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
October 19, 2016

To
Members of the Appellate Advisory Committee's Rules Subcommittee

From
Heather Anderson, Supervising Attorney, Legal Services

Subject
Rules to implement Senate Bill 1065

Action Requested
Please read before October 24 rules subcommittee conference call

Deadline
October 24, 2016

Contact
Heather Anderson
415-865-7691
heather.anderson@jud.ca.gov

Background

On September 25, 2017, the Governor signed into law Senate Bill 1065.[1] This legislation enacted new Code of Civil Procedure section 1294.4 which provides for expedited appellate review of superior court orders dismissing or denying a petition to compel arbitration involving a claim under the Elder and Dependent Adult Civil Protection Act in which a party has been granted a preference Code of Civil Procedure section 36. Under this new code section, the Court of Appeal is required to issue its decision no later than 100 days after the notice of appeal is filed and may only grant extensions of time if good cause is shown and the extension will promote the interests of justice. The legislation requires that, on or before July 1, 2017, the Judicial Council adopt rules to implement these statutory requirement and to establish a shortened notice of appeal period for the cases.

[1] The enacted version of this bill can be accessed at: http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB1065

Draft Rule Amendments

Attached for your consideration is a draft invitation to comment on possible rules intended to implement Senate Bill 1065. The draft rules included in this invitation to comment are modeled on existing rules 8.700 – 8.702 which implement statutory requirements for expedited review in certain cases under the California Environmental Quality Act (CEQA). As is discussed in the next item on the subcommittee agenda, that CEQA legislation required that both the trial and the appellate process be completed within 270 days. The rules developed by the Appellate Advisory Committee and the Civil and Small Claims Advisory Committee to implement that legislative scheme essentially divided this time between the trial and appellate courts, giving the Court of Appeal approximately 135 days to complete its work on a case governed by these statutes. Senate Bill 1065, however, requires the Court of Appeal to complete its work on these arbitration matters within 100 after the notice of appeal is filed. Because this period is shorter than the period provided under the relevant CEQA statues, the attached proposed rules would establish shorter time periods for some of the steps in the appellate process:

- Appellant's opening brief (and the appellants or joint appendix) must be filed 20 days after the filing of the notice of appeal – under the CEQA rules, this period is 25 days
- Respondent's opening brief (and any respondent's appendix) must be 20 days after the filing of appellant's opening brief – under the CEQA rules, this period is 25 days
- Appellant's reply brief must be filed 10 days after the filing of respondent's brief – under the CEQA rules, this period is 15 days
- Oral argument must be set 35 days after the last reply brief is filed – under the CEQA rules, this period is 45 days
- Although the rules do not address this time period, the time remaining after oral argument until the statutory deadline for issuing a decision would be 15 days – under the CEQA rules, this period is 25 days

The subcommittee may want to discuss whether the draft rule appropriately allocates the 100 days among these steps in the appellate process.

Rules Subcommittee Task

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.

Judicial Council of California

455 Golden Gate Avenue · San Francisco, California 94102-3688
www.courts.ca.gov/policyadmin-invitationstocomment.htm

INVITATION TO COMMENT

W17-__

Title
Appellate Procedure: Expedited Review of Certain Orders Denying Motions to Compel Arbitration

Proposed Rules, Forms, Standards, or Statutes
Adopt California Rules of Court, rules 8.710 – 8.717

Proposed by
Appellate Advisory Committee
Hon. Louis Mauro, Chair

Action Requested
Review and submit comments by January 11, 2017

Proposed Effective Date
July 1, 2017

Contact
Heather Anderson, 415-865-7691
heather.anderson@jud.ca.gov

Executive Summary and Origin

Recent legislation requires the Court of Appeal to issue its decision in cases involving the review of certain orders denying motions to compel arbitration no later than 100 days after the notice of appeal is filed. The legislation also requires the Judicial Council to adopt rules to implement this requirement and to establish a shortened notice of appeal period in these cases. These proposed rules are intended to fulfill this legislative obligation.

Background

On September 25, 2017, the Governor signed into law Senate Bill 1065. This legislation enacted new Code of Civil Procedure section 1294.4 which provides for expedited appellate review of superior court orders dismissing or denying a petition to compel arbitration involving a claim under the Elder and Dependent Adult Civil Protection Act in which a party has been granted a preference Code of Civil Procedure section 36. Under this new code section, the Court of Appeal is required to issue its decision no later than 100 days after the notice of appeal is filed and may only grant extensions of time if good cause is shown and the extension will promote the interests of justice. The legislation requires that, on or before July 1, 2017, the Judicial Council adopt rules to implement these statutory requirement and to establish a shortened notice of appeal period for the cases.

The Proposal

The attached proposed rules 8.710 – 8.717 are intended to fulfill the Judicial Council's statutory obligation to adopt rules to implement new Code of Civil Procedure section 1294.4. These rules

are modeled on existing rules 8.700 – 8.702 which implement statutory requirements for expedited review in certain cases under the California Environmental Quality Act (CEQA). However, because the 100-day period for issuance of a decision in cases under Code of Civil Procedure section 1294.4 is shorter than the period provided under the relevant CEQA provisions, the attached proposed rules would establish shorter time periods for some of the steps in the appellate process than are established by rules 8.700 – 8.702.

Alternatives Considered

Because adoption of rules to implement Code of Civil Procedure section 1294.4 is mandated by statute, the committee did not consider the option of not proposing implementing rules. The committee considered different alternatives for the length of time provided for various steps in the appellate process. The proposed rules reflect the committee's attempt to appropriately allocate the very limited 100-days to these steps.

Implementation Requirements, Costs, and Operational Impacts

Implementing Code of Civil Procedure section 1294.4 will generate costs and operational impact for the Courts of Appeal in which the proceedings governed by this statute are filed. The committee does not anticipate that these proposed rules will add to the burden created by this new statutory procedure.

Attachments and Links

1. Proposed California Rules of Court, rules 8.104 and 8.710 – 8.717.
2. Senate bill 1065, as adopted by the Legislature and approved by the Governor: http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB1065

California Rules of Court, rules 8.104 would be amended and rules 8.710 – 8.717 would be adopted, effective July 1, 2017 to read:

Chapter 2. Civil Appeals

Article 1. Taking the Appeal

Rule 8.104. Time to appeal

(a) Normal time

(1) Unless a statute~~,~~ or rules 8.108, ~~or rule~~ 8.702, or 8.712 provide~~s~~ otherwise, a notice of appeal must be filed on or before the earliest of:

(A) – (C) * * *

(b) – (e) * * *

Chapter 12. Review of An Order Dismissing Or Denying A Petition To Compel Arbitration Under Code of Civil Procedure Section 1294.4

Rule 8.710. Application

(a) Application of the rules in this chapter

The rules in this chapter govern appeals to review a superior court order dismissing or denying a petition to compel arbitration under Code of Civil Procedure section 1294.4.

(b) Application of general rules for civil appeals

Except as otherwise provided by the rules in this chapter, rules 8.100–8.278, relating to civil appeals, apply to appeals under this chapter.

Rule 8.711. Filing and service

(a) Service

Except when the court orders otherwise under (b) or as otherwise provided by law, all documents that the rules in this chapter require be served on the parties must be served by personal delivery, electronic service, express mail, or other means consistent with Code of Civil Procedure sections 1010, 1011, 1012, and 1013 and reasonably calculated to ensure delivery of the document to the parties not later than the close of the business day after the document is filed or lodged with the court.

California Rules of Court, rules 8.104 would be amended and rules 8.710 – 8.717 would be adopted, effective July 1, 2017 to read:

(b) Electronic filing and service

(1) In accordance with rule 8.71, all parties except self-represented parties are required to file all documents electronically except as otherwise provided by these rules, the local rules of the reviewing court, or court order~~;~~. Notwithstanding rule 8.71(b), a court may order a self-represented party to file documents electronically.

(2) The court may order that all documents be served electronically on parties who have consented to electronic service or who are otherwise required by law or court order to accept electronic service. All parties represented by counsel are deemed to have consented to electronic service. All self-represented parties may so consent.

(c) Exemption from extension of time

The extension of time provided in Code of Civil Procedure section 1010.6 for service completed by electronic means does not apply to any service in actions governed by these rules.

Rule 8.712. Notice of appeal

(a) Time to appeal

The notice of appeal must be served and filed on or before the earlier of:

(1) Five court days after the superior court clerk serves on the party filing the notice of appeal a document entitled "Notice of Entry" of judgment or a filed-endorsed copy of the judgment, showing the date either was served; or

(2) Five court days after the party filing the notice of appeal serves or is served by a party with a document entitled "Notice of Entry" of judgment or a filed-endorsed copy of the judgment, accompanied by proof of service.

(b) Contents of notice of appeal

The notice of appeal must state that the superior court order being appealed is governed by the rules in this chapter:

(c) Extending the time to appeal

(1) *Motion for new trial*

If any party serves and files a valid notice of intention to move for a new trial or, under rule 3.2237, a valid motion for a new trial and that motion is denied, the time to appeal from the judgment is extended for all parties until the earlier of:

California Rules of Court, rules 8.104 would be amended and rules 8.710 – 8.717 would be adopted, effective July 1, 2017 to read:

(A) Five court days after the superior court clerk or a party serves an order denying the motion or a notice of entry of that order; or

(B) Five court days after denial of the motion by operation of law.

(2) *Motion to vacate judgment*

If, within the time prescribed by subdivision (a) to appeal from the judgment, any party serves and files a valid notice of intention to move—or a valid motion—to vacate the judgment and that motion is denied, the time to appeal from the judgment is extended for all parties until five court days after the superior court clerk or a party serves an order denying the motion or a notice of entry of that order.

(3) *Motion to reconsider appealable order*

If any party serves and files a valid motion to reconsider an appealable order under Code of Civil Procedure section 1008, subdivision (a), the time to appeal from that order is extended for all parties until five court days after the superior court clerk or a party serves an order denying the motion or a notice of entry of that order.

(4) *Cross-appeal*

If an appellant timely appeals from a judgment or appealable order, the time for any other party to appeal from the same judgment or order is extended until five court days after the superior court clerk serves notification of the first appeal.

Advisory Committee Comment

It is very important to note that the deadline for filing a notice of appeal may be earlier than the deadline for filing a motion for a new trial, a motion for reconsideration, or a motion to vacate the judgment.

Rule 8.713. Record on appeal

(a) Record of written documents

The record of the written documents from the superior court proceedings must be in the form of a joint appendix or separate appellant's and respondent's appendixes under rule 8.124.

(b) Record of the oral proceedings

(1) The appellant must serve and file with its notice of appeal a notice designating the record under rule 8.121 specifying whether the appellant elects to proceed with or without a record of the oral proceedings in the trial court. If the appellant elects to

California Rules of Court, rules 8.104 would be amended and rules 8.710 – 8.717 would be adopted, effective July 1, 2017 to read:

proceed with a record of the oral proceedings in the trial court, the notice must designate a reporter's transcript.

(2) Any party that submits a copy of a Transcript Reimbursement Fund application in lieu of a deposit under rule 8.130(b)(3) must serve all other parties with notice of this submission when the party serves its notice of designation of the record. Within five days after service of this notice, any other party may submit to the trial court the required deposit for the reporter's transcript under rule 8.130(b)(1), the reporter's written waiver of the deposit under rule 8.130(b)(3)(A), or a certified transcript of all of the proceedings designated by the party under rule 8.130(b)(3)(C).

(3) Within 10 days after the superior court notifies the court reporter to prepare the transcript under rule 8.130(d)(2), the reporter must prepare and certify an original of the transcript and file the original and required number of copies in superior court.

(4) If the appellant does not present its notice of designation as required under (A) or if any designating party does not submit the required deposit for the reporter's transcript under rule 8.130(b)(1) or a permissible substitute under rule 8.130(b)(3) with its notice of designation or otherwise fails to timely do another act required to procure the record, the superior court clerk must serve the defaulting party with a notice indicating that the party must do the required act within two court days of service of the clerk's notice or the reviewing court may impose one of the following sanctions:

(A) If the defaulting party is the appellant, the court may dismiss the appeal; or

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

Rule 8.714. Superior court clerk duties

Within five court days following the filing of a notice of appeal under this rule, the superior court clerk must:

(1) Serve the following on each party:

(A) Notification of the filing of the notice of appeal; and

(B) A copy of the register of actions, if any.

(2) Transmit the following to the reviewing court clerk:

(A) A copy of the notice of appeal; and

(B) A copy of the appellant's notice designating the record;

California Rules of Court, rules 8.104 would be amended and rules 8.710 – 8.717 would be adopted, effective July 1, 2017 to read:

Rule 8.715. Briefing

(a) Electronic filing

Unless otherwise ordered by the reviewing court, all briefs must be electronically filed.

(b) Time to serve and file briefs

Unless otherwise ordered by the reviewing court:

(1) An appellant must serve and file its opening brief within 20 days after the notice of appeal is served and filed.

(2) A respondent must serve and file its brief within 20 days after the appellant files its opening brief.

(3) An appellant must serve and file its reply brief, if any, within 10 days after the respondent files its brief.

(c) Contents and form of briefs

(1) The briefs must comply as nearly as possible with rule 8.204.

(2) If a designated reporter's transcript has not been filed at least 5 days before the date by which a brief must be filed, an initial version of the brief may be served and filed in which references to a matter in the reporter's transcript are not supported by a citation to the volume and page number of the reporter's transcript where the matter appears. Within 10 days after the reporter's transcript is filed, a revised version of the brief must be served and filed in which all references to a matter in the reporter's transcript must be supported by a citation to the volume and page number of the reporter's transcript where the matter appears.

(3) Unless otherwise ordered by the court, within 5 days after filing its brief, each party must submit an electronic version of the brief that contains hyperlinks to material cited in the brief, including electronically searchable copies of the record on appeal, cited decisions, and the parties' other briefs. Such briefs must comply with any local requirements of the reviewing court relating to e-briefs.

(d) Stipulated extensions of time to file briefs

If the parties stipulate to extend the time to file a brief under rule 8.212(b), they are deemed to have agreed that the time for resolving the action may be extended beyond 100 days by the number of days by which the parties stipulated to extend the time for filing the brief and, to that extent, to have waived any objection to noncompliance with the deadlines for

California Rules of Court, rules 8.104 would be amended and rules 8.710 – 8.717 would be adopted, effective July 1, 2017 to read:

completing review stated in Code of Civil Procedure section 1294.4 for the duration of the stipulated extension.

(e) Failure to file brief

If a party fails to timely file an appellant's opening brief or a respondent's brief, the reviewing court clerk must serve the party with a notice indicating that if the required brief is not filed within two court days of service of the clerk's notice, the court may impose one of the following sanctions:

(1) If the brief is an appellant's opening brief, the court may dismiss the appeal;

(2) If the brief is a respondent's brief, the court may decide the appeal on the record, the opening brief, and any oral argument by the appellant; or

(3) Any other sanction that the court finds appropriate.

Rule 8.716. Oral argument

Unless otherwise ordered by the reviewing court, oral argument will be held within 35 days after the last reply brief is filed. The reviewing court clerk must send a notice of the time and place of oral argument to all parties at least 10 days before the argument date. The presiding justice may shorten the notice period for good cause; in that event, the clerk must immediately notify the parties by telephone or other expeditious method.

Rule 8.717. Extensions of time

The Court of Appeal may grant an extension of the time in appeals governed by this chapter only if good cause is shown and the extension will promote the interests of justice.

Date
October 19, 2016

To
Members of the Appellate Advisory Committee's Rules Subcommittee

From
Heather Anderson, Supervising Attorney, Legal Services

Subject
Consideration of technical amendments to rules 3.2200, 3.2220-3.2223, and 8.700-8.703.

Action Requested
Please read before committee conference call on October 24, 2016

Deadline
October 24, 2016

Contact
Jenny Wald
415-865-8713
jenny.wald@jud.ca.gov

Introduction

This year, the Legislature enacted Senate Bill 836 requiring the Judicial Council to adopt rules implementing procedures for the expedited resolution of actions and proceedings brought under the California Environmental Quality Act ("CEQA") challenging "capitol building annex projects." See Senate Bill 836 (Stats. 2016, ch. 31). The Judicial Council previously adopted rules and established procedures that implemented a similar statutory scheme for the expedited resolution of CEQA actions and proceedings challenging "environmental leadership projects" and "Sacramento arena projects." Pub. Resources Code, § 21185 and 21168.6.6. Staff recommends that the subcommittee consider recommending implementing the new legislation by adding references to the new statutory provisions to these existing CEQA rules.

Background

In 2011, the Legislature enacted Assembly Bill 900 (Stats. 2011, ch. 354), creating an expedited judicial review procedure for CEQA cases relating to "environmental leadership projects" under which challenges to such projects were to be brought directly to the Court of Appeal with geographic jurisdiction over the project, and that court was to complete its review within 175 days. (Pub. Resources Code, § 21185.) AB 900 required the Judicial Council to adopt rules of court to implement this expedited review procedure and it did so, adopting rule 8.497. In March 2013, however, the Superior Court of Alameda County held that the provision in AB 900 requiring that a petition for writ relief be filed only and directly to the Court of Appeal is unconstitutional. The trial court's decision was never challenged.

In 2013, the Legislature again addressed the question of expedited CEQA review by the courts in environmental leadership cases, as well as in cases relating to a new sports arena in Sacramento. Senate Bill 743 (Stats. 2013, ch. 386). SB 743 replaced the statutory provisions relating to the time for the Court of Appeal to act on environmental leadership cases with a requirement that the Judicial Council adopt rules that require the actions or proceedings, including any potential appeals therefrom, be resolved, within 270 days of certification of the record of proceedings (SB 743, § 11; amending Pub. Resources Code, § 21185). SB 743 similarly provided for an expedited review process for projects relating to a new basketball arena and surrounding sports and

entertainment complex planned for Sacramento (SB 743, § 7; adding Pub. Resources Code, § 21168.6.6).[1]

The Legislature did not provide any discrete time frames in which both the actions and proceedings in the trial court and proceedings in the Courts of Appeal were to be resolved, but only a single time period of 270 days for completion of the proceedings in the trial courts and Courts of Appeal. See Public Resources Code §§21185 and 21168.6.6. This legislation directed the Judicial Council to adopt implementing rules.

As some of you may recall, the Civil and Small Claims Advisory Committee and Appellate Advisory Committee worked together on the rules to implement SB 743. The committees determined there was a distinction made in the Legislature's delegation of authority to the council with respect to procedures it could adopt for the Sacramento arena cases versus the environmental leadership cases. Specifically, SB 743 provided, for the Sacramento arena cases, that the expedited procedures to be established by the Judicial Council will apply "*notwithstanding any other law* (emphasis added)." (Pub. Resources Code § 21168.6.6(c)). The advisory committees found no similar provision in the statutes enacted regarding environmental leadership cases. (Pub. Resources Code §21185). For this reason, the committees concluded that while the council is authorized to adopt rules "notwithstanding the provisions" of the Public Resources Code or the Code of Civil Procedure in relation to Sacramento arena cases, it could not do so in relation to environmental leadership cases.

On the recommendation of the two committees, effective July 1, 2014, the Judicial Council responded to SB 743 with the adoption of R rules 3.1365, 3.2220-3.2231 and 8.700 - 8.705.[2]

This year's Senate Bill 836, which became effective on June 28, 2016, contains provisions similar to those enacted by SB 743 from 2013. (Pub. Resources Code §§ 21185 and 21168.6.6). It requires that the Judicial Council adopt rules, on or before July 1, 2017, that implement the expedited CEQA judicial review procedures for resolution of CEQA challenges to "capitol building annex projects" within 270 days from the date of certification of the administrative record. (Pub. Resources Code §21189.51).

Draft Rule Amendments

The attached proposed rule amendments and revisions are intended to satisfy SB 836's requirements for "capitol annex cases" by adding references to the new statutory provisions and

[1] SB 743 also addressed the constitutional issue raised by the Superior Court of Alameda County's decision by eliminating the requirement that a CEQA challenge to a leadership project be brought directly in the Court of Appeal.

[2] You can access the committee's report to the Judicial Council at: http://www.courts.ca.gov/documents/jc-20140425-itemM.pdf

"capitol annex projects" to the existing CEQA rules relating to environmental leadership and "Sacramento arena" projects.

The attached proposal also includes minor revisions to rule 8.70, which are intended to ensure the CEQA appellate rules conform to the requirements of concurrent proposals to amend the rules for appellate electronic filing rules.

One issue that the subcommittee may want to consider in reviewing this draft is whether the "capitol annex projects" rules should follow the model of environmental leadership project rules or the "Sacramento arena" project rules for purposes of exemptions from service and filing requirements under the Code of Civil Procedure. Because the phrase "notwithstanding any other law" is omitted from the newly enacted provisions regarding "capitol annex projects," the attached proposal treats "capitol annex projects" similarly to leadership projects rather than "Sacramento arena" projects for this purpose. This follows the prior determination made by the committees when they developed the rules for expedited judicial review of CEQA cases under SB 743 that in the absence of the "notwithstanding any other law" language, the Judicial Council did not have the authority to adopt rules that alter the service and filing requirements of the Code of Civil Procedure. Under subdivision (d) of Article 6, section 6 of the California Constitution, which establishes the Judicial Council's general rulemaking authority, rules adopted by the Judicial Council "shall not be inconsistent with statute."

There is, however, a possible alternative view that other CEQA rules, which exempt "Sacramento arena" cases from statutory service requirements and filing requirements for post-judgment motions, could include "capitol annex projects." This view derives from the Legislature's statement in SB 836 that "similar provisions and procedures" established for the Sacramento "entertainment and sports arena" projects under SB 743 shall also apply to "capitol annex projects." (SB 836, §18, adding Pub. Resources Code, §21189.50-21189.57). This intent may be shown by the Legislature's adoption of identical statutory language, provisions and procedures for "capitol annex projects" to those previously enacted for "Sacramento arena" projects. (Pub. Resources Code §§21168.6.6 and 21189.51-21189.57). However, since the Legislature did *not* enact a new statute that includes the phrase "notwithstanding any other law" for "capitol annex projects," there is no direct authority to support extending the concomitant Sacramento arena rules.

The subcommittee should also consider whether this proposal meets the criteria for a "technical amendment" to the rules, in which case it can be recommended for adoption by the Judicial Council effective January 1, 2017 without first being circulated for public comment. Rule 10.22, which addresses the Judicial Council's rule-making process, provides that an advisory body proposing a rule change must submit the proposal to the Judicial Council's Rules and Projects Committee (RUPRO) with a recommendation that it be (1) circulated for public comment or (2) submitted to the council for approval without public comment. The rule further provides that RUPRO may recommend that the council adopt a proposal without circulating it for comment "[i]f the proposal presents a nonsubstantive technical change or correction or a minor substantive change that is unlikely to create controversy."

Under Rule 10.22, the attached proposed rule amendments could be considered "a minor substantive change that is unlikely to create controversy." Adding references to the new "capital building annex" statutes to the existing CEQA rules in response to SB 743's mandate is a substantive change, but it is arguably minor and technical in nature, Given that these rules are necessary to fulfill the statutorily mandated obligations, these changes are also unlikely to be controversial. On the other hand, the subcommittee may want to consider whether the public comment process would be helpful in eliciting/exploring alternative approaches to implementing SB 743, including whether the rules should follow the model of environmental leadership project rules or the "Sacramento arena" project rules for purposes of exemptions from service and filing requirements under the Code of Civil Procedure.

Rules Subcommittee Task

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

- Decide whether to :
  - Approve the proposal as presented
  - Approve a modified version of the proposal;
  - Recommend to the full committee that it reject the proposal; or
  - Ask staff or committee members for further information/analysis.
- If the subcommittee approves the proposal as presented or as modified, decide whether:
  - The subcommittee believes the proposal is a technical amendment and should be recommended by the full committee for adoption by the Judicial Council effective January 1, 2017 without being circulated for public comment; or
  - The subcommittee believes the proposal is not a technical amendment and should be recommended by the full committee for circulation in the next comment cycle.

(DRAFT) Rules 3.2200, 3.2220-3.2223, and 8.700-8.703 of the California Rules of Court are amended, effective January 1, 2017, to read:

Division 22. Petitions Under the California Environmental Quality Act

Chapter 1. General Provisions

Rule 3.2200. Application

Except as otherwise provided in chapter 2 for actions under Public Resources Code sections 21168.6, ~~and~~ 21178–21189.3, and 21189.50-21189.57, the rules in this chapter apply to all actions brought under the California Environmental Quality Act (CEQA) as set forth in division 13 of the Public Resources Code.

Chapter 2. California Environmental Quality Act Proceedings Under Public Resources Code Sections 21168.6, ~~and~~ 21178–21189.3, and 21189.50-21189.57

Article 1. General Provisions

Rule 3.2220. Definitions and application

(a) Definitions

(1)-(2) ***

(3) A "capitol building annex project" is defined by Public Resources Code section 21189.51

(b) Proceedings governed

The rules in this chapter govern actions or proceedings brought to attack, review, set aside, void, or annul the certification of the environmental impact report or the grant of any project approvals for the Sacramento arena project, ~~or~~ a leadership project, or a capitol building annex project. Except as otherwise provided in Public Resources Code sections 21168.6, ~~and~~ 21178–21189.3, and 21189.50-21189.57 and these rules, the provisions of the Public Resources Code and the CEQA Guidelines adopted by the Natural Resources Agency (Cal. Code Regs., tit. 14, § 15000 et seq.) governing judicial actions or proceedings to attack, review, set aside, void, or annul acts or decisions of a public agency on the grounds of noncompliance with the California Environmental Quality Act and the rules of court generally apply in proceedings governed by this rule.

(c) ***

(DRAFT) Rules 3.2200, 3.2220-3.2223, and 8.700-8.703 of the California Rules of Court are amended, effective January 1, 2017, to read:

Rule 3.2221. Time

(a) Extensions of time

****

(b) Extensions of time by parties

If the parties stipulate to extend the time for performing any acts in actions governed by these rules, they are deemed to have agreed that the time for resolving the action may be extended beyond 270 days by the number of days by which the performance of the act has been stipulated to be extended, and to that extent to have waived any objection to noncompliance with the deadlines for completing review stated in Public Resources Code sections 21168.6.6(c)–(d), ~~and~~ 21185, and 21189.51. Any such stipulation must be approved by the court.

(c) Sanctions for failure to comply with rules

If a party fails to comply with any time requirements provided in these rules or ordered by the court, the court may issue an order to show cause as to why one of the following sanctions should not be imposed:

(1)-(2) ***

(3) If the failure to comply is by respondent or a real party in interest, removal of the action from the expedited procedures provided under Public Resources Code sections 21168.6.6(c)–(d), ~~and~~ 21185, and 21189.51, and these rules; or

(4) ***

Rule 3.2222. Filing and service

(a)-(c) ***

(d) Service of petition in action regarding leadership project and capitol building annex project

If the petition or complaint in an action governed by these rules and relating to a leadership project or a capitol building annex project is not personally served on any respondent public agency, any real party in interest, and the Attorney General within three court days following filing of the petition, the time for filing petitioner's briefs on the merits provided in rule 3.2227(a) and rule 8.702(e) will be

decreased by one day for every additional two court days in which service is not completed, unless otherwise ordered by the court for good cause shown.

(e) ***

Rule 3.2223. Petition

In addition to any other applicable requirements, the petition must:

(1) On the first page, directly below the case number, indicate that the matter is either a "Sacramento Arena CEQA Challenge," ~~or~~ an "Environmental Leadership CEQA Challenge," or a "Capitol Building Annex Project";

(2) State ~~either~~ one of the following:

(A) ***

(B) The project at issue was certified by the Governor as a leadership project under Public Resources Code sections 21182–21184 and is subject to this rule; or

(C) The project at issue is a capitol building annex project as defined by Public Resources Code section 21189.51 and is subject to this rule;

(3)-(4) ***

Chapter 11. Review of California Environmental Quality Act Cases Under Public Resources Code Sections 21168.6.6, ~~and~~ 21178–21189.3, and 21189.50-21189.57.

Rule 8.700. Definitions and application

(a) Definitions

As used in this chapter:

(1) An "environmental leadership development project" or "leadership project" means a project certified by the Governor under Public Resources Code sections 21182–21184.

(DRAFT) Rules 3.2200, 3.2220-3.2223, and 8.700-8.703 of the California Rules of Court are amended, effective January 1, 2017, to read:

(2) The "Sacramento entertainment and sports center project" or "Sacramento arena project" means the entertainment and sports center project as defined by Public Resources Code section 21168.6.6, for which the proponent provided notice of election to proceed under that statute as described in section 21168.6.6(j)(1).

(3) A "capitol building annex project" is defined by Public Resources Code section 21189.51.

(b) Proceedings governed

The rules in this chapter govern appeals and writ proceedings in the Court of Appeal to review a superior court judgment or order in an action or proceeding brought to attack, review, set aside, void, or annul the certification of the environmental impact report or the granting of any project approvals for an environmental leadership development project, ~~or~~ the Sacramento arena project, or a capitol building annex project.

Rule 8.701. Filing and service

(a) Service

***

(b) Electronic filing and service

~~Notwithstanding rules 8.71(a) and 8.73, the court may order that:~~

(1) In accordance with rule 8.71, all parties except self-represented parties are required to file all documents ~~be filed~~ electronically except as otherwise provided by these rules, the local rules of the reviewing court, or court order~~;~~. Notwithstanding rule 8.71(b), a court may order a self-represented party to file documents electronically.

(2) The court may order that all documents be served electronically on parties who have ~~stipulated~~ consented to electronic service or who are otherwise required by law or court order to accept electronic service. All parties represented by counsel are deemed to have ~~stipulated~~ consented to electronic service. All self-represented parties may so ~~stipulate~~ consent.

(c) Exemption from extension of time

***

(DRAFT) Rules 3.2200, 3.2220-3.2223, and 8.700-8.703 of the California Rules of Court are amended, effective January 1, 2017, to read:

Rule 8.702. Appeals

(a) Application of general rules for civil appeals

***

(b) Notice of appeal

(1) ***

(2) *Contents of notice of appeal*

The notice of appeal must:

(A) State that the superior court judgment or order being appealed is governed by the rules in this chapter;

(B) Indicate whether the judgment or order pertains to the Sacramento arena project, ~~or~~ a leadership project, or a capitol building annex project; and

(C) If the judgment or order being appealed pertains to a leadership project, provide notice that the person or entity that applied for certification of the project as a leadership project must make the payments required by rule 8.705.

(c)-(e) ***

(f) Briefing

(1)-(3) ***

(4) *Extensions of time to file briefs*

If the parties stipulate to extend the time to file a brief under rule 8.212(b), they are deemed to have agreed that the time for resolving the action may be extended beyond 270 days by the number of days by which the parties stipulated to extend the time for filing the brief and, to that extent, to have waived any objection to noncompliance with the deadlines for completing review stated in Public Resources Code sections 21168.6.6(c)–(d), ~~and~~ 21185, and 21189.51 for the duration of the stipulated extension.

(DRAFT) Rules 3.2200, 3.2220-3.2223, and 8.700-8.703 of the California Rules of Court are amended, effective January 1, 2017, to read:

(5) ***

(g) Oral argument

***

Advisory Committee Comment

Subdivision (b). It is very important to note that the time period to file a notice of appeal under this rule is the same time period for filing most postjudgment motions in a case regarding the Sacramento arena project, and in a case regarding a leadership project or capitol building annex project, the deadline for filing a notice of appeal may be earlier than the deadline for filing a motion for a new trial, a motion for reconsideration, or a motion to vacate the judgment.

Rule 8.703. Writ proceedings

(a) Application of general rules for writ proceedings

***

(b) Petition

(1) ***

(2) *Contents of petition*

In addition to any other applicable requirements, the petition must:

(A) State that the superior court judgment or order being challenged is governed by the rules in this chapter;

(B) Indicate whether the judgment or order pertains to the Sacramento arena project, ~~or~~ a leadership project, or a capitol building annex project; and

(C) If the judgment or order pertains to a leadership project, provide notice that the person or entity that applied for certification of the project as a leadership project must make the payments required by 8.705.

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
October 19, 2016

To
Members of the Appellate Advisory Committee's Rules Subcommittee

From
Heather Anderson, Supervising Attorney, Legal Services

Subject
Review of new and pending suggestions for changes to appellate rules and forms

Action Requested
Please read before October 24 rules subcommittee conference call

Deadline
October 24, 2016

Contact
Heather Anderson
415-865-7691
heather.anderson@jud.ca.gov

Introduction

Welcome new rules subcommittee members and welcome back continuing members.

As I indicated in my e-mail to you about setting the October subcommittee meeting, the main purpose of this meeting is to assist the full committee in preparing its proposed annual agenda for the 2016-2017 committee year (November 2016-October 2017). The subcommittee does this by reviewing suggestions received by the committee for changes to the appellate rules and forms (other than those reviewed by the Joint Appellate Technology Subcommittee and the Appellate Division Subcommittee) and making recommendations to the committee about which of those suggestions should be considered/potentially worked on by the committee this year and their prioritization. The full committee will consider these recommendations at its November 7 meeting. The proposed annual agenda for the committee will then be submitted to the Judicial Council's Rules and Project Committee (RUPRO) – the internal Judicial Council committee with oversight responsibility for the Appellate Advisory Committee – in early December for approval of the items the committee may work on for the 2016-2017 committee year.

Suggestions and Prioritization

Attached for your review are tables of items for the subcommittee to consider recommending for possible inclusion in the proposed annual agenda, including:

- Suggestions that remain pending from the committee's 2015-2016 annual agenda;
- New suggestions received by the committee to date this year; and
- Suggestions that the committee deferred last year (please note, as explained below, the subcommittee will not be discussing these suggestions unless a member requests that a particular suggestion be discussed).

If you have additional suggestions for committee projects, please send those to the subcommittee chair, Mr. Kolkey, and to me before the subcommittee meeting and we will distribute them to the subcommittee members.

As continuing members know, for the past several years, the committee's rule and form projects have been limited in light of the economic crisis in the courts. These limits reflect concerns both about the economic impact on courts of any proposed modification of a rule or form and about the economic burden on the courts of reviewing and responding to proposals for modifications to rules and forms. In light of these concerns, RUPRO has established the following criteria for advisory committees to consider in determining whether a rule or form proposal is a high priority – priority 1 – and should be developed within the same committee year (for this year, these would be rules and form changes proposed for circulation in spring 2017 to be effective January 1, 2018):

- The proposal is urgently needed to conform to the law;
- The proposal is urgently needed to respond to a recent change in the law;
- A statute or council decision requires the adoption or amendment of rules or forms by a specified date;
- The proposal will provide significant cost savings and efficiencies, generate significant revenue, or avoid a significant loss of revenue;
- The change is urgently needed to remedy a problem that is causing significant cost or inconvenience to the courts or the public; or
- The proposal is otherwise urgent and necessary, such as a proposal that would mitigate exposure to immediate or severe financial or legal risk.

Committees can ask to work on other rule and form proposals within their subject matter areas that do not meet the criteria for priority 1 projects. The criteria for such projects – priority 2 projects – are:

- The proposal is useful, but not necessary, to implement statutory changes; or
- The proposal is helpful in otherwise advancing Judicial Council goals and objectives.

Proposals with priority level 2 are generally considered for circulation the second year after they are approved for inclusion on a committee's annual agenda – so any new priority 2 proposals included on this year's annual agenda would be developed for potential circulation in the spring of 2018 to be effective January 1, 2019. RUPRO has cautioned that committees should expect that new priority 2 proposals may not be approved for the current year due to the ongoing fiscal situation affecting the judicial branch.

You will see in reviewing the tables of suggestions that remain pending from the committee's 2015-2016 annual agenda that there are three pending priority 2 proposals that RUPRO previously approved for inclusion on the committee's annual agenda. RUPRO has indicated that it will review last year's priority level 2 projects on an item-by-item basis and that it would be helpful to know where these projects are in development and what resources have been expended thus far. All of the pending priority 2 projects had January 1, 2017 proposed completion dates and the committee has not yet begun work on them.

In applying RUPRO's criteria for prioritizing rule and form suggestions, it is often important to consider the following:

- Is the problem/issue identified in a suggestion something that arises frequently or infrequently?
- If the proponent suggests that there would be savings in time or money for the courts, what is the likely amount of such savings?
- Are there likely to be costs for the trial courts, appellate courts, or litigants associated with implementing a suggestion?

Often, additional information about these issues helps the subcommittee/committee assess the need for and priority of a particular suggestion. To this end, ***you are encouraged to seek information about these issues from those with whom you work that may have experience in the areas raised in the suggestions***.

In addition to RUPRO's prioritization criteria, there are several other things subcommittee members may want to keep in mind in reviewing/prioritizing these suggestions:

- There are more suggestions for rule and form changes than the committee will be able to work on during the upcoming year. For the proposed annual agenda to realistically represent what projects the committee is actually able to undertake this coming year, the subcommittees and the full committee will need to prioritize among those suggestions that are identified as good ideas, but not urgent. Last year, the committee worked on 9 projects,

some of which involved several different suggestions: 6 priority 1 projects (including 1 legislative item) and an additional 3 priority 2 projects. Subcommittee members should assume that during the upcoming year, the committee will be able to take on around that same number of projects, including projects being considered by the Joint Appellate Technology Subcommittee and the Appellate Division Subcommittee.

- Because the combined list of new suggestions and those pending from last year's annual agenda is fairly long, as noted above, the subcommittee will not be reviewing items on the "deferred" list (items 13-47) at this time unless a subcommittee member specifically requests that an item be considered for inclusion in the annual agenda.
- In some cases, there are multiple suggestions relating to the same rule or same topic. These can be combined into a single project for purposes of the annual agenda.
- Inclusion of a project on the annual agenda does not mean that the committee is obligated to pursue the suggested rule or form change. As has happened with items in past years, the committee could determine later in the year not to pursue a particular project on its annual agenda. This would be reported to RUPRO in the advisory committee's subsequent annual agenda update.

Rules Subcommittee Task

The subcommittee's task is to review the suggestions in the attached tables and to recommend to the full committee which of them should be:

- Included in the draft annual agenda as priority 1 proposals (urgent proposals with a proposed January 1, 2018 effective date);
- Included in the draft annual agenda as priority 2 proposal (non-urgent proposals that the committee would like to work on this year or next year);
- Not included in the draft annual agenda, but deferred for possible future consideration;
- Referred to a different subcommittee or another judicial council body; or
- Not pursued at all.

APPELLATE RULE AND FORM SUGGESTIONS – 2016-2017

PENDING ITEMS FROM THE COMMITTEE'S 2015-2016 ANNUAL AGENDA

Priority 1 Items

	Rule/Form	Suggestion/Issue	Source	Priority/Other Info
1.	***GENERAL*** *– Rule ? – Privacy protection concerns re appellate opinions*	Recently, members of some other Judicial Council Advisory committees, including the Family and Juvenile Law Advisory Committee and the Access and Fairness Advisory Committee, have identified situations when there may be privacy concerns about information included in opinions given the ease with which these opinions are now searchable on the web. Examples include: • Victim names or identifying information; • Witness names or identifying information; • Information that a harasser was restrained from revealing. There is a very real concern that fear about what information will become widely and easily available on the internet may cause individuals not to seek restraining orders, not to testify, or not to appeal even when an appeal may be warranted. Some options for addressing these concerns that could be explored include: • Rules requiring the use of alternative naming conventions to protect identities, similar to rule 8.401(a) for juvenile cases that require the use of initials; • Reminders/education about not including victim names or unnecessary sensitive information in opinions; • Clarifying the authority/ability of the reporter of decisions to redact victim names or other such information.	Members of the Family and Juvenile Law Advisory Committee and the Access and Fairness Advisory Committee	Priority 1(e) – Urgently needed to remedy a problem that is causing significant cost or inconvenience to the courts or the public This year, the committee recommended adoption of a rule urging justices to consider the use of initials to identify certain individuals in appellate opinions. The privacy subcommittee may consider other rule proposals this year.

Priority 2 Items

	Rule/Form	Suggestion/Issue	Source	Priority/Other Info
2.	***JUVENILE APPEALS*** *– Rule ? – Record on appeal*	There is a problem with appeals in juvenile Dependency cases when a non-entitled party (e.g. an aunt or grandparent appeals. To have access to the record that person must file the attached. If they do not they are not entitled to a copy of the record and thus the appeal should not go forward, but there is no rule or other that states that. I.e. how can they file a brief if they do not have access to the	Joseph Lane, committee member	This was on the committee's 2016 annual agenda as a Priority 2 item with a January 1, 2018

	Rule/Form	Suggestion/Issue	Source	Priority/Other Info
		record? Do you think we could get a rule change to wit: an appealing non entitled party that does not file a form 570 within x days of the filing of the notice the appeal can be dismissed as in-operative.		completion date. The California Appellate Project, which oversees appointed counsel in the Second District, has expressed support for this suggestion
3.	***WRIT OF REVIEW –*** *Rule 8.495 – Verification of Petition*	A recent opinion issued by the Second District addressed whether a petition for a writ of review is required to be verified (New York Knickerbockers v. Workers Compensation Appeals Board, B262759, available at: http://www.courts.ca.gov/opinions/documents/B262759.PDF). The opinion noted that rule 8.495 does not state that the petition must be verified: > It is true, the rule of the California Rules of Court specifically governing petitions for writs of review addressing decisions of the Appeals Board does not require verification. (Cal. Rules of Court, rule 8.495.) Other California rules of court, such as rule 8.496(a)(1), which governs petitions to review decisions of the Public Utilities Commission, explicitly require verification. Code of Civil Procedure section 1069 specifically requires verification, and this provision is made applicable to petitions to review decisions of the Appeals Board by Labor Code section 5954. The California Constitution requires the Judicial Council to adopt rules for court administration, and practice and procedure, not "inconsistent with statute." (Cal. Const., art. VI, § 6, subd. (d).) Here, to the extent rule 8.495 does not require verification for petitions for writs of review addressing Appeals Board decisions, that rule would be inconsistent with Code of Civil Procedure section 1069 and Labor Code section 5954 and therefore not controlling. Should rule 8.495 be modified to provide for verification of the petition?	Staff	This was on the committee's 2016 annual agenda as a Priority 2 item with a January 1, 2018 completion date.
4.	***CIVIL CASE INFORMATION STATEMENT –*** *Form APP-004 – Proof of service*	The form in question "Case Information Statement" Page three of which requires all the information that would also be included (and then some) on a proof of service. Which is required but which the form does not include. So the filer must use two forms to complete the process.	Joseph Lane, committee member	This was on the committee's 2016 annual agenda as a Priority 2 item with a January 1, 2018

	Rule/Form	Suggestion/Issue	Source	Priority/Other Info
		Some of our forms (e.g. APP-002, APP-007, etc.) include a proof of service as part of the form. So I am writing to ask that a page four be added to form APP-004. Of course while we are at it we might want to do the same for any of the forms that don't have a proof of service also included. But the absence on APP-004 is most troubling in our jurisdiction at least as we find many of these forms being submitted w/o a proof of service and we think this may be caused by the similarity of page 3, to a proof of service.		completion date.

NEW SUGGESTIONS

	Rule/Form	Suggestion/Issue	Source	Other Info
5.	***GENERAL*** *– Rules ?? – Access to appellate courts*	Court Access. I believe the Rules Subcommittee's proposals should be guided in part by the Chief Justice's Access 3D Initiative. I have no specific rule proposals in mind but am willing to review Title 8 of the California Rules of Court to identify rules, or provisions of them, that unduly hinder access or that could be amended to increase ease of access to the appellate courts. California has a high percentage of self-represented parties on appeal. Handing your own appeal without counsel is difficult enough. The rules should not make the exercise any harder than it needs to be.	Mr. Kevin Green, committee member	
6.	***GENERAL*** *– Rules 8.204 and 8.360 – Length of briefs*	Word Limit for Briefs. The federal system just concluded a lively debate resulting in a decrease for the permitted length of federal appellate briefs. The same considerations that caused this to be proposed at the federal level apply to California's judicial branch – a new normal of daunting caseloads and decreased funding, and the perception in some quarters that lawyers don't need so many words to make their case on appeal. The New York Times recently ran this article summing up the debate and FRAP amendments effective December 1. http://www.nytimes.com/2016/10/04/business/dealbook/judges-push-brevity-in-briefs-and-get-a-torrent-of-arguments.html?smprod=nytcore-iphone&smid=nytcore-iphone-share To be clear, I am not stating a position on whether California's limits should be	Mr. Kevin Green, committee member	

	Rule/Form	Suggestion/Issue	Source	Other Info
		changed. I believe the topic warrants the subcommittee's consideration.		
7.	***GENERAL*** *– Rule ?? – Copies of out-of-state authorities*	*[Note to committee – this comment was received in response to the recent amendment to rule 8.1115, which included the following amendment to subdivision (c): On request of the court or a party, a copy of an opinion citable under (b) ~~or of a cited opinion of any court that is available only in a computer-based source of decisional law~~ must be promptly furnished to the court ~~and all parties~~ or the requesting party ~~by attaching it to the document in which it is cited or, if the citation will be made orally, by letter within a reasonable time in advance of citation.~~]* My point is that I think, with its focus on *California* cases, the Supreme Court has overlooked the fact that the old version of Rule 8.1115 subdivision (c) covered more than just the cases referred to in subdivision (b). That is, the old version of subdivision (c) covered unpublished *federal* cases. See footnote 8 in Californians for Disability Rights v. Mervyn's LLC (2008) 165 Cal.App.4th 571, 589. (There's a split of authority whether unpublished out-of-state cases can be cited in California state court, but I'll put that aside.) If I cite an unpublished federal case today, I have explicit direction from subdivision (c) and Californians for Disability Rights v. Mervyn's LLC to give the court and opposing party a copy of the case. As of July 1st, I will have no such specific direction. As a practical matter after July 1, I will follow the new subdivision (c) in spirit and offer to give the court and opposing counsel a copy of any unpublished federal or out-of-state case I cite. But the way in which subdivision (c) has been amended the rules no longer give explicit direction on what is to be done when a party cites an unpublished *non*-California case.	Robert G. Scofield Attorney at Law	See also rule 3.1113(i) and invitation to comment on proposal to amend rule 8.1115 at http://www.courts.ca.gov/documents/W14-01.pdf
8.	***CIVIL APPEALS*** *– Rule 8.137 – Settled statements*	With the absence of court reports in many civil cases the use or at least the attempt to use Settled Statements has increased. These have always been a problem, but with the increase demand for them the problems are having more and more of an impact on the Courts of Appeal. Thus I send the attached proposal for a change in rule 8.137. Basically to get the need for a fix out there. There may be other solutions and I expect this problem needs to go the other committees before going to the Appellate Advisory Committee. **(c) Settlement, preparation, and certification** (1) The clerk must set a date for a settlement hearing by the trial judge that is no later than 10 days after the respondent files proposed amendments or the time to do so expires, whichever is earlier, and must give the parties at least five days' notice of the hearing date and send a copy of the notice to the appeals section of the superior court and the Court of	Joseph Lane, Committee member	See attached comments from clerks in other districts

	Rule/Form	Suggestion/Issue	Source	Other Info
		Appeal. (2) At the hearing, the judge must settle the statement and fix the times within which the appellant must prepare, serve, and file it. (3) If the respondent does not object to the prepared statement within five days after it is filed, it will be deemed properly prepared and the clerk must present it to the judge for certification. (4) Upon certification the clerk is to immediately send a copy to the appeals section of the superior court for forwarding to the Court of Appeal. ~~(4)~~ (5) The parties' stipulation that the statement as originally served or as prepared is correct is equivalent to the judge's certification. The stipulation and a copy of the statement are to be given to the appeals section of the superior court and to the Court of Appeal.		
9.	***CIVIL APPEALS*** *– Rule 8.220 – Failure to timely file brief*	Default Period for the AOB and RB. The default (or grace) period under CRC 8.220(a) for the main Court of Appeal briefs should be eliminated. The federal system has no analog and, to my knowledge, no other state does either. There are at least three good reasons to do away with the default period for Court of Appeal briefs. First, the public fisc favors abolition. Since 2008 when tax revenue plummeted, several rule amendments have eliminated default notices and other mailings to save the judiciary's precious funds. The 15-day default notice for the AOB and RB is another in this line. Court employees should not be burdened with generating notices for what amounts to a built-in extension of time, available to counsel by doing nothing. This draws unnecessarily on tax dollars, both in employee labor and tangible resources, paper and postage. Second, the default period creates uncertainty on scheduling. A party invoking this additional time does not know its true deadline until the default notice issues. This in turn creates uncertainty for any party who must plan a response to that brief, whether respondent or reply. The appellate districts vary widely on when Rule 8.220(a) notices go out. I have seen anywhere from three days to nearly a month. The default period interferes with a reliable briefing schedule on which all parties may rely. There is no 15-day default notice for briefs in the California Supreme Court. Like every other judicial system of which I am aware, in the Court of Appeal, the deadline should be the deadline.	Mr. Kevin Green, committee member	

	Rule/Form	Suggestion/Issue	Source	Other Info
		Third, in light of generous extensions that already exist, the default period is unnecessary. Parties may stipulate up to 60 additional days on each brief, no leave of court required (this practice, generous to litigants, is also exceptional). If a party needs more time beyond 60 additional days, it may apply for an extension based on good cause. To be sure, California lawyers are accustomed to the default period, but we were also used to the citation rules until the Supreme Court recently changed them to be more consistent with national practice. By my lights, the default period is in the same vein. It should not endure out of inertia in the face of sounds reasons to eliminate it. In time, I think most would view this as an act of grace.		
10.	***JUVENILE CASES*** *– Rule 5.590 – Advisement of appellate rights*	**DRAFT OUTLINE OF PROPOSAL TO AMEND RULE 5.590(A)** **1) Text of proposed amendment to rule 5.590(a): Amend subdivision to read as follows [only amendment is to *delete* the words, "if present," as in bold below]:** **Rule 5.590. Advisement of right to review in Welfare and Institutions Code section 300, 601, or 602 cases** . **(a) Advisement of right to appeal** If at a contested hearing on an issue of fact or law the court finds that the child is described by Welfare and Institutions Code section 300, 601, or 602 or sustains a supplemental or subsequent petition, the court after making its disposition order other than orders covered in (b) must advise, orally or in writing**,** the child, if of sufficient age, and **>,~~[if present]~~,<** the parent or guardian of: . (1) The right of the child, parent, and guardian to appeal from the court order if there is a right to appeal; . (2) The necessary steps and time for taking an appeal; . (3) The right of an indigent appellant to have counsel appointed by the reviewing court; and . (4) The right of an indigent appellant to be provided with a free copy	Rosemary Bishop	

	Rule/Form	Suggestion/Issue	Source	Other Info
		of the transcript. **2) A description of the problem to be addressed**: The problem is the current rule 5.590(a), read literally, provides parents who are not present at hearings are not entitled to notice of appeal rights. The rule applies both to delinquency cases (Welf. and Inst. Code §§ 601,602 et seq.), and dependency cases (Welf. and Inst. Code § 300 et seq.). In delinquency cases, parents have some appellate rights, at least when their own interests are affected. (*In re Michael S.* (2007) 147 Cal.App.4th 1443 and *In re Jeffrey M.* (2006) 141 Cal.App.4th 1017 [upholding parent's standing to appeal money judgment against parent for delinquent acts of child]; Cf. *In re Almalik S.* (1998) 68 Cal.App.4th 851 [child not removed from home; mother had no standing to appeal], reasoning rejected in *Michael S., supra,* and *In re Q.N.* (2012) 211 Cal.App.4th 896, 904-905.) Even if they don't have a right to appeal a particular order, they may have an interest in knowing whether their delinquent child has a right to appeal an order. In dependency cases, parents are primary parties and have appeal rights at all stages. (Welf. & Inst. Code §395.) Rule 5.590(a), is not based on any statutory provision or case law. There is no authority, other than this rule, for denying notice of appeal rights to parents who are not present at their dependency hearing. **a) The "if present" limitation on notice is confusing and has been interpreted inconsistently.** Rule 5.590(a) is confusing in the dependency context, and has been interpreted inconsistently. One treatise has interpreted rule 5.590(a), as providing "the court must advise *all parties*, including children who are present and old enough to understand, of [appeal rights]." [Emphasis added.] (Cal. Juvenile Dependency Practice (Cont. Ed. Bar 3rd Ed. 2015) § 10.6 pp. 830-831.) Another treatise simply repeats the language of the rule without analysis. (*See,* 10 Witkin Parent and Child (Supp. 2015) § 700 pp. 614-615.) A third treatise notes the normal rule for waiver of issues on appeal may not be followed where the parent was not provided with "*notice of the right of appeal* or the right to file [a writ]." [Emphasis added.] (Seiser and Kumli 1-2 California Juvenile Courts Practice and Procedure (Matthew Bender 2015) § 2.190.)		

	Rule/Form	Suggestion/Issue	Source	Other Info
		A recent published decision by the Court of Appeal follows the literal language of rule 5.590(a), and holds parents in dependency cases are not entitled to notice of appeal rights if they are not present at the hearing. (*In re Albert A.* (2016) 243 Cal.App.4th 1220.) Even the judicial council has characterized rule 5.590 as providing for advisement of appeal rights to all parents. Rule 5.542, enacted in 1991 and amended in 2007, in the context of allowing rehearing requests after a case is heard by a referee, provides: (f) *Advisement of appeal rights—rule 5.590* If the judge of the juvenile court denies an application for rehearing...the judge *must advise, either orally or in writing, the child and the parent or guardian* of all of the following [appeal rights]. (Rule 5.542(f), emphasis added.) This rule references rule 5.590, but does not contain the "if present" limitation on notice that is in rule 5.590(a). Rule 5.590(c), added in January 2016, requires the trial court to provide appellate rights to parties when the court grants a petition to transfer a dependency case to tribal court. The court must advise the parties orally and in writing of the need to appeal before the transfer and obtain a stay. This new provision does not limit such notice to parents who are present at the hearing. **b) Denying notice of appellate rights to parents who are not present at the hearing is inconsistent with the dependency system and public policy.** When a statute grants the right to appeal a decision that affects a fundamental interest [in dependency cases, the right to parent one's child], public policy should be in favor of advising the party of that right. Many parents in the dependency system have limited education and less than average access to legal services or to information about them through such means as the Internet. It is reasonable to shift the burden to the state, which is acting to limit the party's rights, to explain the proceedings and the party's basic remedies. It is true parents, even if not present at a hearing, are generally represented by counsel. Dependency counsel have notoriously unmanageable caseloads and often fewer resources than the court. It is risky to put the sole burden for		

	Rule/Form	Suggestion/Issue	Source	Other Info
		notification on counsel when a simple form notice could be sent directly to the party. The parent's non-presence at the hearing does not justify withholding notice of appeal rights. Parents who do not appear do not necessarily lack concern for their children or the proceedings. Many other factors—illness, employment, other family obligations, lack of transportation or child care, disruptions in living arrangements, etc.--may explain an absence. Yet the requirement a parent be present to receive notice of basic appellate rights, effectively punishes parents who are not present, without regard to their culpability. Individualized judgments as to parents' culpability should be made by trial courts, in their dispositions on the merits. Rule-makers should not risk distorting the decision-making process by selectively withholding appeal information from certain parties. A decision made at a hearing where the parent is not present, is equally likely to contain errors that need to be remedied on appeal. Absent statutory authority, denial of notice of appellate rights to non-present parents is inconsistent with the statutory purpose of allowing appeals at key stages of dependency proceedings. (Welf. & Inst. Code § 395.) "Notice of all hearings and rights" has been described as a key safeguard for parents in the dependency system. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 307-308.) **3) The proposed solution and alternative solutions**: The proposed solution is to amend the current rule to provide for notice of the right to appeal post-jurisdiction orders, to parents and children of sufficient age, without regard to whether the parents are present at the hearing. This solution is set forth at #1 above: eliminate the clause, "if present," from rule 5.590(a). It is consistent with rule 5.590(b), which governs writ rights and provides for notice to "all parties," as well as to the child's parent or adult relative if present. One alternative solution would be, as suggested by a previous comment in 2010 (see #8 below), to have separate rules or subdivisions governing dependency (§ 300) and delinquency (§§ 601, 602) appeal advisements. The Judicial Council has already acknowledged parents in these two types of proceedings have different appeal rights. (Judicial Council comments in history of 2010 amendments to rule 5.590.) However, rule 5.590 (a)(1) has already been amended to clarify the court is to provide notice only "if there is a right to appeal." Under the current rule, the		

	Rule/Form	Suggestion/Issue	Source	Other Info
		court may provide notice as applicable to the type of proceeding. It may be unnecessary and more cumbersome to create separate rules. **4) Any likely implementation problems:** Implementation should not be complex. Trial courts are already mailing notice to parents and other parties of writ rights pursuant to rule 5.590(b). The same procedures could be used for notice of appeal rights. In fact, San Diego County uses a local court form that already includes both writ rights and appeal rights. (Form SDSC JUV-026, attached.) This form could be revised for clarity and used by other Counties to implement the change. **5) Any need for urgent consideration**: None, other than the recent published decision in *In re Albert A., supra,* 243 Cal.App.4th 1220, may be leading trial courts to forego notice of appeal rights to parents who are not present at post-jurisdiction hearings. **6) Known proponents and opponents:** Unknown. **7) Any known fiscal impact:** The only cost should be clerical time and postage in sending written notice of appeal rights to parties after jurisdiction hearings. Some counties may already do this, by sending a minute order and appeal rights notice to parties. (See Form SDSC JUV-026, attached.) **8) Any previous action taken by the Judicial Council or an advisory committee:** Unknown. In 2010, in the context of making other amendments to rule 5.590, the Council received one comment at least partially relevant to this issue: One commentator from a district appellate project suggested that rule 5.590 should not require the trial court to tell parents, without qualification, that they always have the right to appeal. They suggested that the rule be redrafted, separating out section 300 and section		

	Rule/Form	Suggestion/Issue	Source	Other Info
		601/602 advisements. (Excerpt from history of 2010 amendments.) In response to this comment, the Council did add the language "if there is a right to appeal," to rule 5.590(a) (1). It did not separate section 300 and section 601/602 advisements because that would be a major change that had not been part of the public notice.		
11.	***PETITIONS FOR REVIEW*** – *Rule 8.500*	In doing some research recently, I came across the advisory committee comment to former rule 28, the predecessor to current rule 8.500 on petitions for review, which made clear that a denial of a grant of review was not to be considered as an expression of the Supreme Court's view on the merits of the judgment sought to be reviewed . Here is the full text of the relevant portion of that former comment: It has long been established in California law that a denial of hearing is not an expression of the Supreme Court on the merits of the cause. (E.g., People v. Davis (1905) 147 Cal. 346, 350; People v. Triggs (1973) 8 Cal.3d 884, 890-91.) Adoption of the new "review" procedure does not affect this legal doctrine, and denial of review will not be an expression of the opinion of the Supreme Court on the correctness of the judgment of the Court of Appeal or on the correctness of any discussion in the Court of Appeal opinion. A specification of issues to be argued, in connection with a grant of review, will not be an expression of the opinion of the Supreme Court on the correctness of the resolution of other issues by the Court of Appeal or on the correctness of any discussion of them in the Court of Appeal opinion. Former rule 28 was amended effective January 1, 2003 and the advisory committee comment no longer address the issue of the meaning of a denial of review. The report to the Judicial Council that recommended the changes to rule 28 does not discuss the reasons for the changes to the advisory committee comment that accompanied this former rule. Would it be helpful to add a provision to the advisory committee comment to rule 8.500 to address this issue?	Committee staff	
12.	***PETITIONS FOR REVIEW*** –	In this recent published opinion, the dissent faults the majority for allegedly not complying with Government Code section 68081. See discussion beginning at p.	Mr. Kevin Green,	

	Rule/Form	Suggestion/Issue	Source	Other Info
	Rule 8.528 - Disposition	28 of PDF (p. 2 of the dissent). http://www.courts.ca.gov/opinions/documents/B261165A.PDF This is relevant to the LADJ article suggesting the California Supreme Court be given express authority to grant and transfer where the intermediate panel has not complied with the Government Code provision. A dissent this extensive, on this issue, is rare. I have not reached and do not offer any view on whether the dissent is correct on the majority's resolution of the appeal. It's simply an interesting opinion of note (I will track future appellate proceedings) should the Appellate Advisory Committee consider any facet of the proposal outlined in the LADJ.	committee member	

SUGGESTIONS THE COMMITTEE DEFERRED LAST YEAR

	Rule/Form	Suggestion/Issue	Source	Why Defer
13.	***GENERAL –*** *Rule 8.25 – Application of overnight delivery rule to supplemental and letter briefs*	Our managing attorney mentioned to me that the clerks in our court have routinely been rejecting as untimely supplemental briefs or letter briefs when the filing party relied on rule 8.25(b)(3) for constructive filing by overnight delivery. Our PJ is posting a general order for our court indicating that supplemental and letter briefs get the benefit of the constructive filing rule in 8.25(b)(3). Apparently our clerks at some point in our history had been instructed (perhaps by our prior managing attorney) that supplemental and letter briefs were not in the list of documents to which the constructive filing rule applied, and thus should be rejected as untimely. Perhaps there is a reason not to allow constructive filing for supplemental or letter briefs, but I can't think of one. And perhaps this interpretation of the rule is overly strained (which I tend to think it is). But maybe the committee should address this hiccup in our next annual agenda. And I'm now wondering why we wouldn't allow constructive filing for *every* document filed in a case.	Justice Ikola, Committee chair	In 2014-2015, the committee placed this on deferred list because it was not considered a high priority.
14.	***GENERAL –*** *Rule 8.163 – Application of*	A recent Court of Appeal decision [available at: http://www.courts.ca.gov/opinions/nonpub/B246970.PDF] appears to reason that since there was no reporter's transcript, the presumption of rule 8.163 (pasted	Lisa Jaskol, former committee	In 2014-2015 annual agenda, this was designated as a

	Rule/Form	Suggestion/Issue	Source	Why Defer
	presumption from the record when settled statement is used	below) comes into play -- even though there was a settled statement. The opinion even says the "situation is analogous to some appeals on the judgment role of long ago, where the record was so incomplete 'it was impossible to determine upon what theory the case was tried . . . ." (Page 13.) Yes, the record was deficient, but not because of the lack of an RT. It's was deficient because the superior court approved respondent's deficient settled statement after the appellants were unable to present an acceptable one. So my suggestion for the Appellate Advisory Committee -- and in light of this opinion I think it's urgent: revise the second sentence of Rule 8.163 (pasted below) to insert the words "or an authorized substitute" after "reporter's transcript." Rule 8.163. Presumption from the record The reviewing court will presume that the record in an appeal includes all matters material to deciding the issues raised. If the appeal proceeds without a reporter's transcript, this presumption applies only if the claimed error appears on the face of the record.	member	Priority 2 project with a January 1, 2017 proposed completion date. At its 10/29/15 meeting, the rules subcommittee recommended that this be moved to the deferred list because it appears that most courts have considered alternatives to reporter's transcript in applying presumption
15.	***CIVIL APPEALS*** Form APP-002 *Notice of Appeal*	We have attached form APP-002 with our proposed revisions highlighted in yellow. The proposed revisions would add a third section to that form, covering the filing fees and deposit requirements. The new section would parallel and complement the instructions in form APP-001 concerning those fees. Three options are proposed, each with its own check box. The first notes that the notice of appeal is accompanied by the required filing fee and deposit, and specifies those amounts. The second notes that the notice of appeal is accompanied by a Request to Waive Court Fees (form FW-001). The third notes that the party filing the notice of appeal is exempt from filing fees and deposit requirements. We believe that including this information in form APP-002 will provide useful guidance and a helpful checklist for both parties and clerks.	Committee on Appellate Courts, State Bar of California	Was on 2013-2014 annual agenda as Priority 2 – helpful but not urgent. Had 1/2015 completion date but not worked on last year In 2014-2015, the committee placed this on deferred list because it was not considered a high priority.
16.	***CIVIL APPEALS*** *- Forms APP-03 and APP-010 - designation record in unlimited civil cases*	See attached annotated copies of these forms	Superior Court of San Diego County – in comments on SPR15-01	Given that these forms will just have been amended effective 1/1/16 and these changes are not urgent, the rules subcommittee recommends

	Rule/Form	Suggestion/Issue	Source	Why Defer
				deferring these changes
17.	***APPELLATE DIVISION –*** *Rule 8.817 – Application of overnight delivery rule to briefs in appellate division*	I'm sending a note about a possible rule change involving rule 8.817, which governs service and filing in the Appellate Division. The attached order, issued by the Appellate Division of the Orange County Superior Court, sparked my suggestion. I am appellate counsel for the defendants and appellants in this misdemeanor appeal. An attorney who wanted to file an amicus brief supporting my clients mistakenly relied on rule 8.25(b), believing that her amicus brief would be deemed timely filed if she gave it to Federal Express on the due date. In the attached order, the Appellate Division points out that rule 8.25 applies only to filings in the Court of Appeal and Supreme Court. However, the attorney might have reached the same conclusion even if she had relied on rule 8.817 (pasted below), which applies to the Appellate Division. Subdivision (b)(3) deems a "brief" to be timely filed if it is delivered to an overnight carrier on the due date. However, the attached Appellate Division order says rule 8.817 does not apply to amicus briefs. The Appellate Division order does not explain its conclusion, which seems to be wrong. (The Appellate Division allowed the amicus brief to be filed anyway, however.) Indeed, rule 8.630(e) provides: "Amicus curiae briefs may be filed as provided in rule 8.520(f)." Rule 8.520(f), in turn, is governed by rule 8.25(b), which expressly includes requests to file amicus briefs. Therefore, I wonder if modification of rule 8.817 is in order to clarify that amicus briefs are one kind of "brief" referred to in rule 8.817(b)(3)?	Lisa Jaskol, committee member	In 2014-2015, the committee placed this on deferred list because it was not considered a high priority.
18.	***GENERAL –*** *Rule 8.45 et. seq. – Sealed and confidential records*	We urge that the rules be amended to expressly provide that the sealed records be paginated based on where they would have otherwise appeared in the record (e.g., the clerk's transcript, a party's appendix).	Court of Appeal Fourth District in comments on 2013 proposal regarding sealed and confidential records	Was on 2013-2014 annual agenda as Priority 2 - Helpful, but not urgent. Had 1/2016 completion date. In 2014-2015, the committee placed this on deferred list because it was not considered a high priority.
19.	***GENERAL –*** *Rule 8.45 et.*	Court practices vary with respect to the format of sealed records. It would be helpful if the rule specified whether the sealed records should be paginated with	TCPJAC/CEAC Joint	Was on 2013-2014 annual agenda as

	Rule/Form	Suggestion/Issue	Source	Why Defer
	seq. – Sealed and confidential records	the rest of the record or separately.	Rules Working Group in comments on 2013 proposal regarding sealed and confidential records	Priority 2 - Helpful, but not urgent. Had 1/2016 completion date. In 2014-2015, the committee placed this on deferred list because it was not considered a high priority.
20.	***APPEALS IN CIVIL CASES*** Rule 8.124 – Respondent's election to use appendix in lieu of clerk's transcript	As noted in the advisory committee comment, this "election procedure differs from all other appellate rules governing designation of a record on appeal," where the appellant's designation or the parties' stipulation control. In this case, the respondent can impose its view as to how the appellate record should be compiled. Yet, notwithstanding the ability of the respondent to place the burden of preparing a voluminous appendix on the appellant, there is no standard for the superior court to determine whether to allow the respondent's election to trump the appellant's election of the form of the appellate record on appeal. If we are going to maintain this odd exception to the normal right of the appellant to determine the form of the appellate record, there should at least be a standard by which the superior court can determine whether to sustain the appellant's objection to the respondent's election. Otherwise, the superior court is likely to uphold the respondent's election because it relieves the superior court of its burden to prepare the clerk's transcript. Further, it is odd that the form of the record in such circumstances is left with the superior court, even though the appellate court is the tribunal that benefits from, or is inconvenienced by, the form of the record. The process for a clerk's transcript places everything in chronological order; the appendix process may not result in a chronologically ordered record.	Daniel Kolkey, committee member	Was on 2013-2014 annual agenda as Priority 2 - Helpful but not urgent. Had 1/2015 completion date. Proposal prepared, but RUPRO declined to circulate. In 2014-2015, the committee placed this on deferred list because it concluded that issue does not arise very often
21.	***CIVIL APPEALS –*** *Rule 8.124 – Time for respondent's election to use appendix*	We recommend that rule 8.124(a)(1)(B) be amended to allow a respondent to use an appendix if respondent files an election within 10 days after an appellant files a notice designating the record. Currently, rule 8.124(a)(1)(B) provides that a respondent may elect to use an appendix if it files a notice of election "within 10 days after the notice of appeal is filed." As written, the rule forces a respondent to designate an appendix before the respondent knows what kind of record, if any, an appellant has elected, because under rule 8.121 an appellant has 10 days from the date it files its notice of appeal to file a designation of record. The current rule effectively encourages respondents to file what may be unnecessary elections.	Committee on Appellate Courts, State Bar of California	In 2014-2015, the committee placed this on deferred list because it was not considered a high priority.

	Rule/Form	Suggestion/Issue	Source	Why Defer
		Our proposed amendment would read as follows: **(a) Notice of election** (1) Unless the superior court orders otherwise on a motion served and filed within 10 days after the notice of election is served, this rule governs if: (A) The appellant elects to use an appendix under this rule in the notice designating the record on appeal under rule 8.121; or (B) The respondent serves and files a notice in the superior court electing to use an appendix under this rule within 10 days after ~~the notice of appeal is filed~~ the appellant serves and files a notice designating the record on appeal under rule 8.121 and no waiver of the fee for a clerk's transcript is granted to the appellant. If a respondent is forced to designate an appendix before an appellant has designated any record at all, it may be that respondents unwittingly are creating records in cases that appellants intend to abandon. If a respondent designates an appendix within 10 days of the date the notice of appeal is filed, and the appellant never designates any record at all, the respondent's early designation may leave local clerks confused and ultimately delay dismissal of the case. If the rule is amended as proposed, it would also allow a respondent to include an election to use an appendix in its counter-designation form, which must be filed within 10 days after the appellant serves and files a notice designating the record. (Cal. Rules of Court, rules 8.122(a)(2), 8.130(a)(3).) That would reduce the amount of paperwork that parties must file and the amount of paperwork that the clerk's office must process.		
22.	***APPEALS IN CIVIL CASES –*** *Rule 8.204 – Length of briefs*	I am forwarding the below e-mail as a potential item for discussion for the next annual agenda. I know the word limits for briefs contained in present rules 8.204(c)(1) and 8.360(b)(1) have been in place for a substantial period of time, and roughly correspond to the page limits previously in place for even longer. And I note that for death penalty appeals (8.630(b)(1)), the page limit was actually increased about five years ago. I'm guessing that was done to reduce the workload of the court in dealing with requests to file oversize briefs. "As chair of the appellate advisory committee, I recommend you address the size of appellate briefs. I particularly see no justification for permitting longer briefs for	Justice Ikola, committee chair, and Justice Rylaarsdam	In 2014-2015, the committee placed this on deferred list because it was not considered a high priority.

	Rule/Form	Suggestion/Issue	Source	Why Defer
		criminal than for civil cases."		
23.	***GENERAL –*** *Rule 8.208 – Request to seal certificate of interested parties*	Without the certificate, the presiding justice (or APJ) does not have enough information to determine if he or she should be disqualified for ruling on the application. I know it's a lot of trouble but, under the circumstances, I seems to me to be a good idea to propose a rule change to eliminate the 10-day provision in Rule 8.208(d)(2) and require any party applying to file a certificate under seal to lodge the certificate conditionally under seal along with the application.	Cheryl Shensa, writ attorney, Court of Appeal, Fourth Appellate District	In 2014-2015, the committee placed this on deferred list because it was not considered a high priority.
24.	***PETITIONS FOR REHEARING –*** Rule 8.264 (applies in civil, criminal and juvenile appeals)	As you know, petitions for rehearing are filed in the courts of appeal in the vast majority of cases and consume appreciable court time -- at least in the aggregate. Further, their ubiquity degrades their credibility, which makes them usually futile (but not inexpensive) endeavors for the parties. While effective reform will require some careful thought, reform could include (1) a stricter page limit, (2) a prohibition against reply briefs (I have been served on several occasions with applications for leave to file reply briefs which attach a reply, which is annoying to the practitioner who receives the unauthorized final word and which further consumes the court's time), and (3) some means of limiting the grounds so that a mere repetition of arguments made in the briefs and addressed in the court's opinion is not permitted. Admittedly, this latter point may be difficult to implement in practice; thus, an alternative might include an advisory committee comment. Still, reducing the number of these petitions, and thereby making a petition a more meaningful exercise, is not an impossible dream. After all, they do not appear to be filed with the same frequency in the California Supreme Court.	Daniel Kolkey, committee member	In 2014-2015, the committee placed this on deferred list because it concluded further study was needed
25.	***APPEALS IN CIVIL CASES*** Rule 8.264 – Finality	Amend California Rules of Court, rule 8.264(b)(2) to include: "(C)The denial of the request by a vexatious litigant for permission to file an appeal pursuant to Code of Civil Procedure section 391.7." Reasons for request: Currently the rules do not address the finality of the denial of the request by a vexatious litigant for permission to file an appeal. At a meeting of the Managing Attorneys of the California Courts of Appeal, we discovered that the Courts of Appeal are not treating the finality in the same manner. The Managing Attorneys all agree that a rule addressing the issue is necessary. The Fourth District, Division Two recommends that the denial be final immediately because the order is similar to the denial of a request for transfer of	Susan Streble Supervising Appellate Court Attorney California Court of Appeal Fourth District,	In 2014-2015, the committee placed this on deferred list because it concluded that further information was needed

	Rule/Form	Suggestion/Issue	Source	Why Defer
		a case within the jurisdiction of the appellate division of the superior court under California Rules of Court, rules 8.1000 et seq. Under California Rules of Court, rule 8.1018(a), the denial of a transfer request is final immediately. When the court denies a request for transfer or for permission to file an appeal, the court does not assume jurisdiction of the matter.	Division Two	
26.	***APPEALS IN CIVIL CASES*** Rule 8.278 – Costs on appeal	**Should the cost of preparing an "e-brief" be a recoverable cost on appeal:** Rule 8.278 governs the recovery of costs awarded on appeal, and specifies the specific categories of costs that may be recovered. In recent years, several (perhaps the majority) of the appellate court districts in California have begun encouraging parties to appeals to submit an "e-briefs" disk at the conclusion of briefing, containing searchable copies of the record on appeal, the parties' briefs, copies of all decisions cited in the briefs, related motions on appeal (e.g., requests for judicial notice), all hyperlinked to one another. (See, e.g., "Invitation To File Electronic Briefs In The Second District Court Of Appeal"; Invitation To File Hyperlinked CD Documents, Fourth Appellate District, Division One.) Invitations to file e-briefs from the appellate courts typically warn that "Counsel should not assume that the preparation cost, if any, will be recoverable." (Ibid.) Nonetheless, in my firm's experience, some trial courts have been willing to award the cost of e-briefing as a recoverable cost on appeal under the category of "[t]he cost to print and reproduce any brief." (Cal. Rules of Court, rule 8.278(d)(1)(E), emphasis added.) Other trial courts, however, have ruled that the cost of preparing an e-briefs disk does not fall within that category and is not a recoverable cost. Amending the rule to clarify that the cost of preparing an e-brief is a recoverable cost on appeal would encourage the submission of e-briefs, which both the Supreme Court and the Courts of Appeal seem interested in receiving.	John Taylor, former committee member	Was on 2013-2014 annual agenda as Priority 2 - Helpful but not urgent. Had 1/2015 completion date but not worked on last year In 2014-2015, the committee placed this on deferred list because it concluded that cost concerns, raised previously, would likely be raised again. In the spring 2011, the committee considered, but ultimately decided not to pursue, circulating a proposal on this topic. Concerns raised at that time included the potential burden of the cost of electronic briefs on litigants and potential confusion about the difference between these briefs and electronically filed briefs. The group left open the possibility of pursuing a proposal in the future.

	Rule/Form	Suggestion/Issue	Source	Why Defer
27.	***APPEALS IN CIVIL CASES*** Rule 8.278 – Inclusion of hyperlinked briefs in recoverable costs on appeal	I would like to reiterate my previous request to make the cost of hyper-linked briefs a recoverable cost on Appeal. Hyperlinked briefs provide a better way for all concerned to prepare and review appellate briefs. As more courts move to an all e-document filing system, the need to provide briefs, as well as other filings that are hyperlinked to the record and citations, becomes imperative. The cost in preparing hyperlinked briefs is decreasing and will continue to do so, especially as more and more courts either request them or mandate their use. See the attached document of a recent survey of courts requesting hyperlinked briefs. Please note I AM NOT REQUESTING ANY RULES OR RULE CHANGES CONCERNING HYPER-LINKED BRIEFS, JUST THAT THE COST BE A RECOVERALBE COST ON APPEAL.	Joseph Lane, committee member	See notes regarding item 34 above
28.	***APPEALS IN CRIMINAL CASES*** *– Rule 8.320 – Record on appeal*	Rule 8.320(c)(3) specifically exempts opening statements from inclusion in the normal record on appeal. I would suggest that the language "and any opening statement" be deleted from the rule. Similarly, I would suggest that rule 8.320(c)(9)(B) be amended to provide that in a defendant's appeal, the normal record of the reporter's transcript should include "The opening statements and the closing arguments." There is a twofold justification for the proposed change. First, having reviewed records in criminal appeals for over 30 years, it is my experience that the opening statements often provide useful information to the appellate lawyers and the court. In a substantial number of cases, the parties and the trial judge refer to something said or done during the opening statement. Rather than requiring a motion to augment the record in this situation, efficiency would be served by automatically providing the opening statement. Second, there have been a number of cases where appellate counsel has raised a claim of ineffective assistance of trial counsel based on promises made during opening statement which were not subsequently honored. (See generally People v. Corona (1978) 80 Cal.App.3d 684, 725-726; Harris v. Reed (7th Cir. 1990) 894 F.2d 871, 879.) I have personally worked on such cases. Once again, efficiency is served if the opening statements are made part of the record without the need for the delay attendant to a motion to augment the record. For the most part, opening statements are quite short. As a result, the cost of the rules change will be quite modest since it is likely that most jury trial appeals will	Dallas Sacher, committee member	Was on 2013-2014 annual agenda as priority 2 project. Had 1/2016 completion date. Proposal was circulated for public comment last year. Based on the comments, the committee decided not to recommend adoption of the proposal last year, but to keep the suggestion on the list of deferred items for potential future re-consideration.

	Rule/Form	Suggestion/Issue	Source	Why Defer
		have opening statements that are less than 20 pages.		
29.	***CRIMINAL CASES –*** *Rules 8.304 and 8.850 – Definitions of "felony case" and "misdemeanor case"*	I wanted to bring this opinion filed by our court on 11/14/13 (remittitur issued 2/13/14) to your attention just in case the Advisory Committee Comments need to be updated with this information. Not sure if it would matter or not. Thanks. [*People v. Scott* (2013) 221 Cal.App.4th 525; opinion is available at: http://www.courts.ca.gov/opinions/archive/H037681.PDF. Holding is that a case in which the only felony charge was dismissed at the prosecutor's request and a new complaint charging only a misdemeanor filed before trial was not a "felony case," and thus appellate jurisdiction for defendant's appeal from the judgment of conviction was vested in the appellate division of the superior court]	Corrine Pochop, former committee member	In 2014-2015, the committee placed this on deferred list because it concluded that case appears to reflect rare circumstances and rule change most likely unecessary
30.	***APPEALS JUVENILE CASES*** *Rule 8.401 – Confidentiality*	Amend 8.401(b)(2) which allows access to juvenile files to persons "considering filing an amicus brief." Seems like this could compromise confidentiality	Elaine Alexander, former committee member and director of Appellate Defenders	Deferred in 2013-2014 Was not considered high priority Problem seems theoretical at this point; rules subcommittee members were not aware of any issues actually arising with respect to this provision
31.	***PETITIONS FOR REVIEW –*** *Rule 8.508 – Petitions to exhaust state remedies*	California Rules of Court Rule 8.508 now provides for a truncated or abbreviated Petition for Review to Exhaust State Remedies, often used by criminal appellants or petitioners to ensure compliance with federal habeas corpus rules. There is currently an anomaly in this rule, however. Attorneys for criminal defendants generally have an obligation to "exhaust" every federal constitutional issue in an appeal or writ petition. They may believe that a full Petition for Review is merited as to one or more issues, but not all such issues. In that case, under the current rule, the attorney must file a full Petition for Review on each issue, when he or she is only actually seeking review (other than to exhaust) on one or a couple of the issues.	William Kopeny, committee member	In 2014-2015, the committee placed this on deferred list because it was not considered a high priority. Note: Rule 8.508 was developed by the committee 2003 on the request of the Supreme

	Rule/Form	Suggestion/Issue	Source	Why Defer
		My proposal is to amend this rule to permit a the petition to be "to exhaust state remedies" as to some but not all issues, thus saving appointed counsel, and the Supreme Court staff the work involved in working up all issues, when the attorney only believes that one or two of such issues merit a full review work up, and is actually merely seeking to exhaust as to the remainder of the issues. A simply amendment to Rule 8.508, subd. (b) may suffice (inserting "as to certain issues" requiring that the issues on which exhaustion alone is sought be identified on the cover of the Petition, and subd. (c) requiring full service as to a mixed petition.		Court in response to proposals by practitioners representing indigent defendants in criminal appeals.
32.	***ORDERING REVIEW*** Rule 8.512 – Time for ordering review on court's own motion	Rule 8.512(c)(2) sets the time for the Supreme Court to order review on its own motion when a petition for review has been filed. Currently, this rule provides that the Supreme Court may deny the petition but order review on its own motion "within the periods prescribed in (b)(1)." Subdivision (b)(1), in turn, provides that the period for granting a petition for review is generally within 60 days after the last petition for review is filed. Rule 8.512(c)(2) has been interpreted by some as authorizing the court to grant review on its own motion anytime within this 60-day period, even if the court has already denied the petition for review. The court's practice, however, is to order any review on its own motion at the same time as it denies the petition and this is reflected in the fact that under rule 8.272(b)(1), the Court of Appeal clerk must issue a remittitur *immediately* after the Supreme Court denies review (emphasis added). Although not convinced that any change to the rule is necessary, the Supreme Court has asked that the Appellate Advisory Committee consider whether it would be helpful to amend this rule 8.512(c)(2) to clarify that when a petition for review is denied by the Supreme Court, the court must order any review on its own motion at the same time as it denies the petition.	Supreme Court	Deferred in 2013-2014 Was not considered high priority
33.	***APPELLATE COURT ADMIN.*** *Rule 10.1028 – Retention of court records*	At some point I would like to propose amendment of Rule of Court 10.1028(d)(2), which requires retention of "the original reporter's transcript" for a period of 20 years when the court affirms a criminal conviction. Since Code of Civil Procedure section 271(a) requires that an "original transcript" be on paper, the storage costs are substantial. Amending the rule to require retention of a true and correct copy in electronic form would make it much easier for us to receive and use electronic copies as part of the appellate record for the courts that wish to do so, and could generate significant long term cost savings. Even the reporters are now asking about electronic delivery, and we could probably do this with little opposition.	Justice Bruiniers, chair of CTAC	Deferred in 2013-2014 pending determination of whether proposal to amend Code of Civil Procedure section 271(a) would be developed

	Rule/Form	Suggestion/Issue	Source	Why Defer
		Although the statute ultimately needs to be amended, amending the rule would seem to be the far simpler interim solution.		
34.	***COMMITMENT PROCEEDINGS*** Rule ?	There are not currently rules that address civil commitment cases other than LPS cases, such as SVP (Welf. & Inst. Code, § 6600 et seq.), MDO (Pen. Code, § 2666 et seq.), extended detention of youthful offenders (Welf. & Inst. Code, § 1800 et seq.), and extended commitment of persons found not guilty by reason of insanity (Pen. Code, § 1026.5). Should a rule or rules for these cases be developed?	Elaine Alexander, former committee member and director of Appellate Defenders	Deferred in 2013-2014 Was not considered high priority
35.	***APPEALS AND WRITS IN LPS CASES*** Rule ?	A couple of days ago, we published a case called Scott S. v. Superior Court. The case addressed the evidentiary showing an LPS conservator has to make to obtain the right to consent on behalf of the conservatee to a proposed surgical procedure (in this case, the amputation of a toe). The California Style Manual, section 5:13, requires that opinions involving an LPS conservatee use protective nondisclosure when identifying them – thus our caption was "Scott S." Shortly after filing, however, either our clerk's office or our managing attorney (not sure which) got a call from Ed Jessen noting that our court's online docket identified the conservatee by name, without protective nondisclosure, and was available to the public online. The docket is now "offline," the same as Juvenile cases. However, when a writ petition or an appeal is filed involving an LPS conservatee as a party, or as a real party in interest, unless the filing clerk review the contents of the petition or brief with every filing, they have no other way of knowing that the case involves an LPS conservatee unless the cover of the petition, notice of appeal, or brief uses a protective nondisclosure or otherwise flags the case in some fashion as an LPS case. The cover of the Scott S. petition did not contain any hint that it was an LPS case, except possibly inferentially because the public guardian was the real party in interest. Perhaps one of our future agendas should ask the committee to consider whether a rule should be adopted which would require the cover in an LPS case to include some sort of flag to alert the filing clerk that the appellate court docket should not be made public. I'm not aware of any rule that would currently require this.	Justice Ikola, committee chair	Deferred in 2013-2014 Issue does not arise very often

	Rule/Form	Suggestion/Issue	Source	Why Defer
		Not a huge problem – these cases are relatively rare – but I think it's worthy of adding to the list at some point. Thanks.		
36.	***GENERAL RULES*** Rule 2.1040 – Electronic recordings offered into evidence	In a contested probation revocation, a judge overruled a defense objection to the lack of a transcript based on the words "trial judge" in the rule, concluding that the hearing was not a "trial." I would suggest the rule be tweaked to say "superior court" rather than "trial judge." STAFF NOTE: May also want to consider placing rule in a different division of the Rules of Court.	Howard C. Cohen Attorney	Deferred in 2013-2014 Was not considered high priority
37.	***GENERAL –*** *Form ? – Association of counsel*	There should be standard forms to use for . . . association of counsel on appeal. * * * Finally, also to promote efficiency, it makes sense to craft a standard form for associating counsel on appeal. This typically does not require court approval. Under current practice, litigants seek to associate counsel in various ways, including by motion. A standard form would bring greater order to a simple step in an appeal, and reduce the burden on appellate clerks.	Kevin Green, committee member	Deferred in 2013-2014 Was not considered high priority

Items Relating to Juvenile Cases

In 2010, Fam Juv decided to not to pursue any rule or form changes that were not mandated by statute or necessitated by caselaw.The suggestions below were deferred in light of that decision.

	Rule/Form	Suggestion/Issue	Source
38.	***APPEALS & WRITS IN JUVENILE CASES*** Rule 5.590	Rule 5.590 does not specify all of the limitations on the right to appeal. Suggest amending the rule to specify these limitations	Appellate Defenders, Inc.
39.	***APPEALS & WRITS IN JUVENILE CASES*** Rule 5.590	The current advisements of appellate rights that are given do not clearly explain the implications for orders concurrently made with the order setting the hearing under Welfare and Institutions Code section 366.26 or the orders to which the requirements for filing a notice of intent to file a writ petition applies. These should be clarified.	Seth Gorman
40.	***APPEALS &***	Suggest separating rules relating to juvenile dependency and delinquency proceedings	Committee on

	Rule/Form	Suggestion/Issue	Source
	WRITS IN JUVENILE CASES Juvenile rules generally		Appellate Courts State Bar of California
41.	***APPEALS & WRITS IN JUVENILE CASES*** Rule 8.403	The provisions in 8.403(b)(2) on appointed counsel in dependency appeals are incomplete and not as helpful as they might be	Appellate Defenders, Inc.
42.	***APPEALS & WRITS IN JUVENILE CASES*** Rule 8.416	Amend the rule to allow that a motion to augment/correct the record be filed with the respondent's brief or, in the alternative, after 15 days with permission of the Court.	Los Angeles County Office of the County Counsel, by James M. Owens Assistant County Counsel
43.	***APPEALS & WRITS IN JUVENILE CASES*** Rule 8.452	Suggest amending rule 8.452 to include a provision for extension of time (now seems to be covered by provision of rule 8.450(d)). Alternatively, the extension of time provision could be a stand-alone rule, with reference perhaps to the rules such an extension would apply to. (Suggestions not part of comments on SPR09-10)	D'vora Tirschwell Writ Attorney Court of Appeal First District
44.	***APPEALS & WRITS IN JUVENILE CASES*** Rule 8.470	Amend rule 8.470 to include cross-reference to rule 8.490. Note: this suggestion may have been partially addressed by the July 2010 amendments to rules 8.452 and 8.456 that include cross-references to rule 8.490. However, rule 8.470 could still be clarified with respect to writ proceedings.	Joseph Lane Clerk/Executive Officer Court of Appeal, Second Appellate District
45.	***APPEALS & WRITS IN JUVENILE CASES*** Rules 8.480 and 8.482	Rules 8.480, relating to appeals in LPS conservatorship cases, and rule 8.482, relating to appeals in sterilization cases, both currently provide that "except as otherwise provided in this rule, rules 8.304-8.368 and 8.508 govern" these appeals. Is the cross-reference to rule 8.508, which provides for petitions for review to exhaust state remedies in criminal cases for purposes of filing a federal habeas corpus petition, necessary?	Elaine Alexander, former committee member and director of Appellate Defenders
46.	***APPEALS & WRITS IN***	The language of the current notice of appeal form has led some courts to refuse to consider a claim based on a ruling made at the hearing delineated in the checked box, when the ruling at issue was	Appellate Court Committee of the

	Rule/Form	Suggestion/Issue	Source
	JUVENILE CASES Form JV-800	based on a different code section. Suggest changing the language for line 6 on page 2 of the notice of appeal form from "6. The order appealed from was made under Welfare and Institutions Code section (check all that applies): …" to "6. The order or orders appealed from were made at a hearing under: ...".	San Diego County Bar Association
47.	***APPEALS & WRITS IN JUVENILE CASES*** Form JV-820	The notice of intent form should include a box underneath the signature line, next to the attorney box indicating "with client's consent." This would allow the attorney to sign the form with the client's consent if the client is unavailable or otherwise unable to sign the form.	Los Angeles County Counsel, Office of the County Counsel by James Owen Assistant County Counsel