JUDICIAL COUNCIL
OF CALIFORNIA

APPELLATE ADVISORY
COMMITTEE

www.courts.ca.gov/aac.htm
aac@jud.ca.gov

APPELLATE ADVISORY COMMITTEE
OPEN MEETING AGENDA

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

Date:	Monday, November 7, 2016
Time:	12:00 Noon
Public Call-in Number:	1-877-820-7831, Passcode: 5846649

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

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

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

Call to Order and Roll Call

Approval of Minutes
Approve minutes of the October 4, 2016 Appellate Advisory Committee meeting.

II. PUBLIC COMMENT (CAL. RULES OF COURT, RULE 10.75(K)(2))

Written Comment
In accordance with California Rules of Court, rule 10.75(k)(1), written comments pertaining to any agenda item of a regularly noticed open meeting can be submitted up to one complete business day before the meeting. For this specific meeting, comments should be e-mailed to aac@jud.ca.gov or mailed or delivered to Judicial Council of California, attention: Heather Anderson. Only written comments received by Friday, November 4 will be provided to advisory body members.

III. DISCUSSION AND POSSIBLE ACTION ITEMS (ITEMS A–D)

Item A

Rules to implement Senate Bill 1065 (Action Required)
Consider whether to recommend circulation for public comment of proposed rules to implement the requirements of Senate Bill 1065.

Item B

Rules to implement section 271 of Senate Bill 836 (Action Required)
Consider whether to recommend adoption of proposed rules to implement the requirements of section 271 of Senate Bill 836.

Item C

Rules to implement Assembly Bill 2298 (Action Required)
Consider whether to recommend adoption of proposed rules to implement the requirements of Assembly Bill 2298.

Item D

Review of potential items for inclusion on proposed committee annual agenda (Action Required)
Consider what items to recommend for inclusion in the committee's proposed annual agenda for 2016-2017.

IV. ADJOURNMENT

Adjourn

TAB I

JUDICIAL COUNCIL
OF CALIFORNIA

APPELLATE ADVISORY
COMMITTEE

www.courts.ca.gov/aac.htm
aac@jud.ca.gov

APPELLATE ADVISORY COMMITTEE

MINUTES OF CLOSED MEETING

October 4, 2016
4:00 PM

Advisory Body Members Present:	Justice Louis Mauro, chair, Ms. Laura Arnold, Justice Kathleen Banke, Mr. Kevin Green, Justice Adrienne Grover, Justice Richard Huffman, Judge Kent Kellegrew, Mr. Daniel Kolkey, Justice Leondra Kruger, Mr. Mr. Joseph Lane, Mr. Jorge Navarrete, Dallas Sacher, Judge Stephen Schuett, Justice Bruce Smith, Ms. Kimberly Stewart, and Justice Thomas Willhite, Jr.
Advisory Body Members Absent:	Mr. Jeffrey Laurence, Ms. Sheran Morton, and Ms. Mary-Christine Sungaila
Others Present:	Ms. Mary McComb, State Public Defender; Mr. Jonathan D. Grossman, Sixth District Appellate Program; Ms. Adetunji Olude, Center for Judicial Education and Research; Mr Jasperson and Mr. Herzfeld, Governmental Affairs; and Heather Anderson, Committee Counsel;

CLOSED SESSION

Item 1 - Call to Order and Roll Call
Action: The chair called the meeting to order at noon. Roll was taken.

Item 2 – Chairs Report
Action: The chair welcomed the new and returning committee members

Item 3 - Minutes
Action: The committee reviewed and approved the minutes of its July 26, 2016 meeting

Item 4 - Discussion of committee meeting procedures
Action: The committee agreed to hold open meetings unless the chair determines that particular items should be closed. The committee also agreed to use modified parliamentary procedures.

Item 5 - Discussion of new RUPRO schedule for rule and forms proposals and committee meeting calendar

No Action; discussion only

Item 6 - Consider whether to recommend an amendment to rule 8.528 to address inconsistency with recent amendments to rules 8.1105 and 8.1115
Action: The committee recommended adoption of this amendment as a technical amendment, without circulation for public comment.

Item 7 - Consider whether to recommend a pilot program to test a modification to the webpage where appellate opinions are posted to discourage robotic indexing of unpublished Court of Appeal opinions
Action: The committee approved recommending this pilot program.

Item 8 - Consider whether to sponsor or support an amendment to Code of Civil Procedure section 271 to eliminate the requirement that the original of a reporter's transcript be in paper format.
Action: The committee recommended working with the California Court Reporters' Association to move this proposal forward in the Legislature this year.

ADJOURNMENT

There being no further business, the meeting was adjourned.

Approved by the advisory body on enter date.

TAB IIIA

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
November 2, 2016

To
Members of the Appellate Advisory Committee

From
Heather Anderson, Supervising Attorney, Legal Services

Subject
Rules to implement Senate Bill 1065

Action Requested
Please read before November 7 committee conference call

Deadline
November 7, 2016

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

Background

On September 25, 2016, 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.

At its October 24 meeting, the rules subcommittee considered an earlier draft of the attached invitation to comment and proposed rule amendments which are designed to implement the new

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

legislation. The subcommittee recommends that the committee recommend this proposal be circulated for public comment.

Draft Invitation to Comment and Rule Amendments

The draft rules included in the attached draft invitation to comment are generally 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 committee 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 100-day period in SB 1065 is shorter than the period for completion of the Court of Appeal action provided under the relevant CEQA statues, the rules subcommittee is recommending different time periods for some of the steps in the appellate process and other modifications to the CEQA rule approach.

Notice of Appeal and Appellant's Opening Brief Timeframes

The most important differences are in the timeframe for filing the notice of appeal and the appellant's opening brief. Under proposed rule 8.712, the time for filing the notice of appeal would be 20 days from service of notice of entry to the judgment, rather than the 5 days under the CEQA rules, and proposed rule 8.715 would require that the appellant's opening brief be filed within 7 days of the filing of the notice of appeal, rather than the 25 days provided under the CEQA rules. These proposed timeframes embody an expectation that the appellant would use some of the proposed 20-day notice of appeal period to prepare its opening brief. The subcommittee's thought was that this arrangement would provide greater flexibility in scheduling the remaining briefing while still allowing time for oral argument and the court's deliberations during the statutorily–mandated 100-day period for the appeal. The draft invitation to comment explains this reasoning and specifically seeks public comment on whether this approach of the approach embodied in the CEQA rules is preferable. Two things to note about this approach

- Although the proposed 20-day notice of appeal period is longer than the 5-day period in the CEQA rules, it would still be 2/3rds shorter than the normal 60-day appeal period in an unlimited civil case. Thus the proposed rules would comply with the directive of SB 1065 that the rules adopted by the Judicial Council establish a shortened notice of appeal period.
- The proposed 7-day period for filing the appellant's opening brief would make it more likely that any reporter's transcript in the case will not have been completed by the time the

appellant's opening brief must be filed. The proposed rules, like the CEQA rules, include a procedure to address these circumstances by allowing the filing of an initial brief without citations to the transcript and then file an updated brief with these citations after the reporter's transcript is filed.

The subcommittee also considered whether or not it is necessary to include a provision addressing the potential effect of a cross-appeal on the time to file a notice of appeal. The subcommittee decided to retain a draft of such a provision in the proposal but seek public comments on whether this provision is necessary. This approach is embodied in the draft invitation to comment.

Time for Oral Argument

Unlike in the CEQA rules, in these proposed rules, the rules subcommittee is not recommending inclusion of a provision addressing when oral argument must be set. The subcommittee thought that having such a provision would unnecessarily restrict the court's flexibility in setting the date for oral argument. Eliminating this provision leaves to the court's discretion how best to allocate the 53 days between the proposed deadline for filing the appellant's reply brief and the expiration of the 100-day period.

Record on Appeal

The rules subcommittee recommends not including in the proposed rules a provision similar to rule 8.703(d)(2)(B) regarding applications for reimbursement of transcript costs from the Transcript Reimbursement Fund. The subcommittee was concerned about potential delay in the preparation of the record associated with such applications, particularly because of the limitations on funding for reimbursement for unrepresented parties. In addition, the subcommittee discussed the fact that the appellant in these cases, who would be responsible for the initial designation of any reporter's transcript, is unlikely to qualify for such reimbursement.

As an alternative approach for those who are unable to purchase a copy of the reporter's transcript, the subcommittee directed staff to include in the draft rules a provision modelled on rule 8.153, regarding lending of the record (see proposed rule 8.713(b)(4)). Please note that this is a staff draft of this potential provision that has been reviewed by the chair of the subcommittee, but not by the full subcommittee.

The draft invitation to comment specifically asks for input on these record-related provisions.

Application of Rules

The subcommittee also discussed what would be the best approach to provide rule users with adequate notice regarding the situations in which the standard notice of appeal period does not apply. Currently, rule 8.104 cross-references rule 8.108, which addresses extensions on the time

for appeal when there are certain post-judgment motions or for cross-appeals, and rule 8.702, which sets a shortened notice of appeal period in the expedited CEQA cases. The proposed amendments would add a cross-reference to proposed new rule 8.712, which sets the shortened notice of appeal period for cases governed by SB 1065. The subcommittee discussed whether the rule text or the accompanying advisory committee comment to the rule should also be amended to include a description of the type of case covered by rule 8.712 and perhaps also by rule 8.702. The subcommittee ultimately decided against the approach of amending the rule text to include this information because it would make the rule text longer and potentially more difficult to understand. However, the attached draft includes proposed amendments to advisory committee comment to rule 8.104 that would provide information about the types of proceedings that rule 8.712 covers, as well as information about the other rule provisions currently cross-referenced in rule 8.104. The draft invitation to comment also specifically seeks comments on whether this is the best approach to providing rule users with this information.

Committee Task

Attached for the committee's review is a draft invitation to comment reflecting the rules subcommittee recommendations. **Please note** that the rules subcommittee reviewed an earlier draft this draft invitation to comment; the subcommittee chair has reviewed the attached revised version that incorporates changes requested by the subcommittee. The committee's task is to review this draft invitation to comment and:

- Recommend to RUPRO that the invitation to comment, as proposed or as further revised by the committee, be approved for circulation;
- Ask staff or committee members for further information/analysis; or
- Reject the proposal.

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

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

are generally 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). The main differences between these proposed rules and the CEQA rules are:

- 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 different time periods for some of the steps in the appellate process than are established by rules 8.700 – 8.702. For example, proposed rule 8.715 would require that the appellant's opening brief be filed within 7 days of the filing of the notice of appeal, rather than the 25 days provided under the CEQA rules (rule 8.702(f)). Under this proposal, the appellant would be expected to utilize some of the proposed 20-day notice of appeal period to prepare its opening brief.
- The committee did not include a provision similar to rule 8.703(d)(2)(B) regarding applications for reimbursement of transcript costs from the Transcript Reimbursement Fund because of concerns relating to delay in the preparation of the record and because the appellant in these cases is unlikely to qualify for such reimbursement. As an alternative approach for those who are unable to purchase a copy of the reporter's transcript, the committee included a provision modelled on rule 8.153, regarding lending of the record (see proposed rule 8.713(b)(4)). The committee would particularly appreciate comments on this approach.

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 did consider different alternatives for the length of time provided for various steps in the appellate process. For example, the committee considered setting a 5-day notice of appeal period, similar to that in the CEQA rules, and then giving a longer time for filing the appellant's opening brief. The committee ultimately decided that the approach of having a somewhat longer notice of appeal period and shorter opening brief deadline was preferable because it would provide greater flexibility in scheduling the remaining briefing while still allowing time for the court's deliberations during the statutorily–mandated 100-day period for the appeal. The committee would particularly appreciate comments on this approach.

The committee also considered what would be the best approach to provide rule users with adequate notice regarding the situations in which the standard notice of appeal period does not apply. The proposed amendments to rule 8.104 would add a cross-reference to proposed new rule 8.712 and the proposed amendments to the accompanying advisory committee comment would provide information about the types of proceedings that rule 8.712 covers, as well as information about the other rule provisions currently cross-referenced in rule 8.104. The committee considered the alternative of adding more descriptive information to the text of the rule, but decided against this approach because it would make the rule text longer and potentially more difficult to understand.

The committee also considered whether or not it is necessary to include a provision addressing the potential effect of a cross-appeal on the time to file a notice of appeal. The committee would appreciate comments on this issue.

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.

Request for Specific Comments

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

- Whether the proposed amendment to the advisory committee comment to rule 8.104 is sufficient to provide rule users with adequate notice about the nature of the exceptions to the normal time for filing a notice of appeal or whether further information should be incorporated into the text of the rule.
- Which is preferable – the proposed approach of having a longer notice of appeal period and shorter period for filing the appellant's opening brief (which will allow longer periods for the respondent's and reply briefs) or the alternative approach of having a 5-day notice of appeal period and longer period for filing the appellant's opening brief (but which will require shorter periods for the respondent's and reply briefs in order to comply with the 100-day period for adjudicating appeals).
- Whether it is necessary for the rules to include a provision such as 8.712(c)(4) addressing the effect of cross-appeals on the time to file a notice of appeal.
- Whether the proposed rules should include a provision similar to rule 8.703(d)(2)(B) regarding applications for reimbursement of transcript costs from the Transcript Reimbursement Fund.

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

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

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) * * *

Advisory Committee Comment

Subdivision (a). This subdivision establishes the standard time for filing a notice of appeal and identifies rules that establish very limited exceptions to this standard time period for cases involving certain post judgment motions and cross-appeals (rule 8.108), certain expedited appeals under the California Environmental Quality Act (rule 8.702), and review of an order dismissing or denying a petition to compel arbitration under Code of Civil Procedure section 1294.4 (Rule 8.712).

Under subdivision (a)(1)(A), a notice of entry of judgment (or a copy of the judgment) must show the date on which the clerk served the document. The proof of service establishes the date that the 60-day period under subdivision (a)(1)(A) begins to run.

Subdivision (a)(1)(B) requires that a notice of entry of judgment (or a copy of the judgment) served by or on a party be accompanied by proof of service. The proof of service establishes the date that the 60-day period under subdivision (a)(1)(B) begins to run. Although the general rule on service (rule 8.25(a)) requires proof of service for all documents served by parties, the requirement is reiterated here because of the serious consequence of a failure to file a timely notice of appeal (see subd. (e)).

Subdivision (b). * * *

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.

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:

1
2 **(b) Application of general rules for civil appeals**
3
4 Except as otherwise provided by the rules in this chapter, rules 8.100–8.278, relating to
5 civil appeals, apply to appeals under this chapter.
6
7
8 **Rule 8.711. Filing and service**
9
10 **(a) Service**
11
12 Except when the court orders otherwise under (b) or as otherwise provided by law, all
13 documents that the rules in this chapter require be served on the parties must be served by
14 personal delivery, electronic service, express mail, or other means consistent with Code of
15 Civil Procedure sections 1010, 1011, 1012, and 1013 and reasonably calculated to ensure
16 delivery of the document to the parties not later than the close of the business day after the
17 document is filed or lodged with the court.
18
19 **(b) Electronic filing and service**
20
21 (1) In accordance with rule 8.71, all parties except self-represented parties are required
22 to file all documents-electronically except as otherwise provided by these rules, the
23 local rules of the reviewing court, or court order;. Notwithstanding rule 8.71(b), a
24 court may order a self-represented party to file documents electronically.
25
26 (2) All documents be must served electronically on parties who have consented to
27 electronic service or who are otherwise required by law or court order to accept
28 electronic service. All parties represented by counsel are deemed to have consented
29 to electronic service. All self-represented parties may so consent.
30
31 **(c) Exemption from extension of time**
32
33 The extension of time provided in Code of Civil Procedure section 1010.6 for service
34 completed by electronic means does not apply to any service in actions governed by these
35 rules.
36
37
38 **Rule 8.712. Notice of appeal**
39
40 **(a) Contents of notice of appeal**
41
42 (1) The notice of appeal must state that the superior court order being appealed is
43 governed by the rules in this chapter.
44
45 (2) A copy of the order being appealed must be attached to the notice of appeal.
46

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) Time to appeal

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

(1) Twenty 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) Twenty 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.

(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:

(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.

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:

1
2 **Advisory Committee Comment**
3
4 It is very important to note that the deadline for filing a notice of appeal may be earlier than the deadline
5 for filing a motion for a new trial, a motion for reconsideration, or a motion to vacate the judgment.
6
7
8 **Rule 8.713. Record on appeal**
9
10 **(a) Record of written documents**
11
12 The record of the written documents from the superior court proceedings must be in the
13 form of a joint appendix or separate appellant's and respondent's appendixes under rule
14 8.124.
15
16 **(b) Record of the oral proceedings**
17
18 (1) The appellant must serve and file with its notice of appeal a notice designating the
19 record under rule 8.121 specifying whether the appellant elects to proceed with or
20 without a record of the oral proceedings in the trial court. If the appellant elects to
21 proceed with a record of the oral proceedings in the trial court, the notice must
22 designate a reporter's transcript.
23
24 (2) Within 10 days after the superior court notifies the court reporter to prepare the
25 transcript under rule 8.130(d)(2), the reporter must prepare and certify an original of
26 the transcript and file the original and required number of copies in superior court.
27
28 (3) If the appellant does not present its notice of designation as required under (1) or if
29 any designating party does not submit the required deposit for the reporter's
30 transcript under rule 8.130(b)(1) or a permissible substitute under rule 8.130(b)(3)
31 with its notice of designation or otherwise fails to timely do another act required to
32 procure the record, the superior court clerk must serve the defaulting party with a
33 notice indicating that the party must do the required act within two court days of
34 service of the clerk's notice or the reviewing court may impose one of the following
35 sanctions:
36
37 (A) If the defaulting party is the appellant, the court may dismiss the appeal; or
38
39 (B) If the defaulting party is the respondent, the court may proceed with the appeal
40 on the record designated by the appellant.
41
42 (4) Within 10 days after the record is filed in the reviewing court, a party that has not
43 purchased its own copy of the record may request the appellant, in writing, to lend it
44 the appellant's copy of the record at the time that appellant serves its final opening
45 brief under rule 8.715(c)(2). The borrowing party must return the copy of the record
46 when it serves its brief or the time to file its brief has expired.The cost of sending the

copy of the record to and from the borrowing party shall be treated as a cost on appeal under rule 8.891(d)(1)(B).

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, with the copy of the order being appealed attached; and

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

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 7 days after the notice of appeal is served and filed.

(2) A respondent must serve and file its brief within 25 days after the appellant files its opening brief.

(3) An appellant must serve and file its reply brief, if any, within 15 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. No other changes to the initial version of the brief are permitted.

(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 such an extension will promote the interests of justice, 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 that to that extent, they have waived any objection to noncompliance with the deadlines for 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

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.

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:

1
2
3 **Rule 8.717. Extensions of time**
4
5 The Court of Appeal may grant an extension of the time in appeals governed by this chapter only
6 if good cause is shown and the extension will promote the interests of justice.
7
8

TAB IIIB

JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date
November 3, 2016

To
Members of the Appellate Advisory Committee

From
Jenny Wald, 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 November 7 committee conference call

Deadline
November 7, 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.

At its October 24 meeting, the rules subcommittee considered the attached rule amendments, which implement the new legislation by adding references to the new statutory provisions to these existing CEQA rules. The subcommittee recommends that these amendments be recommended for adoption by the Judicial Council as technical amendments without circulation for public comment.

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 that legislation, 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. (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

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[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.

"*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

At its October 24 meeting, the rules subcommittee reviewed the attached proposed rule amendments and revisions. The proposed rule amendments are intended to satisfy SB 836's requirements for "capitol annex cases" by adding references to the new statutory provisions and "capitol annex projects" to the existing CEQA rules relating to "environmental leadership" and "Sacramento arena" projects.

The attached proposal also includes minor amendments to rule 8.701, which are intended to ensure the CEQA appellate rules conform to the requirements of amendments to the appellate electronic filing rules which were recently approved by the Judicial Council.

In its analysis of the proposal, the subcommittee considered two issues. First, the subcommittee considered 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 Public Resources Code and Code of Civil Procedure. (Cal. Rules of Court, rules 3.2235-3.2237). 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 the committees made when they developed the rules for expedited judicial review of CEQA cases under SB 743 that in the

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

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" projects 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). 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 to "capitol annex projects." The subcommittee approved the attached proposal that does not extend the "Sacramento Arena" rules and exemptions to "capitol annex projects."

Second, the subcommittee considered whether the 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."

Here, 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. Under Rule 10.22, the subcommittee found the proposed rule amendments may be considered "a minor substantive change that is unlikely to create controversy." In reaching this conclusion, the subcommittee considered 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.

Committee Task

Staff has prepared a draft report to the Judicial Council, including a draft of the proposed rule amendments, reflecting the rules subcommittee's recommendations. The committee's task is to analyze this proposal, consider the rules subcommittee's recommendation, and:

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

JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: December 16, 2016

Title
CEQA Actions: Technical Rule Amendments to Implement SB 836

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rules 3.2200, 3.2220-3.2223, and 8.700-8.703

Recommended by
Civil and Small Claims Advisory Committee
Hon. Raymond M. Cadei, Chair

Appellate Advisory Committee
Hon.Louis R. Mauro, Chair

Jenny Wald, Attorney

Agenda Item Type
Action Required

Effective Date
January 1, 2017

Date of Report
November 3, 2016

Contact
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DRAFT

Executive Summary

The Civil and Small Claims Advisory Committee and the Appellate Advisory Committee recommend amending the rules regarding expedited review of certain cases under the California Environmental Quality Act (CEQA). The amendments will fulfill the Judicial Council's obligation under legislation enacted earlier this year to adopt rules to implement procedures for the expedited resolution of CEQA cases challenging "capitol annex projects."

Recommendation

The Civil and Small Claims Advisory Committee and the Appellate Advisory Committee recommend that the Judicial Council, effective January 1, 2017, amend Cal. Rules of Court, rules 3.2200, 3.2220-3.2223, and 8.700-8.703 relating to expedited review of CEQA challenges to

"environmental leadership" and "Sacramento arena" projects by adding references to new statutory provisions establishing expedited review of such challenges to "capitol annex projects".

The Appellate Advisory Committee also recommends that the Judicial Council, effective January 1, 2017, amend rule 8.701 to ensure CEQA appellate rules conform to amendments to the appellate electronic filing rules approved by the Judicial Council at its October 2016 meeting.

The text of the amended rules is attached at page 4.

Previous Council Action

In 2011, the Judicial Council adopted rule 8.497 to implement Assembly Bill 900 (Stats. 2011, ch. 354), which created an expedited judicial review procedure in the Court of Appeal for CEQA cases relating to "environmental leadership projects." (Pub. Resources Code, § 21185.)

In 2013, the Legislature adopted legislation that changed the expedited CEQA review procedure in environmental leadership cases and also established expedited review in cases relating to a new sports arena in Sacramento(Senate Bill 743 (Stats. 2013, ch. 386). SB 743 required the Judicial Council to adopt rules providing for the resolution of these cases, including any potential appeals, within 270 days of certification of the record of proceedings (Pub. Resources Code §§ 21185 and 21168.6.6). The Judicial Council responded to SB 743 with the adoption of rules 3.1365, 3.2220-3.2231 and 8.700 - 8.705, effective July 1, 2014.[1]

At its meeting on October 27, 2016, the council approved amendments to the rules relating to electronic filing and service in the appellate courts which, among other things, make electronic filing mandatory unless otherwise ordered by the court or provided by local rule.

Rationale for Recommendation

Senate Bill 836 (Stats. 2016, ch. 31),[2] which became effective on June 28, 2016, contains provisions similar to those enacted by SB 743 from 2013. 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; See also Pub. Resources Code §§ 21185 and 21168.6.6). These recommended rule amendments would fulfill the Judicial Council's obligation under SB 836 by adding references to the new "capital building annex" statutes to the existing CEQA rules.

The report to the Judicial Council regarding these rules can be accessed here at: http://www.courts.ca.gov/documents/jc-20140425-itemM.pdf

[2] SB 836 can be accessed here: http://www.leginfo.ca.gov/pub/15-16/bill/sen/sb_0801-0850/sb_836_bill_20160627_chaptered.pdf

The Appellate Advisory Committee also recommends amending one of the existing CEQA rules, rule 8.701, to conform it to amendments to the appellate electronic filing rules approved by the Judicial Council at its October 2016 meeting. Currently, rule 8.701 provides that the court may order electronic filing and service. Amended rule 8.71, which takes effect January 1, 2017, makes electronic filing mandatory unless otherwise ordered by the court or provided by local rule. Rule 8.701 would be conformed to rule 8.71 by similarly requiring electronic filing in all cases covered by the CEQA rules. Rule 8.701 would also be amended to provide by rule for electronic service on consenting parties, rather than requiring the court to order such service in these CEQA cases.

Comments, Alternatives Considered, and Policy Implications

This proposal has not been circulated for comment because the recommended amendments are minor and technical in nature. Given that these rules are necessary to fulfill the statutorily mandated obligations or conform the CEQA rules to recent amendments to the e-filing rules, these changes are also unlikely to be controversial. It is therefore within the Judicial Council's purview to adopt the rule amendments without circulation. (See Cal. Rules of Court, rule 10.22(d)(2)).

Implementation Requirements, Costs, and Operational Impacts

Implementing the new legislation requiring expedited review of CEQA challenges to "capitol annex projects" may generate costs and operational impacts for both the trial courts and the Courts of Appeal in which the proceedings governed by these statutes are filed. The committee does not anticipate that this proposal will result in any additional costs to the courts.

Attachments and Links

1. Cal. Rules of Court, rules 3.2200, 3.2220-3.2223, and 8.700-8.703, at p. 4.

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 of the rules in this division, ~~for~~ which govern 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” means a capitol building annex project as defined by Public Resources Code section 21189.50.

(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) ***

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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 21189.50 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.

(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” means a capitol building annex project as defined by Public Resources Code section 21189.50.

(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) All documents must 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

***

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.

(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.

TAB IIIC

JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date
November 2, 2016

To
Members of the Appellate Advisory Committee

From
Heather Anderson, Supervising Attorney, Legal Services

Subject
Rules to implement Assembly Bill 2298

Action Requested
Please read before November 7 committee conference call

Deadline
November 7, 2016

Contact
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Introduction

On September 28, 2016, the Governor signed into law Assembly Bill 2298.[1] This legislation amended Penal Code section 186.34 and enacted new section 186.35 which address, in part, review of local law enforcement agency decisions to place information about an individual into a shared gang database. This legislation gives a person who is proposed to be or has been designated as a gang member, associate, or affiliate in such a database or, if the person is under 18, his or her parent or guardian the right to "appeal" the law enforcement agency's decision denying a request to remove the person from the database. This legislation takes effect January 1, 2017. Although this legislation does not specifically require the Judicial Council to adopt implementing rules, without rules providing some direction regarding these "appeals," both individuals who want to seek review in the courts and courts may have difficulty implementing these new legislative requirements.

[1] The enacted version of this bill can be accessed at:
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB2298

The potential need for rules was brought to staff's attention after the agenda and materials for the rules subcommittee's October 24 meeting were distributed. The subcommittee therefore did not have an opportunity to consider possible rules or a form before the committee's November 7 meeting.

Background and Summary of Statutory Provisions

As the August 22, 2016 Senate Floor Analysis of AB 2298 explains,[2] the state currently maintains a database called CalGang that contains information about approximately 150,000 gang members or suspected gang members. According to that analysis, the CalGang system contains tracks 200 data fields including name, address, description, social security number, and race or ethnicity, the database is widely accessed by law enforcement officers, and the information in this and other shared gang databases may be used to "determine who should be served with civil gang injunctions, given gang sentences, and targeted for saturation policing."

Based on concerns about the accuracy and secrecy of to the CalGang system, effective January 1, 2014, Penal Code section 186.34 was enacted. This section currently requires that, unless providing notification would compromise an active criminal investigation or compromise the health or safety of the minor, before a law enforcement agency designates a person who is under 18 years of age as a suspected gang member, associate, or affiliate or otherwise identifies the person in a shared gang database, the agency must provide must written notice of the proposed designation and the basis for the designation to the person and his or her parent or guardian. The person to be designated as a suspected gang member, associate, or affiliate, or his or her parent or guardian, may then submit written documentation to the local law enforcement agency contesting the designation. The local law enforcement agency is required to review the documentation submitted by the minor or his or her parent or guardian and remove the person from the shared gang database if the agency determines that the person is not a suspected gang member, associate, or affiliate. The agency is also required to provide the person and his or her parent or guardian with written verification of the agency's decision within 60 days of submission of the written documentation contesting the designation. The person or his or her parent or guardian may also ask the agency whether the person has been designated as a suspected gang member, associate, or affiliate, and the local law enforcement agency is required to provide that information, unless doing so would compromise an active criminal investigation or compromise the health or safety of the minor

AB 2298 amends Penal Code section 186.34 to extend to adults the right to receive advance notice of possible designation as a suspected gang member, associate, or affiliate or

[2] This analysis can be accessed at:
http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201520160AB2298

identification in a shared gang database and to require that the law enforcement agency describe for the person, or, if the person is under 18 years of age, for his or her parent or guardian, or an attorney working on behalf of the person, the process to contest the designation of the person in the database. It also amends this section to provide that if a person who has inquired about whether he or she is designated in a shared gang database is so designated, that person can also ask for information about the basis for the designation and the law enforcement agency must provide that information unless doing so would compromise an active criminal investigation or compromise the health or safety of the person if the person is under 18 years of age.

In addition, the bill enacts new Penal Code section 186.35 which establishes a process for the person or his or her parent or guardian to "appeal" a denial of a request under section 186.34 to remove the person's information from the shared gang database. The language of this new section appears to be based on provisions similarly providing for "appeals" from:

- A local agency's decision regarding an administrative fine or penalty under Government Code section 53069.4;
- An administrative agency's decision regarding a parking violation under Vehicle Code section 40230; and
- A Public Utility Commission hearing officer's determination regarding an administrative penalty for fare evasion or passenger conduct violation under Public Utility Code section 99582.

New Penal Code section 186.35, like these other provisions:

- Provides that a person may seek review of the agency decision "by filing an appeal" in the superior court;
- Refers to the service and filing of a "notice of appeal;"
- Provides that a proceeding under the section is a limited civil case;
- Provides that the court "shall notify the person of the appearance date;" and
- Refers to "de novo review" by the court.

Unlike in the statutory schemes addressed by these other provisions, however, new Penal Code section 186.35:

- Does not provide for any type of administrative hearing process at the law enforcement agency, so there is no record of or decision from such an administrative proceeding for the court to review;
- Specifically provides that "[t]he evidentiary record for the appeal shall be limited to the agency's statement of basis of its designation made pursuant to subdivision (e) of Section 186.34, and the documentation provided to the agency by the appellant pursuant to subdivision (f) of Section 186.34."

- Provides specific direction about the court's decision-making function: "If, upon de novo review and any arguments presented to the court, the court finds that the law enforcement agency has failed to establish the petitioner's active gang membership, associate status, or affiliate status by clear and convincing evidence, the court shall order the law enforcement agency to remove the name of the person from the shared gang database."

Draft Rules and Form

It is difficult to determine from AB 2298 exactly what type of court proceeding was envisioned for these shared gang database "appeals." Although the statutory provisions on which new Penal Code section 186.5 is modelled refer to "appeals" and "notice of appeal," they appear to contemplate a de novo hearing in the superior court, including, potentially the calling of witnesses. Attached, for example, is the local Los Angeles Superior Court "Notice of Appeal - Parking" that is used to implement Vehicle Code section 40230. The description of the "procedure for appeal" on this form says "[c]heck with the clerk regarding the fee to subpoena a peace officer, firefighter, city, state or county employee, or any other employee of the processing agency." In contrast, Penal Code section 186.35 limits the "evidentiary record" to the documents specified in that statute. This seems to indicate that an evidentiary hearing in the superior court was not contemplated in the shared gang database "appeals."

Penal Code section 186.35 also refers to a court "appearance" in the case and to "any arguments presented to the court." This seems to indicate that some type of opportunity for oral argument to the court was contemplated.

Staff has prepared, for the committee's review and consideration, a draft of a possible rule and a "notice of appeal" form designed to implement AB 2298. The rule is based on a combination of the rules relating to appeals to the superior court appellate division and provisions from AB 2298. The new rule would be placed in a new Chapter of the rules entitled "Miscellaneous Appellate Proceedings" and the title of the division broadened to be "Rules Relating to Appellate Proceedings in the Superior Court." The form is also based on a combination of the notice of appeal form for limited civil cases (APP-101) and provisions from AB 2298.

Because the court process envisioned by AB 2298 is unclear, there may be many issues and alternatives to the approach embodied in the draft rule and form that the committee may want to consider, including:

- Is it appropriate to recommend implementing rules?
- If rules are to be recommended, should these shared gang database appeals be structured more like de novo hearings in the superior court, rather than like an appeal? If they should be

structured more live a de novo hearing, should the rules be in Title 3 (trial court civil rules), rather than Title 8 (appellate rules)?
- Should the rules address where to file the notice of appeal (see subdivision (c)(3))?
- Should the rules provide for written or oral argument (see subdivisions (e) and (f))?
- Should the rules indicate that no new evidence will be accepted (see subdivisions (e)(1)(D) and (f)(4))?

Please note that the Judicial Council's Governmental Affairs office is working with the office of the author of AB 2298 on possible clarifications to the statutory language. Committee member's thoughts on such clarifications would be most welcome.

Timing

As noted above, AB 2298 takes effect January 1, 2017. To have a rule and form in place when this legislation takes effect, they would need to be adopted by the Judicial Council at its meeting on December 15-16. This timing would mean that the rules and form could not be circulated for public comment prior to their adoption. On occasion, when a rule or form needed to be in place and there was not time for pre-adoption circulation, the council has adopted the rule or form and then circulated it for comment post-adoption. If the committee believes it is sufficiently important to have a rule and form in place to implement AB 2298 by January 1, 2017, it could recommend adoption and post-adoption circulation for this rule and form.

If the committee concludes that the adoption of a rule and form is not so urgent that pre-adoption comment should not be sought, the committee could recommend that this proposal be circulated for public comment and adoption targeted for the council's March 24 meeting and a July 1, 2017 effective date. Other shorter comment periods and effective dates could also be explored.

Committee Task

The committee's task is to review the attached draft rules and form and decide whether to:
- Recommend that the rules and form, as drafted or as modified by the committee, be adopted by the Judicial Council without circulation and be circulated for public comment following adoption;
- Recommend that the rules and form, as drafted or as modified by the committee, be circulated for public comment;
- Ask staff or committee members for further information/analysis/revisions; or
- Reject the proposal.

Title 8. Appellate Rules

Division 2. Rules Relating to <u>Appellate Proceedings in</u> the Superior Court ~~Appellate Division~~

<u>Chapter 7. Miscellaneous Appellate Proceedings</u>

<u>Rule 8.938. Review under Penal Code Section 186.35 of Law Enforcement Agency Denial of Request to Remove Information from Shared Gang Database</u>

<u>(a) Proceedings governed</u>

<u>This rule applies to proceedings under Penal Code section 186.35 to seek review by a court of a local law enforcement agency's denial of request under Penal Code section 186.34(f) to remove an individual's information from a shared gang database.</u>

<u>(b) Definitions</u>

<u>For purposes of this rule:</u>

<u>(1) "Notice of appeal" means a request to a court under Penal Code Section 186.35 for review of a law enforcement agency's decision denying a person's subdivision (f) of Penal Code Section 186.34 to remove information from a shared gang database.</u>

<u>(2) "Law enforcement agency" means the local law enforcement agency that denied the request under Penal Code section 186.34(f) of the person seeking review to remove information from a shared gang database.</u>

<u>(c) Notice of Appeal</u>

<u>(1) *Form*</u>

<u>(A) *Notice of Appeal of Agency Denial of Request to Remove Information from Shared Gang Database* (form APP-202) must be used to seek review under Penal Code Section 186.35 of a law enforcement agency's decision denying a request to remove information from a shared gang database. For good cause the court may permit a person to file a notice of appeal that is not on that form.</u>

<u>(B) The person seeking review must attach to the notice of appeal the law enforcement agency's written verification of its decision denying that person's request under subdivision (f) of Penal Code Section 186.34 to remove information from the shared gang database.</u>

(2) *Time for filing*

The notice of appeal must be filed within 90 calendar days of the date the law enforcement agency mails or personally serves the person filing the appeal with written verification of the agency's decision denying that person's request under subdivision (f) of Penal Code Section 186.34 to remove information from the shared gang database.

(3) *Where to file*

The notice of appeal must be filed in either the Superior Court of the County in which the law enforcement agency is located or, if the person filing the appeal resides in California, in Superior Court of the County in which that person resides.

(4) *Fee*

The fee for filing the notice of appeal is $25, as specified in Government Code section 70615.

(5) *Service*

A copy of the notice of appeal with the attachment required under (1)(B) must be served either personally or by mail, as provided in Code of Civil Procedure section 1011 – 1013a, on the law enforcement agency. Proof of this service must be filed in the Superior Court with the notice of appeal.

(d) Record

(1) *Filing*

(A) The law enforcement agency must serve the record on the person filing the notice of appeal and must file the record in the Superior Court in which the notice of appeal was filed.

(B) The record must be served and filed within 15 days after the date the notice of appeal is served on the law enforcement agency as required by subdivision (c)(4) of this rule.

(2) *Contents*

The record must contain only the following documents required by Penal Code section 186.35(b):

(A) The law enforcement agency's statement made under Penal Code section 186.34(e) of basis for its designation of the person as a suspected gang member, associate, or affiliate in a shared gang database;

(B) The written documentation submitted to the law enforcement agency under Penal Code section 186.34(f) by the person designated or to be designated as a suspected gang member, associate, or affiliate, or his or her parent or guardian, contesting that designation.

(3) *Format*

(A) The cover or first page of the record must:

(i) Clearly identify it as the record in the case;

(ii) State the title and court number of the case; and

(iii) Include the name, mailing address, telephone number, fax number (if available), e-mail address (if available), and California State Bar number (if applicable) of the attorney or other person filing the record on behalf of the law enforcement agency. The court will use this as the name, mailing address, telephone number, fax number, and e-mail address of record for the agency unless the agency informs the court otherwise in writing.

(B) All documents in the record must have a page size of 8½ by 11 inches;

(C) The text must be reproduced as legibly as printed matter;

(D) The contents must be arranged chronologically;

(E) The pages must be consecutively numbered; and

(F) The record must be bound on the left margin.

(3) *Failure to file the record*

If the law enforcement agency does not timely file the required record, the superior court clerk must serve the law enforcement agency with a notice indicating that the agency must file the record within five court days of service of the clerk's notice or the court may order the law enforcement agency to remove the name of the person from the shared gang database.

(e) Written argument

(1) C*ontents*

(A) The person seeking review of the law enforcement agency decision may serve and file a written argument about why, based on the record specified in (d), the law enforcement agency has failed to establish by clear and convincing

evidence the active gang membership, associate status, or affiliate status of the person so designated or to be so designated by the law enforcement agency in the shared gang database.

(B) The law enforcement agency may serve and file a written argument about why, based on the record specified in (d), it has established by clear and convincing evidence the active gang membership, associate status, or affiliate status of the person.

(C) If an argument refers to something in the record, it must provide the page number of the record where that thing appears.

(D) Nothing may be attached to an argument and an argument must not refer to any evidence that is not in the record.

(2) *Time to serve and file*

Any written argument must be served and filed within 15 days after the date the record is served:

(3) *Format and length of argument*

(A) The cover or first page of any argument must:

(i) Clearly identify it as the argument of the person seeking review of the law enforcement agency decision or of the law enforcement agency;

(ii) State the title and court number of the case; and

(iii) Include the name, mailing address, telephone number, fax number (if available), e-mail address (if available), and California State Bar number (if applicable) of the attorney or other person filing the argument.

(B) An argument must not exceed 10 pages.

(C) The pages must be consecutively numbered.

(f) Oral argument

(1) *Requesting oral argument*

Either the person that filed the notice of appeal or the law enforcement agency may request that the court hold oral argument in the case. Any such request must be served and filed within 15 days after the date the record is served.

(2) *Setting argument*

The court will set the case for oral argument at the request of either party and may set the case for oral argument on its own motion.

(3) *Notice of argument*

The clerk must send notice of oral argument at least 20 days before the date for oral argument. The presiding judge may shorten the notice period for good cause; in that event, the clerk must immediately notify the parties by telephone or other expeditious method.

(4) *Conduct of argument*

(A) At oral argument, the court will not take the testimony of any witnesses, accept any documents, or receive any other evidence.

(B) An argument must not refer to any evidence that is not in the record. The parties may address only why, based on the record specified in (d), the law enforcement agency has established or has failed to establish by clear and convincing evidence the active gang membership, associate status, or affiliate status of the person so designated or to be so designated by the law enforcement agency in the shared gang database.

(C) Unless the court provides otherwise, each side is allowed 10 minutes for argument. The person who filed the notice of appeal may reserve part of this time to reply to the argument of the law enforcement agency.

(g) Decision

As provided in Penal Code section 186.35, if, on de novo review and any arguments presented to the court, the court finds that the law enforcement agency has failed to establish by clear and convincing evidence the active gang membership, associate status, or affiliate status of the person so designated or to be so designated in the shared gang database, the court must order the law enforcement agency to remove the name of the person from the shared gang database.

APP-202 Notice of Appeal of Agency Denial of Request to Remove Information from Shared Gang Database

Clerk stamps date here when form is filed.

You fill in the name and street address of the court where you are filing this notice of appeal.

Superior Court of California, County of

The clerk will fill in the number below

Court Case Number:

Court Case Name:

Instructions

- This form is only for seeking review by a court of a local law enforcement agency's denial of a request under Penal Code section 186.34(f) to remove an individual's information from a shared gang database.
- You must serve and file this form **no later than 90 calendar days** after the law enforcement agency serves you with written verification of its decision denying your request under Penal Code section 186.34(f) to remove information from a shared gang database. **If your notice of appeal is late, your appeal will be dismissed.**
- Fill out this form and make a copy of the completed form for your records and for the law enforcement agency.
- Serve a copy of the completed form and the required attachment on the law enforcement agency and keep proof of this service. You can get information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at *www.courts.ca.gov/selfhelp-serving.htm.*
- Take or mail the original completed form and proof of service on the law enforcement agency to the clerk's office of the court where you are filing this notice of appeal (see rule 8.938(c)(3) for information about where to file this form). It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.
- Pay the $25 filing fee and file this notice of appeal or, if you are unable to pay this fee, file a request to waive court fees (Form FW-001) in the court.

1 Your Information

a. Name of appellant (the person who is filing this notice of appeal): ______________________________

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

Street address: ______________________ ____________ ______ ______
Street *City* *State* *Zip*

Mailing address *(if different):* ______________________ ____________ ______ ______
Street *City* *State* *Zip*

Phone: ______________ E-mail *(if available):* ______________________

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

Name: ______________________ State Bar number: ______________

Street address: ______________________ ____________ ______ ______
Street *City* *State* *Zip*

Mailing address *(if different):* ______________________ ____________ ______ ______
Street *City* *State* *Zip*

Phone: ______________ E-mail *(if available):* ______________________

Fax *(if available):* ______________

② Decision You Are Appealing

I am/My client is seeking reveiw of the attached decision by ______________________________ *(fill in the name of law enforcement agency)* denying my/my client's request under Penal Code section 186.34(f) to remove information from a shared gang database *(you must attach a copy of the written verification that the law enforcement agency served on you of its decision denying your request).* The attached decision was served on me/my client by the law enforement agency:

☐ by personal delivery on ______________________________*(date)*.

☐ by mail on ______________________________*(date)*.

③ Reason For This Appeal

I am/My client is seeking review of the attached decision on the basis that the law enforcement agency has not established by clear and convincing evidence the active gang membership, associate status, or affiliate status of the person whose information I/my client requested be removed from the shared gang database under Penal Code section 186.34(f).

④ I am/My client ☐ is requesting ☐ is not requesing oral argument in this appeal.

REMINDER: You must serve and file this form no later than 90 days after the law enforcement agency serves you with written verification of its decision denying your request under Penal Code section 186.34(f) to remove information from a shared gang database. If your notice of appeal is late, your appeal will be dismissed.

Date: ______________________

____
Type or print your name

____
Signature of appellant or attorney

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> *Civil*

Civil Home

INFORMATION FOR SPECIFIC CASE TYPES

Parking Citation Appeals

Parking citations are processed by the issuing agency. If you believe that a parking citation was issued in error, you must contact the issuing agency to arrange for an administrative hearing to dispute or contest the citation. The issuing agency's contact information is located on the citation. The rules for this process are included in the California Vehicle Code sections 40200 through 40230.

The Los Angeles Superior Court (LASC) hears appeals of decisions made at administrative hearings. If you have already had your administrative hearing and disagree with the decision made, you may complete and file Notice of Appeal - Parking (LACIV005) along with a copy of the Notice of Statement of Decision from the agency that issued the citation. You will need to pay a filing fee for your Parking Appeal.

Instructions for Completing Notice of Appeal - Parking (CIV006) details how to fill out the form and complete the Parking Appeal process. Upon filing the Notice of Appeal - Parking (LACIV005), the Court will set a hearing date when you or your attorney will have the opportunity to explain what happened.

For the Los Angeles Superior Court local forms listed above, go to the Civil Forms.

For Parking Citation Appeals fee information, go to the Los Angeles Superior Court Fee Schedule.

Civil Home

Art Showcased in
Los Angeles Courthouse Jury Rooms

"Barcelona" by Kristen Pleasant
2009 – Best in Show

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NAME OF CONTESTANT: STREET ADDRESS: MAILING ADDRESS: TELEPHONE NUMBER:	FOR COURT USE ONLY
NAME OF COURT: DISTRICT NAME: ADDRESS:	
NAME OF PROCESSING AGENCY: ADDRESS: TELEPHONE NUMBER:	
NOTICE OF APPEAL - PARKING	COURT CASE NUMBER:

The Contestant in the above-entitled action hereby appeals to the Superior Court of California, County of Los Angeles from the final Administrative Decision on Parking Citation Number ______________, issued on ____________________.

- **The hearing was:** ☐ by personal conference
  ☐ by mailed declaration
- **Date of final Administrative Decision:** ______________________ (a copy of the final decision must be attached)
- **Final Administrative Decision was:** ☐ personally delivered ______________________.
  (Date)
  ☐ mailed ______________________.
  (Date)

Dated: ____________________ ______________________________
(Signature of Contestant)

NOTICE TO CONTESTANT

The **Notice of Appeal** must be filed within **30 days** after personal delivery or within **35 days** after mailing (Code Civ. Proc., § 1013) of the processing agency's final decision to the contestant. **A SEPARATE APPEAL IS REQUIRED FOR EACH CITATION.** When the Court returns a copy of this notice to you with the date, place and the time of hearing filled in, you must file a copy of the original Proof of Service of this notice with the Court at least **10 days** prior to the hearing date. **The Court may not proceed on your appeal if service has not been made.**

NOTICE OF HEARING

For Court Use Only:

A hearing will be heard at Los Angeles Superior Court on the date and time shown in the box below. Processing agencies are requested to mail their file to the address checked below within **15 days** of receipt of this notice.

DATE	TIME	DIV/DEPT.	PLACE
			☐ **Central Civil, 111 North Hill Street, Los Angeles, CA 90012**

SHERRI R. CARTER, Executive Officer/Clerk

Dated: ____________________ By: ______________________________
Deputy Clerk

DISTRIBUTION: **ORIGINAL – Court** **COPY – Contestant** **COPY - To Serve on processing Agency**

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

INSTRUCTIONS FOR COMPLETING

NOTICE OF APPEAL - PARKING

1. Print your name (party appealing), address, and telephone number.
2. Print the name of the court and address.
3. Print the name and address of the processing agency (e.g. City of Los Angeles - Department of Transportation.)
4. Write the citation number(s). (A separate Notice of Appeal - Parking is required for each citation.)
5. Write the date the citation was issued.
6. Check mark the appropriate box that identifies the type of hearing held with the processing agency.
7. Write the date of the agency's final decision.
8. Check mark the appropriate box that identifies how you received notice of the final decision and the date delivered or mailed.
9. Place your signature and date.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

INSTRUCTIONS FOR COMPLETING

PROOF OF SERVICE - PARKING APPEAL

Fill out the Proof of Service as follows:

1. Print your name (party appealing), address and telephone number.
2. Print the name of the court and address.
3. Print the name and address of the processing agency (e.g. City of Los Angeles - Department of Transportation.)
4. Write the case number.
5. Write the citation number.
6. Mark the appropriate box identifying the type of service you have completed notifying the agency of your appeal.
   a. By Mail - If you mail a copy to the agency, write the date, the city and county where it was mailed.
   b. By Personal Service - Date of delivery, name of party served and the address where it was delivered.
7. Place your signature and date.

INSTRUCTIONS

FOR COMPLETING

NOTICE OF APPEAL - PARKING

PARKING VIOLATION APPEAL PROCESS

Vehicle Code Section 40125 established procedures for procedures for processing standing and parking violations, including an administrative investigation and review procedure.

The following is an outline of the procedure for appealing the final decision of a processing agency to the Los Angeles Superior Court pursuant to Vehicle Code Section 40230.

PROCEDURE FOR APPEAL

1. ***FILING THE APPEAL:*** After receiving the final division of the processing agency, the individual contesting the agency's decision (hereafter referred to as "Contestant") must file a "Notice of Appeal - Parking" and a copy of the final administrative decision (NOTICE OF DECISION of the Hearing Examiner) with the Los Angeles Superior Court. The Notice of Appeal - Parking, LASC Approved Form CIV 005 05-04, is available at the Court. **The Notice of Appeal must be filed within 30 days after personal delivery or within 35 days after mailing (CCP 1013) of the processing agency's DECISION to the contestant.** The contestant must pay a **$25.00** filing fee **for each parking ticket** that is being appealed to the Court. The Court will notify the contestant of the date, time and location of the hearing by mail or in person. **The contestant cannot file an appeal unless the Administrative Review process has been completed and a NOTICE OF DECISION on the Administrative Review is received by the contestant and filed with the NOTICE OF APPEAL-PARKING.**

The contestant shall serve a copy of the Notice of Appeal - Parking on the processing agency by delivering it in person or sending it via first class mail 20 days prior to the hearing date. The Proof of Service of Notice, LASC Approved Form CIV 053 03-04, is available at the Court. The contestant shall complete and file the Proof of Service with the Clerk's Office not later than ten (10) days prior to the hearing date.

Parking appeals for the Los Angeles Superior Court shall be filed and heard, according to venue, in any of these locations:

Stanley Mosk Courthouse **111 North Hill Street** **Los Angeles, CA 90012** **(213) 974-6135**	**Torrance Courthouse** **825 Maple Avenue** **Torrance, CA 90504** **(310) 222-8801**	**West Los Angeles Courthouse** **1633 Purdue Avenue** **West Los Angeles, CA 90025** **(310) 914-7478**
Long Beach Courthouse **415 West Ocean Boulevard** **Long Beach, CA 90802** **(562) 491-6234**	**Van Nuys Courthouse** **6230 Sylmar Avenue** **Van Nuys, CA 91401** **(818) 374-3060**	

The processing agency shall forward the agency's case file to the Court within 15 days of the court's request for the file. Check with the clerk regarding the fee to subpoena a peace officer, firefighter, city, state or county employee, or any other employee of a processing agency.

2. ***AT THE HEARING:*** The judicial officer shall hear the case *de novo* (anew, or as for the first time) and the agency's file shall be received into evidence and the notice of parking violation shall be admitted as evidence of the facts stated therein.

3. ***AFTER THE HEARING:*** The contestant and the processing agency shall be provided with the judicial officer's Notice of Decision - Parking Appeal either at the conclusion of the hearing or by mail. If the contestant prevails, the appeal filing fee together with any deposit of parking penalty shall be refunded by the processing agency in accordance with the Court's judgment. The Superior Court's decision on the parking appeal is final and not appealable.

CIV 006 01-05
LASC Approved

PROOF OF SERVICE OF NOTICE OF APPEAL - PARKING

NOTICE TO CONTESTANT

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING IS TRUE AND CORRECT.

NOTICE OF APPEAL - PARKING

NOTICE TO CONTESTANT

NOTICE OF HEARING

JOHN A. CLARKE, Executive Officer/Clerk

Deputy Clerk

TAB IIID

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
November 2, 2016

To
Members of the Appellate Advisory Committee's Rules Subcommittee

From
Heather Anderson, Supervising Attorney, Legal Services

Subject
Development of committee's proposed 2017 annual agenda, including review of new and pending suggestions for changes to appellate rules and forms

Action Requested
Please read before November 7 committee conference call

Deadline
November 7, 2016

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

Introduction

As I indicated in my e-mail to you about setting this committee meeting, this is the time of year when the committee must develop its proposed annual agenda for the 2017 committee year (November 2016-October 2017). The committee's proposed annual agenda must 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 – for its review. RUPRO will determine what items the committee may work on for the 2017 committee year. RUPRO will meet in mid-December to review the proposed agendas of the committees that it oversees, including the Appellate Advisory Committee.

Attached are two items that provide background information about the annual agenda process:

- Guidelines for the Annual Agenda Process (Attachment 1) – these guidelines, adopted by RUPRO and the other Judicial Council oversight committees, provide an overview of the annual agenda process. The questions on page 5 of these guidelines may be of particular interest in considering what items to include on the committee's proposed annual agenda.

- An October 2015 letter from Justice Hull, chair of RUPRO (Attachment 2) – this letter provides additional information about the prioritization of rule and form projects on annual agendas. This is particularly important for the committee, since the bulk of the committee's work has historically been developing recommended changes to appellate rules and forms.

Rule and Form Suggestions and Prioritization

Suggestions

The committee's main task in developing its annual agenda is reviewing the recommendations of its rules, appellate division, and joint appellate technology (JATS) subcommittees on new and pending suggestions for changes to the appellate rules and forms. These recommendations are set out in the following the following attachments to this memo:

- Tables of the rules and form suggestions reviewed by the appellate division subcommittee at its July meetings and by the rules subcommittee at its October 24 meeting (Attachment 3). These tables include all of the new suggestions received by the committee since last October except those listed in Attachment 5, described below, and all of the suggestions that remained pending, either from the committee's 2016 annual agenda or on the list of previously deferred suggestions. These suggestions have been sorted into tables based on the subcommittees' recommended action:
    - Suggestions the were previously designated as Priority 1 projects or that a subcommittee recommends as Priority 1 projects;
    - Suggestions that were previously designated as Priority 2 projects or that a subcommittee recommends as Priority 2 projects;
    - Suggestions that were previously deferred or that a subcommittee recommends be deferred. This means that these suggestions would not be worked on by the committee this year, but will remain on this list for possible consideration by the committee next year. Please note, as explained below, the committee will not be discussing these suggestions at this meeting unless a member requests that a particular suggestion be discussed.

  In these tables, items that are either new suggestions received this year or appellate division suggestions that were considered for inclusion on the annual agenda for the first time this year are identified with yellow highlighting

- A draft of a proposed annual agenda (Attachment 4)– this provides a brief description of the projects that the subcommittees have recommended be included on the proposed annual agenda as either priority 1 or priority 2 projects. Note that this draft includes some non-rule and form proposals, including two legislative proposals that are carry-overs from the committee's prior annual agenda and a new proposal recommended for inclusion on the

annual agenda by JATS. Items that were not on last year's annual agenda are identified with yellow highlighting

In addition to these tables, also attached are some rule and form suggestions recently received from Mr. Grossman, a new member of the committee (Attachment 5). These suggestions have not been reviewed or prioritized by one of the subcommittees. Since submitting them to a subcommittee at this point would mean that they could not be considered for possible inclusion in the proposed annual agenda to be considered by RUPRO in December, they are provided for the committee's consideration now without subcommittee review. The full committee will need consider whether to add these to the proposed annual agenda as either a Priority 1 or Priority 2 project, refer them to a subcommittee for future consideration, or place them on the deferred list.

Prioritization

As the attached letter from Justice Hull (Attachment 2) reflects, 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 new priority 2 rule or form projects included on this year's proposed annual agenda have proposed completion dates of January 1, 2019: they 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 there are several proposals that were previously approved by RUPRO last year as priority 2 projects. These carry-over items have January 1, 2018 proposed completion dates. 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.

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 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 committee members may want to keep in mind in reviewing the rules subcommittee's recommendations:

- 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 committee will need to prioritize among those suggestions that are identified as Priority 2 projects - 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 work on approximately that same number of projects (note that this does not include items 1-3 on the draft agenda, which represent the ongoing charge of the committee, nor new priority 2 items that will not actually be worked on this committee year).

- Because the combined list of new suggestions and those pending from last year's annual agenda is fairly long, as noted above, the committee will not be reviewing items on the "deferred" list (items 17-57) at this time unless a committee member specifically requests that an item be considered for possible re-categorization. If you think an item on this "to be deferred" list should be re-categorized as a priority 1 or priority 2 project, should be referred to another group, or should be placed on the list of items the committee will not pursue, please send an e-mail identifying the item so that the committee can discuss this potential re-categorization at the meeting. If an item on the "to be deferred" list is not called out for discussion, it will be presumed all members approve of it remaining on this list.
- 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, for example, item 7 on the draft agenda combines suggestions 3 and 4 in Attachment 3.
- 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 happened with at least two items last year, 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.

Committee Task

The committee's task is to review the subcommittees' recommendations, as reflected in the attached draft annual agenda and tables, and the new suggestions from Mr. Grossman and decide which of them should be:

- Included in the draft annual agenda as priority 1 proposals (urgent proposals that the committee will work on this year);
- 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 subcommittee or another body; or
- Not pursued at all.

GUIDELINES FOR THE ANNUAL AGENDA PROCESS
From the Judicial Council's Executive and Planning Committee, Rules and Projects Committee, and Technology Committee

Introduction

This document provides an overview of the annual agenda process and information to help prepare the Judicial Council internal committees serving as oversight committees—the Executive and Planning Committee (E&P), the Rules and Projects Committee (RUPRO), and the Judicial Council Technology Committee (JCTC)—advisory body chairs, and principal staff for annual agenda review meetings.

Annual Agenda Review Meetings

The Judicial Council governance policies express the council's interest in connecting with the leaders of its advisory bodies and coordinating efforts for the sake of continuously improving access to the courts and the administration and delivery of justice. The annual agenda review meetings serve as substantive conversations in a multi-year process between the oversight committees and the chairs of the advisory bodies to define the key objectives and projects for advisory bodies in order to align them with judicial branch goals, objectives, and desired outcomes.

The oversight committees and the advisory body chairs discuss the best use of each advisory body's resources for the coming year. The oversight committees also identify any overlap in advisory body activities and projects. In these conversations, oversight committees are likely to convey their interest in the fulfillment of the council's strategic goals and operational objectives through the advisory body's objectives and projects. The oversight committees may also see possibilities for synergies and opportunities for collaboration between advisory bodies.

Through the review meetings, E&P, RUPRO, and JCTC provide oversight to the council's advisory bodies to guide them in focusing on matters of importance to the council and on providing the council with valuable advice and policy recommendations. E&P meets to review and approve the annual agendas of advisory bodies whose work focuses on projects and administrative issues. RUPRO meets to review and approve the annual agendas of advisory bodies whose work focuses on rule-making, forms, and legislation. JCTC meets to review and approve the annual agenda of the Court Technology Advisory Committee, the committee over which it exercises oversight. The advisory body chairs and principal staff attend the meetings either in person or by telephone.

Preparing Draft Annual Agendas for Review

Before the annual agenda review meetings, advisory bodies submit their draft annual agendas to their respective oversight committees for review. Using the template approved by the three

oversight committees[1], each advisory body submits, in advance, a proposed annual agenda consistent with its charge, which includes a list of key objectives and a list of related projects that the advisory body intends to either commence or accomplish in the coming year. The annual agenda also contains information relating to any subgroups (e.g., subcommittees) and the status of the previous year's projects.

If the advisory body would like to create a new subgroup, it may request approval from the oversight committee by including "new" before the name of the proposed subgroup and describing its purpose and membership on the annual agenda.[2] The annual agenda template includes a space for this information in the *Subgroups/Working Groups – Detail* section.

Review and Approval of Draft Annual Agendas

Each advisory body's draft annual agenda forms the basis for a conversation during the review meetings about the advisory body's key objectives for the coming year, related projects, and the alignment of those projects with the council's strategic and operational plans. During the meetings, the oversight committees ask questions of the advisory body chairs and engage in conversations to understand the direction and priorities of the advisory bodies. Principal staff are generally included in these meetings to assist with scheduling and to provide further detailed information as needed. Understanding an advisory body's recent history may be helpful, but the focus of the chair and principal staff should be on the advisory body's present and future work. Questions and proposals from the advisory body chair and principal staff asking for the oversight committee's guidance are also welcome and appropriate.

The intended outcome is an understanding between the oversight committee, the advisory body chair, and principal staff of the advisory body's priorities for the coming year, the objectives to be pursued, and the projects to be undertaken. This understanding serves as a foundation for subsequent annual agenda meetings in a continuous effort to enhance mutual support and coordination between the Judicial Council and its advisory bodies.

Following the review meetings, the approved annual agendas are posted on the Serranus website. They are also posted on the advisory bodies' pages of the California Courts website to allow branch stakeholders to be informed of the work of the advisory bodies.

Roles of a Judicial Council Advisory Body and Its Chair

The Judicial Council governance policies, adopted in 2008, state that the advisory bodies:

- Provide policy recommendations and advice to the council on topics specified by the council or the Chief Justice, using the members' individual and collective wisdom.

[1] The annual agenda template was revised before the 2014 committee year to add a column that identifies the end product (e.g., rule amendment) or outcome of each activity.
[2] California Rules of Court, rule 10.30 (c) allows an advisory body to form subgroups, composed entirely of current members of the advisory body, to carry out the body's duties, subject to available resources, with the approval of its oversight committee.

- Work at the same policy level as the council, developing recommendations that focus on the strategic goals and long-term impacts that align with the judicial branch goals.[3]
- Do not usually implement policy, although the council or the oversight committees may assign policy implementation and programmatic responsibilities.
- Do not speak or act for the council except when formally given that authority for specific and time-limited purposes.
- Are responsible, through staff, for gathering stakeholder perspectives.

The advisory body chair, with the assistance of principal staff, is responsible for developing a realistic annual agenda and discussing appropriate staffing and resources with the Administrative Director. The oversight committees are responsible for reviewing and approving the annual agendas, which provide the advisory bodies with charges specifying what they are to achieve during the coming year. The oversight committees may add or delete specific projects and reassign priorities. The template provides descriptions of priority level 1 and 2 projects that involve rules and forms. This applies to projects approved by RUPRO. Projects of advisory bodies overseen by E&P and JCTC often are other than rule and form proposals. RUPRO offers the following guidance for rule and forms proposals approved by RUPRO:

> An advisory body can expect that a rule or form proposal on its annual agenda that was approved by RUPRO will be circulated for comment. There are limited circumstances in which approval to work on a proposal might not result in approval for public circulation. For example, RUPRO could reasonably not approve for circulation something that it earlier approved for development if there is a significant change in the proposal and the proposal: (1) is much bigger in scope or more complex than described on the annual agenda; (2) has consequences not recognized or anticipated when presented on the annual agenda; or (3) is no longer urgent or needed to avoid inconsistency in the law.

If, after approval of its annual agenda, an advisory body identifies additional or different priorities and projects, because of legislation or other reasons, it may seek approval from its oversight committee to revise its annual agenda. RUPRO has approved a template to be used for this purpose for its advisory bodies, which is available to principal staff on The Hub. In determining whether to give approval to a proposed additional project, the oversight committee considers:

- the new project's urgency;
- whether it is consistent with the advisory body's charge;
- the advisory body's approved annual agenda;
- the Judicial Council's strategic plan; and
- whether it falls within the body's available staff, and other resources.

[3] The Judicial Council's strategic plan can be found at http://www.courtinfo.ca.gov/jc/sp.htm and its operational plan can be found at www.courtinfo.ca.gov/reference/documents/2008_operational_plan.pdf.

Policy Considerations in Reviewing Annual Agendas

Distinction Between Policy Recommendation and Policy Implementation

Because the primary role of advisory bodies is to advise and provide policy recommendations to the Judicial Council, the oversight committees may focus on projects that fall outside of this role. If an advisory body has been directed to implement policy or produce a program, the oversight committee will want to ensure that staff continues to be accountable to the Administrative Director for the satisfactory performance of the implemented policy or program, and that the role of the advisory body is to provide advice to staff. These roles are consistent with the council's governance policies.

For advisory bodies that have policy implementation and programmatic projects, the annual agenda process can clarify for the advisory body the part for which it is responsible (e.g., providing advice and guidance to staff) and the part for which staff is responsible (e.g., performing to the standards and expectations of the Administrative Director).

Preliminary questions about the annual agendas include:

- Which projects give advice or make policy recommendations? (Both are the advisory body's primary role)
- Which projects are policy implementation or programmatic?

An advisory body's *recommendations* of new or revised rules and forms are policy recommendations because they require the weighing of various possibilities and alternatives, and their approval requires a policy decision by the Judicial Council. An advisory body's *recommendations* of specific programs or of specific ways to implement policy are also policy recommendations. As long as an advisory body stays in the realm of making recommendations to the council, it occupies its traditional advisory role.

Under the council's governance policies, however, when the advisory body's project actually produces products or services, such as resource materials, content, or programs, or the advisory body takes final action independent of the council, it is considered to be performing the work of implementation and program delivery. An explicit Judicial Council or oversight committee charge is required for an advisory body to take this action or pursue this type of project. The advisory body's oversight committee may approve the body's involvement with policy implementation or program delivery, but it is important to specify on the annual agenda that a policy implementation project is being approved and to clarify the role and accountability of the advisory body and staff. In particular, the oversight committee's expectations for reviewing final products or introducing new services at the completion of a committee's project should be made clear. That way, oversight committees can ensure that the Administrative Director continues to be accountable to the Judicial Council for staff performance and advisory bodies can proceed with the explicit support of their respective oversight committees. In the event of recommendations to the Judicial Council that result from the advisory body's work, that are subject to the council's approval or adoption, please consult the calendar of Judicial Council

meeting dates and the Executive and Planning Committee's agenda-setting schedule attached to ensure timely delivery of the Judicial Council report.

Judicial Branch Strategic and Operational Plan Goals, Objectives, and Desired Outcomes

The annual agendas require advisory bodies to identify the strategic and operational plan goals achieved by each project. If an oversight committee determines a project that does not appear to align with existing branch priorities, the oversight committee can propose soliciting involvement by a more appropriate entity (e.g., the State Bar). If the annual agenda conversation results in a conclusion that a specific project is attenuated or not covered by branch priorities, the oversight committee and the advisory body chair should discuss and decide whether the project can be modified to meet a judicial branch strategic goal or policy or an operational objective or outcome, or whether that project should be referred to an outside entity.

General Questions and Issues Applicable to Most Annual Agendas

The following are general questions that may be applicable to annual agendas under review:

- Is this a "realistic" list of objectives and projects for the coming year? (Factors may include the number of projects on the list, the varied scope of projects, the impact on the courts if approved, the resources needed, etc.)
- What is the key direction and focus for this advisory body?
- What is the status of previous year's priority level 2 projects? (For priority level 2 projects approved by RUPRO, the expectation that the advisory body can develop the project (typically rules or forms) and that it will be approved for circulation in the second year, absent unusual circumstances.)
- Were there issues/projects that the advisory body worked on during the previous year that were unanticipated? If so, what were they?
- For a project that implements policy or produces a program:
    - What role do the advisory body members play in performing this project? What role do staff play? To whom are staff accountable for the satisfactory and timely completion of this project?
    - Does the advisory body have an explicit Judicial Council or oversight committee charge to pursue this project? If the charge is ambiguous or was issued several years ago, should the oversight committee renew that charge? If so, under what circumstances and conditions should the advisory body pursue this project?
- Does the advisory body gather stakeholder perspectives?
- How does the advisory body intend to obtain information about the cost and training impact on the courts of a particular proposal?
- Does the chair or staff have any concerns about the adequacy of resources to accomplish the projects?

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RULES AND PROJECTS COMMITTEE

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Hon. Eric C. Taylor

October 22, 2015

To: Judicial Council Advisory Committee Chairs

Re: Development of Rules and Forms Proposals on Annual Agendas

Dear Advisory Committee Chairs:

The Judicial Council's Rules and Projects Committee (RUPRO) will meet on December 10, 2015, to consider the annual agendas of the advisory committees it oversees. I would like to provide some guidance specifically about rules and forms proposals as your committee develops its annual agenda. RUPRO recognizes the valuable contributions of advisory committees in advancing the administration of justice through the proposals they develop. Due to limited resources, however, not every meritorious proposal can be put forward.

In establishing the priority levels and criteria listed below, RUPRO considered the goal of reducing burdens on courts, the need to be responsive to changes in the law, and the desire to address urgent problems and promote cost savings and efficiencies. The criteria for the two priority levels and the significance of RUPRO approval of annual agenda items for each level are discussed below.

Priority Level 1

The criteria that RUPRO recommends advisory committees consider in determining whether a proposal has a high priority and should be developed and proposed to be effective January 1, 2016, are the following:

(a) The proposal is urgently needed to conform to the law;
(b) The proposal is urgently needed to respond to a recent change in the law;
(c) A statute or council decision requires the adoption or amendment of rules or forms by a specified date;

(d) The proposal will provide significant cost savings and efficiencies, generate significant revenue, or avoid a significant loss of revenue;
(e) The change is urgently needed to remedy a problem that is causing significant cost or inconvenience to the courts or the public; or
(f) The proposal is otherwise urgent and necessary, such as a proposal that would mitigate exposure to immediate or severe financial or legal risk.

There are limited circumstances in which RUPRO's approval to work on a proposal might not result in approval for public circulation. For example, a circumstance that could justify RUPRO not approving for circulation a proposal that it earlier approved to develop is a significant change in the proposal such that the proposal (1) is much bigger in scope or more complex than described on the annual agenda, (2) has consequences not recognized or anticipated when presented on the annual agenda, or (3) is no longer urgent or needed to avoid inconsistency in the law.

Priority Level 2

RUPRO understands that advisory committees and task forces may have new priority level 2 proposals for their 2016 annual agendas. Advisory committees should include any such proposals, but also should expect that the proposals may not be approved for the current year due to the ongoing fiscal situation affecting the judicial branch. A priority level 2 proposal is one that is:

(a) Useful, but not necessary, to implement statutory changes; or
(b) Helpful in otherwise advancing Judicial Council goals and objectives.

Advisory committees can expect that a proposal with priority level 2 may be developed and will be approved for circulation in the second year, absent unusual circumstances. RUPRO will review last year's priority level 2 projects on an item-by-item basis. RUPRO is interested in learning whether the advisory committee considers that last year's priority level 2 projects remain at level 2, are now considered level 1, or are no longer a project the committee wishes to work on in the immediate future. It will also be helpful to know where these projects are in development and what resources have been expended thus far.

Alternatives to rules and forms

In developing proposals to respond to a specific need, advisory committees should consider whether the need could be addressed in other ways, such as developing suggested practices for courts. Advisory committees should consider whether a proposal must have statewide application

as a rule or whether a different solution tailored to specific courts or all courts of a particular size would address the matter.

Pre-review of annual agendas

Each RUPRO member will be assigned an advisory committee annual agenda to pre-review and will be encouraged to talk to its chair and staff before the meeting to best understand the committee's projects.

I want to say again, as I have tried to say in the past, on behalf of the RUPRO committee and the Judicial Council as a whole, we sincerely appreciate the important work that you do. Without the committees, none of our efforts to provide the people of California the best judicial system possible could be realized.

I look forward to our discussion on December 10, 2015 about your committee's proposals.

Sincerely,

Harry E. Hull, Jr.
Chair

HEH/SRM

RECOMMENDATIONS FROM THE RULES, APPELLATE DIVISION, AND JOINT APPELLATE TECHNOLOGY SUBCOMMITTEES REGARDING APPELLATE RULE AND FORM SUGGESTIONS – 2016-2017

SUGGESTIONS A SUBCOMMITTEE RECOMMENDS BE PRIORITY 1 PROJECTS THIS YEAR

	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	This was a priority 1(e) project on last year's agenda– 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.
2.	***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.	Joseph Lane, Committee member	Note – there was a tie vote on the rules subcommittee on whether this should be a priority 1 or priority 2 project.

	Rule/Form	Suggestion/Issue	Source	Priority/Other Info
		(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 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.		The rules subcommittee was interested in the concept of developing a form to assist appellants with drafting settled statements Clerks in other districts also support working on this issue
3.	***CIVIL APPEALS -*** *Form APP-103 designation record in limited civil cases*	See specific suggestions attached	Superior Court of Los Angeles County	Was on 2013-2014 annual agenda as Priority 2 – helpful but not urgent. Had 1/2015 completion. Referred to appellate division subcommittee The appellate division subcommittee recommends this a priority 1 project because problems with this form results in many defaults
4.	***CIVIL APPEALS -*** *Forms APP-103*	Introductory section entitled "Record of Oral Proceedings in the Trial Court" and/or the election to proceed WITHOUT a record of the oral proceedings should be revised to more specifically inform appellant of the limited scope of the appeal if he	Superior Court of San Diego	The appellate division subcommittee recommends this a

	Rule/Form	Suggestion/Issue	Source	Priority/Other Info
	and APP-110 - designation record in limited civil cases	or she elects to proceed without an oral record. Currently, section 4(a) states in part: "I understand that if I proceed without a record of the oral proceedings, the appellate division will not be able to consider what was said in the trial court during those proceedings in deciding whether legal error was made." The following possible revision is suggested: "I understand that if I elect to proceed without a record of the oral proceedings, the appeal will be strictly limited to legal error, and I will not be able to claim that the evidence was insufficient to support the judgment or to raise any other evidentiary issues." As explained by *Rutter, Civil Appeals and Writs,* §4:45 Absence of a record of the oral proceedings (a) bars appellant from claiming the evidence was insufficient to support the judgment or raising any other evidentiary issues and (b) also precludes a determination that the trial court abused its discretion. [Aguilar v. Avis Rent A Car System, Inc. (1999) 21 C4th 121, 132, 87 CR2d 132, 140; Nielsen v. Gibson (2009) 178 CA4th 318, 324, 100 CR3d 335, 339–340; Barak v. Quisenberry Law Firm (2006) 135 CA4th 654, 660, 37 CR3d 688, 692; *see also* ¶ *4:3*] Many self-represented appellants, who elect to proceed without an oral record, do not understand this limitation on appellate review and only learn of it at the end of the appellate process during oral argument or when they receive a written decision affirming the trial court on that basis.	County – in comments on SPR15-01	priority 1 project because the problem with these forms results in many defaults

SUGGESTIONS A SUBCOMMITEE RECOMMENDS BE PRIORITY 2 PROJECTS

	Rule/Form	Suggestion/Issue	Source	Priority/Other Info
5.	***GENERAL –*** *Modernize Appellate Court Rules for E-Filing and E-Business*	a. Review appellate rules to ensure consistent with e-filing practice; evaluate, identify and prioritize potential rule modifications where outdated policy challenges or prevents e-business. b. Consider rule modifications to remove requirements for paper versions of documents (by amending individual rules or by introducing a broad exception for e-filing/e-service).	Court Technology Advisory Committee	Phases 1 and 2 of this project has been completed. JATS recommends that Phase 3 of this project be included on annual agenda as priority 2 project. Overall project was on

	Rule/Form	Suggestion/Issue	Source	Priority/Other Info
				last 3 annual agendas as Priority 2 – helpful but not urgent.
6.	***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. 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.	Joseph Lane, committee member	This was on the committee's 2016 annual agenda as a Priority 2 item with a January 1, 2018 completion date. Priority 2 – helpful but not urgent
7.	***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 changed. I believe the topic warrants the subcommittee's consideration.	Mr. Kevin Green, committee member	
8.	***CIVIL APPEALS*** *– Rule 8.220 – Failure to timely*	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	Mr. Kevin Green, committee	

	Rule/Form	Suggestion/Issue	Source	Priority/Other Info
	file brief	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. 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.	member	
9.	***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 record?	Joseph Lane, committee member	This was on the committee's 2016 annual agenda as a Priority 2 item with a January 1, 2018 completion date.

	Rule/Form	Suggestion/Issue	Source	Priority/Other Info
		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.		The California Appellate Project, which oversees appointed counsel in the Second District, has expressed support for this suggestion
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 of the transcript. **2) A description of the problem to be addressed**:	Rosemary Bishop	The rules subcommittee recommends that this be a priority 2 project. If the Family and Juvenile Law Advisory Committee also includes this suggestion on its annual agenda, that committee would take the lead on this project.

	Rule/Form	Suggestion/Issue	Source	Priority/Other Info
		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.) 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		

	Rule/Form	Suggestion/Issue	Source	Priority/Other Info
		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 notification on counsel when a simple form notice could be sent directly to the party.		

	Rule/Form	Suggestion/Issue	Source	Priority/Other Info
		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 court may provide notice as applicable to the type of proceeding. It may be unnecessary and more cumbersome to create separate rules.		

	Rule/Form	Suggestion/Issue	Source	Priority/Other Info
		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 601/602 advisements. (Excerpt from history of 2010 amendments.)		

	Rule/Form	Suggestion/Issue	Source	Priority/Other Info
		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.	***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. Priority 2 – helpful but not urgent
12.	***APPELLATE DIVISION –*** *Rule 8.882 – Service of briefs in misdemeanor appeals*	Rule 8.360, regarding briefs in felony appeals, includes the following provision that masks whether the defendant is in jail/prison: **(d) Service** (1) Defendant's appellate counsel must serve each brief for the defendant on the People and the district attorney, and must send a copy of each to the defendant personally unless the defendant requests otherwise. (2) The proof of service under (1) must state that a copy of the defendant's brief was sent to the defendant, or counsel must file a signed statement that the defendant requested in	Dennis Fischer, former committee member	In 2014-2015 annual agenda, this was designated as a Priority 2 project with a January 1, 2017 proposed completion date. In 2016, this was referred to the appellate division subcommittee for its

	Rule/Form	Suggestion/Issue	Source	Priority/Other Info
		writing that no copy be sent. Rule 8.882 does not contain a similar provision. Should it? Also, note that 8.882(e) cross-references to rules 8.25 and 8.29. Should it reference 8.817 instead?		consideration. That subcommittee recommends that this be a Priority 2 project.
13.	***APPELLATE DIVISION –*** *Rules 8.866 and 8.919 – Reporter's transcripts in misdemeanor and infraction appeals*	Current subdivision (d)(3) of rule 8.834, relating to reporter's transcripts in limited civil cases also specifically provides that if an appeal is abandoned or is dismissed before the reporter has filed the transcript, the reporter must inform the clerk of the cost of the portion of the transcript that the reporter has completed and the clerk must pay that amount to the reporter from the appellant's deposited funds and refund any excess deposit. Rules 8.866 and 8.919, relating to preparation of reporter's transcripts in misdemeanor and infraction appeals, do not currently contain such a provision and the proposal that was circulated for public comment did not include such a provision. Consider whether to develop a proposal to address payment of court reporters for portions of transcripts prepared before a misdemeanor or infraction appeal is abandoned.	California Court Reporters Association in comments on 2013 Appellate Division rules and forms proposal	Was on 2013-2014 annual agenda as priority 2 project. Had 1/2016 completion date. In 2016, this was referred to the appellate division subcommittee for its consideration. That subcommittee recommends that this be a Priority 2 project.
14.	***APPELLATE DIVISION –*** *Form APP-105 Statement on Appeal*	Did a little presentation for our civil judges regarding the Statement on Appeal process and the revisions to 8.837 and APP-105. I noted that the rule requires that the trial court order include "the date by which the new proposed statement must be filed and served" (Cal. Rules of Court, rule 8.837 (d)(3)(A)), and also encouraged the trial court judges to similarly include a "due date" in orders under (d)(3)(b)(ii) and orders under (d)(4)(B) so that the statement on appeal process doesn't end up in limbo. However, the revised APP-105 does not include spaces for such "due dates." I realize that this is totally an example of "hindsight is 20-20," but I wanted to let you know in the event you weren't already aware and to suggest the addition of a section perhaps at the bottom of APP-105 – section 3 – stating something like: "Appellant is to comply with any orders in section 2b above by ___________ [date]."	Milica Novakovic Staff Attorney San Diego Superior Court	The appellate division subcommittee recommends that this be a Priority 2 project.
15.	***APPELLATE DIVISION –****Rule 8.851 – Appointment of Counsel for*	**<u>Possible revision to CRC 8.851(a)</u>** **<u>Concern with current language</u>** CRC 8.851(a) sets forth the standards for appointment of counsel in misdemeanor appeals. The rule speaks only to appeals that are post-conviction,	Ann Salisbury, Senior Research Attorney	The appellate division subcommittee recommends that this be a Priority 2 project.

	Rule/Form	Suggestion/Issue	Source	Priority/Other Info
	misdemeanor appeals	but there is at least one common situation in which a misdemeanor defendant may be involved in an appeal (as appellant or respondent) pre-trial. The proposed revision would broaden the language of the rule to encompass this situation as well as any others that might be created by the Legislature in the future. **Current language** (a) Standards for appointment (1) On application, the appellate division must appoint appellate counsel for a defendant **convicted** of a misdemeanor who: (A) Is subject to incarceration or a fine of more than $500 (including penalty and other assessments), or who is likely to suffer significant adverse collateral consequences as a result of the conviction; and (B) Was represented by appointed counsel in the trial court or establishes indigency. (2) On application, the appellate division may appoint counsel for any other indigent defendant **convicted** of a misdemeanor. (3) A defendant is subject to incarceration or a fine if the incarceration or fine is in a sentence, is a condition of probation, or may be ordered if the defendant violates probation. (Cal. Rules of Court, rule 8.851(a), boldface added.) **Background** When a state provides for a first appeal from a criminal conviction as a matter of right, the state must provide counsel to an indigent defendant. (*Douglas v. California* (1963) 372 U.S. 353, 357.) Failure to do so is a violation of due process and equal protection. (*Id.* at pp. 356-357 ["where the merits of the one and only appeal an indigent has as of right are decided without benefit of counsel, we think an unconstitutional line has been drawn between rich and poor"].) This holding was extended to appeals from misdemeanor convictions where the sentence included the possibility of incarceration or other "serious consequences." (*In re Henderson* (1964) 61 Cal.2d 541, 543-544.)	Orange County Superior Court and former member of appellate division subcommittee	

	Rule/Form	Suggestion/Issue	Source	Priority/Other Info
		In addition to an appeal from a judgment of conviction (Pen. Code, § 1466), the Penal Code also allows a pre-trial appeal of an order granting or denying a motion to suppress evidence. (Pen. Code, § 1538.5, subd. (j).) Because there has been no conviction, however, the Rules of Court would not allow an appellate division to appoint counsel for an indigent defendant for such an appeal (whether brought by the defendant or the People). Although a defendant may have the order denying his/her motion reviewed in a post-conviction appeal (Pen. Code, § 1538.5, subd. (m)), it appears that appointment of counsel for a pre-trial appeal pursuant to Penal Code section 1466, subdivision (j), might be mandated. Under the current rule, defendants of means would be able to pursue pre-trial appeals, whereas those defendants with appointed counsel could not, which is a questionable practice. (Cf. *People v. Shipman* (1965) 62 Cal.2d 226, 231-232 [finding a right to appointed counsel to bring a non-frivolous collateral attack on the conviction].) Further, any pre-trial appellate decision would be law of the case[1] for trial and any post-conviction appeal. (See, e.g., *People v. Saucedo* (1974) 42 Cal.App.3d 905, 907.) Thus, absent an appointment of counsel, an indigent defendant might be without counsel at a critical stage of the defendant's case.[2] **Proposed revision** (a) Standards for appointment (1) On application, the appellate division must appoint appellate counsel for a defendant accused or convicted of one or more~~a~~ misdemeanors who: (A) Is or may be subject to incarceration or a fine of more than $500 (including penalty and other assessments), or who is or may be likely to suffer significant adverse collateral consequences as a		

[1] For a discussion of the law of the case doctrine generally, see *People v. Cooper* (2007) 149 Cal.App.4th 500, 524-525.

[2] To the extent that the Public Defender is representing the defendant, one could argue that the Public Defender is obligated to represent the defendant even if there is not an appointment. Government Code section 27706 sets forth the duties of the Public Defender. Subdivision (a) states that "The public defender shall, upon request, give counsel and advice to [an indigent defendant] about any charge against the person upon which the public defender is conducting the defense, and shall prosecute all appeals to a higher court or courts of any person who has been convicted, where, in the opinion of the public defender, the appeal will or might reasonably be expected to result in the reversal or modification of the judgment of conviction."

	Rule/Form	Suggestion/Issue	Source	Priority/Other Info
		result of being convicted of the misdemeanor allegations~~the conviction~~; and (B) Is or was represented by appointed counsel in the trial court or establishes indigency. (2) On application, the appellate division may appoint counsel for any other indigent defendant accused or convicted of a misdemeanor. (3) A defendant is subject to incarceration or a fine if the incarceration or fine is in a sentence, is a condition of probation, or may be ordered if the defendant violates probation.		
16.	***APPELLATE DIVISION - Forms***	Various suggested changes to the following appellate division forms: • APP-102 notice of appeal limited civil case • APP 110 respondent's record designation • APP-104, APP-105, CR-135, CR-136, CR-143, and CR-144, statement of appeal forms • CR-132 notice of appeal misdemeanor • CR-134 notice regarding record on appeal • CR 142 Notice of appeal infraction Proposed new form for record designation in infraction appeal See specific suggestions attached	Superior Court of Los Angeles County	Was on 2013-2014 annual agenda as Priority 2 – helpful but not urgent. Had 1/2015 completion. Referred to appellate division subcommittee The appellate division subcommittee recommends this be a priority 2 project

SUGGESTIONS A SUBCOMMITTEE RECOMMENDS BE DEFERRED

	Rule/Form	Suggestion/Issue	Source	Why Defer
17.	***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	
18.	***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
19.	***GENERAL –*** *Rule 8.163 –*	A recent Court of Appeal decision [available at: http://www.courts.ca.gov/opinions/nonpub/B246970.PDF] appears to reason that	Lisa Jaskol, former	In 2014-2015 annual agenda, this was

	Rule/Form	Suggestion/Issue	Source	Why Defer
	Application of presumption from the record when settled statement is used	since there was no reporter's transcript, the presumption of rule 8.163 (pasted 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.	committee member	designated as a 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
20.	***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 deferring these changes
21.	***APPEALS IN CIVIL CASES*** 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	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

	Rule/Form	Suggestion/Issue	Source	Why Defer
		information in form APP-002 will provide useful guidance and a helpful checklist for both parties and clerks.		deferred list because it was not considered a high priority.
22.	***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.
23.	***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.
24.	***GENERAL –*** *Rule 8.45 et. seq. – Sealed and confidential records*	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 the rest of the record or separately.	TCPJAC/CEAC Joint Rules Working Group in comments on 2013	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

	Rule/Form	Suggestion/Issue	Source	Why Defer
			proposal regarding sealed and confidential records	on deferred list because it was not considered a high priority.
25.	***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
26.	***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. 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	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
		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.		
27.	***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 criminal than for civil cases."	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.
28.	***GENERAL –*** *Rule 8.208 – Request to seal*	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	Cheryl Shensa, writ	In 2014-2015, the committee placed this on deferred list

	Rule/Form	Suggestion/Issue	Source	Why Defer
	certificate of interested parties	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.	attorney, Court of Appeal, Fourth Appellate District	because it was not considered a high priority.
29.	***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
30.	***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 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.	Susan Streble Supervising Appellate Court Attorney California Court of Appeal Fourth District, Division Two	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
31.	***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.
32.	***APPEALS IN CIVIL CASES*** Rule 8.278 – Inclusion of hyperlinked	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	Joseph Lane, committee member	See notes regarding item 34 above

	Rule/Form	Suggestion/Issue	Source	Why Defer
	briefs in recoverable costs on appeal	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.		
33.	***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 have opening statements that are less than 20 pages.	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.
34.	***CRIMINAL CASES –*** *Rules 8.304 and 8.850*	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.	Corrine Pochop, former	In 2014-2015, the committee placed this on deferred list

	Rule/Form	Suggestion/Issue	Source	Why Defer
	– Definitions of "felony case" and "misdemeanor case"	[*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]	committee member	because it concluded that case appears to reflect rare circumstances and rule change most likely unecessary
35.	***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
36.	***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	Committee staff	Was not considered high priority

	Rule/Form	Suggestion/Issue	Source	Why Defer
		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?		
37.	***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. 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.	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 Court in response to proposals by practitioners representing indigent defendants in criminal appeals.
38.	***ORDERING REVIEW*** Rule 8.512 – Time for ordering review on court's own	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	Supreme Court	Deferred in 2013-2014 Was not considered high priority

	Rule/Form	Suggestion/Issue	Source	Why Defer
	motion	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.		
39.	***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. Although the statute ultimately needs to be amended, amending the rule would seem to be the far simpler interim solution.	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
40.	***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
41.	***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	Justice Ikola, committee chair	Deferred in 2013-2014 Issue does not arise very often

	Rule/Form	Suggestion/Issue	Source	Why Defer
		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. Not a huge problem – these cases are relatively rare – but I think it's worthy of adding to the list at some point. Thanks.		
42.	***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
43.	***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	Kevin Green, committee member	Deferred in 2013-2014 Was not considered high priority

	Rule/Form	Suggestion/Issue	Source	Why Defer
		an appeal, and reduce the burden on appellate clerks.		
44.	***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, former committee member	In 2014-2015, the committee placed this on deferred list because it was not considered a high priority. The appellate division agreed with placement on the deferred list.
45.	***APPELLATE DIVISION*** *– Rule ? – Settlement conferences*	The Committee also notes that costs of misdemeanors could be otherwise reduced by providing increased use of diversionary programs for misdemeanors, and by requiring mandatory settlement conferences for appeals of misdemeanors to attempt to resolve some misdemeanor appeals without the costs of transcripts, briefing and Appellate Division hearings.	Committee on Appellate Courts State Bar of California in comments on 2013 Appellate Division rules and forms proposal	The appellate division subcommittee recommends that this be deferred based on concerns that it is unlikely to be reduce costs or be acceptable to the district attorney
46.	***TRANSFER OF***	An Appellate Division issued an opinion on appeal at the same time ordered	John	Deferred in 2013-

	APPELLATE DIVISION CASES Rule 8.1005	certification [for transfer] to the Court of Appeal. I don't think we anticipated that this would happen. This is proper under Rule 8.1005(d), which says a case can be certified anytime after the Appellate Division receives the record on appeal and before its judgment is final. However, rule 8.1014 says that once the Appellate Division has issued a certification order the only action the Appellate Division can take is to send the record to the Court of Appeal. The effect of this is to foreclose the litigants from filing a petition for rehearing or a request for publication--or, at last, to prevent the Appellate Division from considering and acting upon such matters. Perhaps rule 8.1005(d) should be modified to say "A case may be certified at any time after the record on appeal is filed in the appellate division and before the appellate division has issued its opinion. The case may also be certified after the time for filing a petition for rehearing has passed, or such a petition has been denied, and before the appellate division judgment is final in that court." Or since that would not deal with the publication request issue, rule 8.1014 could be modified to say the appellate division can take no action except to consider a petition for rehearing or a request for publication.	Hamilton Scott Los Angeles County Public Defender's Office	2014 Issue does not arise very often The appellate division subcommittee agrees that this should be deferred

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
47.	***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.
48.	***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

	Rule/Form	Suggestion/Issue	Source
49.	***APPEALS & WRITS IN JUVENILE CASES*** Juvenile rules generally	Suggest separating rules relating to juvenile dependency and delinquency proceedings	Committee on Appellate Courts State Bar of California
50.	***APPEALS & WRITS IN JUVENILE CASES*** Rule 8.400	1. Modify Rule 8.400(1)(B) to add the underscored language: "Actions to free a child from parental custody and control under Family Code section 7800 et seq. OR PROBATE CODE SECTION 1516.5; and" Termination of parental rights under Probate Code section 1516.5 is generally governed by the requirements under Family Code section 7800 et seq., but which standards apply to appeal is not entirely clear. However, such appeals have traditionally been handled under the standards of Rule 8.400. 2. Modify Rule 8.400(1)(C) to add "Actions under Family Code section 7662–7666." In independent or agency adoptions when the parents do not consent to the adoption or relinquish parental rights, termination of the parent's rights occurs under two different schemes, Family Code section 7822/7825 (abandonment or unfitness), and Family Code section 7662–7666 (as to alleged or unknown fathers). Thus, when both parents appeal, one appeal is handled under Rule 8.400's standards and the other under the civil appeal standards. This amendment reconciles the conflict.	Seth Gorman
51.	***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.
52.	***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
53.	***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

	Rule/Form	Suggestion/Issue	Source
54.	***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
55.	***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
56.	***APPEALS & WRITS IN JUVENILE CASES*** Form JV-800	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 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: ...".	Appellate Court Committee of the San Diego County Bar Association
57.	***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

Appellate Advisory Committee
Annual Agenda—2017
Approved by E&P/RUPRO:

I. ADVISORY BODY INFORMATION

Chair:	Justice Louis R. Mauro
Staff:	Heather Anderson, Supervising Attorney, Legal Services

Advisory Body's Charge:
- Identify issues and concerns affecting appellate court administration and make recommendations to the Judicial Council for improving the administration of justice in appellate proceedings;
- Propose necessary changes to appellate rules, standards, and forms in response to legislative and case law changes as well as to proposals from committee members and others;
- Review pending legislation affecting appellate court administration and make recommendations to the Policy Coordination and Liaison Committee on whether to support or oppose it;
- Recommend to the council new legislation relating to appellate court administration;
- Recommend to the council pilot projects and other programs to evaluate new appellate court procedures or practices;
- Make proposals on training for justices and appellate support staff to the Governing Committee of the Center for Judicial Education and Research; and
- Act on assignments referred by the council or an internal committee.

(California Rules of Court, rules 10.34 and 10.40).

Advisory Body's Membership: The committee currently has a total of 20 members in the following categories:
- Supreme Court justice – 1;
- Court of Appeal justice - 6;
- Trial court judicial officer with experience in the appellate division - 2;
- Supreme Court clerk administrator - 1
- Appellate court administrator - 1;
- Trial court judicial administrator - 1;
- Civil appellate lawyer - 3;
- Criminal defense appellate lawyer - 2;
- State Public Defender - 1;
- Appellate lawyer of the Attorney General's Office – 1; and
- Appellate lawyer of the Court of Appeal or Supreme Court - 1.

(California Rules of Court, rule 10.40)

Subgroups/Working Groups:

Subcommittees including only AAC members

- Rules Subcommittee
- Legislative Subcommittee
- Subcommittee to consider concerns regarding privacy protection in appellate opinions

Subcommittees including members in addition to AAC members

- Appellate Division Subcommittee (approved in 2014, but not yet formed)
- Joint AAC/CTAC Appellate Technology Subcommittee

Advisory Body's Key Objectives for 2016:

1. Increasing efficiencies in appellate proceedings and providing opportunities for saving court costs by, among other things:
    - * * *; and
    - * * *.
2. Improving the administration of justice in appellate proceedings by, among other things:
    - * * *; and
    - * * *

DRAFT

II. ADVISORY BODY PROJECTS

#	Project[1]	Priority[2]	Specifications	Completion Date/Status	Describe End Product/ Outcome of Activity
1.	**Improve Rules and Forms**: This is a continuing project; with slight differences, it was listed as item 1 on the committee's annual agendas for 2012 – 2016. Working through the Rules Subcommittee, review case law changes that impact appellate courts and appellate procedure and suggestions from committee members, justices, judges, court staff, the bar, and the public concerning appellate rules and forms and appellate court administration and make recommendations to the council for necessary changes to appellate rules, standards, and forms.	1[3]	**Judicial Council Direction:** Strategic Plan Goal 3 – Modernization of Management & Administration, Operational Plan Objective 5. Develop and implement effective trial and appellate case management rules, procedures, techniques and practices to promote the fair, timely, consistent, and efficient processing of all types of cases[4] **Origin of Project:** Required by committee charge in California Rules of Court, rules 10.34 and 10.40. **Resources:** N/A **Key Objective Supported**: 1 and 2	Ongoing	Improved rules and forms

[1] All proposed projects for the year must be included on the Annual Agenda. If a project implements policy or is a program, identify it as *implementation* or *a program* in the project description and attach the Judicial Council authorization/assignment or prior approved Annual Agenda to this Annual Agenda.
[2] For non-rules and forms projects, select priority level 1 (must be done) or 2 (should be done). For rules and forms proposals, select one of the following priority levels: 1(a) Urgently needed to conform to the law; 1(b) Urgently needed to respond to a recent change in the law; 1(c) Adoption or amendment of rules or forms by a specified date required by statute or council decision; 1(d) Provides significant cost savings and efficiencies, generates significant revenue, or avoids a significant loss of revenue; 1(e) Urgently needed to remedy a problem that is causing significant cost or inconvenience to the courts or the public; 1(f) Otherwise urgent and necessary, such as a proposal that would mitigate exposure to immediate or severe financial or legal risk; 2(a) Useful, but not necessary, to implement statutory changes; 2(b) Helpful in otherwise advancing Judicial Council goals and objectives.
[3] This is the general charge of the committee in the rules and forms area and so does not fall within any of the categories for specific rules and forms projects.
[4] Much of the work by the Appellate Advisory Committee falls within this pair of Strategic/Operational Plan Goals. This pair of goals is referred to through the rest of this agenda as "Strategic Plan Goal 3, Operational Plan Objective 5."

DRAFT

#	Project[1]	Priority[2]	Specifications	Completion Date/Status	Describe End Product/ Outcome of Activity
2.	**Review Pending Legislation**: This is a continuing project; it was listed as item 2 on the committee's annual agendas for 2012 – 2016. Working through the Legislative Subcommittee, review pending legislation affecting appellate court administration and make recommendations to the Policy Coordination and Liaison Committee as to whether the council should support or oppose the legislation.	1	**Judicial Council Direction:** Strategic Plan Goal 3, Operational Plan Objective 5 **Origin of Project:** Required by committee charge in California Rules of Court, rules 10.34 and 10.40. **Resources:** Governmental Affairs staff identifies pending legislation affecting appellate court administration for the committee's review **Key Objective Supported**: 1 and 2	Ongoing	Recommendations to the Policy Coordination and Liaison Committee (PCLC) regarding legislation affecting appellate court administration
3.	**Legislative Implementation:** Review all enacted legislation referred to the committee by the Judicial Council's Governmental Affairs office that may have an impact on appellate court administration and propose, for the council's consideration, rules and forms as may be appropriate for implementation of this legislation.	1	**Judicial Council Direction:** Strategic Plan Goal 3, Operational Plan Objective 5 **Origin of Project:** Required by committee charge in California Rules of Court, rules 10.34 and 10.40. **Resources:** Governmental Affairs staff identifies enacted legislation affecting appellate court administration for the committee's review	Ongoing	Implementing rules and forms

DRAFT

#	Project[1]	Priority[2]	Specifications	Completion Date/Status	Describe End Product/ Outcome of Activity
			Key Objective Supported:		
4.	**Reporter's transcripts:** Consider whether to recommend/support amendments to statute requiring that the original reporter's transcript be in paper format	1	**Judicial Council Direction:** Strategic Plan Goal 3, Operational Plan Objective 5 **Origin of Project:** Suggestion received from Court of Appeal Justice **Resources:** Governmental Affairs staff assistance in working with appropriate constituencies on proposal and in presenting recommendations to PCLC. **Key Objective Supported:** 1	January 1, 2018	Revised statute
5.	**Privacy protection –** Consider whether to recommend amendments to the Rules of Court or other actions to better protect the privacy of victims, witnesses, and others who are described in or otherwise affected by appellate opinions.	1 (e)	**Judicial Council Direction:** Strategic Plan Goal 3, Operational Plan Objective 5 **Origin of Project:** Suggestion received from members of Family and Juvenile Law Advisory Committee and Access and Fairness Advisory Committee. **Resources:** • AAC subcommittee to consider concerns regarding privacy	January 1, 2018	Amended rules, education recommendations

DRAFT

#	Project[1]	Priority[2]	Specifications	Completion Date/Status	Describe End Product/ Outcome of Activity
			protection in appellate opinions • Family and Juvenile Law Advisory Committee, Access and Fairness Advisory Committee, Criminal Law Advisory Committee, Civil and Small Claims Advisory, Committee, Joint Appellate Technology Subcommittee Information Technology Advisory Committee. **Key Objective Supported:** 2		
6.	**Settled Statements –** Consider whether to recommend amendments to the rule regarding settled statements or a form to address difficulties in the timely preparation of these statements.	1(e)	**Judicial Council Direction**: Strategic Plan Goal 3, Operational Plan Objective 5 **Origin of Project:** Suggestion received from Court of Appeal clerk/executive officer **Resources:** N/A **Key Objective Supported:** 2	January 1, 2018	Amended rules, form
7.	**Record Designation in Limited Civil Appeals –** Consider whether to recommend revisions to the form for designating the record in limited civil appeals to address concerns about frequent defaults by appellant	1(e)	**Judicial Council Direction**: Strategic Plan Goal 3, Operational Plan Objective 5 **Origin of Project:** Suggestion received from two superior courts **Resources:** N/A	January 1, 2018	Revised form

DRAFT

#	Project[1]	Priority[2]	Specifications	Completion Date/Status	Describe End Product/ Outcome of Activity
			Key Objective Supported: 2		
8.	**Appealability of Orders Following Voluntary Dismissal –** Consider whether to recommend amendments to statute on appealability to permit appeals from orders following a voluntary dismissal	2	**Judicial Council Direction:** Strategic Plan Goal 3, Operational Plan Objective 5 **Origin of Project:** Suggestion received from attorney **Resources:** Governmental Affairs staff assistance in working with appropriate constituencies on proposal and in presenting recommendations to PCLC. **Key Objective Supported:** 2	January 1, 2019	Amended statute
9.	**Modernize Appellate Court Rules for E-Filing and E-Business** a. Review appellate rules to ensure consistency with e-filing practice; evaluate, identify and prioritize potential rule modifications where outdated policy challenges or prevents e-business. b. Consider rule	2(b)	**Judicial Council Direction**: Strategic Plan Goal 3, Operational Plan Objective 5 **Origin of Project:** ITAC **Resources:** JATS and ITAC **Key Objective Supported:** 1	January 1, 2018	Amended rules and revised forms

DRAFT

#	Project[1]	Priority[2]	Specifications	Completion Date/Status	Describe End Product/ Outcome of Activity
	modifications to remove requirements for paper versions of documents (by amending individual rules or by introducing a broad exception for e-filing/e-service).				
10.	**Civil Case Information Statement -** Consider whether to recommend revising this form to add a proof of service	2(b)	**Judicial Council Direction:** Strategic Plan Goal 3, Operational Plan Objective 5 **Origin of Project:** Suggestion received from clerk of Court of Appeal **Resources:** N/A **Key Objective Supported:** 2	January 1, 2018	Revised form
11.	**Record on Appeal in Juvenile Case –** Consider whether to develop rule regarding the record in cases where the appellant is not a party who would ordinarily have access to the record of the trial court proceedings	2(b)	**Judicial Council Direction:** Strategic Plan Goal 3, Operational Plan Objective 5 **Origin of Project:** Suggestion received from attorney at California Appellate Project **Resources:** N/A **Key Objective Supported:** 2	January 1, 2018	Amended rule

DRAFT

#	Project[1]	Priority[2]	Specifications	Completion Date/Status	Describe End Product/ Outcome of Activity
12.	**Verification of Writ Petitions** - Consider whether to recommend amendments to the rules regarding writ petitions to consistently reflect statutory requirements for verification of petitions	2(b)	**Judicial Council Direction:** Strategic Plan Goal 3, Operational Plan Objective 5 **Origin of Project:** Suggestion received from appellate attorney **Resources:** N/A **Key Objective Supported:** 2	January 1, 2018	Amended rule
13.	**Service of briefs –** Consider amending the rule on service of briefs in misdemeanor appeals to make it more consistent with the rule relating to briefs in felony appeals	2(b)	**Judicial Council Direction:** Strategic Plan Goal 3, Operational Plan Objective 5 **Origin of Project:** Suggestion received from appellate attorney **Resources:** N/A **Key Objective Supported:** 2	January 1, 2018	Amended rules
14.	**Payment for transcripts in abandoned appeals –** Consider whether to recommend amendments to clarify the payment for partially prepared transcripts in misdemeanor appeals	2(b)	**Judicial Council Direction:** Strategic Plan Goal 3, Operational Plan Objective 5 **Origin of Project:** Suggestion received from appellate attorney **Resources:** N/A **Key Objective Supported:** 2	January 1, 2018	Amended rules

DRAFT

#	Project[1]	Priority[2]	Specifications	Completion Date/Status	Describe End Product/ Outcome of Activity
15.	**Length of briefs –** Consider whether to recommend shortening the permissible length of briefs	2(b)	**Judicial Council Direction:** Strategic Plan Goal 3, Operational Plan Objective 5 **Origin of Project:** Suggestion received from appellate attorney **Resources:** N/A **Key Objective Supported:** 1	January 1, 2019	Amended rules
16.	**Late briefs –** Consider whether to the "grace period" for filing late briefs in civil appeals	2(b)	**Judicial Council Direction:** Strategic Plan Goal 3, Operational Plan Objective 5 **Origin of Project:** Suggestion received from appellate attorney **Resources:** N/A **Key Objective Supported: 2**	January 1, 2019	Amended rules
17.	**Advisement of the right to appeal in juvenile cases –** Consider whether to recommend amendments to the rule relating to advisement of the right to appeal in juvenile cases to improve its clarity and accuracy	2(b)	**Judicial Council Direction:** Strategic Plan Goal 3, Operational Plan Objective 5 **Origin of Project:** Suggestion received from attorney **Resources:** Family and Juvenile Law Advisory Committee **Key Objective Supported:** 2	January 1, 2019	Amended rule

DRAFT

#	Project[1]	Priority[2]	Specifications	Completion Date/Status	Describe End Product/ Outcome of Activity
18.	**Appointment of counsel in misdemeanor appeals –** Consider whether to recommend amendments to the rule regarding appointment of counsel in misdemeanor appeals to clarify its application in certain cases	2(b)	**Judicial Council Direction:** Strategic Plan Goal 3, Operational Plan Objective 5 **Origin of Project:** Suggestion received from court staff attorney **Resources:** Family and Juvenile Law Advisory Committee **Key Objective Supported:** 2	January 1, 2019	Amended rule
19.	**Appellate Division forms –** Consider recommending revisions to various appellate division forms to make them clearer and easier to use	2(b)	**Judicial Council Direction:** Strategic Plan Goal 3, Operational Plan Objective 5 **Origin of Project:** Suggestions received from courts and court staff **Resources:** Family and Juvenile Law Advisory Committee **Key Objective Supported:** 2	January 1, 2019	Revised forms
20.	**Branch and Model Court Privacy Policies on Electronic Court Records and Access in the Appellate Courts -** (a) Develop a comprehensive statewide privacy policy addressing electronic access to appellate court records and data to align with both state and federal	2(b)	**Judicial Council Direction:** Strategic Plan Goal 3, Operational Plan Objective 5 **Origin of Project:** Suggestions received from courts and court staff **Resources:** Information Technology Advisory Committee	January 1, 2019	Statewide and model policies

#	Project[1]	Priority[2]	Specifications	Completion Date/Status	Describe End Product/ Outcome of Activity
	requirements. (b) Develop a model appellate court privacy policy, outlining the key contents and provisions to address within each court's specific policy.		**Key Objective Supported:** 2		

III. STATUS OF 2016 PROJECTS:

[List each of the projects that were included in the 2016 Annual Agenda and provide the status for the project.]

#	Project[5]	Completion Date/Status
1.	**Improve Rules and Forms**: This is a continuing project; it was listed as item 1 on the committee's annual agendas for 2012 – 2016. Working through the Rules Subcommittee, review legislative and case law changes and suggestions from committee members, justices, judges, court staff, the bar, and the public concerning appellate rules and forms and appellate court administration and make recommendations to the council for necessary changes to appellate rules, standards, and forms.	Completed for 2016. All rule and forms suggestions received through October 31, 2016 have been reviewed and prioritized. Those assigned priority 1 or 2 are listed as new proposals on this annual agenda Ongoing This is part of the committee's general charge and is an ongoing project. It is listed as item 1 on the list of 2017 committee projects.
2.	**Review Pending Legislation**: This is a continuing project; it was listed as item 2 on the on the committee's annual agendas for 2012 – 2016. Working through the Legislative Subcommittee, review pending legislation affecting appellate court administration and make recommendations to the Policy Coordination and Liaison Committee as to whether the council should support or oppose the	Completed for 2016. All legislation received through October 30, 2015 has been reviewed and recommendations made to PCLC. Ongoing This is part of the committee's general charge and is an ongoing project. It is listed as item 2 on the list of 2017 committee projects.

[5] All proposed projects for the year must be included on the Annual Agenda. If a project implements policy or is a program, identify it as *implementation* or *a program* in the project description and attach the Judicial Council authorization/assignment or prior approved Annual Agenda to this Annual Agenda.

DRAFT

#	Project[5]	Completion Date/Status
	legislation.	
3.	**Reporter's transcripts:** Consider whether to recommend/support amendments to statute requiring that the original reporter's transcript be in paper format	The committee worked on this project, including meeting with representatives of the California Court Reporter's Association. Based on those meetings, the committee did not pursue a legislative proposal last year. This remains on the list of 2017 committee projects, as item 4, with a proposed completion date of January 1, 2018.
4.	**Reporter's transcripts:** Consider whether to recommend rule amendments to address party and clerk responsibilities when parties purchase reporter's transcript directly from reporter pro tempore	After further consideration, the committee decided not to pursue this project.
5.	**Record on appeal in juvenile cases -** Consider whether to recommend amendments to the rules regarding the record on appeal in juvenile cases to clarify requirements for inclusion of items relating to Indian Child Welfare Act compliance.	Completed October 2016. Proposal presented to and approved by the Judicial Council at its October 27, 2016 meeting. Amended rules will take effect January 1, 2017
6.	**Privacy protection –** Consider whether to recommend amendments to the Rules of Court or other actions to better protect the privacy of victims, witnesses, and others who are described in or otherwise affected by appellate opinions.	Partially completed. Proposal presented to and approved by the Judicial Council at its October 27, 2016 meeting. Amended rules will take effect January 1, 2017. The committee will consider additional recommendations to address this issue. This is item 5 on the list of 2017 committee projects with a proposed completion date of January 1, 2018.
7.	**Application of rules on juvenile appeals -** Consider whether to recommend amendment to the rules on juvenile appeals to clarify that they apply to appeals under Probate Code 1516.5	Completed October 2016. Proposal presented to and approved by the Judicial Council at its October 27, 2016 meeting. Amended rules will take effect January 1, 2017

DRAFT

#	Project[5]	Completion Date/Status
8.	**E-Filing rules -** Review the rules on electronic filing in the appellate courts and compare with local practices to determine if there are inconsistencies that need to be addressed or where uniform practice might be beneficial	Completed October 2016. Proposal presented to and approved by the Judicial Council at its October 27, 2016 meeting. Amended rules will take effect January 1, 2017
9.	**Modernize Appellate Court Rules for E-Filing and E-Business** c. Review appellate rules to ensure consistency with e-filing practice; evaluate, identify and prioritize potential rule modifications where outdated policy challenges or prevents e-business. d. Consider rule modifications to remove requirements for paper versions of documents (by amending individual rules or by introducing a broad exception for e-filing/e-service).	Phase 2 of this project completed October 2016. Proposal presented to and approved by the Judicial Council at its October 27, 2016 meeting. Amended rules and revised forms will take effect January 1, 2017. The committee intends to work on Phase 3 of this project this year. This is item 9 on the list of 2017 committee projects with a proposed completion date of January 1, 2018.
10.	**Marsden transcripts –** Consider whether to recommend a rule amendment to clarify requirement to provide copy of Marsden transcript to defendant's appellate counsel or, if not yet appointed, the district appellate project	Completed October 2016. Proposal presented to and approved by the Judicial Council at its October 27, 2016 meeting. Amended advisory committee comment will take effect January 1, 2017.
11.	**Amicus Briefs –** Consider whether to recommend amendments to rules on amicus briefs to address whether a party may file a response to an amicus supporting that party and whether to develop rules regarding amicus briefs in writ proceedings	Completed October 2016. Proposal presented to and approved by the Judicial Council at its October 27, 2016 meeting. Amended rules will take effect January 1, 2017.

DRAFT

#	Project[5]	Completion Date/Status
12.	**Record on Appeal in Juvenile Case –** Consider whether to develop rule regarding the record in cases where the appellant is not a party who would ordinarily have access to the record of the trial court proceedings	To be completed January 1, 2018. It is listed as item 11 on the list of 2017 committee projects.
13.	**Verification of Writ Petitions -** Consider whether to recommend amendments to the rules regarding writ petitions to consistently reflect statutory requirements for verification of petitions	To be completed January 1, 2018. It is listed as item 12 on the list of 2017 committee projects.
14.	**Civil Case Information Statement -** Consider whether to recommend revising this form to add a proof of service	To be completed January 1, 2018. It is listed as item 10 on the list of 2017 committee projects.
15.	**Appealability of Orders Following Voluntary Dismissal –** Consider whether to recommend amendments to statute on appealability to permit appeals from orders following a voluntary dismissal	To be completed January 1, 2018. It is listed as item 8 on the list of 2017 committee projects.

DRAFT

IV. Subgroups/Working Groups - Detail

Subgroups/Working Groups:

Subcommittees including only AAC members

Subgroup or working group name: **Rules Subcommittee**

Purpose of subgroup or working group: To review legislative and case law changes and suggestions from committee members, justices, judges, court staff, the bar, and the public concerning appellate rules and forms and appellate court administration and make recommendations to the council for necessary changes to appellate rules, standards, and forms

Number of advisory body members on the subgroup or working group: 13

Number and description of additional members (not on this advisory body): None

Date formed: In existence since at least 2001

Number of meetings or how often the subgroup or working group meets: 3-6 conference call meetings per year

Ongoing or date work is expected to be completed: Ongoing

Subgroup or working group name: **Legislative Subcommittee**

Purpose of subgroup or working group: To review pending legislation affecting appellate court administration and make recommendations to the Policy Coordination and Liaison Committee as to whether the council should support or oppose the legislation

Number of advisory body members on the subgroup or working group: 6

Number and description of additional members (not on this advisory body): None

Date formed: In existence since at least 2001

Number of meetings or how often the subgroup or working group meets: 1-3 conference call meetings per year

Ongoing or date work is expected to be completed: Ongoing

Subgroup or working group name: **Subcommittee to consider concerns regarding privacy protection in appellate opinions**

Purpose of subgroup or working group: Consider whether to recommend amendments to the Rules of Court or other actions to better protect the privacy of victim, witness, or other such information in appellate opinions (see proposed project 6 above).

Number of advisory body members on the subgroup or working group: Anticipate approximately 6 members.

DRAFT

Number and description of additional members (not on this advisory body): None anticipated, but the subcommittee will consult with the Family and Juvenile Law Advisory Committee, Access and Fairness Advisory Committee, Criminal Law Advisory Committee, Civil and Small Claims Advisory, Committee, Joint Appellate Technology Subcommittee, and Information Technology Advisory Committee as needed.

Date formed: New – the committee is requesting permission to form this subcommittee

Number of meetings or how often the subgroup or working group meets: Anticipate 5-6 conference call meetings per year

Ongoing or date work is expected to be completed: January 1, 2017

Subcommittees including members in addition AAC members

Subgroup or working group name: **Appellate Division Subcommittee**

Purpose of subgroup or working group: The Appellate Advisory Committee (AAC) is responsible for developing proposals and reviewing suggestions for improving the rules and forms for the superior court appellate division. This subcommittee will assist the committee in performing this function. The new subcommittee is needed because the committee does not have sufficient members with experience in appellate division proceedings to appropriately perform this function.

Number of advisory body members on the subgroup or working group: At least three (3) members from the AAC, appointed by its Chair
Number and description of additional members (not on this advisory body):
(a) At least two (2) judges serving in the appellate division, appointed by the Chair of the Trial Court Presiding Judges Advisory Committee
(b) At least two (2) court administrators with experience in appellate division matters, appointed by the Chair of the Court Executives Advisory Committee
The subcommittee membership will not exceed 10 members.

Date formed: 2016.

Number of meetings or how often the subgroup or working group meets: Anticipate 3 to 5 meetings per year, by conference calls.

Ongoing or date work is expected to be completed: Ongoing.

Subgroup or working group name: **Joint Appellate Technology Subcommittee**

Purpose of subgroup or working group: The Joint Appellate Technology Subcommittee makes recommendations to its oversight advisory committees (ITAC and AAC) for improving the administration of justice within the appellate courts through the use of technology; and, for fostering cooperative endeavors to resolve common technological issues within the appellate courts. Neither advisory committee, AAC or ITAC, is equipped to adequately address appellate technology issues by itself. AAC lacks technology expertise and ITAC lacks expertise

DRAFT

in appellate procedure and a focus on appellate-specific technology issues.

Number of advisory body members on the subgroup or working group: At least four (4) members from the AAC, appointed by its Chair

Number and description of additional members (not on this advisory body):

(a) At least four (4) members from the ITAC, appointed by its Chair
(b) At least one (1) member from the Appellate Presiding Justices Advisory Committee (APJAC), appointed by its Chair

The subcommittee membership will not exceed 12 members.

Date formed: 2014

Number of meetings or how often the subgroup or working group meets: The subcommittee plans to meet by teleconference between 4-6 times

Ongoing or date work is expected to be completed: The Joint Appellate Technology Subcommittee will be a standing committee with no sunset date; however, the need for this subcommittee will be re-evaluated annually as part of the annual agenda development process for ITAC and AAC.

DRAFT

ATTACHEMENT 5 – NEW SUGGESTIONS FROM MR. GROSSMAN

I would like to propose amending the rules concerning misdemeanor appeals in the appellate division, to be considered when it is appropriate.

(1) ORAL ARGUMENT IN MISDEMEANOR APPEALS

Rule 8.885. Oral argument

(a) Calendaring and sessions

Except in appeals where no issue is raised ~~Unless otherwise ordered~~, all appeals in which the last reply brief was filed or the time for filing this brief expired 45 or more days before the date of a regular appellate division session must be placed on the calendar for that session by the appellate division clerk. By order of the presiding judge or the division, any appeal may be placed on the calendar for oral argument at any session.

* * *

(d) Waiver of argument

Parties may waive oral argument by filing notice of waiver of oral argument within 10 days after notice of oral argument is sent. The other party or parties may object within 10 days after the filing of the notice of waiver. The court may vacate oral argument if no objection is made, The court must send notice to the parties when oral argument is vacated.

Judge Helen E. Williams, the presiding judge of the appellate division of the Santa Clara County Superior Court, unsuccessfully sought to be on the Appellate Advisory Committee. She would like the committee to consider amending the procedure for oral argument in misdemeanor appeals. Current rule 8.885(a) requires oral argument to be set in every appeal "[u]nless ordered otherwise." Taken literally, this would require setting oral argument in every case where no issue is raised pursuant to *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738 unless the court issues an order stating otherwise. Some, but not all, courts do set oral argument in this situation. Judge Williams suggests, and I agree, it would clarify the rule to add an amendment that oral argument will not be set when there are no issues.

A related change suggested by Judge Williams is to clarify the procedure for waiving oral argument. Current rule 8.885(d) permits waiver of oral argument but does not specify how. Many appellants appear at argument only to submit the matter. This is frustrating to the judges and opposing counsel who must prepare for an argument that will never happen. Some practitioners in misdemeanor appeals inform the district attorney's office it will not pursue oral argument and the practitioner does not appear. The attorney for the People then informs the court that appellant wishes to waive oral argument and the People do not oppose the request. This system is flawed because the judges still prepare for the oral argument. It is also potentially vulnerable to miscommunication or abuse. The amendment would create a clear procedure for waiving oral argument.

Striking the phrase “[u]nless ordered otherwise”in subdivision (a) would mean that oral argument would automatically not be set in *Wende* cases. It would also mean that oral argument must remain on calendar if a party objects to the waiver of oral argument. This draws from the rule that exists in appellate courts that a party is entitled to oral argument as a matter of right in all non-*Wende* appeals. (*People v. Brigham* (1979) 25 Cal.3d 283, 285-286.)

(2) DEADLINES FOR REHEARING AND CERTIFICATION TO THE COURT OF APPEAL

Rule 8.888. Finality and modification of decision

(a) Finality of decision

(1) Except as otherwise provided in this rule, an appellate division decision, including an order dismissing an appeal involuntarily, is final 30 days after the decision is ~~filed~~ sent by the court clerk.

(2) If the appellate division certifies a written opinion for publication or partial publication after its decision is filed and before its decision becomes final in that court, the finality period runs from the ~~filing~~ date of the order for publication is sent by the court clerk.

(3) The following appellate division decisions are final in that court when filed:

(A) The denial of a petition for writ of supersedeas;

(B) The denial of an application for bail or to reduce bail pending appeal; and

(C) The dismissal of an appeal on request or stipulation.

(b) Modification of judgment

(1) The appellate division may modify its decision until the decision is final in that court. If the clerk’s office is closed on the date of finality, the court may modify the decision on the next day the clerk’s office is open.

(2) An order modifying a decision must state whether it changes the appellate judgment. A modification that does not change the appellate judgment does not extend the finality date of the decision. If a modification changes the appellate judgment, the finality period runs from the ~~filing~~ date of the modification order is sent by the court clerk.

(c) Consent to increase or decrease in amount of judgment

If an appellate division decision conditions the affirmance of a money judgment on a party’s consent to an increase or decrease in the amount, the judgment is reversed unless, before the decision is final under (a), the party serves and files a copy of a consent in the appellate division. If a consent is filed, the finality period runs from the filing date of the consent. The clerk must send one filed-endorsed copy of the consent to the trial court with the remittitur.

Rule 8.889. Rehearing

(a) Power to order rehearing

(1) On petition of a party or on its own motion, the appellate division may order rehearing of any decision that is not final in that court on filing.

(2) An order for rehearing must be filed before the decision is final. If the clerk’s office is closed on the date of finality, the court may file the order on the next day the clerk’s office is open.

(b) Petition and answer

(1) A party may serve and file a petition for rehearing within 15 days after the following is sent by the court clerk:

(A) The decision ~~is filed~~;

(B) A publication order restarting the finality period under rule 8.888(a)(2), if the party has not already filed a petition for rehearing;
(C) A modification order changing the appellate judgment under rule 8.888(b); or
(D) ~~The filing of a c~~<u>C</u>onsent under rule 8.888(c).

(d) Effect of granting rehearing

An order granting a rehearing vacates the decision and any opinion filed in the case. If the appellate division orders rehearing, it may place the case on calendar for further argument or submit it for decision.

Rule 8.1005. Certification for transfer by the appellate division

(a) Authority to certify

* * *

(b) Application for certification

(1) A party may serve and file an application asking the appellate division to certify a case for transfer at any time after the record on appeal is filed in the appellate division but no later than 15 days after <u>the following is sent by the court clerk</u>:
(A) The decision ~~is filed~~;
(B) A publication order restarting the finality period under rule 8.888(a)(2);
(C) A modification order changing the appellate judgment under rule 8.888(b); or
(D) ~~The filing of a c~~<u>C</u>onsent under rule 8.888(c).

(c) Time to certify

The appellate division may certify a case for transfer at any time after the record on appeal is filed in the appellate division and before the appellate division decision is final in that court.

* * *

Usually, a party in the court of appeal has 40 days to prepare a petition for review and 15 days to prepare a petition for rehearing. A party can receive immediate electronic notification of the decision of the court of appeal. An application for certification to transfer the case to the court of appeal is the equivalent to a petition for review for cases in the appellate division, and it is due 15 days after the decision is filed. The deadlines for the application for certification and the petition for rehearing are inflexible because the appellate division loses jurisdiction 30 days after the decision is filed. Practitioners and pro per parties in the appellate division have complained there is insufficient time for preparing an application for certification and a petition for rehearing for several reasons. First, for most it is something they are not familiar with, especially an application for certification. Second, most superior courts still notify parties of decisions by mail, which delays receipt of the decisions. Third, despite rule 8.887(b) requiring the court clerk to promptly file and send the decision, there have been delays in the mailing of the decision, leaving little or no time for a petition for rehearing or an application for certification. The first and second problems cannot be solved without extending the time of finality. The proposed amendment is modest in that it would retain the time limits but would not prejudice the parties due to failures of the court clerk to timely mail the decision.

A supplemental or alternative solution is to extend the deadlines by 15 days, so that a petition for rehearing and an application for certification are due in 30 days, and the matter is final in 45 days.