to be used as evidence to support or disprove a party's testimony.** *(Write a complete and accurate summary of the exhibits. Include any objections and the court's ruling on those objections. Do not comment or give your opinion about the items.)*

Attachment 3d

PLAINTIFF/PETITIONER:	SUPERIOR COURT CASE NUMBER:
DEFENDANT/RESPONDENT:	COURT OF APPEAL CASE NUMBER (if known):
OTHER PARENT/PARTY:	

4. SUMMARY OF NONPARTY WITNESS TESTIMONY AND OTHER EVIDENCE

Was there testimony from another party or nonparty witnesses that is relevant to the reasons for the appeal?

- No (skip to Item 5)
- Yes (Fill out and attach to this form Other Party and Nonparty Witness Testimony and Evidence Attachment (form APP-014A.)

5. TRIAL COURT'S FINDINGS

a. Did the judge make findings at the hearing or trial in the case? No Yes (Complete item 5b.) (A judge makes a "finding" when he or she decides that something is a fact, is true, or is relevant.)

b. What are the findings that the judge made that are relevant to the reasons for the appeal?

the judge

Attachment 5

6. SUMMARY OF MOTIONS

a. Are any of your reasons for appeal based on your disagreement with the court's ruling on a motion or motions?

- Yes (Fill out b.)
- No (Skip to item 7.)

b. Describe the motion. (State which party made the motion. Then, write a complete and accurate summary of what was said (any testimony and arguments) and what the court decided (whether the court granted or denied the motion).)

Attachment 6

7. SUMMARY OF JURY INSTRUCTIONS

a. Are any of your reasons for appeal based on your disagreement with the court's ruling on a jury instruction or instructions?

- Yes (Fill out b.)
- No (Skip to item 8.)

b. Identify the jury instruction and the party that requested it. (Summarize what the parties said (arguments or objections) and what the court decided (whether the court gave the instruction to the jury, refused to give the instruction to the jury, or modified it before giving it to the jury). Describe any modifications the court made to the instruction.)

Attachment 7

8. ORDER OR JUDGMENT YOU ARE APPEALING

Attach a copy of the order or judgment you are appealing.

Date:

(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF PARTY OR ATTORNEY)

Order on Court Fee Waiver
(Court of Appeal or Supreme Court)
(Ward or Conservatee)

Clerk stamps date here when form is filed.

1 (Proposed) guardian or conservator who asked the court to waive court fees for (proposed) ward or conservatee:

Name:
Street or mailing address:
City: State: Zip:
Telephone:

2 Lawyer, if person in 1 has one:

Name: State Bar No:
Firm or Affiliation:
Street or mailing address:
City: State: Zip:
E-mail: Telephone:

Fill in court name and street address:

3 (Proposed) ward or conservatee:

Name:
Street or mailing address:
City: State: Zip:
Telephone:

Court of Appeal or Supreme Court
Case Number:

4 Ward's or Conservatee's Lawyer, if any: Name:

Firm or Affiliation: State Bar No.:
Address: Telephone:
City: State: Zip: E-mail:

5 On (date): , you filed a Request to Waive Court Fees (form FW-001-GC).

6 The court reviewed your request and makes the following order:

- a. The court grants your request and waives the (proposed) ward's or conservatee's court fees and costs listed below. You do not have to pay fees for the following:
- Filing notice of appeal, petition for writ, or petition for review
- Other (specify):

b. The court denies your request for the following reasons:

(1) Your request is incomplete. You have 10 days from the date this notice was sent to:

- Pay the (proposed) ward's or conservatee's fees and costs, or
- File a new revised request that includes the items listed below (specify incomplete items):

Warning! If you miss the deadline for paying the (proposed) ward's or conservatee's fees and costs or providing the additional items required by the court and you are the appellant, your appeal may be dismissed.



Court of Appeal/Supreme Court Case Name:

Court of Appeal or Supreme Court Case Number:

6 b. (2) The information you provided on the request shows that the (proposed) ward or conservatee is not eligible for the fee waiver you requested for the following reasons (specify):

You have **10 days** from the date this notice was sent to:

- Pay the (proposed) ward's or conservatee's fees and costs, or
- File more information that shows that he or she is eligible for a fee waiver.

the (proposed) ward or conservatee

(3) The court finds there is substantial question regarding the (proposed) ward's or conservatee's eligibility (describe issue(s) regarding eligibility):

You have **10 days** from the date this notice was sent to:

- Pay the (proposed) ward's or conservatee's fees and costs, or
- File the following additional documents to support your request:

c. The court needs more information. **You must go to court** on the date below.

Hearing Date → Date: _____ Time: _____ Dept.: _____
Name and address of court if different from page 1:

Bring the following proof to support your request, if it is reasonably available:

Warning! If item 6 c. is checked and you do not go to court on the hearing date, the court will deny your request to waive court fees for the (proposed) ward or conservatee and you will have **10 days** to pay those fees. If you are the appellant and you do not pay the filing fees, your appeal may be dismissed.

Date: _____

Signature of (check one): Judicial Officer Clerk, Deputy

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.htm 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 mail, deliver, or electronically send (“serve”) the notice of appeal to the other party or parties in the way required by law. If the notice of appeal is mailed or personally

delivered, it must be by someone who is not a party to the case—so not you.

- 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) or *Proof of Electronic Service (Appellate Division)* (form APP-109E) 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, in person, or electronically), 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.legislature.ca.gov/faces/codes.xhtml). 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 *Appellant's 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 mail, deliver, or electronically send ("serve") the notice to the other party or parties in the way required by law. If the notice is mailed or personally delivered, it must be by someone who is not a party to the case—so not you.
- 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) or *Proof of Electronic Service (Appellate Division)* (form APP-109E) 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, in person, or electronically), 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 record of what was said in the trial court (this is called the "oral proceedings")
- A record of the documents filed in the trial court (other than exhibits)
- 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 what was said in the trial court (the "oral proceedings")

The first 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 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 *Appellant's 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:

- 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.”
- 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.
- You can use an agreed statement.
- 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 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—*Appellant’s 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.

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

Cost: The appellant is responsible for paying the court for the cost of either (a) preparing a transcript *or* (b) making a copy of the official electronic recording.

(a) If you elect to use a transcript of an official electronic recording, you will need to deposit the estimated cost of preparing the transcript with the trial court clerk and pay the trial court a \$50 fee. There are two ways to determine the estimated cost of the transcript:

- You can use the amounts listed in rule 8.130(b)(1)(B) for each full or half day of court proceedings to estimate the cost of making a transcript of the proceeding you have designated in your notice designating the record on appeal. Deposit this estimated amount and the \$50 fee with the trial court clerk when you file your notice designating the record on appeal.

- You can ask the trial court clerk for an estimate of the cost of preparing a transcript of the proceedings you have designated in your notice designating the record on appeal. You must deposit this amount and the \$50 fee with the trial court within 10 days of receiving the estimate from the clerk.

(b) If the court has a local rule permitting the use of a copy of the electronic recording itself, rather than a transcript, and you have attached your agreement with the other parties to do this (“stipulation”) to the notice designating the record on appeal that you filed with the court, the trial court clerk will provide you with an estimate of the costs for this copy of the recording. You must pay this amount to the trial court.

If you cannot afford to pay the cost of preparing the transcript, the \$50 fee, or the fee for the copy of the official electronic recording, you can ask the court to waive these costs. 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 mail, deliver, or electronically send ("serve") the proposed statement to the respondent in the way required by law. If the proposed statement is mailed or personally delivered, it must be by someone who is not a party to the case—so not you.
- 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) or *Proof of Electronic Service (Appellate Division)* (form APP-109E) 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, in person, or electronically), 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 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.

b. Record of the documents filed in the trial court

The second 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:

- *A clerk’s transcript*
- The original *trial court file* or
- 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 *Appellant’s 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

When available: If you and the respondent have already agreed to use an agreed statement as the record of the oral proceedings (see a(3) above) and 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.

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. *Appellant's 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 mail, deliver, or electronically send (“serve”) the brief to the other parties in the way required by law. If the brief is mailed or personally delivered, it must be by someone who is not a party to the case—so not you.
- 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) or *Proof of Electronic Service (Appellate Division)* (form APP-109E) 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, in person, or electronically), 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 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) 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.

(b) 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.

(c) 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 mail, deliver, or electronically send (“serve”) the proposed amendments to the appellant in the way required by law. If the proposed amendments are mailed or personally delivered, it must be by someone who is not a party to the case—so not you.
- 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) or *Proof of Electronic Service (Appellate Division)* (form APP-109E) 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, in person, or electronically), 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.

(d) 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.

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 mail, deliver, or electronically send (“serve”) the brief to the other parties in the way required by law. If the brief is mailed or personally delivered, it must be by someone who is not a party to the case—so not you.
- 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) or *Proof of Electronic Service (Appellate Division)* (form APP-109E) 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, in person, or electronically), 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.

**Proposed Statement on Appeal
(Limited Civil Case)**

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 Zip

Mailing address (*if different*): _____
Street City State Zip

Phone: _____ E-mail: _____

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: _____

Fax: _____



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: _____



(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." *(Handwritten: the witness's)*

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 Number: _____

Trial Court Case Name: _____

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

GENERAL INFORMATION

What does this information sheet cover?

This information sheet tells you how to fill out *Proof of Service (Appellate Division)* (form APP-109) or *Proof of Electronic Service (Appellate Division)* (form APP-109E). This information sheet is not part of the proof of service and does not need to be copied, served, or filed.

1 What is “serving” a document?

“Serving” a document on a person means having the document delivered to that person. The general requirements for serving documents are set out in California Code of Civil Procedure sections 1010.6–1013a (you can get a copy of these laws at any county law library or online at www.leginfo.ca.gov/calaw.html). There are three main ways to serve documents: (1) by mail, (2) by personal delivery, or (3) by electronic service.

When a document is served by mail, it must be put in a sealed envelope or package that is addressed to the person who is being served and that has the postage fully prepaid. The envelope then has to be deposited with the U.S. Postal Service by leaving it at a U.S. Postal Service office or mail drop or at an office or business mail drop where the person serving the document knows the mail is picked up every day and deposited with the U.S. Postal Service.

When a document is personally delivered to a party who is represented by an attorney, the document must either be given directly to the attorney representing that party or the document can be placed in an envelope or package addressed to the attorney and left with the receptionist at the attorney’s office or with a person who is in charge of the attorney’s office. When a document is personally served on a party who is not represented by an attorney, the document must either be given directly to the party or the document can be given to someone who is at least 18 years old at the party’s residence between the hours of eight in the morning and six in the evening.

You may be able to serve a document electronically if the person being served has agreed to accept electronic service or if the court has ordered the person to accept electronic service. The requirements for electronic service are set out in California Code of Civil Procedure section 1010.6.

When a document is electronically served, it must be served either by electronic transmission or by electronic notification. “Electronic transmission” means sending the document to the person’s electronic service address, an e-mail address the person has given the court and the other parties to the case for this purpose. “Electronic notification” means sending a notice to the person with the exact name of the document and a hyperlink—a link to a web address—at which the document may be viewed and downloaded.

2 What documents have to be served?

Rule 8.817 of the California Rules of Court requires that before you file any document with the court in a case in the appellate division of the superior court, you must serve one copy of the document on each of the other parties in the case and on anyone else when required by law (statute or rule of court). Other rules require that certain documents in cases in the appellate division be served, including the notice of appeal and the notice designating the record on appeal in appeals in limited civil cases and briefs in all appeals. (For more information about appeals in general and about these documents, read *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO), *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO), and *Information on Appeal Procedures for Infractions* (form CR-141-INFO).)

3 Who can serve a document?

State law (the Code of Civil Procedure) says that a document in a court case can only be served by a person who is over 18 years old. Service by mail or by personal delivery must be by someone who is not a party in the case; electronic service may be performed directly by a party.

If you are a party in a case and wish to serve documents by mail or by personal delivery, **you must have someone else who is over 18 and who is not a party in your case serve any documents in your case for you.** You will need to give the person who is serving the document for you (the server) the names and addresses of all the people who need to be served with that document. You will also need to give the server one copy of each document that needs to be served for each person who is being served.

If you are serving documents electronically, you can do so yourself or have another person over 18 do it for you. The person doing the serving (the server) will need the names and electronic service addresses of everyone who must be served, as well as the document to be served in a form that allows it to be electronically transmitted or made available by hyperlink.

4 What is proof of service?

A “proof of service” shows the court that a document was served as required by the law. Rule 8.817 also requires a party who is filing a document with the court in a case in the appellate division to attach a proof of service to the document **he or she** wants to file. You can use *Proof of Service (Appellate Division)* (form APP-109) or *Proof of Electronic Service (Appellate Division)* (form APP-109E) to give the court this proof of service in any case in the appellate division of the superior court. The server should follow the instructions below for completing the *Proof of Service (Appellate Division)* (form APP-109) or *Proof of Electronic Service (Appellate Division)* (form APP-109E). If another person is serving the documents for you—as is required if the document will be served by mail or personal delivery—tell the server to give you the original form when it is filled out and signed. You will need to attach the original proof of service to the document you want to file.

If you are electronically filing the document, the proof of service may also be filed electronically. However, the original signed proof of service must be kept by the party filing the document and produced upon request.

INFORMATION FOR THE SERVER

5 Who fills out the *Proof of Service* or *Proof of Electronic Service*?

If you are the server (the person who serves a document for a party in a court case), you must prepare and sign the proof of service. If you served the document by mail or personal delivery, you can use *Proof of Service (Appellate Division)* (form APP-109) to prepare this proof of service in any case in the appellate division. If you served the document electronically, you can use *Proof of Electronic Service (Appellate Division)* (form APP-109E) to prepare the proof of service.

6 How do I fill out the *Proof of Service*?

These instructions are for *Proof of Service (Appellate Division)* (form APP-109), if you are serving the document by mail or personal delivery. If you are serving the document electronically, please see 7 below, for instructions on how to fill out *Proof of Electronic Service (Appellate Division)* (form APP-109E).

You can fill out most of the information on *Proof of Service (Appellate Division)* (form APP-109) by copying the information from the document you are serving before you serve that document. However, you should not sign and date the form until after you have finished serving the document. **By signing form APP-109, you are swearing, under penalty of perjury, that the information that you put in the form is true and correct.**

When you fill out the *Proof of Service (Appellate Division)* (form APP-109), you should print neatly or use a typewriter. If you have Internet access, you can fill out the form online at www.courts.ca.gov/forms (use the “fillable” version of the form).

Filling in the top section of form APP-109:

First box, right side of form: Leave this box blank for the court’s use.

Second box, right side of form: Fill in the name of the county in which the case is filed and the street address of the court. You can copy this information from the first page of the document that you are serving. If the document you are serving is another Judicial Council form, this information will be in the second box on the right-hand side of the form.

Third box, right side of form: Fill in the trial court case name and number. You can copy this information from the first page of the document that you are serving. If the document you are serving is another Judicial Council form, this information will be in the third box on the right-hand side of the form.

Fourth box, right side of form: Fill in the appellate division case number, if you know it. If this number is available, it will be on the first page of the document that you are serving. If the document you are serving is

another Judicial Council form, this number will be in the fourth box on the right-hand side of the form.

Filling in items 1–5:

Items ① and ②: You are stating, under penalty of perjury, that you are over the age of 18 and that you are not a party in this court case.

Item ③: Check one of the boxes and provide your home or business address. This information is important because, if you serve the document by mail, you must live or work in the county from which the document was mailed.

Item ④: Check or fill in the name of the document that you are serving. If the document you are serving is another Judicial Council form, the name of the document is located on both the top and the bottom of the first page of the form. If the document you are serving is not a Judicial Council form, the name of the document should be on the top of the first page of the document.

a. Check box 4a. if you are serving the document by mail. **BEFORE YOU SEAL AND MAIL THE ENVELOPE WITH THE DOCUMENT YOU ARE SERVING, fill in the following parts of the form.**

- (1) You are stating, under penalty of perjury, that you are putting one copy of the document you identified in item 4 in an envelope addressed to each person listed in 4a.(2), sealing the envelope, and putting first-class postage on the envelope.
- (2) Fill in the name and address of each person to whom you are mailing the document. You can copy this information from the list of people to be served or the envelopes provided by the party for whom you are serving the document. If you need more space to list names and addresses, check the box under item 4a.(2) and attach a page listing them. At the top of the page, write “APP-109, Item 4a.”
- (3) Fill in the date you are mailing the document and the city and state from which you are mailing it. **REMEMBER: You must live or work in the county from which the document is mailed.**

(a) Check box 4a.(3)(a) if you are personally depositing the document with the U.S. Postal Service, such as at a U.S. Post Office or U.S. Postal Service mailbox.

(b) Check box 4a.(3)(b) if you are putting the document in the mail at your place of business.

Once you have finished filling out these parts of the form, make one copy of *Proof of Service (Appellate Division)* (form APP-109) with this information filled in for each person you are serving by mail. Put this copy of *Proof of Service (Appellate Division)* (form APP-109) in the envelope with the document you are serving. Seal the envelope and mail it as you have indicated on the *Proof of Service*.

- b. Check box 4b. If you personally delivered the documents. Remember, when a document is personally delivered to a party who is represented by an attorney, the document must either be given directly to the party’s attorney or the document can be placed in an envelope or package addressed to the attorney and left with the receptionist at the attorney’s office or with a person who is in charge of the attorney’s office. When a document is personally served on a party who is not represented by an attorney, the document must either be given directly to the party or the document can be given to someone who is at least 18 years old at the party’s residence between the hours of eight in the morning and six in the evening.

For each person to whom you personally delivered the document, fill in:

- (a) The person’s name.
- (b) The address at which you delivered the document to this person.
- (c) The date on which you delivered the document to this person.
- (d) The time at which you delivered the document.

If you need space to list more names, addresses, and delivery dates and times, check the box

under 4b. and attach a page listing this information. At the top of the page, write “APP-109, Item 4b.”

Item ⑤: At the bottom of the form, type or print your name, sign the form, and fill in the date that you signed the form. **By signing this form, you are stating under penalty of perjury that all the information you filled in on *Proof of Service (Appellate Division)* (form APP-109) is true and correct.**

After you have finished serving the document and filled in, signed, and dated *Proof of Service (Appellate Division)* (form APP-109), give the original completed form to the party for whom you served the document.

7 How do I fill out the *Proof of Electronic Service*?

You can fill out most of the information on *Proof of Electronic Service (Appellate Division)* (form APP-109E) by copying the information from the document you are serving before you serve that document. However, you should not sign and date the form until after you have finished serving the document. **By signing form APP-109E you are swearing under penalty of perjury that the information you have put in the form is true and correct.**

You can fill out the *Proof of Electronic Service (Appellate Division)* (form APP-109E) online at www.courts.ca.gov/forms (use the “fillable” version of the form), or you can print it out and fill it in, printing neatly or using a typewriter.

Filling in the top section of form APP-109E:

First box, right side of form: Leave this box blank for the court’s use.

Second box, right side of form: Fill in the name of the county in which the case is filed and the street address of the court. You can copy this information from the first page of the document that you are serving. If the document you are serving is another Judicial Council form, this information will be in the second box on the right-hand side of that form.

Third box, right side of form: Fill in the trial court case number and name. You can copy this information from the first page of the document that you are serving. If the document you are serving is another Judicial Council form, this information will be in the third box on the right-hand side of that form.

Fourth box, right side of form: Fill in the appellate division case number, if you know it. If this number is available, it will be on the first page of the document that you are serving. If the document you are serving is another Judicial Council form, this information will be in the fourth box on the right-hand side of that form.

Filling in items 1–5:

Item ①: You are stating, under penalty of perjury, that you are over the age of 18.

Item ②:

a. Check one of the boxes and provide your home or business address.

b. Fill in your electronic service address. This is the address at which you have agreed to accept electronic service, usually an e-mail address.

Item ③: Check or fill in the name of the document that you are serving. If the document you are serving is another Judicial Council form, the name of the document is located on both the top and the bottom of the first page of the form. If the document you are serving is not a Judicial Council form, the name of the document should be on the top of the first page of the document.

Item ④: Fill in the name of each person served, and the name or names of the parties represented, if the person served is an attorney. For each person served, fill in that person’s electronic service address and the date you served the person. If you need more space to list additional persons served, check the box under item ④ b. and attach a page listing them, with their electronic service addresses and the date each person was served. At the top of the page, write “APP-109E, Item 4.”

When you have filled in the information in items 1–4, create an electronic copy of the *Proof of Electronic Service (Appellate Division)* (form APP-109E) with this

information filled in. Transmit the filled-in form with the document you are serving to each person served.

Item ⑤: At the bottom of the form, type or print your name, sign the form, and fill in the date that you signed the form. **By signing this form, you are stating under penalty of perjury that all the information you filled in on the *Proof of Electronic Service (Appellate Division)* (form APP-109E) is true and correct.** If you are not the party for whom the documents are served, give the original completed *Proof of Electronic Service (Appellate Division)* (form APP-109E) to the party for whom you served the document.

If you are electronically filing the document that is served, the proof of service may also be filed electronically. However, the original signed proof of service must be kept by the party filing it and produced upon request.

GENERAL INFORMATION

1 What does this information sheet cover?

This information sheet tells you about **writ proceedings**—proceedings in which a person is asking for a writ of mandate, prohibition, or review—in misdemeanor, infraction, and limited civil cases, and in certain small claims cases. Please read this information sheet before you fill out *Petition for Writ (Misdemeanor, Infraction, or Limited Civil Case)* (form APP-151). This information sheet does not cover everything you may need to know about writ proceedings. It is only meant to give you a general idea of the writ process. To learn more, you should read rules 8.930–8.936 of the California Rules of Court, which set out the procedures for writ proceedings in the appellate division. You can get these rules at any courthouse or county law library or online at www.courts.ca.gov/rules.

This information sheet does NOT provide information about appeals or proceedings for writs of supersedeas or habeas corpus, or for writs in certain small claims cases.

- For information about appeals, please see the box on the right side of this page.
- For information about writs of habeas corpus, please see rules 4.550–4.552 of the California Rules of Court and *Petition for Writ of Habeas Corpus* (form MC-275).
- For information about writs of supersedeas, please see rule 8.824 of the California Rules of Court. This information sheet applies to writs relating to *postjudgment enforcement actions* of the small claims division. For information about writs relating to *other actions* by the small claims division, see rules 8.930–8.936 of the California Rules of Court and *Petition for Writ (Small Claims)* (form SC-300).
- For information about writs relating to actions of the superior court on small claims appeals, see rules 8.485–8.493 of the California Rules of Court.

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

2 What is a writ?

A writ is an order from a higher court telling a lower court to do something the law says the lower court must do or not to do something the law says the lower court does not have the power to do. In writ proceedings in the appellate division, the lower court is the superior court that took the action or issued the order being challenged.

For information about appeal procedures, see:

- *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO)
- *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.

In this information sheet, we call the lower court the “trial court.”

3 Are there different kinds of writs?

Yes. There are three main kinds of writs:

- Writs of mandate (sometimes called “mandamus”), which are orders telling the trial court to do something.
- Writs of prohibition, which are orders telling the trial court not to do something.
- Writs of review (sometimes called “certiorari”), which are orders telling the trial court that the appellate division will review certain kinds of actions already taken by the trial court.

There are laws (statutes) that you should read concerning each type of writ: see California Code of Civil Procedure sections 1084–1097 about writs of mandate, sections 1102–1105 about writs of prohibition, and sections 1067–1077 about writs of review. You can get copies of these statutes at any county law library or online at leginfo.legislature.ca.gov/faces/codes.xhtml.



4 Is a writ proceeding the same as an appeal?

No. In an **appeal**, the appellate division *must* consider the parties' arguments and decide whether the trial court made the legal error claimed by the appealing party and whether the trial court's decision should be overturned based on that error (this is called a "decision on the merits"). In a **writ proceeding**, the appellate division is *not* required to make a decision on the merits; even if the trial court made a legal error, the appellate division can decide not to consider that error now, but to wait and consider the error as part of any appeal from the final judgment. Most requests for writs are denied without a decision on the merits (this is called a "summary denial"). Because of this, appeals are the ordinary way that decisions made by a trial court are reviewed and writ proceedings are often called proceedings for "extraordinary" relief.

Appeals and writ proceedings are also used to review different kinds of decisions by the trial court. Appeals can be used only to review a trial court's final judgment and a few kinds of orders. Most rulings made by a trial court before it issues its final judgment cannot be appealed right away; they can only be appealed after the trial court case is over, as part of an appeal of the final judgment. Unlike appeals, writ proceedings can be used to ask for review of certain kinds of important rulings made by a trial court before it issues its final judgment.

5 Is a writ proceeding a new trial?

No. A **writ proceeding is NOT a new trial**. The appellate division will not consider new evidence, such as the testimony of new witnesses. Instead, if it does not summarily deny the request for a writ, the appellate division reviews a record of what happened in the trial court and the trial court's ruling to see if the trial court made the legal error claimed by the person asking for the writ. When it conducts its review, the appellate division presumes that the trial court's ruling is correct; the person who requests the writ must show the appellate division that the trial court made the legal error the person is claiming.

6 Can a writ be used to address any errors made by a trial court?

No.

Writs can only address certain legal errors. Writs can only address the following types of legal errors made by a trial court:

- The trial court has a legal duty to act but:
 - Refuses to act
 - Has not done what the law says it must do
 - Has acted in a way the law says it does not have the power to act
- The trial court has performed or says it is going to perform a judicial function (like deciding a person's rights under law in a particular case) in a way that the court does not have the legal power to do.

There must be no other adequate remedy. The trial court's error must also be something that can be fixed only with a writ. The person asking for the writ must show the appellate division that there is no adequate way to address the trial court's error other than with the writ (this is called having "no adequate remedy at law"). As mentioned above, appeals are the ordinary way that trial court decisions are reviewed. If the trial court's ruling can be appealed, the appellate division will generally consider an appeal to be good enough (an "adequate remedy") unless the person asking for the writ can show the appellate division that he or she will be harmed in a way that cannot be fixed by the appeal if the appellate division does not issue the writ (this is called "irreparable" injury or harm).

Statutory writs: There are laws (statutes) that provide that certain kinds of rulings can or must be challenged using a writ proceeding. These are called "statutory writs." Here is a list of some of the most common rulings that a statute says can or must be challenged using a writ:

- A ruling on a motion to disqualify a judge (see California Code of Civil Procedure section 170.3(d))
- Denial of a motion for summary judgment (see California Code of Civil Procedure section 437c(m)(1))
- A ruling on a motion for summary adjudication of issues (see California Code of Civil Procedure section 437c(m)(1))

- Denial of a stay in an unlawful detainer matter (see California Code of Civil Procedure section 1176)
- An order disqualifying the prosecuting attorney (see California Penal Code section 1424)

You can get copies of these statutes at any county law library or online at leginfo.legislature.ca.gov/faces/codes.xhtml. You will need to check whether there is a statute providing that the specific ruling you want to challenge can or must be reviewed using a writ proceeding. (Note that just because there is a statute requiring or allowing you to ask for a writ to challenge a ruling does not mean that the court must grant your request; the appellate division can still deny a request for a statutory writ.)

Common law writs: Even if there is not a statute specifically providing for a writ proceeding to challenge a particular ruling, most trial court rulings other than the final judgment can potentially be challenged using a writ proceeding if the trial court made the type of legal error described above and the petitioner has no other adequate remedy at law. These writs are called “common law” writs.

7 Can the appellate division consider a request for a writ in any case?

No. Different courts have the power (called “jurisdiction”) to consider requests for writs in different types of cases. The appellate division can only consider requests for writs in limited civil, misdemeanor, and infraction cases, and certain small claims cases. A limited civil case is a civil case in which the amount claimed is \$25,000 or less (see California Code of Civil Procedure sections 85 and 88). Misdemeanor cases are cases in which a person has been charged with or convicted of a crime for which the punishment can include jail time of up to one year but not time in state prison (see California Penal Code sections 17 and 19.2). (If the person was also charged with or convicted of a felony in the same case, it is considered a felony case, not a misdemeanor case.) Infraction cases are cases in which a person has been charged with or convicted of a crime for which the punishment can be a fine, traffic school, or some form of community service but cannot include any time in jail or prison (see California Penal Code sections 17 and 19.8). Examples of infractions include traffic tickets or citations for violations of some

city or county ordinances. (If a person was also charged with or convicted of a misdemeanor in the same case, it is considered a misdemeanor case, not an infraction case.) You can get copies of these statutes at any county law library or online at leginfo.legislature.ca.gov/faces/codes.xhtml. The appellate division can consider requests for writs in small claims actions relating to postjudgment enforcement orders.

The appellate division does NOT have jurisdiction to consider requests for writs in either unlimited civil cases (civil cases in which the amount claimed is more than \$25,000) or felony cases (cases in which a person has been charged with or convicted of a crime for which the punishment can include time in state prison). Requests for writs in these cases can be made in the Court of Appeal. The appellate division also does NOT have jurisdiction to consider requests for writs of habeas corpus; requests for these writs can be made in the superior court.

Requests for writs relating to actions of the small claims division *other* than postjudgment enforcement orders are considered by a single judge in the appellate division. (See form SC-300-INFO.) Requests for writs relating to superior court actions in small claims cases on appeal may be made to the Court of Appeal.

8 Who are the parties in a writ proceeding?

If you are asking for the writ, you are called the PETITIONER. You should read “Information for the Petitioner,” beginning on page 4.

The court the petitioner is asking to be ordered to do or not to do something is called the RESPONDENT. In appellate division writ proceedings, the trial court is the respondent.

Any other party in the trial court case who would be affected by a ruling regarding the request for a writ is a REAL PARTY IN INTEREST. If you are a real party in interest, you should read “Information for a Real Party in Interest,” beginning on page 10.

9 Do I need a lawyer to represent me in a writ proceeding?

You do not *have* to have a lawyer; you are allowed to represent yourself in a writ proceeding in the appellate division. But writ proceedings can be very complicated



and you will have to follow the same rules that lawyers have to follow. If you have any questions about the writ procedures, you should talk to a lawyer. In limited civil cases and infraction cases, you must hire a lawyer at your own expense if you want one (the court cannot provide 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.

INFORMATION FOR THE PETITIONER

This part of the information sheet is written for the petitioner—the party asking for the writ. It explains some of the rules and procedures relating to asking for a writ. The information may also be helpful to a real party in interest. There is more information for a real party in interest starting on page 10 of this information sheet.

10 Who can ask for a writ?

Only a party in the trial court proceeding—the plaintiff or defendant in a civil case or the defendant or prosecuting agency in a misdemeanor or infraction case—can ask for a writ challenging a ruling on a motion to disqualify a judge (see California Code of Civil Procedure section 170.3(d)). Parties are also usually the only ones that ask for writs challenging other kinds of trial court rulings. However, in most cases, a person who was not a party does have the legal right to ask for a writ if that person has a “beneficial interest” in the trial court’s ruling. A “beneficial interest” means that the person has a specific right or interest affected by the ruling that goes beyond the general rights or interests the public may have in the ruling.

11 How do I ask for a writ?

To ask for a writ you must serve and file a petition for a writ (see below for an explanation of how to “serve and file” a petition). A petition is a formal request that the appellate division issue a writ. A petition for a writ explains to the appellate division what happened in the trial court, what legal error you (the petitioner) believe the trial court made, why you have no other adequate

remedy at law, and what order you are requesting the appellate division to make.

12 How do I prepare a writ petition?

If you are represented by a lawyer, your lawyer will prepare your petition for a writ. If you are not represented by a lawyer, you must use *Petition for Writ (Misdemeanor, Infraction, or Limited Civil Case)* (form APP-151) to prepare your petition. You can get form APP-151 at any courthouse or county law library or online at www.courts.ca.gov/forms. This form asks you to fill in the information that needs to be in a writ petition.

a. Description of your interest in the trial court’s ruling

Your petition needs to tell the appellate division why you have a right to ask for a writ in the case. As discussed above, usually only a person who was a party in the trial court case—the plaintiff or defendant in a civil case or the defendant or prosecuting agency in a misdemeanor or infraction case—asks for a writ challenging a ruling in that case. If you were a party in the trial court case, say that in your petition. If you were not a party, you will need to describe what “beneficial interest” you have in the trial court’s ruling. A “beneficial interest” means that you have a specific right or interest affected by the ruling that goes beyond the general rights or interests the public may have in the ruling. To show the appellate division that you have a beneficial interest in the ruling you want to challenge, you must describe how the ruling will affect you in a direct and negative way.

b. Description of the legal error you believe the trial court made

Your petition will need to tell the appellate division what legal error you believe the trial court made. Not every mistake a trial court might make can be addressed by a writ. You must show that the trial court made one of the following types of legal errors:

- The trial court has a legal duty to act but:
 - Refuses to act
 - Has not done what the law says it must do



- Has acted in a way the law says it does not have the power to act
- The trial court has performed or says it is going to perform a judicial function (like deciding a person's rights under law in a particular case) in a way that the court does not have the legal power to do.

To show the appellate division that the trial court made one of these legal errors, you will need to:

- Show that the trial court has the legal duty or the power to act or not act in a particular way. You will need to tell the appellate division what legal authority—what constitutional provision, statute, rule, or published court decision—establishes the trial court's legal duty or power to act or not act in that way.
- Show the appellate division that the trial court has not acted in the way that this legal authority says the court is required to act. You will need to tell the appellate division exactly where in the record of what happened in the trial court it shows that the trial court did not act in the way it was required to.

c. Description of why you need the writ

One of the most important parts of your petition is explaining to the appellate division why you need the writ you have requested. Remember, the appellate division does not have to grant your petition just because the trial court made an error. You must convince the appellate division that it is important for it to issue the writ.

Your petition needs to show that a writ is the only way to fix the trial court's error. To convince the court you need the writ, you will need to show the appellate division that you have no way to fix the trial court's error other than through a writ (this is called having "no adequate remedy at law").

This will be hard if the trial court's ruling can be appealed. If the ruling you are challenging can be appealed, either immediately or as part of an appeal of the final judgment in your case, the appellate division will generally consider this appeal to be a good enough way to fix the trial court's ruling (an "adequate remedy"). To be able to explain to the appellate division why you do not have an adequate remedy at law, you will need to find out if the ruling you want to challenge

can be appealed, either immediately or as part of an appeal of the final judgment.

Here are some trial court rulings that can be appealed.

There are laws (statutes) that say that certain kinds of trial court rulings ("orders") can be appealed immediately. In limited civil cases, California Code of Civil Procedure section 904.2 lists orders that can be appealed immediately, including orders:

- Changing or refusing to change the place of trial (venue)
- Granting a motion to quash service of summons
- Granting a motion to stay or dismiss the action on the ground of inconvenient forum
- Granting a new trial
- Denying a motion for judgment notwithstanding the verdict
- Granting or dissolving an injunction or refusing to grant or dissolve an injunction
- Appointing a receiver
- Made after final judgment in the case

In misdemeanor and infraction cases, orders made after the final judgment that affect the substantial rights of the defendant can be appealed immediately (California Penal Code section 1466).

In misdemeanor cases, orders granting or denying a motion to suppress evidence can also be appealed immediately (California Penal Code section 1538.5(j)).

You can get copies of these statutes at any county law library or online at leginfo.legislature.ca.gov/faces/codes.xhtml. You should also check to see if there are published court decisions that indicate whether you can or must use an appeal or a writ petition to challenge the type of ruling you want to challenge in your case.

If the ruling can be appealed, you will need to show that an appeal will not fix the trial court's error. If the trial court ruling you want to challenge can be appealed, you will need to show the appellate division why that appeal is not good enough to fix the trial court's error. To do that, you will need to show the appellate division how you will be harmed by the trial court's error in a way that cannot be fixed by the appeal if the appellate division does not issue the writ (this is called "irreparable" injury or harm). For example, because of



the time it takes for an appeal, the harm you want to prevent may happen before an appeal can be finished.

d. Description of the order you want the appellate division to make

Your petition needs to describe what you are asking the appellate division to order the trial court to do or not do. Writ petitions usually ask that the trial court be ordered to cancel (“vacate”) its ruling, issue a new ruling, or not take any steps to enforce its ruling.

If you want the appellate division to order the trial court not to do anything more until the appellate division decides whether to grant the writ you are requesting, you must ask for a “stay.” If you want a stay, you should first ask the trial court for a stay. You should tell the appellate division whether you asked the trial court for a stay. If you did not ask the trial court for a stay, you should tell the appellate division why you did not do this.

If you ask the appellate division for a stay, make sure you also fill out the “Stay requested” box on the first page of the *Petition for Writ (Misdemeanor, Infraction, or Limited Civil Case)* (form APP-151).

e. Verifying the petition

Petitions for writs must be “verified.” This means that either the petitioner or the petitioner’s attorney must declare under penalty of perjury that the facts stated in the petition are true and correct, must sign the petition, and must indicate the date that the petition was signed. On the last page of the *Petition for Writ (Misdemeanor, Infraction, or Limited Civil Case)* (form APP-151), there is a place for you to verify your petition.

13 Is there anything else that I need to serve and file with my petition?

Yes. Along with the petition, you must serve and file a record of what happened in the trial court (see below for an explanation of how to serve and file the petition). Since the appellate division judges were not there in the trial court, a record of what happened must be sent to the appellate division for its review. The materials that make up this record are called “supporting documents.”

What needs to be in the supporting documents. The supporting documents must include:

- A record of what was said in the trial court about the ruling that you are challenging (this is called the “oral proceedings”) and
- Copies of certain important documents from the trial court.

Read below for more information about these two parts of the supporting documents.

Record of the oral proceedings. There are several ways a record of what was said in the trial court may be provided to the appellate division:

- **A transcript**—A transcript is a written record (often called the “verbatim” record) of the oral proceedings in the trial court. If a court reporter was in the trial court and made a record of the oral proceedings, you can have the court reporter prepare a transcript of those oral proceedings, called a “reporter’s transcript,” for the appellate division. If a reporter was not there, but the oral proceedings were officially recorded on approved electronic recording equipment, you can have a transcript prepared for the appellate division from the official electronic recording of these proceedings. You (the petitioner) must pay for preparing a transcript, unless the court orders otherwise.
- **A copy of an electronic recording**—If the oral proceedings were officially recorded on approved electronic recording equipment, the court has a local rule for the appellate division permitting this recording to be used as the record of the oral proceedings, 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 a transcript. You (the petitioner) must pay for preparing a copy of the official electronic recording, unless the court orders otherwise.
- **A summary**—If a transcript or official electronic recording of what was said in the trial court is not available, your petition must include a declaration (a statement signed by the petitioner under penalty of perjury) either:
 - Explaining why the transcript or official electronic recording is not available and providing a fair summary of the proceedings, including the petitioner’s arguments and any statement by the court supporting its ruling or



- o Stating that the transcript or electronic recording has been ordered, the date it was ordered, and the date it is expected to be filed.

Copies of documents from the trial court. Copies of the following documents from the trial court must also be included in the supporting documents:

- The trial court ruling being challenged in the petition
- All documents and exhibits submitted to the trial court supporting and opposing the petitioner’s position
- Any other documents or portions of documents submitted to the trial court that are necessary for a complete understanding of the case and of the ruling being challenged

What if I cannot get copies of the documents from the trial court because of an emergency? Rule 8.931 of the California Rules of Court provides that in extraordinary circumstances the petition may be filed without copies of the documents from the trial court. If the petition is filed without these documents, you must explain in your petition the urgency and the circumstances making the documents available.

Format of the supporting documents. Supporting documents must be put in the format required by rule 8.931 of the California Rules of Court. Among other things, there must be a tab for each document and an index listing the documents that are included. You should carefully read rule 8.931. You can get a copy of rule 8.931 at any courthouse or county law library or online at www.courts.ca.gov/rules.

14 Is there a deadline to ask for a writ?

Yes. For statutory writs, the statute usually sets the deadline for serving and filing the petition. Here is a list of the deadlines for filing petitions for some of the most common statutory writs (you can get copies of these statutes at any county law library or online at leginfo.legislature.ca.gov/faces/codes.xhtml).

Statutory Writ	Filing Deadline
Writ challenging a ruling on a motion to disqualify a judge (see California Code of Civil Procedure section 170.3(d))	10 days after notice to the parties of the decision
Writ challenging the denial of a motion for summary judgment (see California Code of Civil Procedure section 437c(m)(l))	20 days after service of written notice of entry of the order
Writ challenging a ruling on a motion for summary adjudication of issues (see California Code of Civil Procedure section 437c(m)(l))	20 days after service of written notice of entry of the order

For common law writs or statutory writs where the statute does not set a deadline, you should file the petition as soon as possible and not later than 30 days after the court makes the ruling that you are challenging in the petition. While there is no absolute deadline for filing these petitions, writ petitions are usually used when it is urgent that the trial court’s error be fixed. Remember, the court is not required to grant your petition even if the trial court made an error. If you delay in filing your petition, it may make the appellate division think that it is not really urgent that the trial court’s error be fixed and the appellate division may deny your petition. If there are extraordinary circumstances that delayed the filing of your petition, you should explain these circumstances to the appellate division in your petition.

15 How do I “serve” my petition?

Rule 8.931(d) requires that the petition and one set of supporting documents be served on any named real party in interest and that just the petition be served on the respondent trial court. “Serving” a petition on a party means that you must:

- Have somebody over 18 years old mail, deliver, or electronically send (“serve”) the petition to the real party in interest and the respondent court in the way required by law. If the petition is mailed or



personally delivered, it must be by someone who is not a party to the case—so not you.

- Make a record that the petition has been served. This record is called a “proof of service.” *Proof of Service (Appellate Division)* (form APP-109) or *Proof of Electronic Service (Appellate Division)* (form APP-109E) can be used to make this record. The proof of service must show who served the petition, who was served with the petition, how the petition was served (by mail, in person, or electronically), and the date the petition was served.

You can get more information about how to serve court documents 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.

16 How do I file my petition?

To file a petition for a writ in the appellate division, you must bring or mail the original petition, including the supporting documents, and the proof of service to the clerk for the appellate division of the superior court that made the ruling you are challenging. If the superior court has more than one courthouse location, you should call the clerk at the courthouse where the ruling you are challenging was made to ask where to file your petition.

You should make a copy of all the documents 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 petition to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

17 Do I have to pay to file a petition?

There is no fee to file a petition for a writ in a misdemeanor or infraction case, but there is a fee to file a petition for a writ in a limited civil case. You should ask the clerk for the appellate division where you are filing the petition what this fee is. If you cannot afford to pay this filing fee, you can ask the court to waive this fee. To do this, you must fill out 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 petition or with your petition. The court will review this application and decide whether to waive the filing fee.

18 What happens after I file my petition?

Within 10 days after you serve and file your petition, the respondent or any real party in interest can serve and file preliminary opposition to the petition. Within 10 days after an opposition is filed, you may serve and file a reply to that opposition.

The appellate division does not have to wait for an opposition or reply before it can act on a petition for a writ, however. Without waiting, the appellate division can:

- Issue a stay
- Summarily deny the petition
- Issue an alternative writ or order to show cause
- Notify the parties that it is considering issuing a preemptory writ in the first instance
- Issue a peremptory writ in the first instance if such relief was expressly requested in the petition.

Read below for more information about these options.

a. Stay of trial court proceedings

A stay is an order from the appellate division telling the trial court not to do anything more until the appellate division decides whether to grant your petition. A stay puts the trial court proceedings on temporary hold.

b. Summary denial

A “summary denial” means that the appellate division denies the petition without deciding whether the trial court made the legal error claimed by the petitioner or whether the writ requested by the petitioner should be issued based on that error. Remember, even if the trial court made a legal error, the appellate division can decide not to consider that error now but to wait and consider the error as part of any appeal from the final judgment. No reasons need to be given for a summary denial. Most petitions for writs are denied in this way.



c. Alternative writ or order to show cause

An “alternative writ” is an order telling the trial court either to do what the petitioner has requested in the petition (or some modified form of what the petitioner requested) or to show the appellate division why the trial court should not be ordered to do what the petitioner requested. An “order to show cause” is similar; it is an order telling the trial court to show the appellate division why the trial court should not be ordered to do what the petitioner requested in the petition (or some modified form of what the petitioner requested). The appellate division will issue an alternative writ or an order to show cause only if the petitioner has shown that **he or she** has no adequate remedy at law and the appellate division has decided that the petitioner may have shown that the trial court made a legal error that needs to be fixed. **the petitioner**

If the appellate division issues an alternative writ and the trial court does what the petitioner requested (or a modified form of what the petitioner requested as ordered by the appellate division), then no further action by the appellate division is needed and the appellate division may dismiss the petition.

If the trial court does not comply with an alternative writ, however, or if the appellate division issues an order to show cause, then the respondent court or a real party in interest can file a response to the appellate division’s order (called a “return”) that explains why the trial court should not be ordered to do what the petitioner requested. The return must be served and filed within the time specified by the appellate division or, if no time is specified, within 30 days from the date the alternative writ or order to show cause was issued. The petitioner will then have an opportunity to serve and file a reply within 15 days after the return is filed. The appellate division may set the matter for oral argument. When all the papers have been served and filed (or the time to serve and file them has passed) and oral argument is completed, the appellate division will decide the case.

d. Peremptory writ in the first instance

A “peremptory writ in the first instance” is an order telling the trial court to do what the petitioner has requested (or some modified form of what the petitioner requested) that is issued without the appellate division first issuing an alternative writ or order to show cause. It is very rare for the appellate division to issue a peremptory writ in the first instance, and it will not do so

unless the respondent and real parties in interest have received notice that the court might do so, either through the petitioner expressly asking for such relief in the petition, or by the court first notifying the parties and giving the respondent court and any real party in interest a chance to file an opposition.

The respondent court or a real party in interest can file a response to the appellate division’s notice (called an “opposition”) that explains why the trial court should not be ordered to do what the petitioner has requested. The opposition must be served and filed within the time specified by the appellate division or, if no time is specified, within 30 days from the date the notice was issued. The petitioner will then have a chance to serve and file a reply within 15 days after the opposition is filed. The appellate division may then set the matter for oral argument. When all the papers have been served and filed (or the time to serve and file them has passed) and oral argument is completed, the appellate division will decide the case.

19 What should I do if the court denies my petition?

If the court denies your petition, it may be helpful to talk to a lawyer. In a limited civil or infraction case, you must hire a lawyer at your own expense if you want one (the court cannot provide one). You can get information about finding an attorney on the California Courts Online Self-Help Center at www.courts.ca.gov/selfhelp-lowcosthelp.htm.

**INFORMATION FOR A REAL PARTY
IN INTEREST**

This part of the information sheet is written for a real party in interest—a party from the trial court case other than the petitioner who will be affected by a ruling on a petition for a writ. It explains some of the rules and procedures relating to responding to a petition for a writ. The information may also be helpful to the petitioner.



20 I have received a copy of a petition for a writ in a case in which I am a party. Do I need to do anything?

You do not *have* to do anything. The California Rules of Court give you the right to file a preliminary opposition to a petition for a writ within 10 days after the petition is served and filed, but you are not required to do this. The appellate division can take certain actions without waiting for any opposition, including:

- Summarily denying the petition
- Issuing an alternative writ or order to show cause
- Notifying the parties that it is considering issuing a peremptory writ in the first instance
- Issuing a peremptory writ in the first instance if such relief was expressly requested in the petition.

Read the response to question **18** for more information about these options.

Most petitions for writs are summarily denied, often within a few days after they are filed. If you have not already received something from the appellate division saying what action it is taking on the petition, it is a good idea to call the appellate division to see if the petition has been denied before you decide whether and how to respond.

This would be a good time to talk to a lawyer. You do not *have* to have a lawyer; you are allowed to represent yourself in a writ proceeding in the appellate division. But writ proceedings can be very complicated and you will have to follow the same rules that lawyers have to follow. If you have any questions about writ proceedings or about whether and how you should respond to a writ petition, you should talk to a lawyer. In a limited civil case or infraction case, you must hire a lawyer at your own expense if you want one (the court cannot provide one). You can get information about finding an attorney on the California Courts Online Self-Help Center at www.courts.ca.gov/selfhelp-lowcosthelp.htm.

If the petition has not already been summarily denied, you may, but are not required to, serve and file a preliminary opposition to the petition within 10 days after the petition was served and filed. In general, it is a good idea to consider filing a preliminary opposition if the petition misstates the facts or if you think the petition shows that the trial court made a legal error that may

need to be fixed. However, the appellate division will seldom grant a writ without first issuing an alternative writ, an order to show cause, or a notice that it is considering issuing a peremptory writ. In all these circumstances, you will get notice from the court and have a chance to file a response. Note that the appellate division may issue a peremptory writ without notice if the petitioner expressly asked the court, in the petition, to issue a peremptory writ in the first instance. If the petitioner did that, you may want to consider whether to file a preliminary opposition, to explain why you believe the small claims court made no legal error and why the petitioner is not entitled to a writ.

If you decide to file a preliminary opposition, you must serve that preliminary opposition on all the other parties to the writ proceeding. “Serving and filing” an opposition means that you must:

- Have somebody over 18 years old mail, deliver, or electronically send (“serve”) the preliminary opposition to the other parties in the way required by law. If the preliminary opposition is mailed or personally delivered, it must be by someone who is not a party to the case—so not you.
- Make a record that the preliminary opposition has been served. This record is called a “proof of service.” *Proof of Service (Appellate Division)* (form APP-109) or *Proof of Electronic Service (Appellate Division)* (form APP-109E) can be used to make this record. The proof of service must show who served the preliminary opposition, who was served with the preliminary opposition, how the preliminary opposition was served (by mail, in person, or electronically), and the date the preliminary opposition was served.
- File the original preliminary opposition and the proof of service with the appellate division. You should make a copy of the preliminary opposition 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 preliminary opposition 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 documents 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.

21 I have received a copy of an alternative writ or an order to show cause issued by the appellate division. Do I need to do anything?

Yes. Unless the trial court has already done what the alternative writ told it to do, you should serve and file a response called a “return.”

As explained above, the appellate division will issue an alternative writ or an order to show cause if the appellate division has decided that the petitioner may have shown that the trial court made a legal error that needs to be fixed. An “alternative writ” is an order telling the trial court either to do what the petitioner has requested in the petition (or some modified form of what the petitioner requested) or to show the appellate division why the trial court should not be ordered to do what the petitioner requested. An “order to show cause” is similar; it is an order telling the trial court to show the appellate division why the trial court should not be ordered to do what the petitioner requested in the petition (or some modified form of what the petitioner requested).

If the appellate division issues an alternative writ and the trial court does what the petitioner requested (or a modified form of what the petitioner requested as ordered by the appellate division), then no further action by the appellate division is needed and the appellate division may dismiss the petition. If the trial court does not comply with an alternative writ, however, or if the appellate division issues an order to show cause, then the respondent court or the real party in interest may serve and file a response to the appellate division’s order, called a “return.”

A return is your argument to the appellate division about why the trial court should not be ordered to do what the petitioner has requested. If you are represented by a lawyer in the writ proceeding, your lawyer will prepare your return. If you are not represented by a lawyer, you will need to prepare your own return. A return is usually a legal response called an “answer.” An answer is used to admit or deny the facts alleged in the petition, to add to or correct the facts, and to explain any legal defenses to the legal arguments made by the petitioner. You

should read California Code of Civil Procedure sections 430.10–430.80 for more information about answers. You can get copies of these statutes at any county law library or online at leginfo.legislature.ca.gov/faces/codes.xhtml. A return can also include additional supporting documents not already filed by the petitioner.

If you do not file a return when the appellate division issues an alternative writ or order to show cause, it does not mean that the appellate division is required to issue the writ requested by the petitioner. However, the appellate division will treat the facts stated by the petitioner in the petition as true, which makes it more likely the appellate division will issue the requested writ.

Unless the appellate division sets a different filing deadline in its alternative writ or order to show cause, you must serve and file your return within 30 days after the appellate division issues the alternative writ or order to show cause. The return must be served on all the other parties to the writ proceeding. “Serving and filing” the return means that you must:

- Have somebody over 18 years old mail, deliver, or electronically send (“serve”) the return to the other parties in the way required by law. If the return is mailed or personally delivered, it must be by someone who is not a party to the case—so not you.
- Make a record that the return has been served. This record is called a “proof of service.” *Proof of Service (Appellate Division)* (form APP-109) or *Proof of Electronic Service (Appellate Division)* (form APP-109E) can be used to make this record. The proof of service must show who served the return, who was served with the return, how the return was served (by mail, in person, or electronically), and the date the return was served.
- File the original return and the proof of service with the appellate division. You should make a copy of the return 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 return 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 documents 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.

22 I have received a copy of a notice from the appellate division indicating it is considering issuing a peremptory writ in the first instance. Do I need to do anything?

Yes. You should serve and file a response called an “opposition.”

As explained in the answer to question **18**, a “peremptory writ in the first instance” is an order telling the trial court to do what the petitioner has requested (or some form of what the petitioner requested as ordered by the appellate division) that is issued without the appellate division first issuing an alternative writ or order to show cause. The appellate division will not issue a peremptory writ in the first instance without first giving the parties notice and a chance to file an opposition. However, when the appellate division issues such a notice, it means that the appellate division is strongly considering granting the writ requested by the petitioner.

An opposition is your argument to the appellate division about why the trial court should not be ordered to do what the petitioner has requested. If you are represented by a lawyer in the writ proceeding, your lawyer will prepare your opposition. If you are not represented by a lawyer, you will need to prepare your own opposition. Like a return discussed above, an opposition is usually a legal response called an “answer.” An answer is used to admit or deny the facts alleged in the petition, to add to or correct the facts, and to explain any legal defenses to the legal arguments made by the petitioner. You should read California Code of Civil Procedure sections 430.10–430.80 for more information about answers. You can get copies of these statutes at any county law library or online at leginfo.legislature.ca.gov/faces/codes.xhtml.

Unless the appellate division sets a different deadline in its notice that it is considering issuing a peremptory writ, you must serve and file your opposition within 30 days after the appellate division issues the notice. The opposition must be served on all the other parties to the writ proceeding. “Serving and filing” the opposition means that you must:

- Have somebody over 18 years old mail, deliver, or electronically send (“serve”) the opposition to the

other parties in the way required by law. If the opposition is mailed or personally delivered, it must be by someone who is not a party to the case—so not you.

- Make a record that the opposition has been served. This record is called a “proof of service.” *Proof of Service (Appellate Division)* (form APP-109) or *Proof of Electronic Service (Appellate Division)* (form APP-109E) can be used to make this record. The proof of service must show who served the opposition, who was served with the opposition, how the opposition was served (by mail, in person, or electronically), and the date the opposition was served.
- File the original opposition and the proof of service with the appellate division. You should make a copy of the opposition 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 opposition 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 documents 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.

23 What happens after I serve and file my return or opposition?

After you file a return or opposition, the petitioner has 15 days to serve and file a reply. The appellate division may also set the matter for oral argument. When all the papers have been filed (or the time to file them has passed) and oral argument is completed, the appellate division will decide the case.

**Proposed Statement on Appeal
(Misdemeanor)**

Clerk stamps date here when form is filed.

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.

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:

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: _____

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: _____

Fax: _____



Trial Court Case Number: _____

Trial Court Case Name: _____

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: _____



Trial Court Case Name: _____

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.



Trial Court Case Name: _____

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)."



Trial Court Case Name: _____

- (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."



Trial Court Case Name: _____

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."

the witness's

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: _____

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

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 statement on appeal in an **infraction** case, such as a case about a traffic ticket.
- 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.
- This form can be filed at the same time as your notice of appeal. If it is not filed with your notice of appeal, this form must be filed **no later than 20 days after you file your notice of appeal**. If you have chosen to use 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.
- You must serve a copy of the completed form on each of the other parties in the case 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 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. 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: _____

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: _____

Fax: _____



Trial Court Case Name: _____

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: _____



Trial Court Case Name: _____

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.



Trial Court Case Name: _____

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)."



Trial Court Case Name: _____

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."



Trial Court Case Name: _____

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: _____

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

